Guardianship and Conservatorship in Iowa

Issues in Substitute Decision Making

Guardianship and conservatorship are court cases that make a person or sometimes a corporation or other entity (called the guardian or conservator) a decision-maker for another person (called the ward).

What Is Guardianship and Conservatorship?

General Overview.

Guardianship and conservatorship are court cases that arrange for a person, or sometimes a company or other entity (called a guardian or a conservator), to make certain decisions for another person (called the ward). A guardianship deals with non-financial decisions while a conservatorship deals with financial decisions. A guardianship or conservatorship can be set up for a person if his or her decision making capacity is so impaired that the person is unable to care for his or her own personal safety or to provide for his or her "necessities." The person must be at risk of physical injury or illness.

Why Not Set Up a Guardianship or Conservatorship?

In our country, when we become adults we are generally able to make decisions for ourselves. We can even make decisions that others think are "wrong." Because our right to make decisions for ourselves is such a basic freedom, it can only be taken away for a very good reason. And if there is a very good reason, the court can only take away the smallest amount of decision making necessary. The court must consider the "least restrictive alternative" or the least intrusive option when taking away a person's rights to make decisions.

Guardianship or conservatorship is only needed if the person's decision making is a major threat to his or her welfare. Guardianship or conservatorship should not be used simply because a person makes a decision that other people do not understand or agree with. Guardianship or conservatorship should not be used simply because the person has a certain disability or diagnosis.

The person asking the court to set up a guardianship or conservatorship is called the petitioner. This person must show that the guardianship or conservatorship is needed. This is called the burden of proof. The burden of proof is the duty to prove that the person is incompetent (sometimes also called an incapacitated person). The definition for incompetent and incapacitated person is the same. The court, the petitioner, and the guardian or conservator must try to strike a balance between whether the ward just needs some assistance in doing things for him or herself or whether the ward actually needs someone else to make decisions for him or her.

What Does Incompetency (or incapacitated person) Mean?

Incompetency is when the proposed ward is unable to make decisions about care for himself or herself and there is a real risk of harm to the proposed ward. In the case of a guardianship of the person, an incompetent person is one who 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 of the estate, an incompetent person is a person who 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."

What is the Difference Between Conservatorship and Guardianship?

In a conservatorship, a person or other entity (the conservator) is appointed by the court to make decisions about the property (or estate) of a ward. In a guardianship, a person or other entity (the guardian) is appointed by the court to make personal decisions for the ward. A conservatorship deals with the person's financial decisions and a guardianship deals with non-financial decisions such as where the ward lives and what type of medical care the ward gets.

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

It is possible for one person to be both guardian and conservator. Guardianship and conservatorship proceedings may be combined into one court action.

Guardianship.

In order to set up a guardianship, the court must decide that the ward is incompetent to make personal decisions. This must be based on facts which are proven by "clear and convincing" evidence. This is more and/or stronger proof than is needed in many civil cases. The person appointed is called the "guardian" and the person under guardianship is called the "ward."

In a "plenary" or full guardianship, the guardian makes decisions about all of the ward's basic needs. This is the broadest and most restrictive form of guardianship. It should be sought only when no less restrictive alternative exists.

Under Iowa law, a full or plenary guardianship is only to be set up when needed. **Iowa law requires that the court decide, in all cases, whether the guardianship should be limited.** This means that the guardian only gets the right to make some decisions for the ward. A guardianship can take away the ward's right to choose where to live, the right to consent to or refuse medical treatment, and other important rights. The court has to make a separate decision about the ward's right to vote. The court may also decide that the ward cannot marry.

The guardian has the duty to make decisions in some or all of these areas of the ward's life. The guardian may be responsible for doing many things. The guardian may need to take reasonable care of the ward's personal property. The guardian should assist the ward in developing maximum self-reliance and independence. The guardian may also need to make sure that the ward receives necessary emergency medical services and other professional care, counseling, and treatment. Other responsibilities may be given as well. Some things can only be done with court approval. These may include moving the ward to a more restrictive residence, arranging for most major elective or non-emergency medical procedures, or consenting to withholding or withdrawal of life-sustaining procedures. **NOTE: A person appointed to act under a durable power of attorney for healthcare has priority over any other person to make healthcare decisions. This includes a court**

appointed guardian, unless the guardianship petition and order terminates the health care power of attorney appointment. Also a person's own wishes (through a living will) cannot be disregarded by a guardian.

