

Probate Law Updates

To: Attorneys
From: Carol Aiken, Probate Commissioner
Date: 7/19/2018
Re: Changes to Guardianship Statutes effective 8/28/2018

The governor signed Senate Bill 806 into law on June 1, 2018. It becomes effective on August 28, 2018. I have summarized some of the changes that will impact your filings in guardianship and conservatorship cases:

1. **475.016.2, 475.082:** New reporting requirements for annual reports will take effect one year after 8/28/2018. We will be using new annual status reports for guardians to complete that will require more information than previously sought. For example, the guardian will have to provide a summary of the guardian's visits with the ward and the extent to which the ward has participated in decision-making. A summarized care plan for the upcoming year is also required. If an individual support plan, treatment plan, or plan of care is in place, that document would satisfy this requirement.

2. **475.050.4, 475.050.6:** If the proposed guardian or conservator is not a public administrator, spouse, parent, child, or sibling, a background screening will now be required. This applies to both adult and minor guardianships. The background check must include: 1) the disqualification lists of the departments of mental health, social services, and health and senior services; 2) the abuse and neglect registries for adults and children; 3) a Missouri criminal record review; and 4) the sexual offender registry. It will be the petitioner's responsibility to provide the background screening to the court. Attached is a "State of Missouri Caregiver Background Screening" form that should obtain the necessary information.

A proposed conservator (subject to the exclusions above) will also have to file a credit history investigation.

Both the background screening and the credit reports are to be filed with the court at least ten days prior to the hearing. Because we set our hearings fairly quickly in adult guardianships, we will require the reports in those

cases to be filed with the petition. The reports must be certified by an affidavit or by obtaining a certified copy of the reports.

3. 475.060.1 (12) and 475.060.2(11): If co-guardians of a minor or adult are requested, the petition must now state why such appointment is sought and if the co-guardians can act independently or alone with regard to specified matters.

4. 475.060.2(9)(10): These sections will require the petitioners in an adult guardianship to provide more detailed information than previously required. Petitioners must now provide incidents and specific behaviors demonstrating why the appointment of a guardian is sought.

5. 475.060.2(12): The petition must include a written consent from the proposed co-guardian, including the public administrator.

6.475.062.4: If a voluntary conservatorship petition is filed, and respondent is a codepositer or cotenant, the other codepositors and cotenants must be given notice before the court acts.

7. 475.075.3: If the public administrator is nominated as guardian or conservator, the petitioner must provide the public administrator with a copy of the petition, including any exhibits and medical opinions. The public administrator must also receive written notice of the time of the hearing in order to have the opportunity to attend and be heard. When you are filing the petition, you will need to include the public administrator as an interested party so she can have access to the petition and exhibits on Case Net.

8. 475.075.14: This section requires the court to make detailed findings of fact regarding the extent of the respondent's incapacity and/or disability. This includes a finding on the right to vote, the right to drive if respondent can pass the required driving test and the right to marry.

9. 475.084: This section codifies the visitation issue in a minor guardianship. A parent can petition the court for periods of visitation and the court can order the visitation if it is in the best interest of the child. The court will require that the guardians be served with the Petition for Visitation and will appoint a GAL as needed.

10. **475.130.6:** A conservator can now settle or compromise a claim that does not exceed \$5000. This is an increase from the previous \$1000.00 limit and should eliminate many of the petitions filed requesting authority to expend funds for nominal expenditures.

11. **475.145.:** When filing the inventory, you will be required to disclose any nonprobate transferees designated to receive nonprobate transfers after the protectee's death.

12. **475.230.2:** The protectee must receive notice ten days prior to a hearing on the petition for sale of the protectee's real or tangible personal property.

13. **475.270.4:** In addition to filing an annual settlement, a conservator must now provide additional information listed in this subsection, including a plan for the coming year. The court will look at preparing a standard form that will address these requirements.

14. **475.357:** This section clarifies an issue that has been litigated in the past few years. The probate division has jurisdiction over the adjudication of incapacity and disability and the appointment of a guardian or conservator for a person over 18 whose parents have a pending child custody or visitation order under Chapter 210 or 452. The family court shall have the authority to enter orders only as to child support after the appointment of a guardian by the probate division.

These are just a few of the changes to the probate code. I tried to just highlight those that will affect filings with the court beginning on August 28th. We will do our best to keep everyone updated on new forms and filing requirements!