



**GUARDIANSHIP
AND
CONSERVATORSHIP
IN IOWA**



Issues in
Substitute Decision-Making

IOWA DDCouncil
Preparation, Participation, Power

The Iowa Developmental Disabilities Council—January 2020

Guardianship and Conservatorship in Iowa

Issues in Substitute Decision-Making

TABLE OF CONTENTS

What is Guardianship and Conservatorship.....	1
General Overview	1
Why Not set up a Guardianship or Conservatorship?	1
What Does Incompetency Mean?	2
What is the Difference Between Conservatorship and Guardianship?	2
Guardianship	2
Conservatorship	3
Who Acts as Petitioner?	3
Limited Guardianship and Conservatorship	3
Standby Guardianship and Conservatorship	3
Public vs. Private Guardianship or Conservatorship.....	3
Temporary Guardian and Conservator	4
Alternatives to Guardianship and Conservatorship	5
Why Not set up a Guardianship or Conservatorship?	5
What does “Least Restrictive Alternative” Mean?	5
Can Alternatives be Planned Ahead?	5
Alternative Planning Tools.....	6
Voluntary Alternatives for Personal Needs	6
Voluntary Alternatives for Financial Needs	7
Non-voluntary Alternatives for Financial Needs	8
Determining if Guardianship or Conservatorship is Necessary.....	10
Who Needs a Guardian or Conservator?	10
What are the Criteria for Establishing a Guardianship or Conservatorship?	11
How is Incompetency Determined?	11
How to Determine the Need for Guardianship or Conservatorship.....	11
Court-ordered Professional Evaluation	12
Picking a Guardian or Conservator	13
Who Can Be Appointed as a Guardian or Conservator?	13
How Do You Choose a Guardian or Conservator?	13
Are There Education, Licensing, or Certification Requirements for Guardians or Conservators?	13
Can More than One Guardian or Conservator be Appointed?	14
Must the Guardian or Conservator and Protected Person Live in the Same City or State?	14
Can a Person’s Licensed Service Provider be Appointed Guardian or Conservator?	14
Can the Employee of a Licensed Service Provider be Appointed Guardian or Conservator?	14
Selecting a Professional Guardian or Conservator	15



What Parents Need to Know about Becoming Their

Child's Guardian or Conservator?.....18

Why Would Parents Need to be Appointed Guardian or Conservator of Their Adult Children?	18
What is the Difference Between Full Guardianship and Limited Guardianship?	19
Why is Limited Guardianship Recommended over Full Guardianship?	19
Is a Guardianship or Conservatorship Needed over my Adult Child?	19
What is the Difference Between a Guardian and Conservator?	19
What are the Personal Costs to me in Obtaining Guardianship or Conservatorship?	19
Is a Guardian or Conservator Responsible to Provide Services to the Protected Person or Pay for Services or Debts of the Protected Person?	20
What are the Ongoing Legal Duties and Responsibilities as a Guardian or Conservator to the Protected Person?	20
Are there Forms for Guardians or Conservators to Use?	21
What is the Scope of Authority of a Guardian or Conservator?	21
What Specific Decisions or Actions may a Guardian or Conservator Need to Make or Carry Out?	21
Can Co-conservators or Co-guardians be appointed?	22
Can a Guardianship or Conservatorship be Changed After It Is Set Up?	22
How does a Guardianship or Conservatorship End?	23
How do I Select an Attorney to Help Set Up a Guardianship or Conservatorship?	23
Resources for Finding an Attorney	23

How to Set Up a Guardianship or Conservatorship.....24

Is a Guardianship or Conservatorship Needed?	24
How to Get a Guardianship or Conservatorship.....	24
Can a Respondent Choose a Guardian or Conservator?	25
What Information Has to Be in the Petition?	25
Paying the Costs to File a Petition	26
Notice to the Respondent	26
The Respondent's Right to Representation.....	26
Emergency Appointment of Temporary Guardian or Conservator	27
Mediation	27
Preparing for the Hearing.....	27
Who Must Contact Witnesses and Gather Evidence?	27
What Kind of Information does the Court Want to Hear?	28
Court-ordered Professional Evaluation	28
Court Visitor	28
Court-ordered Background Checks of Proposed Guardian or Conservator	28
Should the Respondent Attend the Hearing?.....	29
The Hearing	29
What Is a Bond and When Is It Necessary?	29
After the Hearing.....	29
Acceptance of Appointment by the Guardian or Conservator	29
Letters of Appointment	30
Inventory and Initial Plan	30
Annual Report	30

Attorney, Court and Guardianship or Conservatorship Fees32

How Do You Decide if the Protected Person is Indigent?	32
Court Fees.....	32
Background Checks of Guardians and Conservators	33
Guardianship/Conservatorship Fees	33
How does a Guardian or Conservator Keep Track of Services and Fees	33
Does the Respondent Get an Attorney?.....	33
Selecting an Attorney	34
Resources for Finding an Attorney	34

Standards for Setting Up and Ending a Guardianship	35
The Standard for Deciding if a Guardianship is Appropriate	35
The Standard for Deciding How Much Authority a Guardian Has Over a Protected Person.....	35
The Standard of Proof and Burden of Proof Rules	35
Which State Can Make Decisions about Guardianships and Conservatorships.....	37
The Standard for Deciding When Iowa has Jurisdiction over Adult Guardianships and Conservatorships.....	37
The Standard for Allowing the Transfer of a Guardianship or Conservatorship to Another State.....	38
The Standard for Accepting the Transfer of a Guardianship or Conservatorship from Another State	38
Registration of Guardianships and Conservatorships in Iowa	39
Guardianship of an Adult Person: Powers, Duties and Responsibilities	40
What Are Guardians Supposed to Do?.....	40
What Are the Limits of a Guardian’s Power	40
Powers and Duties of a Guardian	41
What are the Initial and Annual Duties of the Guardian?	42
Conservator	44
What Must the Conservator Do?	44
What Are the Limits of the Power of Conservators?.....	44
What Are the Ongoing Duties of Conservators?	44
How Does the Conservator Get Authority to Act?	45
When Does the Conservator Need the Approval of the Court?.....	45
What Are the Conservator’s Duties Regarding Filing Reports?	45
What Are the Requirements of the Reports and Accountings?	45
Some Practical Considerations	46
Rights of Protected Persons	48
How Do These Rights Affect a Guardian’s or Conservator’s Decision-Making?	48
Does a Guardian or Conservator Also Act as an Advocate?	48
When Should a Guardian or Conservator Ask for Additional Advocacy Support?	49
Does Getting the Assistance of an Additional Advocate Change the Authority of the Guardian or Conservator as Legal Decision-Maker?.....	49
What Protections Does a Protected Person Have Against a Guardian or Conservator?.....	49
Protected Person’s Rights Under the Law	49
Standards and Principles of Substitute Decision-Making	51
Are there Guidelines for Substitute Decision-Making?	51
What Is Substituted Judgment?	52
What Is Best Interest?	52
What Is Informed Consent?.....	52
Consent or Denial Checklist.....	53
Guardianship Decisions Requiring Court Approval	54
What Health Care Decisions Can a Guardian Make?.....	54
Decisions Requiring Prior Court Approval	55
Changing the Protected Person’s Residence	55
What Decisions Can a Guardian Make About Communication, Visitation and Interaction?	55
How to Ask for Court Approval.....	55



Medical Treatment Decisions	57
Does the Protected Person Participate in Medical Treatment Decisions?	57
What Is Informed Consent?	57
How Does this Apply in Medical Emergencies?	58
When Must the Court Approve Medical Treatment?	58
Can a Guardian Consent to Limit Treatment?	58
Can a Protected Person Refuse Treatment?	58
Medical Treatment Consent Check List	58
Making Decisions to Limit Medical Procedures.....	60
What are Life-Sustaining Procedures?	60
What is a Terminal Condition?	60
Who May Decide that Life-sustaining Procedures Are Not to Be Provided?	60
What Happens if Someone Is in a Coma, Has a Terminal Condition, and Does Not Have a Living Will?	61
What Is Comfort Care?	61
What are Artificial or Mechanical Means to Sustain, Restore, or Supplant a Spontaneous Vital Function?	61
When Should Discussions about Limited Treatment Occur?	61
What Information is Needed to Make Limited Treatment Decision?	61
Other Limited Treatment Terms and Considerations.....	62
Iowa Physician Orders for Scope of Treatment (IPOST)	63
Modification and Termination of Guardianship and Conservatorship	64
Why Modify a Guardianship or Conservatorship?	64
When Does a Guardianship or Conservatorship End?	64
What Happens When the Guardian or Conservator has to be Changed?	65
Frequently Asked Questions about Guardianships and Conservatorships.....	66
Definition of Legal Terms.....	70
Types of Conservatorships and Guardianships.....	70
Legal Terms.....	71
Resource Guide for Guardians and Conservators.....	74

Updated January 2020

By Iowa Legal Aid
 1111 9th Street, Suite 230
 Des Moines, Iowa 50314
 1-800-532-1503
 Funding was provided by
 the Iowa Developmental
 Disabilities Council



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.

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.

