

Guardianship and Conservatorship in Iowa

Issues in Substitute Decision-Making

A conservator takes care of the protected person's assets and income. A conservator's actions are reviewed by the court.

Conservator

What must the Conservator Do?

The conservator has to take care of the protected person'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 protected person 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 protected person. The conservator should use his or her powers in a way which allows the protected person 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?

Conservators have a duty of prudence and loyalty to the protected person. Conservators are responsible for the protection, management, investment and expenditure of the protected person's assets. 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 protected person. This includes knowing about the protected person's physical and mental condition, treatments, care plan, and needs through regular visits with the protected person and contacts with care providers.
- 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 protected persons if they are getting medical assistance through the state.

How does the Conservator Get Authority to Act?

The conservator must file an inventory of the protected person'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. 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 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.

When does the Conservator Need the Approval of the Court?

Unless already included in the approved initial plan for the conservatorships, conservators must ask for a hearing and get court approval before taking certain 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 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.

What are the Conservator's Duties Regarding Filing Reports?

A conservator must file written reports and accountings on an annual basis within 60 days of the end of the reporting period. This requirement cannot be waived. 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 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.

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

- The amount of funds on hand at the beginning and end of the period;
- List of assets at 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.

The Iowa Judicial Branch website has forms for the initial, annual, and final guardianship and conservatorship reports. Go to the website, www.iowacourts.gov, click on *For the Public, Court Forms*, and then click on *Guardian & Conservator*.

There can be court costs related to filing of reports. However, the court may enter an order waiving the payment of court costs if the protected person 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 court order 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 protected person's property. This involves doing a complete search for all assets or property of the protected person. The best source of information may be the protected person. If possible, review financial records with the protected person, 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 protected person. Payments should be sent out in the name of the protected person. 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 protected person has enough money for personal spending. The medical and personal services provided should also be reviewed.

If the protected person's income is not enough to meet his or her needs, the conservator may have to sell some of the protected person's assets. The conservator may also have to apply to federal, state or county agencies for financial help or services for the protected person. A conservator has no duty or obligation to pay for any service for the protected person 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 protected person'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 protected person have adequate household insurance?
- Does the protected person have health insurance that is cost effective?
- Is there duplicate coverage with multiple policies?
- Is the protected person eligible for Medicare? Is the protected person eligible for medical assistance?
- Does the protected person 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 protected person, the conservator must consider whether the protected person 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 court needs to approve the fees charged by the conservator.

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 protected person. 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.

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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.