

Guardianship and Conservatorship in Iowa

Issues in Substitute Decision-Making

Guardianships and conservatorships are court cases that make a person or other entity (called the guardian or conservator) a decision-maker for another person (called the protected person).

What Is Guardianship and Conservatorship?

General Overview

A guardianship deals with non-financial decisions, while a conservatorship deals with financial decisions. A guardianship can be set up if a person's decision-making capacity is so impaired that the person is unable to provide for his/her own personal safety or necessities. The person must be at risk of physical injury or illness. A conservatorship can be set up if a person's decision-making capacity is so impaired that the person is unable to make, communicate, or carry out important financial decisions.

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.

In the court case, the person asking the court to set up a guardianship or conservatorship is called the petitioner. The person who is alleged to need a guardianship or conservatorship or both is called the respondent. The petitioner must show that the guardianship or conservatorship is needed. This is called having the burden of proof. The burden of proof is the duty to prove that the person is incompetent. The court must decide whether the respondent needs no help, just needs some help or actually needs someone else to make all decisions.

What Does Incompetency Mean?

Incompetency is when the respondent is unable to make decisions and there is a real risk of harm to the respondent. In the case of a guardianship, 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, 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, the conservator is appointed by the court to make decisions about the property (or estate) of a protected person. In a guardianship, the guardian is appointed by the court to make personal decisions for the protected person. A conservatorship deals with the person’s financial decisions and a guardianship deals with non-financial decisions, such as where the protected person lives and what type of medical care the protected person receives.

The words “guardian” and “conservator” may 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.” A person who is called the conservator in Iowa might be called the “guardian of the estate.” 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 protected person is incompetent to make personal decisions. This must be based on facts that are proven by “clear and convincing” evidence. This is more proof than is needed in many civil cases. The person

appointed to make decisions is called the “guardian” and the person under guardianship is called the “protected person.”

In a “plenary” or full guardianship, the guardian makes decisions about all the protected person’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 protected person. A guardianship can take away the protected person’s right to choose where to live, the right to consent to or refuse medical treatment, and other important rights. The court must make a separate decision about the protected person’s right to vote. The court may also decide that the protected person cannot marry.

The guardian has the duty to make decisions in some or all areas of the protected person’s life. The guardian may be responsible for doing many things. The guardian must submit a care plan to the court. The guardian may need to take reasonable care of the protected person’s personal property. The guardian should assist the protected person in developing maximum self-reliance and independence. The guardian may also need to make sure that the protected person receives necessary 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 protected person to a more restrictive residence or consenting to the 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 order terminates the healthcare power of attorney appointment. A person's own wishes (through a living will) also cannot be disregarded by a guardian.**

Conservatorship

In order to set up a conservatorship, the court must decide that the protected person 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 "protected person"

The conservator has the duty to protect and preserve the (income and assets of the protected person). The conservator must invest the protected person's money prudently and account for it as provided by law. The conservator must file an initial plan for managing the property. A conservator must have court approval to do things such as invest the funds of the protected person, execute leases, make certain payments, transfer real estate, compromise or settle any claim, or apply any portion of the protected person's assets to the support of any person for whom the protected person is legally liable.

A guardian or conservator does not need to pay for any service for the protected person from his

or her own funds. The guardian or conservator uses funds from the protected person's assets or applies for federal, state, or county services to which the protected person is entitled.

Who Acts as Petitioner?

The petitioner is usually someone other than the proposed respondent who believes that the proposed respondent needs help. Usually it is a relative or friend. It is possible for persons to petition to have someone appointed as their guardian or conservator.

Limited Guardianship and Conservatorship

A limited guardianship or conservatorship is one where the conservator or guardian is given limited power. The protected person 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

In a standby petition, a person chooses in advance who should be a guardian or conservator. The person filing the 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 respondent wants (or would likely have wanted), and who is available and willing to be guardian or conservator. In the case of standby petitions, the court normally appoints the person chosen.

A public guardianship or conservatorship is any guardianship or conservatorship where the court appoints a government agency to act as guardian or conservator. Iowa has a state office of public guardian, but it has limited staff. Some counties hire a person who acts as a conservator or guardian for protected persons who have no other options.

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 in case of emergency. The temporary guardianship or conservatorship can only last 30 days.

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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