

59-3078. Conservator's duties, responsibilities, powers and authorities. (a) (1) The individual or corporation appointed by the court to serve as the conservator shall carry out diligently and in good faith the general duties and responsibilities, and shall have the general powers and authorities, provided for in this section, as well as any specific duties, responsibilities, powers and authorities assigned to the conservator by the court. In doing so, a conservator at all times shall be subject to the control and direction of the court, and shall act in accordance with the provisions of any conservatorship plan filed with the court pursuant to K.S.A. 59-3079, and amendments thereto. The court shall have the authority to appoint counsel for the conservator, and the fees of such attorney may be assessed as costs pursuant to K.S.A. 59-3094, and amendments thereto.

(2) A conservator, in the exercise of the conservator's responsibilities and authorities, should become aware of the conservatee's needs and responsibilities. A conservator shall exercise authority only as necessitated by the conservatee's limitations. A conservator shall encourage the conservatee to participate in the making of decisions affecting the conservatee's estate. A conservator shall encourage the conservatee to manage as much of the conservatee's estate as the conservatee is able to manage. A conservator shall consider and, to the extent possible, act in accordance with the expressed desires and personal values of the conservatee. A conservator shall assist the conservatee in developing or regaining the skills and abilities necessary in order for the conservatee to be able to manage the conservatee's own estate. A conservator shall strive to assure that the personal, civil and human rights of the conservatee are protected. A conservator shall at all times act in the best interests of the conservatee and shall exercise reasonable care, diligence and prudence.

(b) A conservator shall have the following general duties, responsibilities, powers and authorities:

(1) To pay the reasonable charges for the support, maintenance, care, treatment, habilitation and education of the conservatee in a manner suitable to the conservatee's station in life and the value of the conservatee's estate; but nothing herein shall be construed to release a natural guardian from the ordinary obligations imposed by law for the support, maintenance, care, treatment, habilitation and education of the natural guardian's minor children;

(2) to pay all just and lawful debts of the conservatee and the reasonable charges for the support, maintenance, care, treatment, habilitation and education of the conservatee's spouse and minor children;

(3) to separately possess and manage all the assets of the estate of the conservatee and to collect all debts and assert all claims in favor of the conservatee, and with the approval of the court, to compromise the same. The conservator shall keep any property of the conservatee's estate insured against theft, other loss or damage, in reasonable amounts based upon the value of the estate, and for the benefit of the conservatee or the conservatee's estate;

(4) to prosecute and defend all actions in the name of the conservatee or as necessary to protect the interests of the conservatee;

(5) to sell assets of the conservatee's estate when the interests of the conservatee or conservatee's estate require the sale thereof;

(6) to possess and manage any ongoing business that the conservatee was managing and operating prior to the appointment of the conservator, and to divest the conservatee's estate of any interests therein, with the approval of the court, when the conservator deems it in the best interests of the conservatee or the conservatee's estate to do so; and

(7) to invest all funds in a manner which is reasonably prudent in view of the value of the conservatee's estate, except as may be currently needed for payment of any debts and charges as provided for herein. If the conservator shall expend or invest any funds from the conservatee's estate for the purchase of any policy of insurance or annuity contract, the conservator shall reserve to the conservatee the right to change the beneficiary thereof upon the termination of the conservatorship and of any guardianship which may have been established for the conservatee.

(c) A conservator shall not be obligated by virtue of the conservator's appointment to use the conservator's own financial resources for the support of the conservatee.

(d) A conservator shall not be personally liable:

(1) To a third person for the acts of the conservatee solely by virtue of the conservator's appointment, nor shall a conservator who exercises reasonable care in selecting a third person to provide any service to the conservatee's estate be liable for any loss to the conservatee's estate resulting from the wrongful conduct of that third person;

(2) on any mortgage note or by reason of the covenants in any instrument of conveyance duly executed by the conservator in the conservator's representative capacity as authorized by the court;

(3) on a contract properly entered into in a fiduciary capacity in the course of administration of the estate unless the conservator fails to reveal in the contract the representative capacity and to identify the estate;

(4) for obligations arising from ownership or control of property of the estate or for other acts or omissions occurring in the course of administration of the estate unless the conservator is personally at fault;

(5) for any environmental condition on or injury resulting from any environmental condition on land owned or acquired by the conservatee's estate; or

(6) for retaining, until maturity, any security or investment which is included in the conservatee's estate at the time of the establishment of the conservatorship, even though such security or investment may not be considered prudent or reasonable.

(e) A conservator shall be entitled to receive on behalf of the conservatee's estate any distributive share of the assets of an estate or trust, and shall have the same right as any other distributee or beneficiary to accept or demand distribution in kind, and may retain, until maturity, any security or investment so distributed to the conservator, even though such security or investment may not be considered prudent or reasonable.

(f) A conservator shall not have the power:

(1) To use the assets of a minor's estate to pay any obligation imposed by law upon the minor's natural guardian or natural guardians, including the support, maintenance, care, treatment, habilitation or education of the minor, except with the specific approval of the court granted upon a showing of extreme hardship;

(2) to sell, convey, lease or mortgage the conservatee's interest in the homestead of the conservatee, except with the approval of the court, and no conservator's deed or other instrument executed by virtue of the court's approval shall be valid unless the spouse, or if the spouse has been adjudicated a person with an impairment in need of a conservator, the conservator appointed for the spouse, shall join therein as one of the grantors thereof;

(3) to lease, except with the approval of the court, the possession or use of any real estate within the conservatee's estate for any period of greater than three years;

(4) to sell, convey or mortgage, except with approval of the court, any real estate within the conservatee's estate;

(5) to sell, convey, lease or mortgage, except with approval of the court, any oil, gas or other mineral interest within the conservatee's estate;

(6) to sell, convey, lease or mortgage, except with the approval of the court, the inchoate interest of the conservatee in any real estate the title to which is in the spouse of the conservatee, and no conservator's deed or other instrument executed by virtue of the court's approval shall be valid unless the spouse, or if the spouse has been adjudicated a person with an impairment in need of a conservator, the conservator appointed for the spouse, shall join therein as one of the grantors thereof;

(7) to extend, except with the approval of the court, an existing mortgage in favor of the conservatee or conservatee's estate, for a period of more than five years;

(8) to extend, except with the approval of the court, an existing mortgage which obligates the conservatee or the conservatee's estate, unless the extension agreement contains the same prepayment privileges, the rate of interest does not exceed the lowest rate in the mortgage extended, and the extension does not exceed five years; or

(9) to make any gift on behalf of the conservatee, except with the approval of the court upon a finding that:

(A) The conservatee had either in the past as a habit made similar gifts or declared an intent to make such a gift, or under the circumstances, would have made such a gift or gifts;

(B) sufficient funds and assets will remain in the conservatee's estate after the making of such a gift to meet the expected needs and responsibilities of the conservatee; and

(C) any person or entity who would have received the property to be gifted had the conservatee died at the time of the gift, but who is not the person or entity receiving the gift, has either consented to or agreed with the giving of the gift, in writing, or has received notice of the proposal to make the gift and been given the opportunity to request a hearing thereon by the court to be held prior to the court's approving the gift.

(g) The conservator shall file with the court, within 30 days of the court's issuance of letters of conservatorship as provided for in K.S.A. 59-3069, and amendments thereto, an initial inventory of all of the property and assets of the conservatee's estate, including any sources of regular income to the estate.

(h) The conservator shall file with the court accountings and other reports concerning the status of the estate and the actions of the conservator as the court shall direct pursuant to K.S.A. 59-3083, and amendments thereto.

History: L. 2002, ch. 114, § 29; July 1.