Updated January 2020

By Iowa Legal Aid
1111 9th Street, Suite 230
Des Moines, Iowa 50314
1-800-532-1503
Funding was provided by the
Iowa Developmental
Disabilities Council

IOWA DD Council

Preparation, Participation, Power



Guardianship and Conservatorship in Iowa

Issues in Substitute Decision-Making

Guardianship and conservatorship can be the most restrictive and costly options for substitute decision-making. Other alternatives may work as well or better.

Alternatives to Guardianship and Conservatorship

Why Not set up a Guardianship or Conservatorship?

Guardianship and conservatorship may take away all of someone's decision-making authority. In addition, they can be ended only by a court order. For these reasons, guardianships and conservatorships are very restrictive substitute decision-making tools. They can also be more costly than alternative methods, since court review is required, and regular reports must be filed.

American society values independence, freedom, and the right of individuals to make their own decisions. Because of these values, the law requires the "least restrictive alternative" should always be considered before setting up a guardianship or conservatorship. A guardianship or conservatorship should not be required, or used, simply because a person makes a decision that other people do not understand or like. The fact that a person has a disability, or a certain diagnosis, does not necessarily mean a guardianship or conservatorship is needed.

What Does "Least Restrictive Alternative" Mean?

A least restrictive alternative is one that allows a person to make as many decisions and be as independent as possible. Some examples of alternatives are: representative payees for government benefits, joint bank accounts, powers of attorney for health care or finances.

Can Alternatives be Planned Ahead?

There are several formal and informal ways in which a person can make their own plans for future care or assistance. No adult is too young or healthy to plan for the possibility of being unable to do things we normally take for granted, such as paying bills or making health care decisions. This need for assistance could happen due to an accident, illness, disability or age.

Even when a person has not made advance plans, alternatives that are less restrictive than guardianship or conservatorship should be considered. Persons retain some control over their lives when making their own advance plans or agreeing to planned help. The voluntary alternatives can also be less stressful for persons needing help as well as for their family.

Some people may have difficulty talking about these things. However, people who are facing the need for assistance are often relieved to learn that there are ways for them to retain some control over their lives and ensure their wishes will be followed.

Alternatives can also be involuntary. This is when someone makes the arrangements for assistance on behalf of the person needing the help.

Alternative Planning Tools

The planning tools discussed below are generally less restrictive alternatives to a guardianship or conservatorship. If they are put in place, a guardianship or conservatorship may not be needed at all. The best choice of alternatives, including a guardianship or conservatorship, depends on individual needs and preferences.

The descriptions below provide a general summary of the various planning tools. They are not a substitute for legal advice. An attorney should be consulted before making any decisions.

Voluntary Alternatives for Personal Needs

Community-Based Services

A person may be eligible for a wide variety of community-based services that would permit the person to continue meeting personal needs. The services include home nursing, home health aides, homemakers, "Meals on Wheels" (home-delivered meals), "Lifeline" (telephone service assistance), mental health services, transportation, work activity, and many others.

Case Management

Case management can be used to assess a person's needs, and to coordinate and monitor services. Case management is available for some people with disabilities, including persons with intellectual disability or mental illness and some elderly persons. By using case management services, persons with more complex needs may be able to stay in their own homes. For information on case management programs for older Iowans, contact the Iowa Department on Aging at 1-800-532-3213 or www.iowaaging.gov. For information on case management for other needs (for example, persons with brain injuries, intellectual disability or chronic mental illness), contact the Iowa Department of Human Services at 1-800-972-2017 or www.dhs.iowa.gov.

Health Care Facility

Sometimes a person's care needs can only be met by moving to a nursing home, residential care facility, or similar place. If a person voluntarily decides to move, a guardianship may not be needed.

Living Will

A competent adult may sign a "living will" directing that life-sustaining procedures be withheld or withdrawn. The living will is only effective if the signer's condition becomes terminal and if the signer is not able to make treatment decisions. The legal term in Iowa for a living will is "Declaration Relating to Use of Life-Sustaining Procedures."

Durable Power of Attorney for Health Care

A person can name another person as agent (sometimes called the attorney-in-fact) to make health care decisions using a durable power of attorney for health care. This paper gives the agent the authority to make decisions regarding care, treatment, and health care services. A living will is limited to situations of terminal illness. A durable power of attorney for health care covers a broad range of future medical decisions.

A person appointed to act under a durable power of attorney for health care has priority to make health care decisions over any other person, including a court-appointed guardian, unless the guardianship order specifically terminates the power of attorney. The agent has authority to make decisions only if the person is unable to make health care decisions (in the judgment of the attending physician).

Standby Guardianship

The Iowa Code sets out a procedure for a competent adult to plan for a court-supervised guardianship. In a written petition, the person can specify that a guardian shall be appointed when certain conditions have been met. These could include events or the occurrence of a physical or mental condition. The petition also says how the occurrence of these events or conditions must be proven.

Voluntary Alternatives for Financial Needs

Banking Options

There are some simple banking options that may be appropriate alternatives to conservatorships for some people. A person may be able to control his or her own affairs with the help of automatic bill payments, direct deposits, or banking by mail, phone, or on-line.

The person should have the ability to understand what is being done each month. This may not work for people who do not use computers or the internet.

Another method often used is adding a trusted friend or family member to bank accounts. This can be done by making the person a joint owner of the account or by naming the person as a signatory on the account. Trustworthiness is very important because in either case the person can take money out of the account. Care must also be taken to make clear who will get the money from the account if one person dies.

These informal options provide useful means to handle financial needs but provide little third-party supervision.

Financial Powers of Attorney

This power of attorney deals only with finances. A power of attorney appointment is signed voluntarily by a competent adult (the principal) authorizing another person (the agent, formerly called the attorney-in-fact) to act on his or her behalf.

- The power of attorney is in effect right away unless the form states otherwise.
- The power of attorney is durable unless the form states otherwise. Durable means the agent is able to make decisions and act with respect to the principal's property whether or not the principal is able to act on their own due to failing health.
- The financial power of attorney agent is not authorized to make health care decisions for the principal.

The agent needs to be a trustworthy person who will act in the principal's expectations, in the principal's best interest, and in good faith. Unless the power of attorney document states otherwise, the agent's authority to act continues until the principal dies or revokes the power of attorney or the agent resigns or is unable to act for the principal.

A financial power of attorney can grant general authority for all transactions and affairs related to property owned by the principal. It can also be limited in various ways.

Iowa Code 633B contains a statutory power of attorney form that may be used.

The principal can revoke or end a power of attorney at any time. It should usually be revoked in writing. Any bank, brokerage firm, or other third party who may be relying on the power of attorney should be immediately notified of the revocation.

The drawback of a financial power of attorney is that it is not supervised by a court and there are no surety, bonding, or annual accounting requirements. This creates a risk of theft or mismanagement.

Trusts

A trust is a legal relationship in which one person (a “trustee”) holds property for the benefit of another (the “beneficiary”). The property can be any kind of real or personal property such as money, real estate, stocks, bonds, collections, business interests, personal possessions, and other assets. Trusts can be useful planning tools for incapacity because they can be established and controlled by a competent person and later continue under the control of a successor trustee if the person who established the trust becomes unable to manage his or her affairs.

One person often establishes a trust for the benefit of another. This type of trust involves at least three people: the person who creates the trust is called the GRANTOR (or settlor or trustor); the person or financial institution who holds and manages the property is called the TRUSTEE; and the person or persons who receive the benefits from the trust are called the BENEFICIARY or beneficiaries. Trusts that can be changed or terminated at any time by the grantor are called revocable. Trusts that cannot be changed or terminated before the time specified in the trust itself are called irrevocable. The trustee holds “legal title” to the property transferred to the trust and has the legal duty to use the property as provided in the trust agreement and as permitted by law. The beneficiaries have “equitable title,” which is the right to benefit from the property as specified in the trust.

There are several types of trusts that are used to plan for one’s own incapacity or the incapacity of another. There are also many other kinds of trusts that are used for different purposes. It is important to talk to a knowledgeable trust attorney.

Social Security Representative Payee

This alternative can be voluntary on the part of a person who gets Social Security. It can also be used without the person’s consent in some

cases, making it involuntary. This is discussed below under non-voluntary alternatives.

Standby Conservatorship

The Iowa Code sets out a procedure for a court-supervised conservatorship. In a written petition, the person can specify that a conservator shall be appointed when certain conditions have been met. These could include events or the occurrence of a physical or mental condition. The petition also says how the occurrence of these events or conditions must be proved.

Non-voluntary Alternatives for Financial Needs

Social Security Representative Payee

A Social Security representative payee is appointed by the Social Security Administration (SSA) for persons unable to manage their own Social Security retirement and disability benefits or Supplemental Security Income/SSI benefits due to mental or physical impairments. This can be done with or without the consent of the person receiving the benefits. The person has several opportunities to challenge an unwanted appointment of a representative payee. Once established, the representative payee appointment can be terminated by showing that the beneficiary has regained the ability to manage the benefits. A person can also request changing the appointed representative payee to someone else.

The Social Security Administration (SSA) has an application process to establish a representative payee. This might be an appropriate alternative to conservatorship if Social Security or SSI is a person’s only income and there is no need to manage or protect other assets. Even if a conservator has been appointed, the conservator must apply to become the representative payee in order to receive the Social Security or SSI checks directly. Representative payees must use the Social Security and SSI benefits in the person’s best interest. Representative payees are personally liable for misuse of

funds. It may be quite difficult to prove misconduct or even locate a payee who misuses funds. Using caution in choosing a representative payee is important. Options for payee may be a trustworthy relative, friend, or residential facility (nursing home or group home where the person resides).

