

Guardianship and Conservatorship in Iowa

Issues in Substitute Decision Making

The legal terms used in guardianship and conservatorship can be confusing. Below is a list of some general legal terms followed by a list of guardianship and conservatorship legal terms. **NOTE: Legal terms used in jurisdictions outside of Iowa may be different from some legal terms used in Iowa.**

Definitions of Legal Terms

General Legal Terms

Affidavit - A written statement made under oath. The signature is usually witnessed by a notary public.

Affiant - The person who makes an affidavit.

Appeal - To bring a case before a higher court to review a decision of a lower court.

Bond - A promise by a bonding company to pay if there is a financial loss because of mismanagement or fraud by the conservator. The promise protects the ward (see definition below) from mismanagement by the conservator of the estate. In the event of mismanagement, the court may decide that the bond will reimburse the estate for the missing money. In that case the company that issued the bond can try to get the money back from the conservator.

Burden of Proof - Duty of a party to prove a fact. The amount of proof required depends on the type of case. In some guardianship and conservatorship matters, the amount of proof is "clear and convincing evidence." In others, it is probably a "preponderance of the evidence." (Preponderance means more than half of the available evidence must support a certain decision. This is a lower standard than clear and convincing evidence.)

Change of Venue - To move the court case from one county to another.

Civil Lawsuit - A legal action brought to get relief for injuries or financial loss. This is different than a criminal lawsuit. Civil lawsuits are usually brought by private parties (people or companies) against other private or public parties.

Contested - When any party objects to the petition or opposes it at the hearing, the case is "contested."

Constitutional Rights - Rights guaranteed by the Federal or State Constitution.

Continuance - A postponement of the hearing or trial date.

Estate - A person's income, assets, real estate, or any other financial holdings all make up an estate.

Evidence - Evidence includes documents, material, or testimony presented during a legal case which are used to prove the claims made in the case.

Fiduciary - A person having duties involving good faith, trust, special confidence, and candor towards another. This includes such relationships as executor, administrator, trustee, guardian, and conservator.

Guardian Ad Litem - A person appointed by a court to look after the interests of a minor or a person with a disability who is involved in a court case. The guardian ad litem is not representing either side in a contested court case. The guardian ad litem serves the court in a guardianship or conservatorship proceeding. It is the ward's attorney that represents the ward.

Hearing - A hearing is a court proceeding presided over by a judge. The judge "hears" the petition or request for action that has been filed. The judge listens to the evidence presented and the arguments of the parties. Based on the evidence presented in the hearing, the judge decides the case and enters an order.

Indigent - A person with little money and property. If a ward or proposed ward is indigent, he or she may be entitled to have an attorney appointed, at no charge to the ward. A person who is indigent may be able to file without prepaying fees or costs. This may be called "in forma pauperis" or deferral of fees.

Litigation - Litigation is a trial and associated proceedings. A litigant is a party to a lawsuit.

Notarize - Process where an authorized person (a notary public) verifies the signature on a document. The signing must be done in the presence of the notary.

Oath - Taking an oath is swearing something is true.

Order - Statement by the court, usually in writing requiring, authorizing or allowing something be done.

Order to Show Cause - An order requiring a person to appear and show why he or she did not comply with a previous order or why a proposed order should not be made.

Party or Parties - The person(s) who take part in a legal proceeding. In a guardianship or protective proceeding for a conservatorship the parties are the petitioner, respondent, guardian, conservator, or any other person allowed by the court to participate in the proceeding.

Petition - A legal paper asking for action or relief from the court. A petition is the first document filed with a court in a lawsuit. It starts the lawsuit.

Petitioner - The person who files a petition with the court.

Probate Code - Chapter 633 of the Iowa Code which is the main law over the probate of wills and administration of deceased persons' estates. This also includes the law on guardianships and conservatorships.

Pro Se - A party who acts as his or her own attorney. Also called self represented litigant.

Respondent - The party who makes an answer to the petition.

Subpoena - An order requiring a witness to appear and testify in a court proceeding.

Substitute Decision-Maker - A person who makes decisions regarding personal and medical issues and /or financial issues for a person who is incompetent. This can be done either informally, as a family member or friend, or formally, as an attorney in fact (power of attorney), proxy, agent, guardian, or conservator,

Testimony - Oral statements made under oath at a legal proceeding.

