

MEMORANDUM TO PUBLIC ADMINISTRATORS
MISSOURI ASSOCIATION OF PUBLIC ADMINISTRATORS

This Memorandum outlines those changes to the Missouri Guardianship Code from SB806 which affect Public Administrators.

1. **Right to Notice and Participate.** Public Administrators have a right to notice of a hearing on a petition nominating the PA as guardian or conservator, a copy of the petition and accompanying documents and a right to participate in the proceeding. These rights apply at any stage of the proceeding if the PA is considered by the court to be nominated. §§475.075.3 and 475.079.3 RSMo.

2. **Public Administrator is Guardian of Last Resort.** No change in law, but the revised code more clearly states that the Court should consider other persons before appointing an unrelated third party as guardian or conservator. §475.050.2 RSMo. Additionally, the revisions make clear that guardianship itself is the remedy of last resort, and the Court should consider alternatives to guardianship. §475.075.13 RSMo.

3. **Additional Findings of Fact in Guardianship/Conservatorship cases.** The revised Code requires the Court to make detailed findings, including:

(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. §475.075.14 RSMo.

4. **Changes in the Guardian's Reporting Requirements.** Guardians have one year to comply with the new requirements (i.e. by August 27, 2019). But, the new guardian report should state:

(1) a plan for future care, or attach a copy of a treatment plan, person centered plan, or similar care plan;

(2) the extent to which the ward participates in decision making;

(3) a summary of the guardian's visits with the ward and activities on the ward's behalf (this is in addition to stating the number and nature of contacts); and

(4) the ward's current mental and physical condition and any major changes. §475.082.2 RSMo.

5. **Change in Settlement Due Dates.** Annual settlements are now due sixty days after the anniversary date of first letter granted. §475.270 RSMo. Final settlement is due ninety days after

termination of authority, §475.290.1 RSMo., and, if the court has ordered that no letters of administration be granted under §475.320, annual settlements are due. §475.320.1 RSMo.

6. **Managing the Estate.** In addition to a statement of general authority, three changes apply.

(1) Protectees have a right to notice and hearing on petitions to sell real property and tangible personal property unless waived by the court for cause, §475.230.2 RSMo.;

(2) a conservator's authority to settlement claims increases from \$1,000 to \$5,000, §475.130.5(4) RSMo.; and,

(3) Inventories must now disclose any assets subject to non-probate transfer, §475.145 RSMo.

7. **Termination of Guardianship.** The revised Code provides two basis upon which you can petition to terminate a guardianship. The guardianship may be terminated if the court determines that the guardian is unable to provide the services of a guardian due to 1) the ward's absence from the state, or 2) other particular circumstances of the ward. §475.0832(4) RMo.

8. **Statement of Ward Rights.** The revised Code includes a statement of rights retained by the ward. §475.361.1 RSMo.

9. **Powers of Attorney Revoked.** The authority of attorneys in fact under a durable power of attorney for health care is revoked by the appointment of a guardian. §475.083.3 RSMo.