

Guardianship and Conservatorship in Iowa

Issues in Substitute Decision Making

This chapter discusses the basic steps to set up a guardianship or conservatorship.

How to Set Up a Guardianship or Conservatorship

Is a Guardianship or Conservatorship Needed?

A family member or other person will need the help of doctors, nurses, social workers, caregivers and other people to decide whether a guardianship or conservatorship is needed. The person who may need a guardianship or conservatorship (called “the proposed ward”) must be found to be “incompetent” before a court would grant a guardianship or conservatorship. It is not enough that a person has a mental disability. The disability must seriously limit the proposed ward’s ability to function. The proposed ward’s decision-making capacity must be so impaired that he/she is unable to care for his/her personal safety or attend to or provide for necessities (food, shelter, clothing, or medical care) without which physical injury or illness might occur. To order a guardianship or conservatorship, there should be no other less restrictive alternatives that would meet the needs of the proposed ward. (See the article “Determining if Guardianship or Conservatorship is Necessary.”)

How to Get a Guardianship or Conservatorship

If a guardian or conservator is needed, the court will appoint an appropriate person to assist the proposed ward. A guardian or conservator may be a relative, other person, or an agency. Two or more people may be co-conservators or co-guardians. Guardians or conservators should live in Iowa, although the court may appoint someone who does not live in Iowa if there is also an Iowa resident appointed or if the court finds there is a good reason to appoint the out-of-state person.

Any person may file a petition for the appointment of a guardian or conservator. The person asking the court to set up the guardianship or conservatorship is called the “petitioner.” The petitioner files A Petition for Appointment of a Guardian or Conservator, which is a legal form asking the court to appoint a person or agency to act as guardian or conservator. The petition should be filed in the county where the proposed ward lives.

Can a Proposed Ward Choose a Guardian or Conservator?

A proposed ward who is not incompetent but has some limitations may file a petition to set up a guardianship or conservatorship. That proposed ward may want a certain person to help make decisions on his or her behalf. The proposed ward may choose the person to serve as guardian or conservator. This is called a “voluntary” petition.

An adult of “sound mind” may sign a petition that sets up a guardianship or conservatorship on a standby basis. This kind of guardianship or conservatorship would only go into effect if a specific event happens or if a particular mental or physical condition exists.

What Information has to be in the Petition?

For a Guardianship:

The petition must state:

- The name, age and post office address of the proposed ward;
- That the proposed ward is a person whose decision-making capacity is so impaired that the person is unable to care for the person’s personal safety or attend to or provide for necessities—such as food, shelter, clothing, or medical care—without which physical injury or illness might occur;
- The name and post office address of the proposed guardian;
- A statement that the proposed guardian meets the test to be a guardian;
- That the proposed ward is a resident of Iowa or present in the state (For more information on how long a ward has to live in Iowa to qualify, see the article “Changes to Iowa Guardianship and Conservatorship Law”);
- That the proposed ward’s best interests require the appointment of a guardian in Iowa;
- The name and address of any person or institution having care, custody, or control of the proposed ward.

Other information usually is included in the petition. The proposed ward must be told:

That a guardianship or conservatorship takes away rights;

- What actions the guardian or conservator may take without prior court approval;
- What actions the guardian or conservator may take only with prior court approval;
- That the proposed ward has the right to be represented by an attorney;
- That the proposed ward has the right to hire a private attorney rather than use one appointed by the court;
- That the county will pay for an attorney for the proposed ward if he or she does not have money.

For a Conservatorship:

The petition includes the same information as needed for a guardianship. However, a petition asking for a conservator looks at the proposed ward’s ability to manage financial affairs. The petition must state that the proposed ward is unable to make, communicate, or carry out important financial decisions. The petition must include information about the estimated value of the proposed ward’s assets.

A single petition can ask for both a guardianship and conservatorship.

Paying the Costs to File a Petition

There are costs to file a petition. In the case of a conservatorship, the fees would be paid out of the ward’s assets. If the ward does not have enough assets, a conservatorship is usually not needed.

In the case of a guardianship, the ward or the ward’s estate would have to pay the court costs of the guardianship. A petition can still be filed if the person cannot afford to pay the filing fees. The person may ask the court to waive the filing fees. To do so, the person must show that he or she is not able to pay the fee. If the ward or the ward’s estate is ever able to pay the cost, the costs must then be paid.

Notice to the Proposed Ward

After the petition is filed, the proposed ward must get notice of the case. A proposed ward must get:

- A copy of the petition;
- A notice telling the proposed ward that he or she has 20 days to file an “Answer” with the court.

The Proposed Ward’s Right to Representation

A proposed ward who is an adult and who is not a petitioner has the right to legal representation. The court shall appoint an attorney to represent the proposed ward if the proposed ward:

- Does not have money or
- Cannot ask to have an attorney appointed.

The costs of the attorney for a ward who does not have money shall be paid by the county where the guardianship or conservatorship was filed.

