Missouri Revised Statutes

Chapter 475
Probate Code–Guardianship

←475.555 (/mostatutes/stathtml/47500005551.html)

Section 475.010.1

475.011→ (/mostatutes/stathtml/47500000111.html)

August 28, 2016

Definitions.

475.010. When used in this chapter, unless otherwise apparent from the context, the following terms mean:

(1) "Adult", a person who has reached the age of eighteen years;

(2) "Claims", liabilities of the protectee arising in contract, in tort or otherwise, before or after the appointment of a conservator, and liabilities of the estate which arise at or after the adjudication of disability or after the appointment of a conservator of the estate, including expenses of the adjudication and of administration. The term does not include demands or disputes regarding title of the protectee to specific assets alleged to be included in the estate;

(3) "Conservator", one appointed by a court to have the care and custody of the estate of a minor or a disabled person. A "limited conservator" is one whose duties or powers are limited. The term "conservator", as used in this chapter, includes limited conservator unless otherwise specified or apparent from the context;

(4) "Custodial parent", the parent of a minor who has been awarded sole or joint physical custody of such minor, or the parent of an incapacitated person who has been appointed as guardian of such person, by an order or judgment of a court of this state or of another state or territory of the United States, or if there is no such order or judgment, the parent with whom the minor or incapacitated person primarily resides;

(5) "Disabled" or "disabled person", one who is:

(a) Unable by reason of any physical or mental condition to receive and evaluate information or to communicate decisions to such an extent that the person lacks ability to manage his financial resources; or

(b) The term "disabled" or "disabled person", as used in this chapter includes the terms partially disabled or partially disabled person unless otherwise specified or apparent from the context;

(6) "Eligible person" or "qualified person", a natural person, social service agency, corporation or national or state banking organization qualified to act as guardian of the person or conservator of the estate pursuant to the provisions of section 475.055;

(7) "Guardian", one appointed by a court to have the care and custody of the person of a minor or of an incapacitated person. A "limited guardian" is one whose duties or powers are limited. A "standby guardian" is one approved by the court to temporarily assume the duties of guardian of a minor or of an incapacitated person under section 475.046 (/mostatutes/stathtml/47500000461.html). The term "guardian", as used in this chapter, includes limited guardian and standby guardian unless otherwise specified or apparent from the context;

(8) "Guardian ad litem", one appointed by a court, in which particular litigation is pending, to represent a minor, an incapacitated person, a disabled person, or an unborn person in that particular proceeding or as otherwise specified in this code;

(9) "Habilitation", instruction, training, guidance or treatment designed to enable and encourage a intellectually disabled or developmentally disabled person as defined in chapter 630 to acquire and maintain those life skills needed to cope more effectively with the demands of his or her own person and of his or her environment;

(10) "Incapacitated person", one who is unable by reason of any physical or mental condition to receive and evaluate information or to communicate decisions to such an extent that he or she lacks capacity to meet essential requirements for food, clothing, shelter, safety or other care such that serious physical injury, illness, or disease is likely to occur. The term "incapacitated person" as used in this chapter includes the term partially incapacitated person unless otherwise specified or apparent from the context;

(11) "Least restrictive environment", that there shall be imposed on the personal liberty of the ward only such restraint as is necessary to prevent the ward from injuring himself or herself and others and to provide the ward with such care, habilitation and treatment as are appropriate for the ward considering his or her physical and mental condition and financial means;

(12) "Manage financial resources", either those actions necessary to obtain, administer, and dispose of real and personal property, intangible property, business property, benefits, income or any assets, or those actions necessary to prevent waste, loss or dissipation of property, or those actions necessary to provide for the care and support of such person or anyone legally dependent upon such person by a person of ordinary skills and intelligence commensurate with his or her training and education;

(13) "Minor", any person who is under the age of eighteen years;

(14) "Parent", the biological or adoptive mother or father of a child whose parental rights have not been terminated under chapter 211, including:

(a) A person registered as the father of the child by reason of an unrevoked notice of intent to claim paternity under section 192.016;

(b) A person who has acknowledged paternity of the child and has not rescinded that acknowledgment under section 193.215; and

(c) A person presumed to be the natural father of the child under section 210.822;

(15) "Partially disabled person", one who is unable by reason of any physical or mental condition to receive and evaluate information or to communicate decisions to such an extent that such person lacks capacity to manage, in part, his or her financial resources;

(16) "Partially incapacitated person", one who is unable by reason of any physical or mental condition to receive and evaluate information or to communicate decisions to the extent that such person lacks capacity to meet, in part, essential requirements for food, clothing, shelter, safety, or other care without court-ordered assistance;

(17) "Protectee", a person for whose estate a conservator or limited conservator has been appointed or with respect to whose estate a transaction has been authorized by the court under section 475.092 (/mostatutes/stathtml/47500000921.html) without appointment of a conservator or limited conservator;

(18) "Seriously ill", a significant likelihood that a person will become incapacitated or die within twelve months;

(19) "Social service agency", a charitable organization organized and incorporated as a not-for-profit corporation under the laws of this state and which qualifies as an exempt organization within the meaning of Section 501(c)(3), or any successor provision thereto of the federal Internal Revenue Code;

(20) "Standby guardian", one who is authorized to have the temporary care and custody of the person of a minor or of an incapacitated person under the provisions of section 475.046;

(21) "Treatment", the prevention, amelioration or cure of a person's physical and mental illnesses or incapacities;

(22) "Ward", a minor or an incapacitated person for whom a guardian, limited guardian, or standby guardian has been appointed.

