

Guardianship and Conservatorship in Iowa

Issues in Substitute Decision-Making

Frequently Asked Questions About Guardianships and Conservatorships

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The following are frequently asked questions about guardianships and conservatorships.

What is the difference between a guardian and a conservator?

In a conservatorship:

- The court appoints a person (the conservator) to control the property (assets and income) of a protected person.
- A conservatorship deals with the person's financial decisions.

In a guardianship:

- The court appoints a person (the guardian) to be responsible for the personal needs of the protected person.
- A guardianship deals with non-financial decisions such as where the protected person lives and what type of medical care the protected person gets.

One person may be both the guardian and conservator. Guardianship and conservatorship cases may be combined into one court action.

The words "guardian" and "conservator" have different meanings in different states. The person who is called a guardian in Iowa is sometimes referred to as a "conservator of the person" in other states. A person who is called the conservator in Iowa might be called the "guardian of the estate" somewhere else.

In Iowa, a person over whom a guardianship or conservatorship is being sought is called a respondent until the court decides that a guardian or conservator should be appointed. The person is then called a protected person.

How much does it cost to file for a guardianship or conservatorship?

Court fees and attorney fees can vary. It may depend on the area of the state and the persons who need to get notice of the action. Fees may increase if the action will be contested by anyone. The attorney's fee and court costs for these cases are typically paid from the protected person's funds. If a protected person is poor, the court may enter an order waiving prepayment of the court costs. The county will pay the fees charged by the protected person's attorney if the protected person is poor. However, public funds generally are not available to pay the guardian or conservator's attorney, if the protected person cannot pay. The guardian or conservator must pay his or her attorney according to the agreement worked out between the guardian or conservator and the attorney. There will also be a court-ordered criminal record checks and checks of the child abuse, dependent adult abuse, and sexual offender registries in this state. The charge for carrying out background checks must be paid by the guardian or conservator.

Am I responsible to provide services or pay for services or debts of the protected person out of my own personal funds?

A guardian or conservator has no duty or obligation to pay for any services for the protected person from the guardian's or conservator's personal funds. The protected person's funds pay for services and debts of the protected person. Governmental benefits may also be available to pay for services.

The guardian or conservator should find federal, state, or county benefits, entitlements, and services for which the protected person is eligible. The guardian makes decisions about the service needs of the person but does not need to provide or pay for needed services. The guardian does not have to act alone to determine which services or benefits are needed or availa-

ble. There are many places to get information. Case management services, the coordinator of disability services employed by the county, providers, and other advocates can be helpful. The guardian can receive assistance to understand and obtain various benefits and services for the protected person.

What are my ongoing legal duties and responsibilities as guardian?

In general, the guardian must know about the protected person's physical and mental status, be familiar with the protected person's needs and be available to carry out all the powers granted by the court.

To carry out these responsibilities, the guardian should be actively involved in:

- Planning for services (usually done in conjunction with service providers, case managers, and funding personnel);
- Ensuring that the services provided meet the needs of the protected person;
- Making informed decisions by weighing the risks and benefits to the protected person and the protected person's preferences, if known.

The guardian must file an initial care plan within 60 days of being appointed. The information in the initial care plan must include:

- Current residence of protected person and plan for future living arrangements;
- Plan for payment of protected person's living and other expenses;
- Current health status and needs and plan for meeting health care needs;
- Plan for meeting other needs of the protected person including education, training and vocation services;
- Plan for facilitating the protected person's participation in social activities;

- Plan for facilitating contacts with family members and other significant persons; and
- Guardian's plan for contact with and activities on behalf of protected person.

A guardian must file an annual report which cannot be waived by the court. The report includes information about:

- Current living arrangements of protected person;
- Sources of payment for living and other expenses;
- Current physical and mental health status and professional services provided to the protected person;
- Protected person's employment status and educational, training and vocational services provided;
- Contacts between protected persons and family members and other significant persons;
- Guardian's contact with and activities on behalf of the protected person; and
- Guardian's recommendation regarding continued need for the guardianship, the ability of the guardian to continue as guardian and any need of the guardian in providing or arranging for provision of care to protected person.

What is the scope of authority that I have as guardian or conservator?

The court will grant the conservator or guardian only the specific powers necessary to protect and supervise the protected person. The guardian or conservator should exercise that power in a way that will maximize the protected person's self-reliance and independence. The guardian or conservator must exercise that power consistent with the authority granted by the court.

Both guardians and conservators must file an initial plan with the court that sets out how the guardian or conservator will meet the needs of the protected person. Those plans once approved by the court set out the authority of the guardian or conservator to act.

Guardian

A guardian may make decisions about:

- Care, comfort, and maintenance (food, clothing, shelter, health care, social and recreational activities, training, education);
- Giving necessary consents for and ensuring that the protected person receives needed professional care;
- Taking reasonable care of personal property;
- Ensuring the protected person receives necessary emergency medical services and professional care, counseling, treatment or services as needed.

With prior court approval, a guardian may have the following powers and make decisions about:

- Changing the protected person's permanent residence to one more restrictive of the person's liberty unless advance notice of the change was included in the guardian's initial care plan;
- Denying all communication or interaction with a person with whom the protected person has expressed a desire to interact which can only be done upon a showing of good cause;
- Consenting to the withholding or withdrawal of life-sustaining procedures, performance of an abortion or sterilization.

Conservator

A conservator must:

- Act as a fiduciary and exercise duties of prudence and loyalty to the protected person;

- Consider any estate plan or other document of the protected person regarding investing and selecting property for distribution;
- Act in accordance with a valid power of attorney under chapter 633B;
- Report to the Department of Human Services the assets and income of the protected person if the person is getting medical assistance through the state.

The conservator must follow the financial plan approved by the court and seek modification of that plan as needs arise.

With court approval, a conservator may:

- invest funds belonging to the protected person;
- sell, mortgage or lease the protected person's real or personal property;
- make payments to or for the benefit of the protected person;
- compromise or settle a claim;
- make elections for a protected person who is a surviving spouse or under chapter 633E;
- apply any portion of the protected person's income or assets for the support of any person for whose support the protected person is legally liable.

May co-guardians be appointed? If so, how many can there be?

Co-guardians may be appointed. There are no legal restrictions about the number of co-guardians that the court may appoint for one protected person. Normally one and no more

than two co-guardians should be appointed. This is because with more people it is difficult to get decisions made and come to an agreement. The guardians will have to work together and agree on an action. However, the court could direct that decisions could be made by only one of the guardians or conservators.

A person who is not a resident of Iowa can be a guardian. A non-resident guardian would usually be required to serve with a resident guardian. However, the court can decide, for good cause, that the non-resident may serve alone.

When does a guardianship end?

Modification

At times a protected person may not need as much decision-making help. The court may modify a guardianship or conservatorship to allow the protected person to make more decisions. The court also may modify a guardianship or conservatorship to allow the guardian or conservator to make more decisions for the protected person.

In a proceeding to modify, the court must make specific findings when deciding whether the powers of the guardian should be increased or decreased. This decision must be based on the evidence presented and must support the powers given to the guardian.

Termination

A guardianship ends when the protected person dies. A guardianship may also end when the court decides that the protected person is no longer incompetent or that the guardianship is no longer necessary for any other reason.

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By Iowa Legal Aid
1111 9th Street, Suite 230
Des Moines, Iowa 50314
1-800-532-1503

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These materials are a general summary of the law. They are not meant to completely explain all that you should know about guardianship and conservatorship. You should see a lawyer to get complete, correct and up-to-date legal advice. Iowa's law on guardianship and conservatorship is found in Iowa's Probate Code starting at section 633.551.