

# Quick Guide: Guardianship/Conservatorship

## Guardianship/Conservatorship

When Adult Protective Service (APS) Specialists consider the eligible adult's (EA) need for a guardian/conservator, all actions should consistently provide the eligible adult with the least restrictive environment. Staff shall explore and document the following alternatives for maintaining or providing care before considering guardianship/conservatorship. Alternatives may include the following:

- Supported decision-making
- Residing with a family member/friend
- Full/part-time caregiver
- Delivery of meals or other services to assist the EA in remaining at home
- Family/friend checking on the eligible adult when needed
- Appointment of a durable power of attorney (DPOA)
- Appointment of a payee
- Establishment of a trust; and
- Civil detention if the eligible adult is a threat to themselves/others

APS Specialists must meticulously document all contacts and information collected regarding the eligible adult's inability to care for themselves. This comprehensive documentation is essential, as the Office of General Counsel (OGC) must be able to prove the eligible adult's incapacity/partial incapacity or disability/partial disability by clear and convincing evidence.

**Note:** If the eligible adult is in a hospital, nursing facility, or has an established Department of Mental Health (DMH) Case Manager, those establishments shall be asked if they will file the petition for guardianship first.

## Court Summary: Guardianship/Conservatorship Review Form

To ensure all necessary elements are met to consider filing the case in Probate Court, the APS Specialist shall complete the Court Summary: Guardianship/Conservatorship Review Form. The APS Unit Supervisor shall review and approve the recommendation to proceed with guardianship or conservatorship.

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Each section shall be completed in its entirety, or it will be returned for additional information.

## **Demographic Information**

- ☐ Name;
- ☐ Current location;
- ☐ Physical address;
- ☐ Phone number;
- ☐ Social Security Number; and
- ☐ Department Client Number (DCN).

## **Income and Assets**

- ☐ All accounts (including account number, value, and name of financial institution);
- ☐ All property (including type, value, titled name, and location); and
- ☐ All known income (including source, amount, and frequency of receipt).

## **Involved Persons**

- ☐ Family (including spouse, children, siblings, and other close relatives);
- ☐ Friends; and
- ☐ Medical providers.

**Note:** Ensure that addresses and phone number(s) are included for each person, if available. APS Specialists must make contact or document efforts to contact all family members, even if they are not interested in being involved. The court uses this information to ensure proper notification of proceedings for guardianship and/or conservatorship. Statute requires the spouse, parents, and adult children to receive notification of proceedings.

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## Power(s) of attorney, guardian(s), conservator(s), and/or trustee(s)

Pursuant to 475.075.2, RSMo, notification of court proceedings is required to anyone serving as, guardian/limited guardian, conservator/limited conservator, any person having the power to act in a fiduciary capacity with respect to financial resources (such as power of attorney or durable power of attorney), and any person having the respondent's care and custody. APS Specialists must provide the name(s) and the contact information (if available) of the following:

- ☐ Power of Attorney;
- ☐ Guardian or Conservator; and/or
- ☐ Trustees.

## Capacity to Consent

- ☐ Summarization of the eligible adult's current condition and circumstances, including what physical and/or mental condition is preventing the eligible adult from meeting their basic needs and observations regarding the eligible adult's ability to understand the consequences of decisions;
- ☐ Documentation of any recent contact efforts with the eligible adult;
- ☐ Detailed case history with DSDS, including timelines of how the eligible adult's circumstances have changed, hotline history, police involvement/911 calls, involvement of other agencies, and a description of why current power of attorney, durable power of attorney, guardianship and/or conservatorship, if any, is not working;
- ☐ Physician's interrogatories and a brief summary of findings;  
**Note:** Interrogatories are only valid for six months from the date the adult was seen by the physician.
- ☐ Any psychological evaluations; and
- ☐ Information about if the eligible adult's condition is expected to improve.

## Family/Friend Involvement

- ☐ Documentation regarding friends and family members' willingness to be involved and if they might be a more appropriate option to file.

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## Documentation of Least Restrictive Environment Options/Interventions

- Documentation of efforts and alternatives explored before seeking legal intervention including formal/informal supports and their effectiveness;
- Any agencies involved that may be more appropriate to file; and
- Actions taken to illustrate that legal intervention is a last resort.

## OGC Consultation

Upon approval of the Guardianship/Conservatorship Court Summary by the APS Unit Supervisor, the form and all supporting documentation shall be submitted electronically to the APS Policy Unit via email at [APSPolicy@health.mo.gov](mailto:APSPolicy@health.mo.gov). The following is a list of information that must be included for submission to OGC, but additional information may be required depending on the circumstances:

- Copies of hotline reports and case notes;
- Medical records;
- Interrogatories (with physician's notarized signature);
- Copy of existing Power of Attorney/Power of Attorney, if applicable;
- Copy of existing Guardianship/Conservatorship, if applicable;
- Copy of will, if applicable;
- Copy of trust, if applicable; and
- Police reports, if applicable.

**Note:** If the eligible adult already has a guardian but needs a change of guardian, the APS Specialist must submit all of the information listed above except for the interrogatories.

The APS Policy Unit will review the information to ensure it is complete. If all necessary information is included, the APS Policy Unit will submit it to OGC utilizing the OGC Case Management System.