

Guardianship and Conservatorship in Iowa

Issues in Substitute Decision-Making

The following are some answers to frequently asked questions parents have about guardianship or conservatorship.

What Parents Need to Know About Becoming Their Child's Guardian or Conservator

Why would parents need to be appointed guardian or conservator of their adult children?

Parents are the natural guardians for their minor children (persons age 17 years old and younger). As natural guardians, parents make a variety of decisions for their children. This includes decisions such as: 1) where their child will go to school; 2) what medical care their child will receive; and 3) in what activities their child will participate. This natural guardianship ends, however, once their child reaches the "age of majority," or adulthood (age 18 years). At that age, all children become legal adults with the right to make their own decisions.

As an adult, a person is granted certain legal and civil rights. These include the right to vote, to marry, and to sign contracts. Some individuals may lack the ability to manage their finances or make decisions for themselves that meet their personal needs. The individual may have had disabilities since childhood or become a person with disabilities as an adult.

If adults lack the "capacity" (ability) to make decisions, they may need someone (a substitute decision-maker) to make decisions for them. The person, family members, or friends may want to consider which substitute decision making options would be best.

Two options that are often used are guardianships and conservatorships. Careful assessment of the person's decision-making abilities should be made before establishing any form of substitute decision-making. If a guardianship or conservatorship is chosen, the court may require that a professional evaluation be completed. When limiting or removing a person's legal or civil rights in any way, the least restrictive choice should always be used.

Some other less restrictive options include: power-of-attorney for finances, durable power of attorney for health care, Social Security representative payee, trusts, and other formal and informal supports. The goal should be to preserve and protect the person's self-determination and decision-making independence as much as possible while making sure their needs are met.

What is the difference between full guardianship and limited guardianship?

In a full guardianship, the guardian is given broad powers over the person needing the guardianship, called the “protected person,” and makes all decisions for the person. Most people have the ability to make some decisions (for example, what clothes to wear, what recreational activities to participate in). Full guardianship is the most restrictive form of protection and should be sought only when there is no other less restrictive alternative.

In a limited guardianship, the guardian is only given decision-making power in the areas where protection and supervision is required to meet a person’s needs. A limited guardianship assumes that the protected person is able to make some decisions. There is no finding of general incompetence.

Why is limited guardianship recommended over full guardianship?

By law, a limited guardianship must be considered in all cases because it is less restrictive than full guardianship.

Is a guardianship or conservatorship needed over my adult child?

Deciding if there is a need for a guardianship or conservatorship is very important. Just because a parent disagrees with the decisions that an adult child makes does not mean a guardianship is required. If a person is making decisions that could result in harm, a guardianship may be needed. Without a guardianship, a parent’s ability to make decisions for an adult child in need is limited. For example, a doctor might refuse to treat your adult child because of the child’s lack of capacity to understand the treatment. Without a guardianship a parent may be unable make a necessary decision for the child’s wellbeing.

What is the difference between a guardian and conservator?

A guardian makes personal decisions, such as where the person should live, and what medical, educational, or professional services the person might need.

A conservator makes financial decisions.

What are the personal costs to me in obtaining guardianship or conservatorship?

Court fees and attorney fees can vary depending on the area of the state, as well as who needs to be served with the court papers and whether the case is contested (in dispute). The person over whom the guardianship or conservatorship is sought is called the “respondent.” The attorney and court costs for these procedures are typically paid from the funds of the respondent. If a respondent cannot afford to pay, the court may enter an order waiving payment of the court costs. Also, the county will pay the fees charged by the respondent’s attorney, if the respondent cannot afford to pay.

A criminal record check and checks of the child abuse, dependent adult abuse, and sexual offender registries in Iowa are required of all proposed guardians or conservators, except for certain financial institutions. The costs of these checks are to be paid by the person who files the petition for appointment of guardian or conservator.

No payment from public funds is available for payment of the guardian’s or conservator’s own attorney. If a respondent cannot afford to pay, the guardian’s or conservator’s attorney fees would be paid according to the agreement worked out between the guardian or conservator and the attorney.

Is a guardian or conservator responsible to provide services to the protected person or pay for services or debts of the protected person? For example, must the guardian pay for services if the protected person is no longer eligible for benefits, entitlements or services?

A guardian or conservator does not have to pay for any services of the protected person from the guardian's or conservator's personal funds. Services and debts are paid out of the protected person's own funds, as well as out of any governmental benefits that may be available.

The guardian or conservator should make decisions about the needs of the protected person and seek out federal, state, or county benefits and services that the protected person is entitled to receive.