(L. 1955 p. 385 § 283, A.L. 1979 H.B. 95, A.L. 1983 S.B. 44 & 45, A.L. 1994 S.B. 734, A.L. 2009 H.B. 154, A.L. 2014 H.B. 1064)

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←475.024 (/mostatutes/stathtml/47500000241.html)

Section 475.025.1

475.030→ (/mostatutes/stathtml/47500000301.html)

August 28, 2016

Rights of parents as natural guardians of minors.

475.025. In all cases not otherwise provided for by law, the father and mother, with equal powers, rights and duties, while living, and in case of the death of either parent the survivor, or when there is no lawful father, then the mother, if living, is the natural guardian of their children, and has the custody and care of their persons and education. When the estate of a minor is derived from a parent, the parent as natural guardian has all of the powers of a conservator appointed by a court, with respect to property derived from him, except that no court order or authorization is necessary to exercise these powers and the natural guardian may invest, sell and reinvest the estate of the minor in such property as is reasonable and prudent.

(RSMo 1939 § 375, A.L. 1955 p. 385 § 286, A.L. 1957 p. 829, A.L. 1983 S.B. 44 & 45)

Prior revisions: 1929 § 375; 1919 § 371; 1909 § 430

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←475.025 (/mostatutes/stathtml/47500000251.html)

Section 475.030.1

475.035→ (/mostatutes/stathtml/47500000351.html)

August 28, 2016

Letters of guardianship and conservatorship issued, when.

475.030. 1. Letters of guardianship of the person may be granted for any person adjudged incapacitated. Letters of conservatorship of the estate may be granted for any person adjudged to be disabled.

2. Letters of conservatorship of the estate of a minor shall be granted for that part of the estate of the minor which is not derived from a living parent who is acting as natural guardian.

3. Letters of conservatorship for the entire estate of a minor may be granted in the following cases:

(1) Where the minor has no parent living; or

(2) Where there is a natural guardian of the minor and where the court finds that the best interests of the minor require letters of conservatorship for all of his estate.

4. Letters of guardianship of the person of a minor may be granted in the following cases:

(1) Where a minor has no parent living;

(2) Where the parents or the sole surviving parent of a minor are unwilling, unable or adjudged unfit to assume the duties of guardianship;

(3) Where the parents or the sole surviving parent have had their parental rights terminated under chapter 211.

(RSMo 1939 §§ 375, 376, 378, 379, A.L. 1955 p. 385 § 287, A.L. 1957 p. 829, A.L. 1983 S.B. 44 & 45)

Prior revisions: 1929 §§ 375, 376, 378, 379; 1919 §§ 371, 372, 374, 375; 1909 §§ 403, 404, 406, 407

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Title XXXI TRUSTS AND ESTATES OF DECEDENTS AND PERSONS UNDER DISABILITY

Chapter 475

475.050. Appointment of guardian or conservator of disabled or incapacitated persons — order of priority. — 1. Before appointing any other eligible person as guardian of an incapacitated person, or conservator of a disabled person, the court shall consider the suitability of appointing any of the following persons, listed in the order of priority, who appear to be willing to serve:

(1) If the incapacitated or disabled person is, at the time of the hearing, able to make and communicate a reasonable choice, any eligible person nominated by the person;

(2) Any eligible person nominated in a durable power of attorney executed by the incapacitated or disabled person, or in an instrument in writing signed by the incapacitated or disabled person and by two witnesses who signed at the incapacitated or disabled person's request, before the inception of the person's incapacity or disability;

(3) The spouse, parents, adult children, adult brothers and sisters and other close adult relatives of the incapacitated or disabled person;

(4) Any other eligible person or, with respect to the estate only, any eligible organization or corporation, nominated in a duly probated will of such a spouse or relative.

2. 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.

3. Except for good cause shown, the court shall make its appointment in accordance with the incapacitated or disabled person's most recent valid nomination of an eligible person qualified to serve as guardian of the person or conservator of the estate.

