

# Guardianship and Conservatorship in Iowa

## Issues in Substitute Decision-Making

A guardian or conservator is appointed to make decisions for the protected person and protect the protected person's rights.

### **Rights of Protected Persons**

A person under guardianship or conservatorship keeps any rights that are not taken by the court. A guardian or conservator should help the protected person use these rights, not prevent the protected person from using these rights.

A guardian or conservator does not need to know every law, right, benefit, or service that may help the protected person. There are advocacy organizations and state and local agencies in the community that can help find the resources the protected person needs. These organizations can provide information about various services and benefits, how to get them, and how to help the protected person use the rights that he or she kept. Such organizations usually are good sources of support for family members or caregivers.

### **How do these Rights Affect a Guardian's or Conservator's Decision-Making?**

In making any kind of decision, the guardian or conservator should always consider the protected person's wishes and beliefs before taking action. A protected person has certain rights that may be affected by decisions made by the guardian or conservator. A guardian or conservator may not make decisions that restrict the rights that a protected party keeps.

### **Does a Guardian or Conservator Also Act as an Advocate?**

Yes. An advocate agrees to help another person understand what his or her rights are and how to use those rights. An advocate argues for a cause, defends beliefs, or supports a position on behalf of another person.

There are laws that are meant to protect those who cannot protect themselves. These laws often do not work unless someone takes a personal interest in a vulnerable adult's welfare and wants to help. That person acts as an advocate.

Once appointed, the guardian or conservator becomes an advocate in those areas where duties and powers are given to them.

## **When Should a Guardian or Conservator Ask for Additional Advocacy Support?**

This is a decision based on the best interests of the protected person, the rights of the protected person and the duties of the guardian or conservator. The guardian or conservator should contact the parties involved and any related service providers, case managers, or social workers. The guardian or conservator should then determine each party's interest and point of view. Next, the guardian or conservator should use this information, along with any other relevant information the guardian or conservator has gathered, to make a decision about requesting advocacy support. Contacting advocacy support may help to resolve the issue as well.

Additional advocacy support can be especially useful in such areas as funding questions or placement problems. Sometimes the guardian or conservator believes that the protected person is not getting the services that would allow them to live in the least restrictive environment. Sometimes the guardian or conservator believes the protected person is not getting services that would help the protected person develop maximum self-reliance and independence. In either of these situations, the guardian or conservator should consider getting additional advocacy support.

## **Does Getting the Assistance of an Additional Advocate Change the Authority of the Guardian or Conservator as Legal Decision Maker?**

No. When an additional advocate is obtained, the powers and duties of the guardian or conservator are not changed or restricted. It does not matter if the additional advocate is an attorney or lay person. Decisions must still be made by the guardian or conservator. Any additional advocates will usually take their direction from the guardian or conservator.

## **What Protection Does a Protected Person Have Against a Guardian or Conservator Who May be Unable or Unwilling to Properly Carry Out His or Her Responsibilities?**

A guardian or conservator appointed by the court is an officer of the court. Because the court is involved, the guardian or conservator is subject to the control and direction of the court. The protected person or any other interested person should notify the court if he or she believes that the guardian or conservator is not acting in the best interest of the protected person or is not carrying out his or her duties.

The protected person can ask the court to change or end the guardianship or conservatorship. The protected person may ask the court to remove the guardian or conservator and appoint a new guardian or conservator. This may be necessary if the guardian or conservator is not able or willing to fulfill his or her duties. The protected person may ask to have the guardianship or conservatorship ended if it is not needed.

## **Protected Person's Rights under the Law**

The protected person keeps all other rights that the court does not give to the guardian or conservator. These rights could include the right to make health care decisions and the right to make decisions about needed services.

Iowa law does not talk about specific rights that a protected person keeps other than the right to communicate, visit, and interact with others. The right is not unlimited. The protected person has to want to communicate, visit or interact with someone. The guardian, without court approval, can place reasonable time, place or manner restrictions on the communication, visitation, or interaction. However, a guardian must get court approval and show good cause in order to deny all communication, visitation, or interaction by a protected person with whom the

protected person has expressed a desire to communicate, visit, or interact or with a person who seeks to communicate, visit, or interact with the protected person.

In addition to these rights, the protected person has certain rights regarding the guardianship or conservatorship. The protected person has:

- The right to appeal any orders issued by the judge;
- The right to be represented by an attorney;
- The right to have an attorney appointed;
- The right to have an annual report filed;
- The right to try to change or end the guardianship or conservatorship.

The law says a court must make a specific finding that a protected person loses some particular rights. Included in these rights are:

- The right to vote;
- The right to decide what will happen to property upon death;
- The right to marry;
- The right to have children.

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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