The guardian or conservator does not have to act alone to decide which services or benefits are needed. The guardian or conservator can get help from case management, the coordinator of disability services employed by the county, providers, and other advocates.

What are the ongoing legal duties and responsibilities as a guardian or conservator to the protected person?

The guardian or conservator must: know about the protected person's physical and mental condition; be familiar with the protected person's needs and wishes; and be available to carry out all the powers and duties granted by the court.

The guardian should:

- Plan for services (usually done with service providers, case managers, and funding personnel);
- Make sure that the services meet the needs of the protected person;
- Make informed decisions by weighing the risks and benefits to the protected person while considering the protected person's wishes, if known;

- Maintain regular contact with the protected person;
- Facilitate supportive relationships of the protected person with family members and other significant persons.

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 the protected person and plan for future living arrangements;
- Plan for payment of the 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 vocational 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.

Also, the guardian is to report to the court every year. This report cannot be waived. The report includes information about:

- current living arrangements of the 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.

The conservator has a duty of prudence and loyalty to the protected person. The conservator is responsible for the protection, management, investment and expenditure of the protected person's assets.

The conservator must file an inventory of the ward's property within 90 days of the conservator's appointment. Also due within 90 days is an initial plan for protecting, managing, investing and distributing the assets of the conservatorship estate. The plan must include:

- a budget, including fees to be charged by the conservator;
- a statement as to how the conservator will involve the protected person in decisions about management of the estate; and
- an estimate of the duration of the conservatorship.

The court must review and approve or reject the plan. If approved, the conservator has the power and authority described in the plan without further court order.

The conservator must report to the court every year within 60 days of the end of the reporting period. These reports cannot be waived. The report shall include:

- The amount of funds on hand at the beginning and end of the period;
- List of assets at the end of the period;
- All disbursements made;
- Any changes in the conservator's plan;
- Amount of the bond and name of the surety;

- The residence of the protected person;
- The general physical and mental condition of the protected person;
- And such other information necessary to show the condition of the conservatorship estate.

Are there forms for guardians or conservators to use?

There are some forms, including initial plans and reporting forms. The forms can be found on the Judicial Branch website. <https://www.iowacourts.gov/for-the-public/court-forms/>.

What is the scope of authority of a 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 the power in a way that will maximize the protected person's self-reliance and independence.

What specific decisions or actions may a guardian or conservator need to make or carry out?

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 party's permanent residence to one more restrictive of the protected party'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 instrument 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 Health and Human Services the assets and income of the protected person if the protected 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.

Can co-conservators or co-guardians be appointed? If so, how many can there be?

Co-guardians or co-conservators can be appointed. There are no legal restrictions about the number of co-guardians that can be appointed by the court for a single person. Normally one and no more than two co-guardians should be appointed. If the co-guardians or co-conservators disagree it may be difficult to make decisions. The court could direct that decisions be made by one or the other of the guardians or conservators. However, using one guardian or conservator avoids this situation.

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

Can a guardianship or conservatorship be changed after it is set up?

It is possible to modify or change a guardianship to allow the protected person to make more decisions for himself or herself. It is also possible to make changes if the guardian needs authority to make more decisions for the protected person. In either case, a court proceeding is required to increase or decrease the powers of the guardian or conservator. This decision must be based on evidence presented and must support the powers given to the guardian or conservator.

How does a guardianship or conservatorship end?

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

How do I select an attorney to help set up a guardianship or conservatorship?

Before a petitioner selects an attorney to represent him or her it is useful to get information about the attorney. Below are some questions that may be helpful when selecting an attorney for a guardianship or conservatorship petition.

Background Information

- Do you handle guardianship or conservatorship cases? If, yes, how many cases do you take a year?
- When was your most recent case?
- In which counties do you work?
- What other information can you provide about your qualifications and experience?

- Are you familiar with the legal issues, health issues, and other issues concerning people with the same type of disability as the respondent?

Fees/Costs

- How do you bill your fees? Hourly, flat fee, percentage of income or assets?
- Can you provide an estimate of the cost for your services to set up a guardianship/conservatorship?
- Do you provide a written agreement describing your fees, billing, and services?

Resources for finding an attorney

- Lawyer referral service of the Iowa State Bar Association: www.iowafindalawyer.com.
- Legal Hotline for Older Iowans: provides advice and referral for Iowans 60 years of age and older: 1-800-992-8161, Des Moines area 515-282-8161
- Iowa Legal Aid provides legal assistance to low-income Iowans in all Iowa counties: call 1-800-532-1275.

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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.