

Boone County Guardianships

Frequently Asked Questions:

Q: What is a guardianship?

A: A guardianship is a legal relationship between a court-appointed adult who assumes the role of guardian for an individual who has been deemed legally disabled. 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 affairs.

Q: Who is considered disabled?

A: A person who is 17 years of age or older and unable to make informed decisions about his/her day-to-day activities and/or is no longer able to manage his/her financial affairs.

Q: Where do I file for guardianship/conservatorship?

A: In the county where the person you are seeking guardianship over resides, or the county where the parent(s) resides in the case of a minor. For Boone County residents, petitions are filed at the Boone County Justice Center located at 6025 Rogers Lane Burlington, KY 41005.

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 one person serve as guardian?

A: Yes. 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 Boone County, currently the filing fee is \$157.50 for a guardianship in which the respondent is an adult and \$83.50 for a guardianship in which the respondent is a minor. These fees are subject to change and individuals should contact the Boone County Circuit Court Clerk at (859) 448-2900 for the most up to date information.

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), whom the petitioner selects and must schedule the evaluation with, 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 and/or financial affairs. The Court will also set it for a trial, typically 30-60 days after the filing.

Q: What if my loved one can't wait that long for someone to be appointed. Is there an option for an emergency guardianship and/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-747). The hearing on the emergency petition will be heard within 7 days.

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

A: These proceedings consist of the County Attorney and a court appointed attorney, Guardian Ad Litem (GAL) serving in specific and important roles 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 judge or jury to find that someone lacks the capacity to manage his/her personal and/or financial affairs. The court appointed attorney (GAL) will represent the interests of the person you are filing over. While the County Attorney does not represent the petitioner or any applicants, they 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 counsel if they choose.

Q: Does the person I am seeking guardianship and/or 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. This determination must be made by one of the members of the evaluation team and be stated in the report.

Q: What happens at the trial?

A: If the interdisciplinary team members unanimously find that the respondent is at least partially disabled, and respondent's counsel and the Commonwealth agree, then the case may be tried as a bench trial (to the judge) rather than to a jury. If the reports do not agree, or the respondent or another interested party object, the case will be set before a jury. The County Attorney will present the case to the judge or jury and may call witnesses to testify. The judge or jury will listen to the testimony, review the reports from the Interdisciplinary Evaluation Team, and ultimately, make a decision based on the evidence whether the person is wholly, partially, or not disabled as to his/her personal and/or financial affairs.

Q: Who appoints the guardian and/or conservator?

A: The Judge determines who will be appointed to serve as the guardian and/or conservator. In the case where there are multiple applicants, the Court will look at factors, preferences, and qualifications in making the determination.

Q: How long does a guardianship and/or conservatorship last?

A: If the person is found to be 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 maybe be appointed for up to 5 years, the term which may be renewed by the Court.

Q: Can the guardianship and/or 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). The court will schedule the matter for a hearing and make a decision on the motion.

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

A: If someone is found to be fully disabled the Department of Transportation (DOT) will be notified of this finding and the individual's driving privileges will be automatically suspended. If someone is under a partial guardianship his/her driver's license will not be automatically suspended.

Q: Can a person under guardianship vote?

A: After a finding of disability has been made the court will inquire as to the appropriateness of the person retaining his/her right to vote. The presiding judge will make a determination as to whether the individual shall retain 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: A guardian may present the person under guardianship to the mental health hospital; however, the hospital is not required to take the individual if the medical team does not feel he/she meets the criteria for involuntary hospitalization. In short, the guardian cannot force the mental health hospital to take the person if the hospital does not feel placement is appropriate.

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

A: Additional information and materials are available for guardians and/or conservators via the Kentucky Guardianship Association. 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.