Conservatorship.

In order to set up a conservatorship, the court must decide that the ward is incompetent to make financial decisions. This must be based on facts showing the person is incompetent by "clear and convincing" evidence. The person appointed is called the "conservator" and the person under the conservatorship is called the "ward."

The conservator has the duty to protect and preserve the estate of the ward (income and assets). The conservator must invest the ward's money prudently and account for it as provided by law. To the extent the court directs, the conservator will also have the power to collect income, sell and transfer personal property, vote at corporate meetings, and receive additional property. A conservator must have court approval to do things such as invest the funds of the ward, execute leases, make certain payments, transfer real estate, compromise or settle any claim, or apply any portion of the ward's assets to the support of any person for whom the ward is legally liable.

Powers of a Conservator or Guardian.

The court should only grant a guardian or a conservator the powers necessary to provide for the needs of the ward. The guardian or conservator must use the specific authority granted by the court in a manner which limits the ward's rights and restricts his or her personal freedoms only to the extent necessary to provide needed care and services.

Neither guardians nor conservators can make decisions, or limit the ward's freedoms, in areas which the court has not specifically granted the authority to act. This makes sure that a guardian's or conservator's decisions will not be overly protective or restrictive of the person's rights.

A guardian or conservator does not need to pay for any service for the ward from his or her own funds. The guardian or conservator uses funds from the ward's estate or applies for federal, state, or county services to which the ward is entitled.

Who Acts As Petitioner? (Voluntary or Involuntary Guardianship or Conservatorship)

There are voluntary and involuntary conservatorship and guardianship petitions:

Voluntary means the proposed ward is the petitioner and asks the court to have a conservator or guardian appointed.

Involuntary means the petitioner is someone other than the proposed ward who feels that the proposed ward needs help.

Limited Guardianship and Conservatorship.

A limited guardianship or conservatorship is one where the conservator or guardian is given limited power. The ward retains some decision making ability. The court is required, in all cases, to consider if a limited guardianship or conservatorship is appropriate. The court is to make findings of fact to support the powers given to the guardian or conservator.

Standby Guardianship and Conservatorship.

A standby petition is a type of voluntary petition. This means that a person chooses in advance who should be a guardian or conservator for him or her. The person filing such a petition must be competent. The petition must state what event or condition triggers the start of the guardianship or conservatorship.

Public vs. Private Guardianship or Conservatorship.

A family member, friend, interested party, a non-profit corporation, or an agency may be appointed guardian or conservator for an incompetent person. Banks or trust companies can be appointed as conservators.

The court's decision about who will be appointed as guardian depends in part on what the proposed ward wants (or would likely have wanted), plus who is available and willing to be guardian or conservator. In the case of standby petitions, the court appoints the person chosen in advance. When it comes to guardianships and conservatorships of minors, parents are preferred over all others. If qualified parents are not available, then preference is given to a person designated in the will of the parent who had custody of the minor or to any suitable and qualified person that a minor requests, if the minor is at least 14 years old.

Public. A public guardianship or conservatorship is any guardianship or conservatorship where the court appoints a state or county government agency to act as guardian or conservator. **Iowa does not have public guardians.** However, some counties hire a person who acts as a conservator or guardian for wards who have no other options. There is no Iowa law restricting the number of cases in which a person or company can act as guardian or conservator. There is no law in Iowa about the kind of contact that a guardian must have with a ward.

Private. A private guardianship or conservatorship is any guardianship or conservatorship where the court has appointed a private citizen, such as a family member, close friend, professional guardian or conservator, or a private agency to act as guardian or conservator.

Temporary Guardian and Conservator. A temporary guardian or conservator may be appointed by the court after a hearing. This is sometimes done in an emergency situation when more time is needed to determine if a guardian or conservator is needed and until a more permanent guardian or conservator can be named.

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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