

Guardianship and Conservatorship in Iowa

Issues in Substitute Decision Making

A conservator takes care of the ward's property. A conservator's actions are reviewed by the court.

Conservator of the Estate

What must the Conservator Do?

The conservator of the estate has to take care of the ward's income and assets, invest them well, account for them, and perform all other duties required by law. The conservator has to report to the Iowa Department of Human Services all assets and income of any ward getting state medical assistance.

What Are the Limits of the Power of a Conservator?

The conservator only has the powers that the court gives the conservator. The conservator must always be aware of the rights kept by the ward. The conservator should use his or her powers in a way which allows the ward as much independence as possible.

Conservators must remember that their decisions can be reviewed and investigated by other interested parties. This means that their decisions may be criticized and challenged.

What are the Ongoing Duties of Conservators?

The duties of conservators include:

- To carry out duties given to them by the court.
- To follow any limits placed on their powers.
- To understand the current needs of the ward. This includes knowing about the ward's physical and mental condition, treatments, care plan, and needs through regular visits with the ward and contacts with care providers.

What can the Conservator do without prior Court Approval?

The conservator has the following powers that do not require prior court approval:

- To collect, or receive any principal or income
- To pursue or defend any claim by or against the ward or the conservator.

- To sell and transfer perishable personal property and other personal property for which there is a regularly established market such as certain stocks, bonds, mutual funds and commodities.
- To vote at corporate meetings.
- To receive additional property.
- To continue to hold any investment or other property originally received by the conservator until filing of the first annual report.

When Does the Conservator Need the Approval of the Court?

In some situations, conservators must ask for a hearing and get court approval before taking actions. The court may require notice to interested parties. The court has to approve the following actions before the conservator can:

- Invest funds belonging to the ward.
- Enter into leases.
- Make payments to or for the benefit of the ward. This may be payments directly to the ward or directly for the maintenance, welfare, and education of the ward. This includes payments to the legal guardian of the ward, or to anyone who has custody and care of the ward.
- Apply any portion of the income for the support of someone the ward is legally liable to support.
- Compromise or sell any claim by or against the ward or conservator.
- Take an election in the estate of a deceased spouse of the ward.
- Do other things that the court decides are in the best interest of the ward.

What are the Conservator's Duties Regarding Filing Reports?

A conservator must file an inventory of the ward's property within 60 days of the conservator's appointment. If the conservator gets or becomes

aware of additional property, another inventory must be filed within 30 days.

A conservator must file written reports and accountings on an annual basis unless the court orders otherwise. A report and accounting must be filed within 30 days after the date the conservator is removed. If the conservator resigns, a report and accounting must be provided before the resignation is accepted. A final report must be filed within 60 days after the conservatorship is ended. The court may also require reports at other times.

The clerk of court must notify the conservator in writing of the reporting requirements. The reports will be reviewed and approved by the court.

What are the Requirements of the Reports and Accountings?

The report and accounting must cover the period of time since the last report was filed. The reports need to include information on the financial transactions which have occurred, including any changes in assets or income.

Under the statute, the reports must contain the following information:

- The balance of funds on hand at the close of the last accounting and all amounts received during the period covered by the accounting.
- All money paid out during the period covered by the accounting.
- All changes in investments since the last report, including a list of all assets and recommendations of the conservator for keeping or getting rid of any property.
- The amount of the bond and the name of the surety.
- The residence or physical location of the ward.
- The general physical and mental condition of the ward.
- Other information necessary to show the condition of the conservatorship.

The clerk of court may have a form for the guardian or conservator to use. The Iowa Judicial Branch website has forms for the initial, annual, and final guardianship reports and conservatorship reports. www.iowacourts.gov Go to the website, click on Court Rules and Forms, and then click on Probate Forms.

The court will not enter an order approving an annual report until the court costs have been paid. However, the court may enter an order waiving the payment of court costs if the ward is indigent. If the conservatorship later becomes financially able to pay the waived costs, those costs must be paid.

Some Practical Considerations

There are many practical considerations in being a conservator. Some of them are listed below. In carrying out duties, a conservator must always check to see whether court approval is necessary.

The conservator is responsible for keeping accurate financial records at all times. In order to do this, the following steps are recommended.

- Establish a separate conservatorship account to receive all deposits and make all payments.
- Maintain a complete and accurate record which shows all funds going through the conservatorship account.
- Seek approval from the court whenever required by law or when there is any question regarding what course of action should be taken.

One of the conservator's first duties is to take control of the ward's property. This involves doing a complete search for all assets or property of the ward. The best source of information may be the ward. If possible, review financial records with the ward, such as current bank accounts and broker statements, income tax returns, account ledgers, deeds, and insurance policies.

The conservator has the duty to pay reasonable charges on behalf of the ward. Payments should

be sent out in the name of the ward. All documents signed by a conservator should state that it is being signed as conservator. This should be done to make it clear that the conservator is not personally liable. The conservator should first make sure that the service has been provided and the charge is reasonable. For a person residing at home, reasonable charges might include: payment of mortgage, rent, insurance, taxes, utilities, maintenance of the home, needed in-home services, medical services, clothing, and other personal items. For a person residing in a facility, the conservator should review the charges to make sure that they are appropriate for the level of care required. The conservator should make sure that the ward has enough money for personal spending. The medical and personal services provided should also be reviewed.

If the ward's income is not enough to meet his or her needs, the conservator may have to sell some of the ward's assets. The conservator may also have to apply to federal, state or county agencies for financial help or services for the ward. A guardian or a conservator has no duty or obligation to pay for any service for the ward from the conservator's own funds. **The conservator should not enter into any agreements to sell properties or assets without first consulting his or her attorney and obtaining necessary court approval.**

A conservator must make appropriate decisions regarding the ward's need for insurance. Here are some questions to ask:

- Is all real property adequately insured for replacement value? Are the premiums current? Does the ward have adequate household insurance?
- Does the ward have health insurance that is cost effective?
- Is there duplicate coverage with multiple policies?
- Is the ward eligible for Medicare? Is the ward eligible for medical assistance?
- Does the ward have life insurance? Are the premiums current and is the insurance necessary?

The conservator must arrange for the care and maintenance of real estate. This could include cutting grass, shoveling snow, trash removal, furnace inspection or making sure there is adequate heating fuel. The conservator should determine who has access to the property and whether the locks should be changed. Are the real estate taxes current? Where is the abstract?

If the conservator wants to sell the principal residence of the ward, the conservator must consider whether the ward will be able to return to independent living. Before selling, the conservator should consult with his or her attorney.

The conservator must keep an adequate record of services he or she has performed, the time spent, and the expenses of performing duties. A conservator may charge a reasonable fee for providing needed services

The conservator is responsible for filing income tax returns.

The conservator must investigate and determine all debts and claims in order to pursue collection. If there is a need to protect assets, the conservator may need to start a lawsuit.

As noted above, a conservator has authority to take many actions on behalf of the ward. However, in some cases, court approval must be obtained. In addition, the conservator should obtain competent legal and financial advice, particularly in the management of large assets and in contested or controversial situations.

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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