4. Except for those individuals specified in subdivisions (1) and (2) of this subsection, the court shall require all guardians and conservators who are seeking appointment and who have a fiduciary responsibility to a ward, an incapacitated person, or a disabled person to submit at their own expense to a background screening that shall include the disqualification lists of the departments of mental health, social services, and health and senior services; the abuse and neglect registries for adults and children; a Missouri criminal record review; and the sexual offender registry. Individuals seeking appointment as a conservator shall also submit, at their own expense, to a credit history investigation. The nominated guardian or conservator shall file the results of the reports with the court at least ten days prior to the appointment hearing date unless waived or modified by the court for good cause shown by an affidavit filed simultaneously with the petition for appointment or in the event the protected person requests an expedited hearing. The provisions of this subsection shall not apply to:

(1) Public administrators; or

(2) The ward's, incapacitated person's, or disabled person's spouse, parents, children who have reached eighteen years of age, or siblings who have reached eighteen years of age.

5. Guardians certified by a national accrediting organization may file proof of certification in lieu of the requirements of subsections 4 and 6 of this section.

6. An order appointing a guardian or conservator shall not be signed by the judge until such reports have been filed with the court and reviewed by the judge, who shall consider the reports in determining whether to appoint a guardian or conservator. Such reports, or lack thereof, shall be certified either by an affidavit or by obtaining a certified copy of the reports. No reports or national criminal history record check shall be required by the court upon the application of a petitioner for an emergency temporary guardianship or emergency temporary conservatorship. The court may waive the requirements of this subsection for good cause shown. If appointed, a guardian or conservator may petition the court for reimbursement of the reasonable expenses of the credit history investigation and background screenings.

(L. 1983 S.B. 44 & 45, A.L. 1989 H.B. 145, A.L. 1994 S.B. 734, A.L. 1996 S.B. 719, A.L. 2018 S.B. 806)

< end of effective 28 Aug 2018 >

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	Effective	End
475.050	8/28/2018	
475.050	8/28/1996	8/28/2018

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←475.050 (/mostatutes/stathtml/47500000501.html)

Section 475.055.1

475.060→ (/mostatutes/stathtml/47500000601.html)

August 28, 2016

Qualifications of guardians or conservators.

475.055. 1. Except as herein otherwise provided:

(1) Any adult person may be appointed guardian of the person or conservator of the estate, or both, of a minor or incapacitated or disabled person, except that a parent shall not be denied appointment as guardian of the person of a minor for the reason that the parent is a minor;

(2) Any charitable organization organized and incorporated as a not-for-profit corporation under the laws of this state prior to January 1, 1902, shall be qualified to continue to serve as guardian of the person of any ward for whom such charitable organization has been appointed guardian of the person prior to September 28, 1983, or to be appointed guardian of the person or persons adjudicated incapacitated subsequent to September 28, 1983;

(3) Any social service agency located within a county of the first classification or within a city not within a county except any county of the first classification without a charter form of government with a population of one hundred thousand or more inhabitants which contains all or part of a city with a population of three hundred fifty thousand or more inhabitants, which is found capable by the court of providing an active and suitable program of guardianship for the incapacitated person, taking into consideration the nature of such person's disability and the nature of such organization's services, may be appointed as guardian of the person; however, no social service agency shall be appointed as guardian of the person under this subdivision unless it employs a licensed professional found by the court to have sufficient expertise to meet the needs of the ward, and it is found by the court that such professional shall have primary responsibility for providing guardianship services to the incapacitated person for which such social service agency is appointed guardian. The court shall not appoint as guardian of the person under this subdivision a social service agency which is providing residential services to the ward;

(4) Any corporation authorized to do business in this state and empowered by its charter so to act or any national banking association authorized so to act in this state may be appointed conservator of the estate of a minor or disabled person. No corporation other than a social service agency may be appointed to serve as guardian of the incapacitated person.

2. No person or corporation, other than the public administrator of the county, shall be appointed guardian or conservator unless the appointee has filed a consent to act. Except as otherwise provided by this section, no person or corporation licensed as a facility by the Missouri department of mental health or the Missouri department of social services, nor any administrator, owner, operator, manager or employee of such a facility shall be appointed guardian of the person or conservator of the estate of any resident of that facility, unless related within the fourth degree of consanguinity or affinity to the resident. No full-time judge of any court of this state and no clerk, deputy clerk or division clerk shall be appointed as guardian of the person or conservator of the estate, but a judge, clerk, deputy clerk or division clerk may serve as a guardian or conservator for a ward or protectee who is a spouse or is within the third degree of relationship by consanguinity or affinity as calculated according to civil law. No natural person under eighteen years of age, other than as provided in subsection 1 of this section, no incapacitated or disabled person, and no habitual drunkard shall be appointed guardian of the person or conservator of the estate. No person whose letters of guardianship or conservatorship are revoked shall be appointed guardian or conservator within two years after the revocation. No one shall be appointed guardian of the person or conservator of the estate unless qualified to perform the duties of said office or offices.