The SSA may require periodic accountings for the benefits. The SSA may remove payees for a breach of their duties, but there is no careful oversight. A payee only has authority to handle matters relating to the Social Security benefits. The payee has no authority to handle property or income other than Social Security benefits.

Under other SSA requirements for representative payees, a payee must:

- Determine the beneficiary's needs and use his or her payments to meet those needs;
- Save any money left after meeting the beneficiary's current needs in an interest-bearing account or savings bonds for the beneficiary's future needs;
- Report any changes or events which could affect the beneficiary's eligibility for payments;
- Keep records of all payments received and how you spent and saved them;

- Provide all records of how payments are spent or saved to SSA upon request;
- Report to SSA any changes that would affect your performance or your continuing as payee;
- Complete reports accounting for your use of payments, as required;
- Return to SSA any payments to which the beneficiary is not entitled; and
- Return to SSA any payments saved when you are no longer the representative payee for the beneficiary.

Arrangements for Veterans and Railroad Retirement Benefits

Payees for Railroad Retirement Benefits or Veterans Benefits may also be set up. The process for substitute payment arrangements is established by each agency. The Veterans Administration or the Railroad Retirement Board should be contacted for details and procedures to follow. As with Social Security representative payees, these arrangements should be carefully considered based on individual needs and preferences.

Updated January 2020

By Iowa Legal Aid
1111 9th Street, Suite 230
Des Moines, Iowa 50314
1-800-532-1503
Funding was provided by
the Iowa Developmental
Disabilities Council



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.

Guardianship and Conservatorship in Iowa

Issues in Substitute Decision-Making

It may be very difficult to decide if a guardianship or conservatorship is needed.

Determining if Guardianship or Conservatorship is Necessary

Family members often take on informal decision-making roles for a person before he or she becomes incompetent. A common example would be an adult son who assists his elderly father with personal care or financial matters. If the father's mental "capacity" is called into question due to Alzheimer's or other diseases affecting the father's decision-making ability, a court order appointing the son as guardian or conservator may be needed. This would legally allow the son to make decisions on his father's behalf. Other times the need for a guardian or conservator may come about very quickly, for example, as a result of a severe head injury from an accident.

Who Needs a Guardian or Conservator?

Those who may need a guardian or conservator include many different types of people such as:

- A person with a developmental disability;
- A person who has a mental illness;
- A person who has experienced a stroke or a head injury which has resulted in a mental disability;
- A person who has a disease such as Alzheimer's which affects decision-making ability.

A person may fit into one of these categories, but not need a guardian or conservator. A person's need for decision-making support or for a substitute decision-maker will depend on the person's ability to make reasonable decisions about health, safety, and personal needs. There may be formal and informal support from family or friends or other resources. There may have been adequate planning to make sure that his or her needs are met.

What are the Criteria for Establishing a Guardianship or Conservatorship?

To establish a guardianship or conservatorship, the court must find clear and convincing evidence that:

- The person is incompetent;
- The person needs the supervision and protection of a guardian or conservator.
- There is no appropriate less restrictive alternative

The court will consider the availability of third-party in meeting the needs of the person.

How is Incompetency Determined?

Under Iowa law, 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 provide for necessities such as food, shelter, clothing, or medical care without which physical injury or illness may occur.” Under this definition, functional limitations are important in determining incompetence. Iowa law specifically requires that the functional limitations of the proposed ward be considered. Under Iowa law, “functional limitation” is defined as “the behavior or condition of a person which impairs the person’s ability to care for the person’s personal safety or to attend to or provide for necessities for the person.”

Three factors in determining incompetence:

- Decisional Capacity
- Impairment
- Functional Capacity

Decisional Capacity. “Decisional capacity” means a person’s ability to understand and make decisions about his or her needs.

- Is the person aware of an unmet need or inability in managing personal needs?
- Has the person been informed about, and does the person understand, the variety of alternatives available to meet these needs?
- Does the person understand and appreciate the choice made, and the potential risks and the benefits?
- Is the person able to express a choice?

Impairment. “Impairment” generally refers to a person’s diagnosed disability or medical condition which affects the person’s decision-making skills.

Functional Capacity. “Functional capacity” means a person’s practical ability to meet personal needs or take necessary action to have needs met. It must be determined whether and how well the individual can perform activities to meet personal needs and

how much assistance is needed with decision-making.

How to Determine the Need for Guardianship or Conservatorship

There needs to be a comprehensive evaluation or assessment of a person’s ability to make decisions to care for oneself. The assessment must address many areas.

- Medical: This assessment would be done by a physician or other medical professional. This would include diagnoses, medications and their affects, and treatment and prognosis for the impairments.
- Behavioral: This assessment could be done by a psychologist, care provider, or other behavioral professional. This would address how behavior may affects a person’s ability to make decisions.

- **Social History:** This assessment should be completed by the person, family members, and the social services provider. It would include the person's background with past and present decision-making skills, what led to the possible need for guardianship or conservatorship, and the person's view about a guardianship or conservatorship.
- **Intelligence:** An intelligence test may be completed by a psychologist or psychiatrist with an assessment of decisional capacity for personal and financial needs.

Court-ordered Professional Evaluation

At or before a hearing, the court must order a professional evaluation of the respondent unless the court finds it has sufficient information to decide that a guardianship or conservatorship is needed or if a professional evaluation has already been filed. Even if a professional evaluation has been filed, the court may decide that an additional evaluation will assist the court and order another evaluation. If a report is ordered, it must include certain information such as a description of the respondent's cognitive and functional abilities, evaluation of the respondent's condition as well as prognosis for improvement, and recommendation for an appropriate treatment, support or habilitation plan. Unless the court orders otherwise, the cost of the evaluation will be paid by the respondent or, if the respondent is indigent, by the county where the case is pending.

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.

IOWA DD Council
Preparation, Participation, Power

Updated January 2020

By Iowa Legal Aid
1111 9th Street, Suite 230
Des Moines, Iowa 50314
1-800-532-1503
Funding was provided by the
Iowa Developmental
Disabilities Council



Guardianship and Conservatorship in Iowa

Issues in Substitute Decision-Making

A spouse, an adult child or parent of the protected person can be a guardian or conservator. Others may also be able to fill that role.

Picking a Guardian or Conservator

Who Can Be Appointed as a Guardian or Conservator?

Generally, any person, 18 years of age or older, who is a resident of Iowa and who has not been declared incompetent can be a guardian or conservator. Banks and trust companies and private nonprofit corporations can also be guardians or conservators. There are some exceptions set out below. Non-residents of Iowa may also be guardians or conservators in some situations.

How Do You Choose a Guardian or Conservator?

Here are some factors to consider when picking a guardian or conservator:

- Does the protected person prefer someone as a guardian or conservator?
- Is there regular and appropriate contact between the protected person and the proposed guardian or conservator?
- Is the proposed guardian or conservator interested in advocating for the welfare and the rights of the protected person?
- Does the proposed guardian or conservator understand the protected person's needs in all areas of life?
- Is the proposed guardian or conservator a family member? Does this help the protected person carry out the job that has to be done as guardian or conservator?

Are there Education, Licensing, or Certification Requirements for Guardians or Conservators?

There are no statutory certifications, licensing requirements, or guidelines for guardians or conservators. This is the same for paid professional guardians or conservators as well as unpaid, nonprofessional guardians or conservators. However, all guardians and conservators, except for certain financial institutions, will be subject to criminal record checks and checks of the child abuse, dependent adult abuse and sexual offender registries in this state. The court shall consider the results in determining the suitability of the appointment.

The National Guardianship Association has developed written ethical guidelines and performance standards for persons who act as guardians or conservators. These may be requested from the agency at the address listed at the end of this article.

Can More than One Guardian or Conservator be Appointed?

Co-guardians or co-conservators can be appointed. There is no statutory limit on the number of guardians or conservators who may be appointed for a person. It is recommended that no more than two co-guardians or co-conservators be appointed. Generally, both conservators or guardians will have to agree on an action. However, the court can direct that decisions be made by one or the other of the guardians or conservators. For practical purposes and ease in decision-making, naming one guardian and one conservator is best.

Must the Guardian or Conservator and Protected Person Live in the Same City or State?

The guardian or conservator should live in Iowa. He or she must be able to know about the protected person's physical and mental status and needs. The guardian or conservator must be available to carry out all the powers and duties granted to him/her by the court. The court can allow an out-of-state guardian or conservator for good cause or if a resident of Iowa is also appointed.

It can be very difficult to live far away from the protected person and be able to carry out all responsibilities. An example of when to consider asking the court for a co-guardian or co-conservator is when one of the proposed guardians or conservators lives out of state or far away from the protected person. The person living farther away could share the responsibilities with another person who lives closer.

Can a Person's Licensed Service Provider be Appointed Guardian or Conservator?

Sometimes the person who is willing to act as the guardian or conservator is also the protected person's licensed service provider. This may not work well for the protected person. There is a significant potential for conflict of interest when a licensed service provider also acts as guardian or conservator for the same person.

