

# DUTIES, RESPONSIBILITIES AND LIMITATIONS OF GUARDIANS IN KANSAS

K.S.A. 59-3075 et seq.

The duties, responsibilities and limitations of a guardian are found in Kansas Statutes Annotated (K.S.A.) 59-3075 et seq.

## **The guardian shall:**

- become and remain personally acquainted with the ward, the spouse of the ward and other interested persons associated with the ward and who are knowledgeable about the ward's needs, and the ward's responsibilities
- exercise authority only as necessitated by the ward's limitations
- encourage the ward to participate in making decisions affecting the ward
- encourage the ward to act on the ward's own behalf to the extent the ward is able
- encourage the ward to develop or regain the skills and abilities necessary to meet the ward's own essential needs and to otherwise manage the ward's own affairs

## **In making decisions on behalf of the ward, the guardian shall:**

- consider the expressed desires and personal values of the ward to the extent known to the guardian
- strive to assure that the personal, civil, and human rights of the ward are protected
- at all times act in the best interests of the ward and exercise reasonable care, diligence and prudence
- file with the court reports concerning the status of the ward and actions of the guardian as the court directs

## **The guardian shall exercise all powers and discharge all duties necessary or proper to implement the following provisions:**

- take charge of the person of the ward, and provide for the ward's care, treatment, habilitation, education, support and maintenance
- consider and provide on behalf of the ward necessary or required consents or refuse the same
- assure the ward resides in the least restrictive setting appropriate to the needs of the ward and which are reasonably available
- assure the ward receives any necessary and reasonably available medical care and, any reasonably available non-medical care or other services as may be needed to preserve the health of the ward or to assist the ward to develop or retain skills and abilities
- promote and protect the comfort, safety, health and welfare of the ward
- make necessary determinations and arrangements for and give necessary consents in regard to the ward's funeral arrangements, burial or cremation, the performance of an autopsy upon the body of the ward, and anatomical gifts of the ward. Cremation, autopsies and anatomical gifts are subject to limitations and provisions in other areas of the law.

## LIMITATIONS OF POWERS OF A GUARDIAN

Unless approved by the court, a guardian shall not have the power on behalf of the ward to:

- consent to the adoption of the ward
- place the ward in a treatment facility as defined in K.S.A. 2002 Supp. 59-3077 (h)
- exercise any control or authority over the ward's estate
- consent to any psychosurgery, removal of a bodily organ, or amputation of a limb, unless, the surgery, removal or amputation has been approved in advance by the court, except in an emergency and when necessary to preserve the life of the ward or to prevent serious and irreparable impairment to the physical health of the ward consent to the sterilization of the ward, unless approved by the court following a due process hearing where the ward is represented by a court appointed attorney
- consent to the withholding or withdrawing of life-saving or life-sustaining medical care, treatment, services or procedures, except in accordance with the provisions of any declaration of the ward making a Living Will pursuant to K.S.A. 65-28, 101 through 65-28, 109 and amendments thereto; or, if the ward, before the appointment of a guardian, executed a *durable power attorney for health care decisions* (DPOAHC) and the document as not revoked by the ward and there is included any provision relevant to the withholding or withdrawal of life-saving or life-sustaining medical care, treatment, services or procedures,
  - the guardian shall have the authority to act as provided for in the DPOAHC even if the guardian has revoked or amended the power of attorney, OR,
  - the guardian may allow the agent appointed by the ward to act on the ward's behalf if the guardian has not revoked or amended the power of attorney; OR,
  - where the ward's treating physician shall certify in writing to the guardian that:
    - the ward is in a persistent vegetative state, or, is suffering from an illness or other medical condition for which further treatment, other than for relief of pain, would not likely prolong the life of the ward other than by artificial means,
    - nor would be likely to restore to the ward any significant degree of capabilities beyond those the ward possesses, and,
    - which opinion is concurred in by either a second physician or by any medical ethics or similar committee to which the health care provider has access, established for the purposes of reviewing the circumstances and the appropriateness of any type of physician's order which would have the effect of withholding or withdrawing life-saving or life sustaining medical care, treatment, services or procedures. The written certification shall be approved by a court order.
- to exercise any control or authority over the ward's estate, except if the court shall specifically authorize such. The court may assign such authority to the guardian, including the authority to establish certain trusts as provided in K.S.A. 2002 Supp. 59-3080, and amendments thereto.

Conservator (financial authority) Duties, Responsibilities and Limitations may be found in K.S.A. 59-3078 et seq.

### ADDITIONAL GUARDIANSHIP RESOURCES

1. Guardianship Statutes – K.S.A 59-3050 through 59-3096.
2. [Guide to Kansas Laws on Guardianship and Conservatorship](http://www.ksgprog.org) – KGP at [www.ksgprog.org](http://www.ksgprog.org)
3. Basic Instructions for Guardians and Conservators – Kansas Judicial Council at <http://www.kansasjudicialcouncil.org/GuardianConservatorTraining.shtm>