3. A person becomes a guardian or conservator of a minor or incapacitated or disabled person upon issuance of letters of guardianship or conservatorship by the court. A person so appointed need not reside within this state in order to accept or serve as guardian or conservator, unless the court finds that such person, taking into consideration his place of residence, is unable to effectively perform the duties of guardian or conservator as provided by this code. The guardianship or conservatorship status continues until terminated, without regard to the location from time to time, whether within or outside of this state, of the guardian and ward or conservator and protectee.

4. Subsections 3 and 4 of section 473.117 (/mostatutes/stathtml/47300001171.html), section 473.689 (/mostatutes/stathtml/47300006891.html), and section 475.338 (/mostatutes/stathtml/47500003381.html) are applicable to nonresident guardians and conservators.

5. If a social service agency is appointed to act as guardian under this section, any other eligible person listed in subdivision (3) of subsection 1 of section 475.050 (/mostatutes/stathtml/47500000501.html) may petition the court to have the social service agency removed as guardian. The court shall grant the petition if it finds that the petitioner is qualified and will act in the best interests of the disabled or incapacitated person. The removal of a social service agency under such circumstances does not require evidence that the agency committed acts of misfeasance warranting the agency's removal pursuant to section 475.110 (/mostatutes/stathtml/47500001101.html).

6. A social service agency acting as a guardian pursuant to subdivision (4) of subsection 1 of this section may only authorize the withholding or withdrawal of artificially provided nutrition or hydration as prescribed under section 404.820 (/mostatutes/stathtml/40400008201.html).

(L. 1955 p. 385 § 292, A.L. 1957 p. 829, A.L. 1978 H.B. 1634, A.L. 1979 H.B. 95, A.L. 1983 S.B. 44 & 45, A.L. 1987 H.B. 637, A.L. 1994 S.B. 734)

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←475.055 (/mostatutes/stathtml/47500000551.html)

Section 475.060.1

475.061→ (/mostatutes/stathtml/47500000611.html)

August 28, 2016

Application for guardianship--petition for guardianship requirements--incapacitated persons, petition requirements.

475.060. 1. Any person may file a petition for the appointment of himself or herself or some other qualified person as guardian of a minor. Such petition shall state:

(1) The name, age, domicile, actual place of residence and post office address of the minor if known and if any of these facts is unknown, the efforts made to ascertain that fact;

(2) The estimated value of the minor's real and personal property, and the location and value of any real property owned by the minor outside of this state;

(3) If the minor has no domicile or place of residence in this state, the county in which the property or major part thereof of the minor is located;

(4) The name and address of the parents of the minor and whether they are living or dead;

(5) The name and address of the spouse, and the names, ages and addresses of all living children of the minor;

(6) The name and address of the person having custody of the person of the minor;

(7) The name and address of any guardian of the person or conservator of the estate of the minor appointed in this or any other state;

(8) If appointment is sought for a natural person, other than the public administrator, the names and addresses of wards and disabled persons for whom such person is already guardian or conservator;

(9) The name and address of the trustees and the purpose of any trust of which the minor is a qualified beneficiary;

(10) The reasons why the appointment of a guardian is sought;

(11) A petition for the appointment of a guardian of a minor may be filed for the sole and specific purpose of school registration or medical insurance coverage. Such a petition shall clearly set out this limited request and shall not be combined with a petition for conservatorship.

2. Any person may file a petition for the appointment of himself or herself or some other qualified person as guardian of an incapacitated person. Such petition shall state:

(1) If known, the name, age, domicile, actual place of residence, and post office address of the alleged incapacitated person, and for the period of three years before the filing of the petition, the most recent addresses, up to three, at which the alleged incapacitated person lived prior to the most recent address, and if any of these facts is unknown, the efforts made to ascertain that fact. In the case of a petition filed by a public official in his or her official capacity, the information required by this subdivision need only be supplied to the extent it is reasonably available to the petitioner;

(2) The estimated value of the alleged incapacitated person's real and personal property, and the location and value of any real property owned by the alleged incapacitated person outside of this state;

(3) If the alleged incapacitated person has no domicile or place of residence in this state, the county in which the property or major part thereof of the alleged incapacitated person is located;

(4) The name and address of the parents of the alleged incapacitated person and whether they are living or dead;

(5) The name and address of the spouse, the names, ages, and addresses of all living children of the alleged incapacitated person, the names and addresses of the alleged incapacitated person's closest known relatives, and the names and relationship, if known, of any adults living with the alleged incapacitated person; if no spouse, adult child, or parent is listed, the names and addresses of the siblings and children of deceased siblings of the alleged incapacitated person; the name and address of any agent appointed by the alleged incapacitated person in any durable power of attorney, and of the presently acting trustees of any trust of which the alleged incapacitated person is the grantor or is a qualified beneficiary or is or was the trustee or cotrustee and the purpose of the power of attorney or trust;

(6) The name and address of the person having custody of the person of the alleged incapacitated person;

(7) The name and address of any guardian of the person or conservator of the estate of the alleged incapacitated person appointed in this or any other state;

(8) If appointment is sought for a natural person, other than the public administrator, the names and addresses of wards and disabled persons for whom such person is already guardian or conservator;

(9) The fact that the person for whom guardianship is sought is unable by reason of some specified physical or mental 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, clothing, shelter, safety, or other care such that serious physical injury, illness, or disease is likely to occur;

(10) The reasons why the appointment of a guardian is sought.