The attorney appointed to represent the ward in a guardianship has a number of duties. The attorney appointed to represent the ward must:

- Make sure that the proposed ward has been told about the guardianship;
- Make sure that the proposed ward has been told of the ward’s rights in a guardianship case;
- Personally talk to the proposed ward;
- File a report stating that the attorney has complied with the requirements of the law;
- Represent the proposed ward; and
- Make sure the guardianship meets the requirements of Iowa law.

If an order setting up a guardianship is entered, the attorney must:

- Tell the proposed ward about the effects of the order;
- Tell the ward about his or her rights to ask the court to change or end the guardianship; and

- Tell the ward of the rights he or she still has .

After a guardianship or conservatorship is created, the court may again appoint an attorney to represent the ward in any other proceedings in the case. The court does this if it is in the ward’s best interest to have legal representation.

Preparing for the Hearing

The hearing is the time for the petitioner to tell the court why a guardianship or conservatorship should be created .

The case may be contested if the proposed ward or some other interested person thinks there is no need for a guardian or conservator. Someone may also say that the proposed guardian or conservator will not act in the best interests of the ward. The court will have to decide what is in the best interests of the ward .

Who Must Contact Witnesses and Gather Evidence?

The petitioner or the petitioner’s attorney must find witnesses who can talk about why a guardianship or conservatorship is needed. Any papers that show the ward needs help should be given to the court. The law assumes that the proposed ward is “competent.” The burden of proof is on the petitioner to show otherwise. The petitioner must show by clear and convincing evidence that the ward is “incompetent.”

What Kind of Information does the Court want to hear?

The court will want to know about specific examples of how the proposed ward has acted against his or her own interests in the past. The court will want to know how these past acts show that the person needs a guardianship or conservatorship. Information might include the latest psychological report, any medical reports and evaluations, current service or care plans, and any other current assessments .

The petitioner is responsible for getting all of these reports and bringing them to the hearing. It helps to bring along someone who can support the petitioner’s statements, such as a social worker.

Should the Proposed Ward Attend the Hearing?

The proposed ward should be at the hearing and has a right to be personally present at all hearings. The proposed ward may waive the right to appear in person. In some cases, the proposed ward's medical condition may make it impossible for the ward to appear. It is strongly encouraged that the proposed ward attend the hearing.

Sometimes behavior problems may disrupt the hearing. Even then, it may be a good idea to have the proposed ward attend the hearing. The judge can see how the person acts. This may give the judge insight into the need to set up the guardianship or conservatorship.

The Hearing

The petitioner first has to give the court facts to show that the proposed ward needs the guardianship or conservatorship. The proposed ward then can give the court other facts to show that a guardianship or conservatorship is not needed. Usually, the court will decide the case without a jury. A person contesting the guardianship or conservatorship can ask for a jury.

After hearing the facts, the court can decide either:

- A full guardianship or conservatorship is needed.
- A limited guardianship or conservatorship is needed. The court then sets out the specific powers that the guardian or conservator has.
- No guardianship or conservatorship is needed. The case is ended.

What is a Bond and When is it Necessary?

A bond is a promise by a bonding company to pay if the conservator does not take care of the ward's money. The court may require the conservator to have a bond equal to the value of the estate. Each year, the conservator must continue to pay for the bond. Conservators can get a bond from any bonding company. Bonds are not required for guardianships of the person.

After the Hearing

After the hearing, the court will enter a written order. If the court sets up a guardianship or conservatorship, additional action must be taken. If the court dismisses the petition, the petitioner may appeal.

If the court creates a guardianship or conservatorship, the ward has 30 days to appeal the order. If the ward appeals, a "stay" may be entered. A stay stops the guardian's or conservator's powers during the appeal process. Stays are not easy to get.

Acceptance of Appointment by the Guardian or Conservator

The proposed guardian or conservator will need to sign a paper saying that he or she will faithfully perform his or her duties.

Letters of Appointment

The clerk of court gives the guardian or conservator letters of appointment. These papers are proof that the guardian or conservator can act for the ward. The guardian or conservator should get extra copies of the letters.

Inventory and Appraisal or Initial Report

If a conservator is appointed, an inventory of the ward's property must be filed with the court within 60 days. A guardian must also file an initial report within 60 days of his or her appointment.

Annual Report

Each year the guardian and conservator will have to file a report.

A guardian must file an annual report unless the court says the guardian does not have to do so. Guardianship reports must include the following information:

- The current mental and physical condition of the ward;
- Where the ward is living;
- A summary of the medical, educational, vocational, and other professional services provided for the ward;
- The guardian's visits and activities on behalf of the ward;
- Whether the guardianship is still needed.

A conservator must also file reports. An annual accounting must be provided. The annual accounting report must include the balance of funds, income, payments made, changes in investments, and other information. If additional property comes into the estate, the conservator must tell the court about this within 30 days.

The clerk of court may have a form for the guardian or conservator to use.

A report must be filed when a guardianship or conservatorship ends or when the conservator or guardian resigns.

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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