A guardian or conservator makes decisions which are in the best interest of the protected person. A service provider makes decisions which should benefit the client, but also benefit the service provider. When the same person is making the decisions in both roles, there may be a difference between what is best for the protected person and what is best for the service provider. Sometimes the law does not allow a service provider to be a guardian or conservator.

Because of this potential for problems and conflict of interests, a licensed service provider should normally not act as a provider and guardian or conservator for the same person.

Can the Employee of a Licensed Service Provider be Appointed Guardian or Conservator?

Generally, employees of license holders should not act as guardian or conservator for a person who is receiving services from the employer/license holder. This conflict may be minimized somewhat by careful planning. Employees of the license holders should NOT be used as a guardian or conservator unless:

- There is absolutely no other less restrictive alternative available for legal representation (meaning it is a choice of last resort); AND
- The employee/guardian or conservator is not directly providing care or services to his/her protected person; AND
- The court has been made aware of the conflict of interest and has made a finding that such appointment presents no substantial risk for a conflict of interest.

Here are some questions to consider in this process. They should be discussed thoroughly before proceeding with a petition:

- What is the history of the relationships between the protected person and the employee and/or license holder? Is there anything about these current or past relationships to indicate that the protected person's best interests will not be met?
- Does the employee/proposed guardian or conservator have the ability to act independently when making decisions about the services the protected person receives from the employer?
- What assurances or protections for the protected person regarding service decisions will be included as part of this guardianship or conservatorship? Is there any reason to believe such protections won't be effective to ensure that the protected person will receive the services that he or she needs?

NOTE: A health care facility or the owner, administrator, employee or representative of the facility cannot act as a guardian or conservator for any resident of the facility, unless the resident of the facility is closely related to the person acting as guardian.

Selecting a Professional Guardian or Conservator

If there is no person available who is willing and able to act as a guardian or conservator for an individual, it may be appropriate to consider seeking the appointment of a professional guardian or conservator. This may be especially true in cases where there are assets to manage that require specialized skills or knowledge to best serve the interests of the protected person.

Iowa also has an office of Public Guardian, under the Department of Aging.
www.iowaaging.gov. The office has limited

resources, but help may be available if an individual is an Iowa resident who is at least 18 years old and:

- Has no appropriate or responsible person available to serve as a substitute decision-maker; or
- Is without adequate resources to compensate a substitute decision-maker.

Before selecting a professional guardian or conservator, finding out more about the company or person is recommended. Below are some questions that may help when making a decision about who could best meet the needs of the protected person.

Background Information

1. Is the guardian or conservator a:
(Please circle one)
Private Individual
For-Profit Corporation
Non-Profit Agency
2. What guardianship/conservatorship or fiduciary services do you provide?
(Please circle all that apply)
Guardian of the Person
Conservator of the Estate
Personal Representative Trustee
Attorney-in-Fact
Guardian Ad Litem/Court Visitor
3. How many years have you been acting as a guardian, conservator or fiduciary? _____
4. Is being a guardian or conservator your primary occupation?
___ Yes ___ No
If No, what is your primary occupation?
If Yes, how many hours per week do you work as guardian or conservator?
1-10 hrs.
11-20 hrs.
21-40 hrs.
41+ hrs.

5. Do you have any assistants?

___ Yes ___ No

6. In which counties do you work?

7. Educational background: Do you participate in any continuing education or training?

___ Yes ___ No

If Yes, what?

8. Are you a member of any professional associations?

National Guardianship Association (NGA) ___

Other (please specify) _____

9. What is your philosophy regarding family member involvement in decision-making?

10. Describe a typical decision-making process that you use.

11. Have you ever been removed as a guardian or conservator by the court?

___ Yes ___ No

If Yes, Reason?

12. Have you ever been refused bond?

___ Yes ___ No

If Yes, Reason?

13. Have you ever been convicted of a felony?

___ Yes ___ No

If Yes, Reason?

14. Have you ever had a dependent adult complaint substantiated against you?

___ Yes ___ No

If Yes, Reason?

15. With which populations of people do you work? (

Please circle all that apply)

Persons with Dementia or Alzheimer's disease

Persons with Developmental Disabilities

Persons with Mental Illness

Persons with Chronic Alcoholism or Substance Abuse

Others (please specify):

16. What additional related information can you provide regarding your qualifications, experience, and education as a guardian or conservator?

17. Please provide a list of three professional references.

Costs/Fees

1. How do you bill your fees?

Does this include travel time, other expenses?

Hourly \$ /per hour

Flat Fees \$ /per service

% of Income

% of Assets

2. Do you accept indigent (includes Medical Assistance recipients) clients?

___ Yes ___ No

What percentage of your cases are indigent?

___ %

Additional Resource

The National Guardianship Association listed below has developed ethics and standards guidelines for guardians and conservators. This information is available on their website.

National Guardianship Association

174 Crestview Drive
Bellefonte, PA 16823
Phone: 877-326-5992
Fax: 814-355-2452

Website:

<http://www.guardianship.org/standards/>

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.

Updated January 2020

By Iowa Legal Aid
1111 9th Street, Suite 230
Des Moines, Iowa 50314
1-800-532-1503
Funding was provided by the
Iowa Developmental
Disabilities Council

IOWA DDCouncil

Preparation, Participation, Power



Guardianship and Conservatorship in Iowa

Issues in Substitute Decision-Making

The following are some answers to frequently asked questions parents have about guardianship or conservatorship.

What Parents Need to Know About Becoming Their Child's Guardian or Conservator

Why would parents need to be appointed guardian or conservator of their adult children?

Parents are the natural guardians for their minor children (persons age 17 years old and younger). As natural guardians, parents make a variety of decisions for their children. This includes decisions such as: 1) where their child will go to school; 2) what medical care their child will receive; and 3) in what activities their child will participate. This natural guardianship ends, however, once their child reaches the "age of majority," or adulthood (age 18 years). At that age, all children become legal adults with the right to make their own decisions.

As an adult, a person is granted certain legal and civil rights. These include the right to vote, to marry, and to sign contracts. Some individuals may lack the ability to manage their finances or make decisions for themselves that meet their personal needs. The individual may have had disabilities since childhood or become a person with disabilities as an adult.

If adults lack the "capacity" (ability) to make decisions, they may need someone (a substitute decision-maker) to make decisions for them. The person, family members, or friends may want to consider which substitute decision-making options would be best.

Two options that are often used are guardianships and conservatorships. Careful assessment of the person's decision-making abilities should be made before establishing any form of substitute decision-making. If a guardianship or conservatorship is chosen, the court may require that a professional evaluation be completed. When limiting or removing a person's legal or civil rights in any way, the least restrictive choice should always be used.

Some other less restrictive options include: power-of-attorney for finances, durable power of attorney for health care, Social Security representative payee, trusts, and other formal and informal supports. The goal should be to preserve and protect the person's self-determination and decision-making independence as much as possible while making sure their needs are met.

What is the difference between full guardianship and limited guardianship?

In a full guardianship, the guardian is given broad powers over the person needing the guardianship, called the “protected person,” and makes all decisions for the person. Most people have the ability to make some decisions (for example, what clothes to wear, what recreational activities to participate in). Full guardianship is the most restrictive form of protection and should be sought only when there is no other less restrictive alternative.

In a limited guardianship, the guardian is only given decision-making power in the areas where protection and supervision is required to meet a person’s needs. A limited guardianship assumes that the protected person is able to make some decisions. There is no finding of general incompetence.

Why is limited guardianship recommended over full guardianship?

By law, a limited guardianship must be considered in all cases because it is less restrictive than full guardianship.

Is a guardianship or conservatorship needed over my adult child?

Deciding if there is a need for a guardianship or conservatorship is very important. Just because a parent disagrees with the decisions that an adult child makes does not mean a guardianship is required. If a person is making decisions that could result in harm, a guardianship may be needed. Without a guardianship, a parent’s ability to make decisions for an adult child in need is limited. For example, a doctor might refuse to treat your adult child because of the child’s lack of capacity to understand the treatment. Without a guardianship a parent may be unable make a necessary decision for the child’s wellbeing.

What is the difference between a guardian and conservator?

A guardian makes personal decisions, such as where the person should live, and what medical, educational, or professional services the person might need.

A conservator makes financial decisions.

What are the personal costs to me in obtaining guardianship or conservatorship?

Court fees and attorney fees can vary depending on the area of the state, as well as who needs to be served with the court papers and whether the case is contested (in dispute). The person over whom the guardianship or conservatorship is sought is called the “respondent.” The attorney and court costs for these procedures are typically paid from the funds of the respondent. If a respondent cannot afford to pay, the court may enter an order waiving payment of the court costs. Also, the county will pay the fees charged by the respondent’s attorney, if the respondent cannot afford to pay.

A criminal record check and checks of the child abuse, dependent adult abuse, and sexual offender registries in Iowa are required of all proposed guardians or conservators, except for certain financial institutions. The costs of these checks are to be paid by the person who files the petition for appointment of guardian or conservator.

No payment from public funds is available for payment of the guardian’s or conservator’s own attorney. If a respondent cannot afford to pay, the guardian’s or conservator’s attorney fees would be paid according to the agreement worked out between the guardian or conservator and the attorney.

