

Change to Guardianships and Conservatorships in Kansas - Impact on Ag Contracts?

Roger McEowen (roger.mceowen@washburn.edu) – Washburn University School of Law
November 2025

Overview

The Kansas Guardianship, Conservatorship, and Other Protective Arrangements Act (ACT), enacted by HB 2359 (effective January 1, 2026), establishes a "protective arrangement" as a highly specific, limited court order. The statutory text regarding the powers granted under this arrangement is found in the section dealing with the court's authority to establish a protective arrangement instead of a conservatorship, generally referred to as New Section 121 of the Act. The new law will result in significant changes to the current guardianship and conservatorship statutes in Kansas. One key distinction is that a protective arrangement grants no default powers over property; the powers must be expressly defined by the court.

In addition, the use of protective arrangements instead of conservatorships could impact agricultural contracts

What are “Protective Arrangements”?

The Act represents a significant modernization of the state's protective services. A key feature is the emphasis on "protective arrangements" as a less restrictive alternative to a full conservatorship.

Note: For farm owners and operators, this shift can subtly but significantly impact the administration and enforceability of agricultural contracts.

The authority for a court to issue a protective arrangement for property is derived from the court's general jurisdiction to protect the financial interests of an individual. New Section 121 grants the court the authority to issue any order that is necessary to manage the respondent's property or business affairs. The court must find that the individual's ability to manage property or business affairs is impaired and that the management of their property or business affairs is required to avoid substantial waste of the property. Crucially, the protective arrangement must utilize the least restrictive alternative adequate to address the needs of the individual.

Note: The new Act promotes a “person-centered” approach, ensuring court intervention is the least restrictive necessary. A traditional conservatorship appoints a person (the conservator) with broad authority to manage the protected person's (the conservatee's) entire financial estate.

A protective arrangement grants the court power to enter an order specifically tailored to the individual's needs, often without appointing a full conservator. This could include:

- Specific, one-time transactions: Authorizing the sale of a single piece of equipment or livestock.
- Approval of certain contracts: Ordering the execution of a specific annual farm lease or a grain forward contract.



- Designating a different agent: Granting an agent under a pre-existing Power of Attorney specific powers the person still has the capacity to execute.

This is a crucial distinction. Under the old system, a finding of financial incapacity often led to a full conservatorship, stripping the person of most contractual authority. The new protective arrangement may preserve a farmer's right to enter into some contracts, while restricting others.

Key Impacts on Agricultural Contracts

The shift toward protective arrangements primarily affects two areas: contractual capacity and contractual certainty for third parties, such as grain elevators, seed/chemical suppliers, and tenant farmers.

Contractual capacity and self-determination. The move to less restrictive protective arrangements means that a farmer who has a court order in place may still retain the capacity to enter into certain contracts, unlike under a full conservatorship where the appointed conservator takes over all financial dealings.

- **Preservation of authority:** A protective arrangement might only restrict high-value, long-term decisions (e.g., selling the farm) but leave routine operational decisions (e.g., purchasing fertilizer, hiring seasonal labor) to the farm owner. This honors the new Act's goal of maximum self-determination.
- **Impact on day-to-day operations:** For an agricultural operation, this is vital. A farmer under a limited protective arrangement might still have the legal authority to sign a production contract for hogs or a crop-share lease for an investment property. A third-party contracting with this farmer must verify the *scope* of the protective arrangement, not just the existence of a court order.

Increased due diligence for third parties. Under the old law, if a contracting party (e.g., a bank lending money for equipment, a grain buyer) knew a farm owner was under a full conservatorship, they knew precisely who to contract with: the conservator. The new system introduces a layer of complexity.

- **Scrutiny of court orders:** A third-party dealing with a protected person must now exercise greater due diligence. They cannot simply assume the person has no capacity. They must review the specific court order establishing the protective arrangement.

Example: A farmer with a protective arrangement may be authorized to sign all contracts up to \$50,000. A grain elevator entering into a forward contract would need court approval or the contract might be deemed voidable.

