

# Guardianship and Conservatorship in Iowa

## Issues in Substitute Decision-Making

### Standards for Setting Up and Ending a Guardianship

#### **Standards for Setting Up and Ending a Guardianship**

##### **The Standard for Deciding if a Guardianship is Appropriate**

In deciding whether a guardianship is needed, the court looks at a person's decision-making capacity. How much is the person's decision-making capacity impaired? Is the person unable to care for his or her personal safety? Is the person unable to attend to or provide for such necessities as food, shelter, clothing, medical care? Because of this will physical injury or illness occur? Are there others available to help the protected person? Iowa law requires that the court consider a person's "functional limitations" in determining whether and what type of guardianship is needed. Functional limitations are defined as "the behavior or condition of a person which impairs the person's ability to care for the person's personal safety or to attend to or provide for necessities for the person."

##### **The Standard for Deciding How Much Authority a Guardian Has Over a Protected Person**

The court must limit the guardianship as much as possible. The court should allow the protected person to continue to have the legal right to make as many decisions as possible. The court must decide whether a limited guardianship is appropriate and make findings of fact to support the powers given to the guardian.

##### **The Standard of Proof and Burden of Proof Rules**

Burden of proof is about who must provide evidence. The party with the burden of proof in a case must produce evidence to prove a fact. If a party has a burden of proof and does not produce enough evidence, the party will lose on that issue.

The burden of proof is on the person asking to have a guardianship set up. The rules, however, may be different if someone is asking to modify or end a guardianship. If the guardian or conservator is filing the petition, the burden of persuading the court of the need for a change remains with the guardian or conservator. If the protected person is filing the petition, the protected person must present evidence to show that the protected person has some decision-making capacity. The burden of persuasion then shifts to those opposing the termination to show the court by clear and convincing evidence that the protected person is incompetent.

Standard of proof has to do with the amount of evidence that must be presented in order for the

court to make a determination about a fact. In most civil law cases, the standard of proof is a “preponderance.” Preponderance means most of the evidence shows that something is true. It is more likely than not that a particular fact is true. In criminal cases, the highest standard of proof is used, “beyond a reasonable doubt.” If there is any reasonable doubt, the fact or guilt of the person will not be established. A third standard of proof is “clear and convincing evidence.” This standard is used in some types of civil cases. This standard is higher than a preponderance of evidence, but lower than beyond a reasonable doubt. This is the standard that must be used in proceedings to set up, change, or end a guardianship.

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.

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