Is a guardian or conservator responsible to provide services to the protected person or pay for services or debts of the protected person? For example, must the guardian pay for services if the protected person is no longer eligible for benefits, entitlements or services?

A guardian or conservator does not have to pay for any services of the protected person from the guardian's or conservator's personal funds. Services and debts are paid out of the protected person's own funds, as well as out of any governmental benefits that may be available.

The guardian or conservator should make decisions about the needs of the protected person and seek out federal, state, or county benefits and services that the protected person is entitled to receive.

The guardian or conservator does not have to act alone to decide which services or benefits are needed. The guardian or conservator can get help from case management, the coordinator of disability services employed by the county, providers, and other advocates.

What are the ongoing legal duties and responsibilities as a guardian or conservator to the protected person?

The guardian or conservator must: know about the protected person's physical and mental condition; be familiar with the protected person's needs and wishes; and be available to carry out all the powers and duties granted by the court.

The guardian should:

- 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.

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 the protected person and plan for future living arrangements;
- Plan for payment of the 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. This report cannot be waived. The report includes information about:

- current living arrangements of the 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 arranging for provision of care to protected person.

The conservator has a duty of prudence and loyalty to the protected person. The conservator is responsible for the protection, management, investment and expenditure of the protected person’s assets.

The conservator must file an inventory of the ward’s property within 90 days of the conservator’s appointment. Also due within 90 days is an initial plan for protecting, managing, investing and distributing the assets of the conservatorship estate. The plan must include:

- a budget, including fees to be charged by the conservator;
- a statement as to how the conservator will involve the protected person in decisions about management of the estate; and
- an estimate of the duration of the conservatorship.

The court must review and approve or reject the plan. If approved, the conservator has the power and authority described in the plan without further court order.

The conservator must report to the court every year within 60 days of the end of the reporting period. These reports cannot be waived. The report shall include:

- The amount of funds on hand at the beginning and end of the period;
- List of assets at the end of the period;
- All disbursements made;
- Any changes in the conservator’s plan;
- Amount of the bond and name of the surety;

- The residence of the protected person;
- The general physical and mental condition of the protected person;
- And such other information necessary to show the condition of the conservatorship estate.

Are there forms for guardians or conservators to use?

There are some forms, including initial plans and reporting forms. The forms can be found on the Judicial Branch website. <https://www.iowacourts.gov/for-the-public/court-forms/>.

What is the scope of authority of a guardian or conservator?

The court will grant the conservator or guardian only the specific powers necessary to protect and supervise the protected person. The guardian or conservator should exercise the power in a way that will maximize the protected person’s self-reliance and independence.

What specific decisions or actions may a guardian or conservator need to make or carry out?

Guardian

A guardian may make decisions about:

- Care, comfort, and maintenance (food, clothing, shelter, health care, social and recreational activities, training, education);
- Giving necessary consents for and ensuring that the protected person receives needed professional care;
- Taking reasonable care of personal property;
- Ensuring the protected person receives necessary emergency medical services and professional care, counseling, treatment or services as needed.

With prior court approval, a guardian may have the following powers and make decisions about:

- Changing the protected party's permanent residence to one more restrictive of the protected party's liberty unless advance notice of the change was included in the guardian's initial care plan;
- Denying all communication or interaction with a person with whom the protected person has expressed a desire to interact which can only be done upon a showing of good cause;
- Consenting to the withholding or withdrawal of life-sustaining procedures, performance of an abortion or sterilization.

Conservator

A conservator must:

- Act as a fiduciary and exercise duties of prudence and loyalty to the protected person;
- Consider any estate plan or other instrument of the protected person regarding investing and selecting property for distribution;
- Act in accordance with a valid power of attorney under chapter 633B;
- Report to the Department of Human Services the assets and income of the protected person if the protected person is getting medical assistance through the state.

The conservator must follow the financial plan approved by the court and seek modification of that plan as needs arise.

With court approval, a conservator may:

- invest funds belonging to the protected person;
- sell, mortgage or lease the protected person's real or personal property;
- make payments to or for the benefit of the protected person;

- compromise or settle a claim;
- make elections for a protected person who is a surviving spouse or under chapter 633E;
- apply any portion of the protected person's income or assets for the support of any person for whose support the protected person is legally liable.

Can co-conservators or co-guardians be appointed? If so, how many can there be?

Co-guardians or co-conservators can be appointed. There are no legal restrictions about the number of co-guardians that can be appointed by the court for a single person. Normally one and no more than two co-guardians should be appointed. If the co-guardians or co-conservators disagree it may be difficult to make decisions. The court could direct that decisions be made by one or the other of the guardians or conservators. However, using one guardian or conservator avoids this situation.

A person who is not a resident of Iowa can be a guardian or conservator. A non-resident would usually be required to serve with a resident guardian or conservator. However, the court can decide, for good cause shown, that the nonresident may serve alone.

Can a guardianship or conservatorship be changed after it is set up?

It is possible to modify or change a guardianship to allow the protected person to make more decisions for himself or herself. It is also possible to make changes if the guardian needs authority to make more decisions for the protected person. In either case, a court proceeding is required to increase or decrease the powers of the guardian or conservator. This decision must be based on evidence presented and must support the powers given to the guardian or conservator.

How does a guardianship or conservatorship end?

A guardianship or conservatorship ends when the protected person dies. A guardianship or conservatorship may also end when the court decides that the protected person is no longer incompetent or that the guardianship or conservatorship is no longer necessary for other reasons.

How do I select an attorney to help set up a guardianship or conservatorship?

Before a petitioner selects an attorney to represent him or her it is useful to get information about the attorney. Below are some questions that may be helpful when selecting an attorney for a guardianship or conservatorship petition.

Background Information

- Do you handle guardianship or conservatorship cases? If, yes, how many cases do you take a year?
- When was your most recent case?
- In which counties do you work?
- What other information can you provide about your qualifications and experience?

- Are you familiar with the legal issues, health issues, and other issues concerning people with the same type of disability as the respondent?

Fees/Costs

- How do you bill your fees? Hourly, flat fee, percentage of income or assets?
- Can you provide an estimate of the cost for your services to set up a guardianship/conservatorship?
- Do you provide a written agreement describing your fees, billing, and services?

Resources for finding an attorney

- Lawyer referral service of the Iowa State Bar Association: www.iowafindalawyer.com.
- Legal Hotline for Older Iowans: provides advice and referral for Iowans 60 years of age and older: 1-800-992-8161, Des Moines area 515-282-8161
- Iowa Legal Aid provides legal assistance to low-income Iowans in all Iowa counties: call 1-800-532-1275.

Updated January 2020

By Iowa Legal Aid
1111 9th Street, Suite 230
Des Moines, Iowa 50314
1-800-532-1503

Funding was provided by
the Iowa Developmental
Disabilities Council



IOWA DD Council
Preparation, Participation, Power

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.

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 respondent”) 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 respondent’s ability to function. The respondent’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. There should be no other less restrictive alternatives that would meet the needs of the respondent. (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 respondent, who is called “a protected person,” once the guardianship or conservatorship is set up. A guardian or conservator may be a relative, other person, or a public or private 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, 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 respondent lives.

Can a Respondent Choose a Guardian or Conservator?

A respondent who has some limitations may file a petition to set up a guardianship or conservatorship. That respondent may want a certain person to help make decisions on his or her behalf. The respondent may choose the person to serve as guardian or conservator. The court would still need to approve.

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 be verified by a person with an interest in the welfare of the adult and include:

- A statement of the factual basis for the petition;
- A statement of why there is no less restrictive alternative to the appointment of a guardian;

- The name and address of the petitioner and the petitioner’s relationship to the respondent;
- The name and address of the proposed guardian and the reason the proposed guardian should be selected;
- List the names and addresses of
 - any spouse, adult children or parents of the respondent;
 - any adult who has had primary care of the respondent or with whom the respondent has lived for at least six months prior to filing of the petition or any institution or facility where the respondent has resided for at least six months prior to the filing of the petition;
 - any legal representative or representative payee of the respondent;
 - any person designated as an attorney in fact in a durable power of attorney.

The respondent is entitled to a written notice that must be served along with the petition. The notice must include:

- 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 respondent has the right to be represented by an attorney;
- That the respondent has the right to hire a private attorney rather than use one appointed by the court.

For a Conservatorship:

The petition includes the same information as needed for a guardianship. However, a petition asking for a conservator looks at the respondent's ability to manage financial affairs. The petition must include a description of the respondent's alleged functional limitations that make the respondent unable to communicate or carry out important financial decisions. The petition must include information about the value of the real estate and personal property owned by the respondent, and the estimated gross annual income of the respondent.

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 protected person's assets. If the protected person does not have enough assets, a conservatorship is usually not needed.

In the case of a guardianship, the protected person 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 protected person is ever able to pay the cost, the costs must then be paid.

Notice to the Respondent

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

- A copy of the petition;
- A notice telling the respondent that he or she has 20 days to file an "Answer" with the court.

The Respondent's Right to Representation

A respondent 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 respondent. If the respondent chooses to hire a private attorney, the appointed attorney may be discharged.

The costs of the attorney for a respondent who does not have money, are paid by the county where the guardianship or conservatorship was filed.