(RSMo 1939 §§ 377, 447, A.L. 1955 p. 385 § 293, A.L. 1983 S.B. 44 & 45, A.L. 2000 S.B. 944, A.L. 2011 H.B. 111 merged with S.B. 59 merged with S.B. 213)

Prior revisions: 1929 §§ 377, 448; 1919 §§ 373, 444; 1909 §§ 405, 474

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Title XXXI TRUSTS AND ESTATES OF DECEDENTS AND PERSONS UNDER DISABILITY

Chapter 475

Effective - 28 Aug 2018, 2 histories

475.075. Hearing on capacity or disability — notice — service — contents of petition, appointment of attorney — examination of respondent, when — burden of proof — rights of respondent — factors court to consider. — 1. Except as otherwise provided in section 475.062, when a petition for the appointment of a guardian ad litem, guardian, or conservator for any potential ward or protectee, who is then referred to as the respondent, is filed under this chapter on grounds other than minority, the court, if satisfied that there is good cause for the exercise of its authority, shall promptly set the petition for hearing.

2. The respondent shall be served in person with the following: A copy of the petition; a written notice stating the time and place the proceeding will be heard by the court, the name and address of appointed counsel, and the names and addresses of the witnesses who may be called to testify in support of the petition; and with a copy of the respondent's rights as set forth in subsections 9 and 10 of this section. The notice shall be signed by the judge or clerk of the court and served in person on the respondent a reasonable time before the date set for the hearing. A 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 the spouse, parents, children who have reached the age of eighteen, any person serving as the respondent's guardian, conservator, limited guardian, or limited conservator, any person proposed to serve as guardian or conservator, any person having power to act in a fiduciary capacity with respect to any of the respondent's financial resources, any person having the respondent's care and custody known to the petitioner, and any co-tenants or co-depositors with the respondent. Each person so listed shall be served in any manner permitted by section 472.100. If no such spouse, parent, or child is known, notice shall be given to at least one of the respondent's closest relatives who have reached eighteen years of age.

3. If the public administrator is nominated as guardian or conservator or at any stage of the proceeding is being considered by the court to be nominated as guardian or conservator, the public administrator shall receive a copy of the petition from the petitioner or the court and any accompanying documents, including exhibits and medical opinions, receive written notice indicating the date and time of the proceeding, and have an opportunity to attend and be heard.

4. Upon the filing of a petition under the provisions of subsection 1 of this section or for the approval on behalf of the respondent of a transaction pursuant to section 475.092 or for the rendition of emergency medical treatment under the provisions of section 475.123, the court shall immediately appoint an attorney to represent the respondent in the proceeding. The attorney shall visit the respondent at least twenty-four hours prior to the hearing unless the court

finds good cause for waiving this requirement. If the attorney finds that the respondent is capable of understanding the matter in question or of contributing to the advancement of the respondent's interest, the attorney shall obtain from the respondent all possible aid. If the attorney finds that the respondent is so impaired that the respondent cannot communicate or participate in the proceedings, the attorney shall consider all circumstances then prevailing and act with care to safeguard and advance the interests of the respondent.

5. If the court enters an order appointing an attorney for the respondent, it shall specify that the attorney shall have 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 appointed for the respondent. The court shall allow a reasonable attorney's fee for the services rendered, to be taxed as costs of the proceeding. Upon entry of appearance by private counsel on behalf of the respondent, the court may permit the court-appointed attorney to withdraw only if after a hearing the court finds cause to permit the withdrawal. The private counsel shall meet the requirements of the court-appointed attorney in representing the respondent as provided in subsection 4 of this section. The respondent's attorney shall not also serve as guardian ad litem or conservator ad litem for the respondent unless and until a judgment granting guardianship, conservatorship, limited guardianship, or limited conservatorship has been entered by the court. If the attorney for the respondent has filed or intends to file an appeal of such judgment, the attorney for the respondent shall not serve as guardian ad litem or conservator ad litem for the respondent until all proceedings in connection with such appeal have been finally resolved. The petitioner shall not nominate an attorney for the respondent.

