

JACKSON COUNTY CIRCUIT COURT – PROBATE DIVISION

NOTICE

Senate Bill 806 becomes effective August 28, 2018, and brings with it considerable changes to the Probate Code. Below, please find a synopsis of some the changes effecting Chapter 475 that deals with guardianships and conservatorships.

Section 475.010 – Definitions:

- paragraph (4) added the definition for Conservator Ad Litem;
- paragraph (6) added cognitive as a condition for disabled or disabled person;
- paragraph (10) completely revised the definition for Habilitation;
- paragraph (11) added cognitive as a condition and expanded the wording “to such an extent that the person, even with appropriate services and assistive technology” to incapacitated person;
- paragraph (12) added the definition of Interested Persons;
- paragraph (13) revised least restrictive environment to least restrictive alternative and completely revised the definition;
- paragraph (17) added cognitive as a condition for partially disabled person
- paragraph (18) added cognitive as a condition for partially incapacitated person

Section 475.016.2 grants existing guardians and conservators until August 28, 2019, to meet any annual and other reporting requirements that are different from the requirements of chapter 475 before August 28, 2018. This applies to the Annual Statement of Affairs (ASA’s).

Section 475.050

- 475.050.1 sets an order of priority on the individuals considered suitable and willing to serve as guardian and/or conservator;
- 475.050.1.(2) removes the language “at a time within 5 years before the hearing when the person was able to make and communicate a reasonable choice”;
- 475.050.2 added “The court shall not appoint an unrelated third party as a guardian or conservator unless there is no relative suitable and willing to serve or if the appointment of a relative or nominee is otherwise contrary to the best interests of the incapacitated or disabled person. If the incapacitated or disabled person is a minor under the care of the children’s division and is entering adult guardianship or conservatorship, it shall be a rebuttable presumption that he or she has no relative suitable and willing to serve as guardian or conservator.”
- 475.050.3 removes the language “In the event there is not brought to the attention of the court any such valid nomination executed within 5 years before the hearing, then the court shall give consideration to the most recent valid nomination brought to its attention, but the court shall not be required to follow such nomination.”
- 475.050 paragraphs 4, 5, and 6 added the requirement that anyone asking to be appointed guardian and/or conservator, with the exception of public administrators, the minor or incapacitated and/or disabled person’s spouse, parents, children or siblings over the age of 18, submit at their own expense to a background screening that include the disqualification lists of the Departments of Mental Health, Social Services, Health and Senior Services, the abuse and

neglect registries for adults and children, a Missouri criminal record review and the sexual offender registry and that if asking to be appointed conservator, with those same exceptions, submit at their own expense to a credit history investigation. The results of the reports must be submitted to the court at least 10 days prior to the hearing date unless waived or modified by the court for good cause shown by an affidavit filed simultaneously with the petition or if the protected person requests an expedited hearing. It provides that a guardian certified by a national accrediting organization can file proof of certificate in lieu of the background screening and credit history investigation. No order appointing a guardian or conservator can be signed until such reports have been filed and reviewed by the court. The requirement for the background screening and credit history reports is waived if a petition for emergency temporary guardianship and/or conservatorship is filed or for good cause shown. The appointed guardian and/or conservator can petition for reimbursement of the reasonable expenses in obtaining the reports.

Sections 475.060 and 475.061 In addition to the current requirements for petitions for appointment of guardians and/or conservators, the following is a summary of the additional information that must be included in the petition:

MINORS

- Name and address of the person having custody or who claims to have custody of the minor.
- If requesting co-guardians, a statement of the reasons why co-guardians are wanted and whether the co-guardians may act independently, act only together or only together with regard to specified matters.
- The written consent from any person including the public administrator who is to be appointed as co-guardian.
- Whether the petitioner knows of any other court having jurisdiction over the minor along with the name of the court, if known.

ADULTS

- The factual basis for the petitioner's conclusion that the person is unable or partially unable by reason of some specified physical, mental or cognitive condition to receive and evaluate information or to communicate decisions to such an extent that the person lacks capacity to meet essential requirements for food.....and to manage his financial resources.
- The reasons, incidents and specific behaviors demonstrating why the appointment is sought.
- If requesting co-guardians, a statement of the reasons why co-guardians are wanted and whether the co-guardians may act independently, act only together or only together with regard to specified matters.
- The written consent from any person including the public administrator who is to be appointed as co-guardian.
- If filing a petition for emergency guardian, it must include the same information as a non-emergency petition and shall request the appointment per the requirements of Section 475.075.15.

