

- 59-3080. Authority of conservator or guardian to establish certain trusts; petition; contents; notice; hearing; procedure.** (a) At any time the conservator, or the guardian if the guardian has been granted the authority to exercise control or authority over the ward's estate pursuant to subsection (c)(8) of K.S.A. 59-3075, and amendments thereto, may file a verified petition requesting that the court grant authority to the conservator or guardian to establish an irrevocable trust which will enable the conservatee or ward to qualify for benefits from any federal, state or local government program, or which will accelerate the conservatee's or ward's qualification for such benefits.
- (b) The petition shall include:
- (1) The conservator's or guardian's name and address, and if the conservator is the petitioner and is both the conservator and the guardian, a statement of that fact, or if the guardian is the petitioner, a statement that the court has previously granted to the guardian the authority to exercise control or authority over the ward's estate;
 - (2) the conservatee's or ward's name, age, date of birth, address of permanent residence, and present address or whereabouts, if different from the conservatee's or ward's permanent residence;
 - (3) the name and address of the conservatee's court appointed guardian, if a guardian has been appointed by the court and is different from the conservator;
 - (4) the names and addresses of any spouse, adult children and adult grandchildren of the conservatee or ward, and those of any parents and adult siblings of the conservatee or ward, or if no such names or addresses are known to the petitioner, the name and address of at least one adult who is nearest in kinship to the conservatee, or if none, that fact. If no such names and addresses are known to the petitioner, but the petitioner has reason to believe such persons exist, then the petition shall state that fact and that the petitioner has made diligent inquiry to learn those names and addresses;
 - (5) a statement of whether the secretary for children and families has an interest in the matter by virtue of the purpose of the trust being to enable the conservatee or ward to qualify for benefits from any program administered by the secretary;
 - (6) the names and addresses of other persons, if any, whom the petitioner knows to have an interest in the matter, or a statement that the petitioner knows of no other persons having an interest in the matter;
 - (7) a description of the funds or assets of the conservatee or ward which the petitioner proposes to transfer to a trust;
 - (8) the factual basis upon which the petitioner alleges the need for such a trust;
 - (9) the names and addresses of witnesses by whom the truth of this petition may be proved; and
 - (10) a request that the court find that the conservator or guardian should be granted such authority, and that the court grant to the conservator or guardian the authority to establish such a trust.
- (c) The petition shall be accompanied by a draft of the instrument by which the trust is proposed to be established.
- (d) Upon the filing of such a petition, the court shall issue an order fixing the date, time and place of a hearing upon the petition, which hearing may be held forthwith and without further notice if those persons named within the petition pursuant to the requirements of subsections (b)(4), (b)(5) and (b)(6), as applicable, have entered their appearances, waived notice and agreed to the court's granting to the conservator or guardian the authority to establish the proposed trust. Otherwise, the court shall require the petitioner to give notice of this hearing to such persons and in such manner as the court may direct, including therewith a copy of the proposed trust instrument. This notice shall advise such persons that if they have any objections to this authority being granted to the conservator or guardian, that they must file their written objections with the court prior to the scheduled hearing or that they must appear at the hearing to present those objections. The court may appoint an attorney to represent the conservatee or ward in this matter similarly as provided for in subsection (a)(3) of K.S.A. 59-3063, and amendments thereto, and in such event, the court shall require the petitioner to also give this notice to that attorney.
- (e) At the conclusion of the hearing, if the court finds by a preponderance of the evidence that:
- (1) The establishment of such a trust will enable the conservatee or ward to qualify for benefits from any federal, state or local government program, or will accelerate the qualification of the conservatee or ward for such benefits;
 - (2) the conservatee or ward will be the sole beneficiary of such trust;
 - (3) the term of the trust will not extend beyond the lifetime of the conservatee or ward;
 - (4) the provisions of the trust will provide for the distribution of the trust estate for the benefit of the conservatee or ward for special needs not satisfied from governmental benefits and that such distributions made for special needs not satisfied from governmental benefits will only be made in similar manner and under similar circumstances as the conservatee's or ward's estate would otherwise have been distributed by the conservator or guardian for the benefit of the conservatee or ward had the trust not been established;
 - (5) if the provisions of the trust will grant discretion to the trustee to terminate the trust during the lifetime of the conservatee or ward, that such provisions shall preclude the exercise thereof if such termination of the trust will disqualify the conservatee or ward from being eligible for any governmental benefits; and
 - (6) the provisions of the trust will provide that, upon termination of the trust, the remaining trust estate will first be expended to reimburse the governmental entities for the benefits which have been provided to the conservatee or ward, if such reimbursement was ever required as a condition for the conservatee's or ward's qualification for such benefits, and then any remaining balance shall be paid over and assigned as follows:
 - (A) To the conservator, if the termination occurs during the lifetime of the conservatee and the conservatorship remains open, or to the guardian, if the termination occurs during the lifetime of the ward and the guardianship remains open, or to the conservatee or ward, in the event the conservatorship or guardianship has been terminated and the conservatee or ward has been restored to capacity; or
 - (B) if the termination of the trust occurs by virtue of the conservatee's or ward's death, as follows: (i) If a testamentary power of appointment was granted to the conservatee or ward in the trust instrument, pursuant to the conservatee's or ward's valid exercise of such testamentary power of appointment which specifically references such power of appointment; or (ii) in the absence of any such power of appointment or to the extent such power was not validly exercised by the conservatee or ward over the entirety of the trust assets, to: (a) The devisees and legatees the trustee determines would have otherwise received such trust assets, and in the manner they would have received it, under the provisions of the conservatee's or ward's last will and testament had such last will and testament been admitted to probate and the trust assets constituted a portion of the conservatee's or ward's estate; (b) in the absence of a valid duly probated last will and testament of the conservatee or ward, the persons who would have received such trust assets, and in the manner they would receive it, under the intestacy laws of the state of residence of the conservatee or ward at the time of the death of the conservatee or ward had such trust assets constituted a portion of the estate of the conservatee or ward; or (c) the personal representative of the estate of the conservatee or ward, then the court may grant to the conservator or guardian the authority to establish such a trust and to transfer specified property or assets from the conservatee's or ward's estate to the trust. The court shall order the conservator or guardian to report any such transfer within the conservator's or guardian's next accounting as required by K.S.A. 59-3083, and amendments thereto.
- (f) The court may require as a condition of the court's granting to the conservator or guardian the authority to establish such a trust that the sole trustee of the trust be the court appointed conservator or guardian, and that the conservator or guardian, acting as the trustee, shall be subject to the same requirements and limitations as provided for in this act concerning conservatorships and shall report and account to the court concerning the trust estate the same as if the trust estate remained within the conservatee's or ward's estate.

History: L. 2002, ch. 114, § 31; L. 2014, ch. 115, § 229; July 1.