6. The court may direct that the respondent be examined by a physician, licensed psychologist, or other appropriate professional if the other professional has experience or training in the alleged mental, physical, or cognitive impairment. The court-appointed physician, licensed psychologist, or other professional shall, prior to examination, explain to the respondent in simple language, the following:

(1) That the purpose of the examination is to produce evidence which may be used to determine whether the respondent is incapacitated, disabled, partially incapacitated, or partially disabled;

(2) That respondent has the right to remain silent;

(3) That anything respondent says may be used at the court hearing, and in making the determination of incapacity or disability.

7. The court-appointed physician, licensed psychologist, or other professional shall submit a report in writing to the court and to counsel for all parties. It shall not be a valid objection to the review of the report by the court or the attorneys for the parties that the court will be responsible for the ultimate determination of incapacity or partial incapacity. If other objections to the report are made by any party, the court may order a hearing for the limited purpose of

determining whether the court shall admit the report. The court may allow a reasonable fee for the services rendered by the physician, licensed psychologist, or other professional to be taxed as costs in the proceeding.

8. If prima facie proof of partial or complete incapacity or disability, with or without the court-ordered evaluation as provided in subsections 6 and 7 of this section, is made upon motion by any party or the court on its own motion, a physician, licensed psychologist, or other appropriate professional is competent and may be compelled by the court to testify as to information acquired from the respondent, despite otherwise applicable testimonial privileges. Evidence received under this subsection that would otherwise be privileged and confidential may not be used in any other civil action or criminal proceeding without the consent of the holder of the privilege. Any resulting report shall be shared with the respondent and counsel for all parties but shall not be used in any other civil action or criminal proceeding without the consent of the holder of the privilege.

9. The petitioner has the burden of proving incapacity, partial incapacity, disability, or partial disability by clear and convincing evidence.

10. The respondent shall have the following rights in addition to those elsewhere specified and shall be advised of these rights by the attorney for the respondent:

(1) The right to be represented by an attorney;

(2) The right to have a jury trial;

(3) The right to present evidence in the respondent's behalf;

(4) The right to cross-examine witnesses who testify against the respondent;

(5) The right to remain silent;

(6) The right to have the hearing opened or closed to the public as the respondent elects;

(7) The right to a hearing conducted in accordance with the rules of evidence in civil proceedings, except as modified by this chapter;

(8) The right to be present at the hearing;

(9) The right to appeal the court's decision.

11. If the court finds that the respondent possesses capacity to manage the respondent's essential requirements for food, clothing, shelter, safety, and other care or that the respondent possesses the ability to manage the respondent's financial resources, the court shall deny the petition. On the other hand, if the court finds that the capacity of the respondent to receive and evaluate information or to communicate decisions is impaired to such an extent as to render the respondent incapable of managing some or all of the respondent's essential requirements for food, clothing, shelter, safety or other care so that serious physical injury, illness, or disease is likely to occur, or that the capacity of the respondent to receive and evaluate information or to communicate decisions is impaired to such an extent so as to render the respondent unable to

manage some or all of the respondent's financial resources, the court shall appoint a guardian or limited guardian, a conservator or limited conservator, or both in combination.

12. If the court finds the respondent to be in some degree incapacitated or disabled, or both, the court, in determining the degree of supervision necessary, shall apply the least restrictive alternative principle as defined in this chapter and shall not restrict the respondent's personal liberty or the respondent's freedom to manage the respondent's financial resources to any greater extent than is necessary to protect the respondent's person and the respondent's financial resources. The limitations imposed upon the authority of the guardian or conservator as set forth in the findings of the court shall be stated in the letters of the guardian or conservator and shall be set forth in the notice of first publication of letters of conservatorship granted.

13. Before appointing a guardian or conservator, the court shall consider whether the respondent's needs may be met without the necessity of the appointment of a guardian or conservator, or both, by a less restrictive alternative including, but not limited to, the following:

(1) Evidence that the respondent has appointed an attorney-in-fact in a durable power of attorney executed by the respondent before the petition was filed;

(2) The management of the beneficial interests of the respondent in a trust by a trustee;

(3) Evidence that a representative payee has been appointed to manage the respondent's public benefits;

(4) Supported decision-making agreements or the provision of protective or supportive services or arrangements provided by individuals or public or private services or agencies;

(5) The use of appropriate services or assistive technology;

(6) The appointment of a temporary emergency guardian ad litem or conservator ad litem under subsection 15 of this section; or

(7) The appointment of a limited guardian or conservator.

14. The court shall make and recite in its order detailed findings of fact stating:

(1) The extent of the respondent's physical, mental, and cognitive incapacity to manage essential requirements for food, clothing, shelter, safety, or other care;

(2) The extent of the respondent's physical, mental, and cognitive incapacity to manage the respondent's financial resources;

(3) Whether the respondent requires placement in a supervised living situation and, if so, the degree of supervision needed;

(4) Whether the respondent's financial resources require supervision and, if so, the nature and extent of supervision needed;

(5) Whether the respondent retains the right to vote;

(6) Whether the respondent is permitted to drive a motor vehicle if the respondent can pass the required driving test; and

(7) Whether the respondent retains the right to marry.

