BASIC INSTRUCTIONS

FOR GUARDIANS

January 1, 2009

Kansas Judicial Council

Preface

These basic instructions for guardians were prepared by the Guardianship and Conservatorship Advisory Committee of the Kansas Judicial Council and were approved by the Council in December 2008. The instructions constitute the basic instructional program concerning the duties and responsibilities of a guardian required by K.S.A. 2009 Supp. 59-3069(j). After reading these instructions, a proposed guardian should sign the affidavit of completion at the end of this booklet and file it with the court as evidence of completion of the basic instructional program.

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BASIC INSTRUCTIONS FOR GUARDIANS

Definitions of Words You Need to Know:

Guardian - A guardian is a person appointed by a court to act on behalf of a minor or impaired person, who is called a "ward." A guardian manages a ward's personal health, safety, and welfare**.**

Ward - A ward is a person for whom a guardian has been appointed. A ward may be either a minor or an adult person with an impairment.

Conservator - A conservator is a person appointed by a court to act on behalf of a minor or impaired person, who is called a "conservatee." A conservator manages a conservatee's property or "estate," such as money, personal and real property.

Conservatee - A conservatee is a person for whom a conservator has been appointed. A conservatee may be either a minor or an adult person with an impairment.

NOTE: Sometimes, a person is appointed as both a guardian and conservator. In that case, the person they are helping may be called either a ward or conservatee, or both.

What Are a Guardian's Powers and Duties?

A guardianship is a legal proceeding filed to protect an impaired person, who is called a "ward." After a hearing to determine whether a guardianship is necessary, a court order will be issued. Your attorney should provide you with a copy of that court order. A guardian manages a ward's personal health, safety, and welfare. If the court appoints you as guardian your job is separate from the duties of a conservator, though the court may appoint the same person to serve in both roles. As guardian you are always subject to the control and direction of the court.

State law and the court define a guardian's power and set the rules to be followed when caring for the ward. At all times, a guardian is under the court's direction and control. A guardian must always act in the ward's best interest and use reasonable care and attention. **EACH YEAR THE GUARDIAN MUST FILE A REPORT WITH THE COURT TELLING THE COURT ABOUT THE GUARDIAN'S ACTIONS AND THE WARD'S CONDITION.**

If the court authorizes a guardian to exercise authority over a ward's estate valued at less than $10,000, the guardian may have many of the same duties as a conservator, including filing an annual accounting with the court. In that situation, a guardian might find it helpful to read the booklet, "Basic Instructions for a Conservator," which includes a sample accounting form.

As a guardian, your job is to get to know the ward and the ward's family, friends, and care givers. You should use your authority only as needed and allow the ward to take part in decisions. You should consider the ward's personal desires and values when making decisions on the ward's behalf. You should encourage the ward to make decisions, develop skills for daily living, and do as much as the ward can on his or her own.

The law does **NOT** require you as guardian to use your own personal money or other assets for support of the ward solely because you have been appointed as guardian. **However**, if you are the parent or spouse of the ward, you may have an independent duty to support the ward. You are not liable to other persons for the acts of the ward solely because you have been appointed as guardian. This means you are not responsible to any one else for something that the ward has done simply because you are the guardian.

You should protect the ward's personal, civil, and human rights. The law requires that you **MUST ALWAYS** act in the best interest of the ward and exercise reasonable care, diligence, and good sense.

As a guardian, you MAY generally take any of the following actions on behalf of the ward without getting additional court approval:

1. Take charge of the ward and provide for the ward's care, treatment, housing, education, support, and maintenance;
2. Give or withhold consents for the ward except those listed below;
3. Assure the ward is living in the least restrictive setting that meets his or her needs;
4. Assure the ward receives medical and nonmedical care;
5. Protect the health, safety, and welfare of the ward;
6. Make necessary arrangements for the ward's funeral, burial or cremation; and
7. Revoke a power of attorney.