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

- Make sure that the respondent has been told about the guardianship;
- Make sure that the respondent has been told of the respondent's rights in a guardianship case;
- Personally talk to the respondent;
- Advocate for the wishes of the respondent to the extent that the attorney can determine the respondent's wishes; if the wishes can be determined, the attorney shall advocate for the least restrictive alternative consistent with respondent's best interests;
- File a report stating that the attorney has complied with the requirements of the law;
- Represent the respondent; 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 protected person about the effects of the order;
- Tell the protected person about his or her rights to ask the court to change or end the guardianship; and
- Tell the protected person 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 protected person in any other proceedings in the case. The court does this if it is in the protected person's best interest to have legal representation.

Emergency Appointment of Temporary Guardian or Conservator

An application for the emergency appointment of a temporary guardian or conservator can be filed and must include information regarding the name and address of the respondent and the proposed guardian or conservator, and the reason for the emergency appointment. The court may enter an order without a hearing if the court finds that there is not sufficient time to file a regular petition and hold a hearing, that the appointment is necessary to avoid immediate and irreparable harm to the respondent, and there is reason to believe that there is a basis for the appointment of a guardian or conservator. The powers are limited to those necessary to address the emergency. If such an order is entered, the respondent may file a request for a hearing. The temporary guardianship or conservatorship ends within 30 days after the order is issued.

Mediation

The court, either on its own or on the request of one of the parties, may order the parties to participate in mediation. Participation can be waived if there is domestic or elder abuse involved. If the parties must mediate, they are not required to reach agreement but will have to attend a session and engage in good faith negotiations.

Preparing for the Hearing

The court sets a hearing date, which is usually no less than twenty days after the date notice of the hearing is served. 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 respondent 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 respondent. The court will have to decide what is in the best interests of the respondent.

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 respondent needs help should be given to the court. The law assumes that the respondent is "competent." The burden of proof is on the petitioner. The petitioner must show by clear and convincing evidence that the respondent is "incompetent."

What Kind of Information does the Court Want to Hear?

The court will want to know about specific examples of how the respondent 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 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.

Court-ordered Professional Evaluation

The court must order a professional evaluation of the respondent unless the court finds it has sufficient information to decide that a guardianship or conservatorship is needed, or a professional evaluation has already been filed. Even if a professional evaluation has been filed, the court may decide that an additional evaluation will assist the court and order another evaluation. If a report is ordered, it must include certain information such as a description of the respondent's cognitive and functional abilities, evaluation of the respondent's condition as well as prognosis for improvement and recommendation for an appropriate treatment, support or habilitation plan. The cost is to be paid by the respondent unless indigent in which case it shall be paid by the county in which the proceedings are pending, unless the court orders otherwise.

Court Visitor

The court may appoint a court visitor if it would be in the best interest of the respondent. The visitor does not have to be an attorney. The visitor cannot also be the attorney for the respondent. The court may limit or expand the duties of the court visitor but would normally include:

- Conducting an in-person interview with the respondent;
- Explaining the substance of the petition, the proceeding, the rights of respondent and general powers and duties of a guardian or conservator;
- Determining the views of the respondent regarding the proposed guardian or conservator, powers and duties of a guardian or conservator and the scope and duration of the guardianship or conservatorship.

If directed by the court, other duties can be added. The court visitor must submit a written report which contains recommendations regarding limited guardianship or other less restrictive alternatives, qualifications of the guardian and whether the respondent agrees with the appointment of the proposed guardian or conservator. Other matters may be added.

Court-ordered Background Checks of Proposed Guardian or Conservator

The court shall request criminal record checks and checks of the child abuse, dependent adult abuse and sexual offender registries in this state for all proposed guardians and conservators, other than certain financial institutions. The court shall review the results in deciding the suitability of the proposed guardian or conservator. The person filing the petition is required to pay the fee for the background checks.

Should the Respondent Attend the Hearing?

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

Sometimes behavior problems may disrupt the hearing. Even then, it may be a good idea to have the respondent 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 must give the court facts to show that the respondent needs the guardianship or conservatorship. The respondent can give the court other facts to show that a guardianship or conservatorship is not needed. A person with an interest in the welfare of the respondent may ask the court to participate in the hearing and other proceedings.

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 protected person's money. The court cannot exempt a conservator, other than certain financial institutions, from giving a bond unless there is an alternative to a bond that will provide sufficient protection to the assets of the protected person. 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 protected person has 30 days to appeal the order. If the protected person 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 protected person. The letters should contain an explanation of the powers held by the guardian or conservator so that others will know what the guardian or conservator is able to do. The guardian or conservator should get extra copies of the letters.

Inventory and Initial Plan

The conservator must file an inventory of the protected person's property within 90 days of the conservator's appointment. Also due within 90 days is an initial plan for protecting, managing, investing and distributing the assets of the conservatorship. The plan must include:

- a budget, including fees to be charged by the conservator;
- a statement as to how the conservator will involve the protected person in decisions about management of the assets;
- and estimate of the duration of the conservatorship.

The court must review and approve or reject the plan. If approved, the conservator has the power and authority described in the plan without further court order.

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 vocation 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.

Annual Report

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

A guardian must file an annual report which cannot be waived by the court. 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 arranging for provision of care to protected person.

The conservator must report to the court every year within 60 days of the end of the reporting period. These reports cannot be waived. The report shall include:

- The amount of funds on hand at the beginning and end of the period;
- List of assets at end of the period;
- All disbursements made;
- Any changes in the conservator's plan;
- Amount of the bond and name of the surety;
- The residence of the protected person;
- The general physical and mental condition of the protected person;
- And such other information necessary to show the condition of the conservatorship.

If additional property comes into the estate, the conservator must tell the court about this in the next annual report.

The Iowa Judicial Branch has forms for the guardian or conservator to use. They are available at: <https://www.iowacourts.gov/for-the-public/court-forms/>.

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.

Updated January 2020

By Iowa Legal Aid
1111 9th Street, Suite 230
Des Moines, Iowa 50314
1-800-532-1503
Funding was provided by the
Iowa Developmental
Disabilities Council

IOWA DD Council
Preparation, Participation, Power



Guardianship and Conservatorship in Iowa

Issues in Substitute Decision-Making

There are costs associated with bringing a guardianship or conservatorship case.

There are filing fees and other court costs as well as the fee of the attorney who prepares the case.

Attorney, Court and Guardianship or Conservatorship Fees

There are costs associated with bringing a guardianship or conservatorship case. There are filing fees and other court costs as well as the fee of the attorney who prepares the case.

Filing fees can be waived if there is no money for them. They may have to be paid later if money is found. These costs, however, are small compared to the other costs that come with the filing of a petition for guardianship or conservatorship. If the protected person has money, fees and costs can be paid out of the protected person's funds. If the protected person has no money, many of the costs of bringing a guardianship or conservatorship may be covered by the person who is trying to become the guardian or conservator. If the protected person does not have enough money for these costs, the protected person is "indigent."

How Do You Decide If the Protected Person is Indigent?

The court may find a person indigent if the person's income and resources do not exceed 150 percent of the federal poverty level. The court may also find a person indigent if the person cannot pay other essential bills and pay the costs of an attorney. Essential bills would include things like food, shelter, clothing, and health care.

Court Fees

Court costs are charged against the protected person's assets. Court costs include court filing fees, costs for service of process, witness fees, and any other costs. The court may, if asked, enter an order waiving payment of the court costs where the protected person does not have the money to pay for them. If the protected person gets money and is able to pay, the costs that were waived must be paid.

Background checks of Guardians and Conservators

A guardian or conservator, other than certain financial institutions, will need to obtain criminal record checks and checks of the child abuse, dependent adult abuse, and sexual offender registries in this state. The court will consider the results in deciding the suitability of the proposed guardian or conservator. The person filing the petition is required to pay the fee for the background checks.

Guardianship/Conservatorship Fees

Can Conservators or Guardians Get Paid for Their Work?

Yes. A guardian or conservator may charge a reasonable fee for work done for the protected person.

If the protected person has assets, the court will usually order payment from the protected person. If the protected person is indigent, there is no other source of money to pay the guardian or conservator. The guardian or conservator will not receive any payment.

The court decides what is reasonable compensation for the work done. The court will look at many things. These would include the difficulty of the case, the experience of the guardian or conservator and what amount other persons in the area might be paid for similar work.

Fees for the attorney representing the guardian or conservator may also be charged against the protected person. The court decides what is reasonable compensation for the work done by the attorney. Again, if the protected person is indigent, there is no other source of funds to pay the attorney for the guardian or conservator.

The attorney, guardian or conservator must apply to the court to have the fees approved. The

application must include a list of the work done. An affidavit by the attorney, guardian, or conservator must state that the fees will not be divided with any other person.

How Does a Guardian or Conservator Keep Track of Services and Fees?

A guardian or conservator must keep an accurate record of the work done for the protected person in order to get paid for it. A guardian or conservator should keep a log that shows the date of service(s), service(s) performed, and the amount of time spent.

A sample log is included below. This can be used to help track services and fees.

Sample Summary Log of Fees

Guardian(s)/Conservator(s): _____

Protected Person: _____

Date: _____

Hours/Minutes: _____

Activity: _____

Expenses: _____

Does the Respondent Get an Attorney? How is that Paid For?