15. If it is alleged in a petition that an alleged incapacitated or disabled respondent has no guardian or conservator and an emergency exists that presents a substantial risk that serious physical harm will occur to the respondent's person or irreparable damage will occur to the respondent's property because of the respondent's failure or inability to provide for the respondent's essential human needs or to protect the respondent's property, the court may, with notice to such person's attorney, as provided in subsection 4 of this section, and service of notice upon such person as provided in subsection 2 of this section, and, with or without notice to other persons interested in the proceeding, after hearing, appoint an emergency guardian ad litem or conservator ad litem for a specified period not to exceed ninety days and for specified purposes. Except for good cause shown, the court shall hold a hearing on petitions filed under this section within five business days of the filing of the petition. Orders appointing the guardian or conservator ad litem may be modified upon motion and hearing. Only after a hearing and a showing of continuing emergency need, the court may order the extension of the appointment of an emergency guardian ad litem or conservator ad litem from time to time, not to exceed ninety days each. A guardian ad litem or conservator ad litem may be removed at any time and shall make any report the court requires. Proceedings under this subsection shall not be employed as alternative to proceedings for the involuntary detention and treatment of a mentally ill person under the provisions of chapter 632. If no petition for guardianship, conservatorship, limited guardianship, or limited conservatorship has been filed within the first ninety days following the granting of emergency authority under this section, the court may terminate the authority granted under the emergency letters upon motion of the attorney for the respondent and a finding that doing so would not be manifestly contrary to the respondent's interest.

(RSMo 1939 §§ 447, 449, A.L. 1955 p. 385 § 297, A.L. 1983 S.B. 44 & 45, A.L. 1985 S.B. 35, et al., A.L. 2018 S.B. 806)

Prior revisions: 1929 §§ 448, 450; 1919 §§ 444, 446; 1909 §§ 474, 476

(1986) Waiver of rights under this section must be affirmative and on the record. In re Link, 713 S.W.2d 487 (Mo. banc).

(1996) A court may not circumvent the right to a jury trial by entering a judgment notwithstanding the verdict against the alleged incompetent. Matter of Korman, 913 S.W.2d 416 (Mo.App.E.D.).

---- end of effective 28 Aug 2018 ----

use this link to bookmark section 475.075

- All versions

	Effective	End
475.075	8/28/2018	
475.075	8/28/1985	8/28/2018

Click here for the **Reorganization Act of 1974 - or - Concurrent Resolutions Having Force & Effect of Law**

In accordance with Section **3.090**, the language of statutory sections enacted during a legislative session are updated and available on this website on the effective date of such enacted statutory section.

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History and Fun Facts

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Missouri Revised Statutes

Chapter 475
Probate Code--Guardianship
Section *475.083*

August 28, 2010

Termination of guardianship or conservatorship, when.

475.083. 1. The authority of a guardian or conservator terminates:

(1) When a minor ward becomes eighteen years of age;

(2) Upon an adjudication that an incapacitated or disabled person has been restored to his capacity or ability;

(3) Upon revocation of the letters of the guardian or conservator;

(4) Upon the acceptance by the court of the resignation of the guardian or conservator;

(5) Upon the death of the ward or protectee except that if there is no person other than the estate of the ward or protectee liable for the funeral and burial expenses of the ward or protectee the guardian or conservator may, with the approval of the court, contract for the funeral and burial of the deceased ward or protectee;

(6) Upon the expiration of an order appointing a guardian or conservator ad litem unless the court orders extension of the appointment;

(7) Upon an order of court terminating the guardianship or conservatorship.

2. A guardianship or conservatorship may be terminated by court order after such notice as the court may require:

(1) If the conservatorship estate is exhausted;

(2) If the conservatorship is no longer necessary for any other reason;

(3) If the court finds that a parent is fit, suitable and able to assume the duties of guardianship and it is in the best interest of the minor that the guardianship be terminated.

3. Notwithstanding the termination of the authority of a conservator, he shall continue to have such authority as may be necessary to wind up his administration.

4. At any time the guardian, conservator or any person on behalf of the ward or protectee may, individually or jointly with the ward or protectee, or the ward or protectee individually may petition the court to restore the ward or protectee, or to decrease the powers of the guardian or conservator, except that if the court determines that the petition is frivolous, the court may summarily dismiss the petition without hearing.

5. Upon the filing of a joint petition by the guardian or conservator and the ward or protectee, the court, if it finds restoration or modification to be in the best interests of the ward or protectee, may summarily order restoration or modification of the powers of the guardian or conservator without the necessity of notice and hearing.

