

Guardianship and Conservatorship in Iowa

Issues in Substitute Decision Making

The following are the most frequently asked questions about guardianships and conservatorships. This information is from a series on substitute decision making prepared by Iowa Legal Aid and funded by the Iowa Governor's Developmental Disabilities Council.

Frequently Asked Questions About Guardianships and Conservatorships

What is the difference between a guardian and a conservator?

In a conservatorship:

- The court appoints a person (the conservator) to control the property (or estate) of a ward.
- A conservatorship deals with the person's financial decisions.

In a guardianship:

- The court appoints a person (the guardian) to control the person of the ward.
- A guardianship deals with non-financial decisions such as where the ward lives and what type of medical care the ward gets.

One person may be both the guardian and conservator. Guardianship and conservatorship cases may be combined into one court action.

The words "guardian" and "conservator" have different meanings in different states. The person who is called a guardian in Iowa is sometimes referred to as a "conservator of the person" in other states. A person who is called the conservator in Iowa might be called the "guardian of the estate" somewhere else.

How much does it cost to file for a guardianship or conservatorship?

Court fees and attorney fees can vary. It may depend on the area of the state and the persons who need to get notice of the action. Fees may increase if the action will be contested by anyone. The attorney's fee and court costs for these cases are typically paid for from the proposed ward's funds. If a proposed ward is poor, the court may enter an order waiving pre-payment of the court costs. The county will pay the fees charged by the ward's attorney if the ward is poor. However, public funds generally are not available to pay the guardian or conservator's attorney, if the ward's estate cannot pay. The guardian or conservator must pay his or her attorney according to the agreement worked out between the guardian or conservator and the attorney.

Am I responsible to provide services or pay for services or debts of the ward out of my own personal funds? For example, would the ward have to come to live with me or must I pay for services if he or she is no longer eligible for benefits, entitlements, or services?

A guardian or conservator has no duty or obligation to pay for any services for the ward from the guardian's or conservator's personal funds. The ward's funds pay for services and debts of the ward. Governmental benefits may also be available to pay for services.

The guardian or conservator should find federal, state, or county benefits, entitlements, and services for which the ward is eligible. The guardian or conservator makes decisions about the service needs of the person, but does not need to provide or pay for needed services. The guardian does not have to act alone to determine which services or benefits are needed or available. There are many places to get information. Case management services, the central point coordinator employed by the county, providers, and other advocates can be helpful. The guardian can receive assistance to understand and obtain various benefits and services for the ward.

What are my ongoing legal duties and responsibilities as guardian?

In general, the guardian must know about the ward's physical and mental status, be familiar with the ward's needs and be available to carry out all of the powers granted by the court.

To carry out these responsibilities, the guardian should be actively involved in:

- Planning for services (usually done in conjunction with service providers, case managers, and funding personnel);
- Ensuring that the services provided meet the needs of the ward;
- Making informed decisions by weighing the risks and benefits to the ward and the ward's preferences, if known.

The guardian must report annually to the court. The report includes information regarding the ward's cur-

rent mental and physical condition, and present living arrangements. The report also includes a summary of the professional services provided to the ward, a description of the guardian's visits with and activities on behalf of the ward, and a recommendation as to whether or not the guardianship should continue.

What is the scope of authority that I have as guardian or conservator?

The court will grant the conservator or guardian only the specific powers necessary to protect and supervise the ward. The guardian or conservator should exercise that power in a way that will maximize the ward's self-reliance and independence. The guardian or conservator must exercise that power consistent with the authority granted by the court.

Guardian

A guardian may:

- Make decisions about care, comfort, and maintenance (food, clothing, shelter, health care, social and recreational activities, training, education);
- Place reasonable time, place, and manner restrictions on the communication, visitation, and interaction between an adult ward and another person;
- Give necessary consents for and ensure that the ward receives needed professional care;
- Take reasonable care of personal property;
- Ensure the ward receives necessary emergency medical services.

A guardian may do the following with prior court approval:

- Change the ward's permanent residence to one that is more restrictive of the ward's liberty;
- Upon showing of good cause, deny all communications, visitation, or interaction by the adult ward with a person with whom the adult ward wants to have contact or with a person wanting to have contact with the adult ward.
- Arrange to provide major elective surgery or any other non-emergency major medical procedure (certain dental and health procedures are specifically excluded from this requirement);
- Consent to the withholding or withdrawal of life-sustaining procedures.

Conservator

A conservator must:

- Protect and preserve the property and assets of the ward;
- Invest funds prudently;
- Account for the assets of the ward;
- Collect all debts and claims in favor of the ward.

A conservator shall have the following powers, unless a court limits them:

- Collect income and enforce or defend any claim by or against the ward;
- Sell and transfer personal property that is perishable or for which there is an established market;
- Vote at corporate meetings;
- Continue to hold any investment or property originally received until the timely filing of the first annual report.

A conservator shall have the following powers, if the court approves:

- Enter into leases;
- Make payments to or for the benefit of the ward;
- Compromise or settle a claim;
- Apply any portion of the ward's income or assets to the support of any person for whose support the ward is legally liable.

May co-guardians be appointed? If so, how many can there be?

Co-guardians may be appointed. There are no legal restrictions about the number of co-guardians that the court may appoint for one ward. Normally one and no more than two co-guardians should be appointed. This is because with more people it is difficult to get decisions made and come to an agreement. The guardians will have to work together and agree on an action. However, the court could direct that decisions could be made by only one of the guardians or conservators .

A person who is not a resident of Iowa can be a guardian. A non-resident guardian would usually be

required to serve with a resident guardian. However, the court can decide, for good cause shown, that the non-resident may serve alone.

When does a guardianship end?

Modification

At times a ward may not need as much decision-making help. The court may modify a guardianship or conservatorship to allow the ward to make more decisions. The court also may modify a guardianship or conservatorship to allow the guardian or conservator to make more decisions for the ward.

In a proceeding to modify, the court must make specific findings when deciding whether the powers of the guardian should be increased or decreased. This decision must be based on the evidence presented and must support the powers given to the guardian. .

Termination

A guardianship ends when the ward dies or when a minor reaches the age of majority. A guardianship may also end when the court decides that the ward is no longer incompetent or that the guardianship is no longer necessary for any other reason.

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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