Venue - The county in which legal proceeding is held.

Witness - A person called to testify in a legal proceeding. Also a person who witnesses the signing of a legal document.

Adult Guardianship/ Conservatorship Legal Terms

***NOTE: there are some new legal terms now in use under the Iowa Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act passed in 2010.**

Adult - An individual who is eighteen years of age.

Conservator (also called Conservator of the Estate or Guardian of the Estate or Property) - A person appointed by the court to handle the property or estate of a ward.

Co-conservator/Co-guardian - One of two or more persons appointed to serve as decision maker. There is no limit on the number of co-conservators or co-guardians that can be appointed. However, having more than one conservator or guardian may make decision making more complicated. The co-guardians and co-conservators will have to agree on decisions made for the ward, unless the court directs otherwise.

Court - For guardianship or conservatorship protective proceedings in Iowa this is the district court

Foreign Judgment - This is a guardianship or conservatorship judgment, decree, or order of a court from outside of Iowa that is entitled to full faith and credit in Iowa. An out of state court order which Iowa courts will uphold.

Guardian (also called Guardian of the Person) - A person appointed by the court to make decisions for the person of the ward about non-financial matters such as medical treatment, education, living arrangements, etc.

Incompetency (or Incapacitated Person – * new term being used in Iowa under the Iowa Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act)

- In the case of a guardianship, an incompetent/incapacitated person is one who the court has decided has a decision making capacity which is so impaired that the person is unable to care for the person's personal safety or to attend to or provide for necessities of the person such as food, shelter, clothing, or medical care, without which physical injury or illness may occur.

In the case of a conservatorship, an incompetent/incapacitated person is a person who the court has decided has a decision making capacity which is so impaired that the person is unable to make, communicate, or carry out important decisions concerning the person's financial affairs.

Inventory - A conservator must make a list of all of the ward's property which the conservator has or knows about.

Protected Person (new term being used in Iowa under the Iowa Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act) - This is the ward/ individual person for whom a conservatorship has been set up.

Protective Order (new term being used in Iowa under the Iowa Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act) - An order appointing a conservator under Iowa's conservatorship law (not to be confused with civil or criminal protective orders and no contact orders for domestic abuse, adult & child abuse, and victim protection.)

Protective Proceeding (new term being used in Iowa under the Iowa Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act) - A court action dealing with a conservatorship.

Respondent - The individual person for whom a conservatorship or guardianship is sought.

Ward (or protected person- new term being used in Iowa under the Iowa Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act) - The individual person for whom a guardian or conservator has been appointed to handle personal or financial matters.

Types of Conservatorships and Guardianships

Guardianship of the Person - This type of substitute decision making can cover all or only some decisions about a person's medical care, nutrition, clothing, shelter or residence, and other matters regarding the person, but not the person's finances. A guardianship can be full (or "general"), covering all aspects of the ward's personal life, or it can be "limited," only covering certain specific areas of the person's life.

Conservator of the Estate - This type of substitute decision making can cover all or only some decisions about a person's finances, property, and real estate. A conservatorship can be full (or "general"), covering all aspects of the person's finances, or it may be "limited," only covering certain specific portions of the person's finances.

Standby Conservatorship - The Iowa Code sets out a procedure for a competent adult to plan for a court-supervised conservatorship. In a written petition, the person can say that a conservator shall be appointed when certain conditions have been met. These could be a particular event or the occurrence of a physical or mental condition. The petition also says how the occurrence of these events or conditions must be proven.

Standby Guardianship - The Iowa Code sets out a procedure for a competent adult to plan for a court-supervised guardianship. In a written petition, the person can say that a guardian shall be appointed when certain conditions have been met. These could be a particular event or the occurrence of a physical or mental condition. The petition also says how the occurrence of these events or conditions must be proven.

Voluntary Guardianship or Conservatorship - The Iowa Code permits a person to ask the court to appoint a guardian or conservator to handle the person's personal or financial affairs. A person must have the capacity to consent to the appointment of a guardian or conservator. Even in this situation, the court must decide whether a limited guardianship or conservatorship is appropriate.

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.



HOPE. DIGNITY. JUSTICE.

Updated September 2013
by Iowa Legal Aid,
1111 9th Street, Suite 230,
Des Moines, IA 50314
1-800-532-1503 or
515-243-2151. Funding
was provided by the
Iowa Developmental
Disabilities Council.