6. Upon the filing of a petition without the joinder of the guardian or conservator, the court shall cause the

petition to be set for hearing with notice to the guardian or conservator. If the ward or protectee is not represented by an attorney, the court shall appoint an attorney to represent the ward or protectee in such proceeding. The burden of proof by a preponderance of the evidence shall be upon the petitioner. Such a petition may not be filed more than once every one hundred eighty days.

7. At any time the guardian or conservator may petition the court to increase his powers. Proceedings on the petition shall be in accordance with the provisions of section 475.075.

(L. 1983 S.B. 44 & 45, A.L. 1992 H.B. 903, A.L. 2001 S.B. 348)

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Missouri Revised Statutes

Chapter 475
Probate Code--Guardianship
Section *475.110*

August 28, 2010

Removal of guardian or conservator--incapacitated or disabled person, continuation of guardianship after dissolution of marriage, when.

475.110.. 1. When a minor ward has attained the age of fourteen years, the guardian of his or her person may be removed on petition of the ward to have another person appointed guardian if it is for the best interests of the ward that such other person be appointed. When the spouse of an incapacitated or disabled person is appointed his or her guardian or conservator, such spouse shall be removed as guardian or conservator upon dissolution of his or her marriage with the incapacitated or disabled person. A guardian or conservator may also be removed on the same grounds as is provided in section 473.140 for the removal of personal representatives.

2. Notwithstanding subsection 1 of this section, a spouse whose marriage to the ward was dissolved may petition the court to remain as or be reappointed guardian or conservator of the incapacitated or disabled person in accordance with section 475.115.

(L. 1955 p. 385 § 304, A.L. 1983 S.B. 44 & 45, A.L. 2001 H.B. 454)

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Chapter 475
Probate Code--Guardianship
Section *475.115*

August 28, 2010

Appointment of successor guardian or conservator.

475.115. When a guardian or conservator dies, is removed by order of the court, or resigns and his resignation is accepted by the court, the court shall have the same authority as it has in like cases over personal representatives and their sureties and may appoint another guardian or conservator in the same manner and subject to the same requirements as are herein provided for an original appointment of a guardian or conservator.

(RSMo 1939 § 496, A.L. 1955 p. 385 § 305, A.L. 1983 S.B. 44 & 45)

Prior revisions: 1929 § 497; 1919 § 493; 1909 § 523

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Missouri Revised Statutes

Chapter 475
Probate Code--Guardianship

←475.115 (/mostatutes/stathtml/47500001151.html)

Section 475.120.1

475.121→ (/mostatutes/stathtml/47500001211.html)

August 28, 2016

General powers and duties of guardian of the person--social service agency acting on behalf of ward, requirements.

475.120. 1. The guardian of the person of a minor shall be entitled to the custody and control of the ward and shall provide for the ward's education, support and maintenance.

2. A guardian or limited guardian of an incapacitated person shall act in the best interest of the ward. A limited guardian of an incapacitated person shall have the powers and duties enumerated by the court in the adjudication order or any later modifying order.

3. The general powers and duties of a guardian of an incapacitated person shall be to take charge of the person of the ward and to provide for the ward's care, treatment, habilitation, education, support and maintenance; and the powers and duties shall include, but not be limited to, the following:

(1) Assure that the ward resides in the best and least restrictive setting reasonably available;

(2) Assure that the ward receives medical care and other services that are needed;

(3) Promote and protect the care, comfort, safety, health, and welfare of the ward;

(4) Provide required consents on behalf of the ward;

(5) To exercise all powers and discharge all duties necessary or proper to implement the provisions of this section.

4. A guardian of an adult or minor ward is not obligated by virtue of such guardian's appointment to use the guardian's own financial resources for the support of the ward. If the ward's estate and available public benefits are inadequate for the proper care of the ward, the guardian or conservator may apply to the county commission pursuant to section 475.370 (/mostatutes/stathtml/47500003701.html).

5. No guardian of the person shall have authority to seek admission of the guardian's ward to a mental health or intellectual disability facility for more than thirty days for any purpose without court order except as otherwise provided by law.

6. Only the director or chief administrative officer of a social service agency serving as guardian of an incapacitated person, or such person's designee, is legally authorized to act on behalf of the ward.

7. A social service agency serving as guardian of an incapacitated person shall notify the court within fifteen days after any change in the identity of the professional individual who has primary responsibility for providing guardianship services to the incapacitated person.

8. Any social service agency serving as guardian may not provide other services to the ward.

(RSMo 1939 §§ 394, 460, 474, 497, A.L. 1955 p. 385 § 306, A.L. 1983 S.B. 44 & 45, A.L. 1985 S.B. 35, et al., A.L. 1994 S.B. 734, A.L. 1997 H.B. 540, A.L. 2014 H.B. 1064)

Prior revisions: 1929 §§ 394, 461, 475, 498; 1919 §§ 390, 457, 471, 494; 1909 §§ 422, 487, 501, 524

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