Respondents in both guardianship and conservatorship proceedings are entitled to be represented by an attorney. Respondents who are adults will have an attorney appointed, unless the adult respondent filed the petition. An attorney for the respondent can be paid directly by the respondent or file a claim or report with the court to recover fees and expenses. If the respondent is indigent or is not able to request counsel, the court shall appoint an attorney to represent the respondent. The cost of court appointed counsel for indigents is paid by the county where the case is filed.

Selecting an Attorney

Before selecting a lawyer, it is useful to gather information about the attorney. Below are some questions that may help in making the decision.

Background Information

1. Do you handle guardianship or conservatorship cases? If yes, how many cases do you take a year?
2. When was your most recent case?
3. What were the results of that case?
4. In which counties do you work?
5. What is your educational background?
6. Do you participate in continuing education or training related to guardianship or conservatorship? If yes, what trainings and when?
7. What additional related information can you provide regarding your qualifications and experience?
8. Please provide guardianship/conservatorship references.

Fees/Costs

1. How do you bill your fees? Hourly, flat fee, percentage of income or assets?
2. Can you provide a general estimate of the cost for your services to obtain a guardianship/conservatorship?
3. Do you provide a written agreement describing your fees, billing and services?

Resources for Finding an Attorney

- Lawyer referral service of the Iowa State Bar Association: www.iowafindalawyer.com.
- Legal Hotline for Older Iowans: Provides advice and referral for Iowans 60 years of age and older:
 - 1-800-992-8161
 - Des Moines area: 515-282-8161

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.

Updated January 2020

By Iowa Legal Aid
1111 9th Street, Suite 230
Des Moines, Iowa 50314
1-800-532-1503
Funding was provided by the
Iowa Developmental
Disabilities Council

IOWA DD Council
Preparation, Participation, Power



Guardianship and Conservatorship in Iowa

Issues in Substitute Decision-Making

Standards for Setting Up and Ending a Guardianship

Standards for Setting Up and Ending a Guardianship

The Standard for Deciding if a Guardianship is Appropriate

In deciding whether a guardianship is needed, the court looks at a person's decision-making capacity. How much is the person's decision-making capacity impaired? Is the person unable to care for his or her personal safety? Is the person unable to attend to or provide for such necessities as food, shelter, clothing, medical care? Because of this will physical injury or illness occur? Are there others available to help the protected person? Iowa law requires that the court consider a person's "functional limitations" in determining whether and what type of guardianship is needed. Functional limitations are defined as "the behavior or condition of a person which impairs the person's ability to care for the person's personal safety or to attend to or provide for necessities for the person."

The Standard for Deciding How Much Authority a Guardian Has Over a Protected Person

The court must limit the guardianship as much as possible. The court should allow the protected person to continue to have the legal right to make as many decisions as possible. The court must decide whether a limited guardianship is appropriate and make findings of fact to support the powers given to the guardian.

The Standard of Proof and Burden of Proof Rules

Burden of proof is about who must provide evidence. The party with the burden of proof in a case must produce evidence to prove a fact. If a party has a burden of proof and does not produce enough evidence, the party will lose on that issue.

The burden of proof is on the person asking to have a guardianship set up. The rules, however, may be different if someone is asking to modify or end a guardianship. If the guardian or conservator is filing the petition, the burden of persuading the court of the need for a change remains with the guardian or conservator. If the protected person is filing the petition, the protected person must present evidence to show that the protected person has some decision-making capacity. The burden of persuasion then shifts to those opposing the termination to show the court by clear and convincing evidence that the protected person is incompetent.

Standard of proof has to do with the amount of evidence that must be presented in order for the

court to make a determination about a fact. In most civil law cases, the standard of proof is a “preponderance.” Preponderance means most of the evidence shows that something is true. It is more likely than not that a particular fact is true. In criminal cases, the highest standard of proof is used, “beyond a reasonable doubt.” If there is any reasonable doubt, the fact or guilt of the person will not be established. A third standard of proof is “clear and convincing evidence.” This standard is used in some types of civil cases. This standard is higher than a preponderance of evidence, but lower than beyond a reasonable doubt. This is the standard that must be used in proceedings to set up, change, or end a guardianship.

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.

Updated January 2020

By Iowa Legal Aid
1111 9th Street, Suite 230
Des Moines, Iowa 50314
1-800-532-1503
Funding was provided by the
Iowa Developmental
Disabilities Council

IOWA DD Council
Preparation, Participation, Power



Guardianship and Conservatorship in Iowa

Issues in Substitute Decision-Making

Which State Can Make Decisions about Guardianships and Conservatorships

Which State Can Make Decisions about Guardianships and Conservatorships

The Standard for Deciding when Iowa has Jurisdiction over Adult Guardianships and Conservatorships

This information is found in the section of the Iowa Code called the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. Iowa has the power to appoint a guardian or conservator if Iowa is the “home state” of the respondent to a guardianship or conservatorship petition. Home state is defined as either:

- The state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of a petition for appointment of guardianship or conservatorship; or
- The state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of a petition for guardianship or conservatorship.

If the respondent does not have a home state or the court in the respondent’s home state decides not to exercise jurisdiction, the state of Iowa has jurisdiction if it has a “significant connection” with the respondent. In determining whether there is a significant connection, the court considers all the following:

- The location of the respondent’s family and other persons required to be notified of the guardianship or conservatorship proceeding.
- The length of time the respondent was physically present in the state and the duration of any absence.
- The location of the respondent’s property.
- The extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver’s license, social relationship, and receipt of services.

The court can appoint a guardian in the event of an emergency. The court can issue protective orders dealing with real or personal property located in Iowa. Finally, the court can also consider petitions for the transfer of existing guardianships or conservatorships from other states.

The court can decline to exercise jurisdiction if jurisdiction was obtained as a result of unjustifiable conduct by one of the parties. The court can decline jurisdiction if it decides that another state is a more appropriate forum.

The Standard for Allowing the Transfer of a Guardianship or Conservatorship to Another State

The court may transfer a guardianship or conservatorship to another state if the Iowa guardian or conservator asks the court for a transfer. The court must order the transfer of a guardianship if the court believes the other state will accept the guardianship and if all the following are true:

- The incapacitated person is physically present in or is reasonably expected to move permanently to the other state.
- An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the incapacitated person.
- Plans for care and services for the incapacitated person in the other state are reasonable and sufficient.

The court must order the transfer of a conservatorship if the court believes the other state will accept the conservatorship and if all the following are true:

- The protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state.
- An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person.
- Adequate arrangements will be made for management of the protected person's property.

The Standard for Accepting the Transfer of a Guardianship or Conservatorship from Another State

The court can accept a transfer of a guardianship or conservatorship from another state upon the petition of a guardian or conservator. A certified copy of the other state's order of transfer must be included with the petition. The court must grant the petition unless either of the following applies:

- An objection is made, and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person.
- The guardian or conservator is ineligible for appointment in this state.

Registration of Guardianships and Conservatorships in Iowa

If there is no petition for the appointment of a guardian or conservator pending in Iowa, a guardian or conservator appointed in another state may register the guardianship or conservatorship order in Iowa after giving notice to the out of state appointing court. Upon registration of the guardianship or conservatorship order, the guardian or conservator may exercise all the powers authorized by the out of state order of appointment (except as prohibited by the laws of the state of 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.

Updated January 2020

By Iowa Legal Aid
1111 9th Street, Suite 230
Des Moines, Iowa 50314
1-800-532-1503
Funding was provided by the
Iowa Developmental
Disabilities Council

IOWA DDCouncil

Preparation, Participation, Power



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-

ranging 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.

Updated January 2020

By Iowa Legal Aid
1111 9th Street, Suite 230
Des Moines, Iowa 50314
1-800-532-1503
Funding was provided by the
Iowa Developmental
Disabilities Council

IOWA DDCouncil

Preparation, Participation, Power



Guardianship and Conservatorship in Iowa

Issues in Substitute Decision-Making

A conservator takes care of the protected person's assets and income. A conservator's actions are reviewed by the court.

Conservator

What must the Conservator Do?

The conservator has to take care of the protected person's income and assets, invest them well, account for them, and perform all other duties required by law. The conservator has to report to the Iowa Department of Human Services all assets and income of any protected person getting state medical assistance.

What are the Limits of the Power of a Conservator?

The conservator only has the powers that the court gives the conservator. The conservator must always be aware of the rights kept by the protected person. The conservator should use his or her powers in a way which allows the protected person as much independence as possible.

Conservators must remember that their decisions can be reviewed and investigated by other interested parties. This means that their decisions may be criticized and challenged.

What are the Ongoing Duties of Conservators?

Conservators have a duty of prudence and loyalty to the protected person. Conservators are responsible for the protection, management, investment and expenditure of the protected person's assets. The duties of conservators include:

- To carry out duties given to them by the court.
- To follow any limits placed on their powers.
- To understand the current needs of the protected person. This includes knowing about the protected person's physical and mental condition, treatments, care plan, and needs through regular visits with the protected person and contacts with care providers.
- Consider any estate plan or other document of the protected person regarding investing and selecting property for distribution;

- Act in accordance with a valid power of attorney under chapter 633B;
- Report to the Department of Human Services the assets and income of protected persons if they are getting medical assistance through the state.

How does the Conservator Get Authority to Act?