- **Risk of voidable contracts:** If an agricultural contract is signed by a protected person who was specifically stripped of that authority by the protective arrangement order, the contract may be voidable by the court or the court-appointed representative. This injects uncertainty into common agricultural transactions.

Administrative burden on farm representatives. When a court *does* appoint a conservator or a person to administer a protective arrangement, that representative will now likely face more detailed reporting and planning requirements to the court.



- **The protective plan:** The new Act requires a detailed plan (similar to the new conservatorship plan) outlining how financial decisions will be managed. For a complex farm, this plan must specifically address the management of various contracts:
 - **Leases:** Cash-rent agreements, crop-share leases, and pasture leases.
 - **Financing:** Operating loans, equipment financing, and mortgages.
 - **Commodity contracts:** Grain marketing agreements, forward contracts, and hedging strategies.
- **Court Approval:** The plan—and any deviation from it—will be subject to greater court oversight. This could slow down time-sensitive agricultural decisions, such as securing an operating loan before planting season or selling a commodity when the market price is favorable, as a representative may need judicial approval for actions exceeding their specified authority.

Implications for Oil and Gas Industry

For landmen, attorneys, and energy companies negotiating with an individual under a protective arrangement, the focus shifts to ensuring the contract is executed by a fiduciary who possesses the express and necessary legal authority. The following table summarizes the primary issues:

Aspect	Former Conservatorship (Generally Broader)	Protective Arrangement (Least Restrictive)
Fiduciary's Power	General authority to manage all property (subject to statutory limits and court supervision).	Specific, limited powers tailored to the person's needs and stated in the court order/plan.
Contract Validity	A general conservator's authority to lease/sell mineral interests derived from statute and required a separate court order.	The party executing the contract must verify the specific "Protective Order" to confirm the fiduciary has the authority to sign the oil/gas lease or contract.
Complexity	Relatively straightforward verification of conservator status and a single court order for the specific transaction.	May require closer examination of the initial Protective Order to ensure the fiduciary's power encompasses the transaction (e.g., leasing vs. selling).

In essence, protective arrangements aim to provide the necessary management with the minimum possible intrusion on the protected person's rights. For the oil and gas industry, this means due diligence will be even more critical to verify that the person signing an oil and gas contract or lease has the explicit, court-granted power to do so under the specific terms of their Protective Order.

Powers over real and mineral property (oil and gas interests). The new Act does not give a person acting under a protective arrangement a standing, pre-authorized list of powers (like the power of a full conservator). Instead, the power to deal with mineral interests is defined by the court's order itself.



To manage real or mineral property, such as oil and gas interests, the court's protective arrangement order must specifically define the specific transaction or management duty being authorized (e.g., executing a certain oil and gas lease, selling a particular royalty interest, or receiving and distributing specific mineral income), and the specific property to which the authority applies.

Note: In contrast to a full conservatorship, where the conservator receives a statutory list of powers, a protective arrangement is used when a one-time transaction or limited intervention is necessary. Therefore, any power related to selling, conveying, leasing, or mortgaging an oil and gas interest must be specifically petitioned for and explicitly enumerated in the resulting protective order.

Conclusion

For farm owners and operators, the Act is a positive step toward preserving individual autonomy. However, the resulting shift to protective arrangements in lieu of full conservatorships demands a higher level of scrutiny and documentation from all parties involved in agricultural commerce. Going forward, third parties entering into contracts for farm equipment, land leases, or commodity sales must ensure they understand the specific limitations outlined in the court's protective arrangement order to maintain contractual enforceability and minimize risk.

For more information about this publication and others, visit [AgManager.info](https://www.agmanager.info).

K-State Agricultural Economics | 342 Waters Hall, Manhattan, KS 66506-4011 | 785.532.1504

www.ageconomics.k-state.edu

Copyright 2025: [AgManager.info](https://www.agmanager.info) and K-State Department of Agricultural Economics



K-State Department Of Agricultural Economics