As a guardian, you may NOT take any of the following actions UNLESS the supervising court issues a written order approving the action(s):

1. Consent to adoption of the ward;
2. Consent to any psychosurgery, organ or limb removal except in a life threatening emergency or to prevent lasting impairment to the ward's physical body;
3. Consent to sterilization of the ward;
4. Consent to experimental procedures;
5. Consent to withholding or withdrawal of life-saving medical care unless the ward previously made a written advance directive (living will, durable power of attorney for health care decisions, or similar document) that meets legal requirements;
6. Have any control over the ward's property, unless the Letters of Guardianship authorize you to do so **AND** the value of the ward's property is less than $10,000;
7. Place the ward in a psychiatric treatment facility;
8. Pay guardian fees or reimburse expenses; or

9. Dispose of property after the ward's death.

As a guardian, you may NEVER take any of the following actions:

1. Prohibit the marriage or divorce of the ward; or
2. Consent to termination of the ward's parental rights.

What Are a Guardian's Responsibilities to the Court?

Required Training

Before you are appointed as guardian, you must complete a basic training program about the duties and responsibilities of a guardian. Reading this booklet meets that requirement. At the end of this booklet, you will find an affidavit of completion of the basic training program (a form stating you have read the booklet). When you finish reading this booklet, you should sign the affidavit and file it with the court to prove that you have completed the program. You should also keep this booklet for future reference.

Oath

When you are appointed as guardian, the court will require that you file an oath or affirmation stating that you will faithfully, impartially and to the best of your ability fulfill all duties assigned by the court. The oath must be in writing and signed before a notary or the judge.

Letters

After you have filed your oath and affidavit of completion of the basic training program, the court will issue Letters of Guardianship. This document gives you the authority to carry out your legal duties. You should ask for a certified (legal) copy of the original document, which is on file with the court. You should keep the certified copy in a safe place and provide copies of the Letters of Guardianship to anyone you deal with who provides services to the ward.

Guardianship Plan

In some cases, the court may require, or your attorney may suggest, that you file a guardianship plan. A guardianship plan might include provisions about where a ward will live, what kinds of decisions the ward will be allowed to make on his or her own, and, if no conservator has been appointed, how the ward's financial assets will be used. Guardianship plans are most useful in situations where the ward is capable of making some decisions independently.

Annual Report on the Ward's Condition

Because the court needs to know where the ward is living and how the ward is

doing, the guardian must file a report on the ward's condition every year. This report is required even if there is no change in the ward's condition. The reporting period usually starts when the guardian is appointed and covers a 12-month period of time, unless the judge orders a different reporting time period. A sample of the annual report is included at the end of this booklet.

Special Reports and Accountings

A guardian must file a special report or accounting with the court if any of the following occurs:

1) a change of address of the guardian;
2) a change of residence or placement of the ward;
3) a significant change in the health or impairment of the ward;
4) if the ward acquires any real property, or if the ward receives or accumulates other property or income which causes the total value of the ward's estate to equal or exceed $10,000; or
5) the death of the ward.

If the ward dies, you will need to complete a final report on the ward's condition so that the court can close the case.

Reimbursement for Time and Expenses

The court must approve in advance any reimbursement to the guardian for expenses and time spent on official duties. If you want to be paid back for your time and expenses, you must keep a detailed timesheet of time spent and a detailed record of expenses incurred. Many guardians do not claim such expenses, especially if the ward is a family member, and perform their duties out of love and affection. If you want to receive reimbursement, you should talk to your attorney and bring this up preferably at the first court hearing.

What are Conflicts of Interest?

A conflict of interest happens when your personal or financial interests as guardian go against those of the ward or where your actions appear to be self-serving (for your own benefit). For example, it would be a conflict of interest for a guardian to get a loan from or buy property belonging to the ward's estate. It could also be a conflict of interest for a guardian to work in the same facility where the ward lives.

Whenever you think you might have a conflict of interest, even if you are not sure, report it to the court. Just because you may have a conflict of interest does not mean you cannot serve as guardian, as long as you keep the court informed.

Additional resources:

If you have questions about any of your duties as a guardian, ask your attorney.