Section 475.062 deleted the existing item 1 in its entirety making the previous item 2 the start of the section and added new items 2, 3 and 4 which deal with the appointment of a conservator with the respondent's consent on the petition; the requirement of appointing an attorney for the respondent who has to advise the respondent of the rights and consequences of the appointment of a conservator; and that if the respondent is a co-depositor or co-tenant that notice be given to the other co-depositors and co-tenants before the court acts.

Section 475.070 requires notice on petitions for appointment of guardian and/or conservator be given to "The person or entity nominated to serve as guardian or conservator".

Section 475.075

- 475.075.2 requires "written notice stating the time and place for the petition to be heard by the court, and the name and address of counsel appointed to represent the respondent shall be served upon" all persons listed in the definition of Interested Persons along with "any person proposed to serve as guardian or conservator" and "any co-tenants or co-depositors with the respondent".
- 475.075.3 is all new regarding when "the public administrator is nominated as guardian and/or conservator or at any stage of the proceeding is being considered to be nominated" that they be given a copy of the petition, any accompanying documents, including exhibits and medical opinions, receive written notice of the date and time of the hearing and have an opportunity to attend and be heard.
- 475.075.4 sets out the requirements that the court appointed attorney has to visit with the respondent at least 24 hours prior to the hearing date unless waived by the court for good cause and if the attorney finds that the respondent is so impaired that the respondent cannot communicate or participate in the proceedings, the attorney shall safeguard the interests of the respondent.
- 475.075.5 has been revised to give the attorney for respondent the right to obtain all medical and financial information of the respondent from medical care providers and financial institutions and no medical care provider or financial institution shall be liable for damages or otherwise for the release of this information to the attorney. It also sets out the requirements for when private counsel enters appearance on behalf of the respondent and when a court appointed attorney may be allowed to withdraw.
- 475.075.6 delineates the meaning of "other appropriate professional" to having experience or training in the alleged mental, physical or cognitive impairment.
- 475.075.7 denotes handling objections to a report of a court appointed physician, licensed psychologist or other professional and taxing the fees for said report as costs in the proceedings.
- 475.075.8 sets out that a physician, licensed psychologist or other appropriate professional may be compelled by the court to testify with or without a court ordered evaluation, upon motion by any party of the court's own motion and that evidence received that is privileged and confidential can be shared with the respondent and counsel for all parties but cannot be used in any other civil or criminal proceeding without consent of the holder of the privilege.
- 475.075.10 requires the attorney for respondent to advise the respondent of their rights and adds the right to appeal the court's decision.
- 475.075.11 deletes subsections (1), (2), (3), and part of (4) along with adding the language "the court shall appoint a guardian or limited guardian, a conservator of limited conservator, or both in combination".

- 475.075.12 changes least restrictive environment to least restrictive alternative and deletes the language “The court shall consider whether or not..... by the appointment of a guardian or conservator”.
- 475.075.13 adopts new guidelines for considering if the needs of the respondent may be met without the appointment of a guardian and/or conservator by a less restrictive alternative.
- 475.075.14 adopts the requirement that detailed findings of fact must be made in the order as to the extent of the respondent’s physical, mental, and cognitive incapacity to manage essential requirements for food, clothing, shelter, safety or other care; the extent of the respondent’s physical, mental, and cognitive incapacity to manage the respondent’s financial resources; whether the respondent requires placement in a supervised living situation, and if so, the degree of supervision needed; whether the respondent’s financial resources require supervision and, if so the nature and extent of supervision needed; whether the respondent retains the right to vote; whether the respondent is permitted to drive a motor vehicle if the respondent can pass the required driving test; and whether the respondent retains the right to marry.
- 475.075.15 increases the time period for emergency ad litem to act from 30 to 90 days; that a hearing for an emergency ad litem be held within 5 business days of the filing of the petition except for good cause shown; that extensions of ad litem appointments increases from 30 to 90 days; and that if no petition for guardianship and/or conservatorship is filed within the first 90 days of granting the emergency authority, the court can terminate the authority granted upon motion of the attorney for respondent and upon finding that it would be contrary to the respondent’s interest.

