

Guardianship and Conservatorship in Iowa

Issues in Substitute Decision-Making

The court gives the guardian certain powers. Because of these powers, the guardian has duties to the protected person.

Guardianship of an Adult Person: Powers, Duties and Responsibilities

What are Guardians Supposed to Do?

Guardians must:

- Carry out duties and responsibilities given to them by the court.
- Follow limits placed on their power by the law or the court.
- Know what the protected person needs.
- Prepare and file annual reports.
- Plan for services (usually done with service providers, case managers, and funding personnel);
- Make sure that the services meet the needs of the protected person;
- Make informed decisions by weighing the risks and benefits to the protected person while considering the protected person's wishes, if known;
- Maintain regular contact with the protected person
- Facilitate supportive relationships of the protected person with family members and other significant persons.

What are the Limits of a Guardian's Power?

The guardian only has the power given by the court, and no more. The court can limit the guardian's power. The court can allow the protected person to keep the right to make some decisions.

Guardians' decisions can be reviewed by other interested parties and by the court. Guardians' decisions may be challenged.

Powers and Duties of a Guardian

The powers and duties of a guardian are set out in the court order appointing the guardian.

Usually these include the following:

Provide for Care, Comfort, and Maintenance of the Protected Person

The guardian makes sure that the protected person's basic needs are met. This means that the protected person has food, shelter, health care, people to talk to and things to do. The guardian needs to see that protected persons get training and education so that they can do as much as possible for themselves.

Guardians do not have to pay for these needs out of their own funds. These needs can be met through governmental benefits or services for which the protected person is eligible.

Guardians should think about the following:

The guardian should:

- Visit the protected person and talk with care professionals or interested parties on a regular basis. This should be done monthly or as often as needed to check on the protected person's well-being.
- Keep written notes about visits and other communication about the guardianship. The guardian should keep records about the protected person and be available for routine or emergency communications.
- Promote the care, comfort, and well-being of the protected person. The guardian should know about the protected person's psychological and emotional state, as well as the protected person's attitude towards their current situation.

- Know about the protected person's personal items.
- Know the protected person's religious faith and church. The guardian should help the protected persons participate as they want.

Establish the Place of Residence

The guardian will often be able to decide where the protected person lives. The guardian cannot change the protected person's permanent residence to a more restrictive place without prior court approval. For example, prior court approval is needed to move a protected person into a more restrictive environment such as a nursing home, unless advance notice of the change was included in the guardian's initial care plan.

Before making a decision to change a protected person's residence, the guardian should consider:

- Are the living arrangements appropriate and the least restrictive?
- Do the living arrangements reflect the protected person's prior lifestyle? Is the protected person satisfied with the current living arrangements?
- Do the living arrangements meet the needs of the protected person with the least amount of impact on the privacy and independence of the protected person?
- Are needed support services available?
- Is it clean and safe?
- If the protected person lives in a care facility, is there an individual plan in place to make sure the protected person's personal, recreational, and medical needs will be met.

Take Reasonable Care of the Protected Person's Clothing, Furniture, Vehicle, and Other Personal Property

The guardian usually has to take care of a protected person's personal property. The conservator can pay for and buy personal property. This is an area where the powers and duties of guardians and conservators may overlap. A guardian usually cannot use a protected person's funds. As a result, the guardian cannot buy new clothes or furniture. However, the guardian needs to take reasonable care of the protected person's personal property. The guardian needs to think about whether more clothing is needed. For example, a new winter coat may be needed. The guardian may need to ask the conservator for money to buy the coat or find community resources to help with getting one.

Consent to Medical or Other Professional Care

The guardian usually has to agree for the protected person to get necessary medical or other professional care, counseling, treatment, or services. The guardian should get enough information to be able to make a good decision.

A guardian must get prior court approval in a number of situations. These situations include consenting to the withholding or withdrawal of life-sustaining procedures, performance of an abortion or sterilization.

NOTE: A person appointed to act under a durable power of attorney for health care has priority over any other person to make health care decisions. This includes a court-appointed guardian, unless the guardianship order terminates the power of attorney. In addition, a person's own wishes as stated in a living will cannot be disregarded by a guardian.

For more information about these issues, see "Guardianship Decisions Needing Court Approval."

Assist the Protected person in Developing Maximum Self-reliance and Independence

The guardian should arrange training, treatment, or other services for the protected person that will help him or her to be as independent as possible. The guardian should think about whether special clothing or tools might let a protected person get dressed with less help or get around as independently as possible.

The guardian can only deny all communication or interaction with a person with whom the protected person has expressed a desire to interact after court approval. The guardian must show good cause for this limit on communication and visits.

What are the Initial and Annual Duties of the Guardian?

- The guardian must file an initial care plan within 60 days of being appointed. The information in the initial care plan must include:
- Current residence of protected person and plan for future living arrangements;
- Plan for payment of protected person's living and other expenses;
- Current health status and needs and plan for meeting health care needs;
- Plan for meeting other needs of the protected person including education, training and vocational services;
- Plan for facilitating the protected person's participation in social activities;
- Plan for facilitating contacts with family members and other significant persons; and
- Guardian's plan for contact with and activities on behalf of protected person.

Also, the guardian is to report to the court every year. The report includes information about:

- current living arrangements of protected person;
- Sources of payment for living and other expenses;
- Current physical and mental health status and professional services provided to the protected person;
- Protected person's employment status and educational, training and vocational services provided;
- Contacts between protected persons and family members and other significant persons;
- Guardian's contact with and activities on behalf of the protected person; and
- Guardian's recommendation regarding continued need for the guardianship, the ability of the guardian to continue as guardian and any need of the guardian in providing or ar-

anging for provision of care to protected person.

The Iowa Judicial Branch website has forms for the initial plans, and annual and final guardianship reports. www.iowacourts.gov Go to the website, click on For the Public, Court Forms, and then click on Guardian & Conservator.

The plan and report of the guardian is reviewed and approved by a district court judge or referee. If a report is not filed on time, the court may notify the guardian. The protected person or the protected person's assets are charged the court costs, and the guardian's fees, and the fees of the attorney for the guardian. The court may enter an order waiving the payment of court costs if the protected person is indigent. If the protected person later becomes financially able to pay the waived costs, those costs must be paid. The person who files the petition for appointment of a guardian is responsible for paying the fee for the guardian's criminal record check and checks of the child abuse, dependent adult abuse and sexual offender registries in Iowa.

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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