Additional resources, including blank forms for guardian's reports, can be found on the Kansas Judicial Council's webpage at:
www.kansasjudicialcouncil.org

IN THE _____ JUDICIAL DISTRICT
DISTRICT COURT OF APACHE COUNTY, KANSAS

In the Matter of the)
(Guardianship) (Conservatorship) of)
)
Samuel G. Crown) Case No. 97 GC 031
)
Proceeding Pursuant to K.S.A. Chapter 59

X ANNUAL _ FINAL REPORT ON THE CONDITION
OF THE GUARDIAN'S WARD
From July 01, 2007 to June 30, 2008

Comes now, Marjorie Crestone (Name) 3299 Smithville Road, Apartment #4 (Address)
Sanesville, KS 66666 (City & Zip Code) (785) 999-71000 (Telephone Number)

guardian in the above entitled estate and submits the following (annual) (final) report on the condition of:

Samuel G. Crown (Name) 1942 (Year of Birth)

1. The ward resided at the following places during the reporting period:
39 Solar Haven Rd, Sanesville, KS 66666. (address) Own home. (Type of Residence) 22 years. (Length of stay)

2. State the approximate number of times the guardian has contact with the ward, the nature of such contacts, and the date the ward was last seen by the guardian:
Guardian visits ward in his own home approximately two to three times per month. Guardian checks on the ward's health status, sufficient groceries, household and personal care items, and the home cleanliness, maintenance and upkeep.

3. Summarize the medical, social, educational, vocational and other professional services received by the ward during the reporting period:
Samuel is retired. He is recuperating from recent hip surgery and receives bi-weekly physical therapy; he takes medications for diabetes, high blood pressure, heart disease and pain associated with osteoporosis. He has monthly doctor appointments to monitor medications. Additionally, a home health nurse visits weekly to set up his medications. Samuel reads, watches TV and enjoys activities at the senior center and periodic visits

from his great-niece who lives out of state.

4. If the ward is institutionalized, the results of an investigation into the nature and appropriateness of the ward's care and treatment are as follows:

Ward lives in his own home. Following hip surgery in August 2007, he recuperated for three weeks in a local nursing home after which he was able to return home.

5. What changes in the mental or physical condition of the ward has the guardian observed?

During the past year, Samuel experienced several episodes of memory lapses for which he is now receiving medication. The doctor indicates Samuel is in early stages of Alzheimer's disease. He had hip replacement surgery in August 2007 and now is able to walk using a cane. Other medical conditions are stable.

6. What major problems relating to the guardianship, if any, have arisen during the reporting period?

A former neighbor who had exploited Samuel attempted to reintroduce himself into Samuel's life. Guardian secured a restraining order against the person. No other problems were experienced.

7. In the opinion of the guardian, does the guardianship need to continue, and is it necessary to increase or decrease the powers of the guardian?

The guardian has advocated and provided consents regarding health care, home maintenance and freedom from exploitation. Guardianship should continue with the current powers.

8. Compensation requested and expenses incurred by the guardian:

Refer to itemized list attached.

9. Other information required by the court is:

I declare under penalty of perjury under the laws of the state of Kansas that the foregoing is true and correct. Executed on June 30, 2008.

_____

Guardian

IN THE _____ JUDICIAL DISTRICT
DISTRICT COURT OF _____ COUNTY, KANSAS

In the Matter of the	)	
Guardianship of	)	
	)	Case No. _____
_____	)	
	)	

Proceeding Pursuant to K.S.A. Chapter 59

AFFIDAVIT OF COMPLETION
OF BASIC INSTRUCTIONAL PROGRAM

I declare that I have received and reviewed the Basic Instructions for Guardians and kept a copy of those Instructions. I acknowledge that, as guardian, I have the duties and responsibilities described in the Instructions.

I declare under penalty of perjury that this is true and correct.

Executed on this _____ day of _____, _____.

_____
Signature

_____
Please Print Your Name

_____

_____
Address

_____
Telephone Number