Section 475.078.4 allows the court to expressly enter an order that even if found to be totally incapacitated, they can retain the right to vote; be permitted to drive a motor vehicle if they can pass the driver’s test and retain the right to marry.

Section 475.079

- 475.079 paragraphs 1 and 2 add the language “and that the respondent’s identified needs cannot be met by a less restrictive alternative”;
- 475.079.3 sets out requirements that must be met before the public administrator can be appointed in any capacity.

Section 475.080 adds the language “and that the respondent’s identified needs cannot be met by a less restrictive alternative.”

Section 475.082 sets out new requirements for the annual status reports to determine if the guardianship should be terminated or the powers of the guardian increased or decreased; and allows the court to contact the Department of Health and Senior Services or other agencies to investigate the conduct of the guardian and file a report of its findings. The new requirements for the status reports are:

- Plans for future care;
- If the ward is living with the guardian, the contact number of times is no longer needed;
- Summary of visits with the ward; activities on ward’s behalf; and extent to which ward has participated in decision making;
- Date of treatment plan if living in a facility;
- Current mental and physical condition of the ward and any major changes since the last report;

- A summarized plan for the coming year. If there's an individual support plan, treatment plan or plan of care already in place, a copy of that plan may be filed to satisfy this requirement.

Section 475.083

- Section 475.083.2(4) adds the guardianship and/or conservatorship can be terminated by court order "if the court determines that the guardian is unable to provide the services or a guardian due to the ward's absence from the state or other particular circumstances of the ward".
- Section 475.083 paragraphs (4), (5), (6), (7) and (8) – denotes changes to restoration of wards, increase or decrease powers of the guardian and return rights to the ward or protectee as well as consequences for interference with a request to be restored.

Section 475.084 addresses visitation if a guardian has been appointed for a minor under 475.030 (4) (2).

Section 475.094 has been rewritten to set out what the conservator has the authority to do after notice to interested persons and authority by the court.

Section 475.120 added item 10 which addresses the guardian's decisions regarding an adult ward's support, care, education, health and welfare.

Section 475.125 added item 2 addresses considerations in setting the amount for support allowance.

Section 475.130

- 475.130.3 rewrote the section to provide guidelines that a conservator shall use when managing, investing, and distributing the estate.
- 475.130.6 increases the amount from \$1,000 to \$5,000 that a conservator has the power to do without court authorization for certain things; adds "receive additions to the estate; deposit funds in a bank; pay taxes, assessments, and other expenses incurred in the collection, care, administration and protection of the estate; prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of estate assets; execute and deliver all instrument that will accomplish or facilitate the exercise of the powers vested in the conservator".

Section 475.145 requires the inventory to disclose any non-probate transferees designated to receive non-probate transfers after the protectee's death.

Section 475.230 added item 2 which addresses notice of required hearings on petitions for sale of real or tangible personal property.

Section 475.270 changes the requirements for annual settlements allowing the court to require them more often if necessary; increases the time to file from 30 to 60 days after the anniversary of grant of letters; and provides for additional information unless the conservator is the public administrator as set out in the newly adopted item 4.

Section 475.290 increases the time to file final settlements from 60 to 90 days after termination of their authority except for those cases where the court has ordered that no letters of administration be granted under 475.320.

Sections 475.341 and 475.342 are new sections enacted involving management of the conservatorship.

Section 475.343 is a new section enacted whereby a guardian is not obligated to use their own financial resources for support of the ward and provides direction for authority to have a ward admitted to a mental health facility or intellectual disability facility.

Section 475.355 adds the term “developmental disability” to be defined in Chapter 630.

Section 475.357 is a new section enacted granting jurisdiction to the Probate Division over issues of adjudication and the appointment of a guardian and/or conservator of an adult 18 years or older whose parents have a pending matter under Chapter 210 or 452 for child custody or visitation of that child and limiting the authority of the court with jurisdiction under those 2 chapters to only enter orders as to child support.

Section 475.361 is a new section enacted provides additional rights to a ward in every guardianship and more specific in an adult guardianship; revokes the powers under a durable power of attorney for health care; and designates that the appointment of a guardian is not a determination that the ward lacks testamentary capacity.