The conservator must file an inventory of the protected person's property within 90 days of the conservator's appointment. Also due within 90 days is an initial plan for protecting, managing, investing and distributing the assets of the conservatorship. The plan must include:

- a budget, including fees to be charged by the conservator;
- a statement as to how the conservator will involve the protected person in decisions about management of the estate;
- and estimate of the duration of the conservatorship.

The court must review and approve or reject the plan. If approved, the conservator has the power and authority described in the plan without further court order.

When does the Conservator Need the Approval of the Court?

Unless already included in the approved initial plan for the conservatorships, conservators must ask for a hearing and get court approval before taking certain actions. The court may require notice to interested parties. The court has to approve the following actions before the conservator can:

- invest funds belonging to the protected person;

- sell, mortgage or lease the protected person's real or personal property;
- make payments to or for the benefit of the protected person;
- compromise or settle a claim;
- make elections for a protected person who is a surviving spouse or under chapter 633E;
- apply any portion of the protected person's income or assets for the support of any person for whose support the protected person is legally liable.

What are the Conservator's Duties Regarding Filing Reports?

A conservator must file written reports and accountings on an annual basis within 60 days of the end of the reporting period. This requirement cannot be waived. A report and accounting must be filed within 30 days after the date the conservator is removed. If the conservator resigns, a report and accounting must be provided before the resignation is accepted. A final report must be filed within 60 days after the conservatorship is ended. The court may also require reports at other times. The reports will be reviewed and approved by the court.

What are the Requirements of the Reports and Accountings?

The report and accounting must cover the period of time since the last report was filed.

Under the statute, the reports must contain the following information:

- The amount of funds on hand at the beginning and end of the period;
- List of assets at end of the period;
- All disbursements made;
- Any changes in the conservator's plan;

- Amount of the bond and name of the surety;
- The residence of the protected person;
- The general physical and mental condition of the protected person;
- And such other information necessary to show the condition of the conservatorship.

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

There can be court costs related to filing of reports. However, the court may enter an order waiving the payment of court costs if the protected person is indigent. If the conservatorship later becomes financially able to pay the waived costs, those costs must be paid.

Some Practical Considerations

There are many practical considerations in being a conservator. Some of them are listed below. In carrying out duties, a conservator must always check to see whether court approval is necessary.

The conservator is responsible for keeping accurate financial records at all times. In order to do this, the following steps are recommended.

- Establish a separate conservatorship account to receive all deposits and make all payments.
- Maintain a complete and accurate record which shows all funds going through the conservatorship account.
- Seek approval from the court whenever required by law or court order or when there is any question regarding what course of action should be taken.

One of the conservator's first duties is to take control of the protected person's property. This involves doing a complete search for all assets or property of the protected person. The best source of information may be the protected person. If possible, review financial records with the protected person, such as current bank accounts and broker statements, income tax returns, account ledgers, deeds, and insurance policies.

The conservator has the duty to pay reasonable charges on behalf of the protected person. Payments should be sent out in the name of the protected person. All documents signed by a conservator should state that it is being signed as conservator. This should be done to make it clear that the conservator is not personally liable. The conservator should first make sure that the service has been provided and the charge is reasonable. For a person residing at home, reasonable charges might include: payment of mortgage, rent, insurance, taxes, utilities, maintenance of the home, needed in-home services, medical services, clothing, and other personal items. For a person residing in a facility, the conservator should review the charges to make sure that they are appropriate for the level of care required. The conservator should make sure that the protected person has enough money for personal spending. The medical and personal services provided should also be reviewed.

If the protected person's income is not enough to meet his or her needs, the conservator may have to sell some of the protected person's assets. The conservator may also have to apply to federal, state or county agencies for financial help or services for the protected person. A conservator has no duty or obligation to pay for any service for the protected person from the conservator's own funds. **The conservator should not enter into any agreements to sell properties or assets without first consulting his or her attorney and obtaining necessary court approval.**

A conservator must make appropriate decisions regarding the protected person's need for insurance. Here are some questions to ask:

- Is all real property adequately insured for replacement value? Are the premiums current? Does the protected person have adequate household insurance?
- Does the protected person have health insurance that is cost effective?
- Is there duplicate coverage with multiple policies?
- Is the protected person eligible for Medicare? Is the protected person eligible for medical assistance?
- Does the protected person have life insurance? Are the premiums current and is the insurance necessary?

The conservator must arrange for the care and maintenance of real estate. This could include cutting grass, shoveling snow, trash removal, furnace inspection or making sure there is adequate heating fuel. The conservator should determine who has access to the property and whether the locks should be changed. Are the real estate taxes current? Where is the abstract?

If the conservator wants to sell the principal residence of the protected person, the conservator must consider whether the protected person will be able to return to independent living. Before selling, the conservator should consult with his or her attorney.

The conservator must keep an adequate record of services he or she has performed, the time spent, and the expenses of performing duties. A conservator may charge a reasonable fee for providing needed services. The court needs to approve the fees charged by the conservator.

The conservator is responsible for filing income tax returns.

The conservator must investigate and determine all debts and claims in order to pursue collection. If there is a need to protect assets, the conservator may need to start a lawsuit.

As noted above, a conservator has authority to take many actions on behalf of the protected person. However, in some cases, court approval must be obtained. In addition, the conservator should obtain competent legal and financial advice, particularly in the management of large assets and in contested or controversial situations.

Updated January 2020

By Iowa Legal Aid
1111 9th Street, Suite 230
Des Moines, Iowa 50314
1-800-532-1503

Funding was provided by
the Iowa Developmental
Disabilities Council



IOWA DD Council
Preparation, Participation, Power

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.

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.

Updated January 2020

By Iowa Legal Aid
1111 9th Street, Suite 230
Des Moines, Iowa 50314
1-800-532-1503
Funding was provided by the
Iowa Developmental
Disabilities Council

IOWA DD Council
Preparation, Participation, Power



Guardianship and Conservatorship in Iowa

Issues in Substitute Decision-Making

It can be very difficult to make decisions for another person. Here are some ideas that might help make some of those decisions.

Standards and Principles of Substitute Decision-Making

When people cannot make decisions for themselves, guardians and conservators take on the very important job of making decisions for them. Acting as another person's substitute decision-maker can be very rewarding. The guardians or conservators have to be careful that they are acting in the protected person's best interest, not their own interest.

Are there Guidelines for Substitute Decision-Making?

In making decisions for someone else, there are important factors to consider:

- Remember how you would like to be treated if someone was making decisions for you;
- Take actions and make decisions that encourage and allow the maximum level of independent activities of the protected person;
- Exercise those powers that you are given by the court, but allow the protected persons to make decisions they are still able to make.

In order to know what decisions to make, a guardian or conservator should:

- Get to know the protected person;
- Understand any needs or problems the protected person may have;
- Be able to ask questions and seek opinions about different ways to meet the needs of the protected person.

The Iowa statutes do not give much guidance on making decisions for someone else. Usually, courts consider what the protected person would have done if the protected person was able to make the decision. This is called substituted judgment. Sometimes courts consider what is in the protected person's best interest. Often using either of these standards will result in the same decision. Decisions should be made with informed consent. These concepts are explained below.

What is Substituted Judgment?

Substituted judgment means the guardian or conservator make decisions for the protected persons based on how the protected persons would have decided for themselves if able. This works best if the guardian or conservator knew the person when he or she was able to make decisions. The guardian or conservator should also review any written statements made by the protected person. The guardian or conservator should talk to the protected person and others who have known the protected person for a long time.

What is Best Interest?

If the protected person has always been considered incapacitated, it can be harder to figure out what the protected persons would do if able. An example is a person with a developmental disability. The conservator or guardian should talk to the protected person. Even if the protected person was able to make decisions in the past, it can be hard to know what the protected person would do. When there is no good information about what the protected person would do, it is proper to make a decision based on what is in the protected person's best interest.

In applying a best interest standard, a guardian or conservator considers the benefits and

harms to the protected person of a particular act or course of action based on reasonable alternatives. The guardian or conservator then selects a reasonable alternative that provides the most benefit and least harm. The protected person's wishes should also be considered. These decisions require the guardian to know enough about the protected person in order to make decisions on the protected person's behalf that are in their best interest.

What is Informed Consent?

In making decisions for a protected person, the guardian or conservator may need to consent or agree to some treatment or course of action. Consent should usually be informed consent. The concept is most often used in the context of health care treatment but can be used in other areas as well. "Informed consent" means that consent is valid only if the person giving the consent understands:

- The nature of what is being consented to;
- The benefits and/or the risks of harm; and
- What the available alternatives are to the protected person if consent is, or is not, given.

The person giving consent should be able to give a reason for selecting a particular alternative.

- Informed consent requires that the person giving consent:
- Has the knowledge available to make a reasonable decision;
- Has the capacity or ability to make reasoned decisions based upon information that applies to the situation; and
- Is giving consent voluntarily and without coercion, intimidation or pressure from another person.

Consent or Denial Checklist

Review the questions below when making a consent determination. If the answer is “no” to any of the questions, the guardian or conservator should stop and get the necessary information in order to continue with the decision-making process.

- Has the court modified the protected person’s rights in this area?
- Does the guardian or conservator have the legal authority or court approval needed to make the decision?
- Does the guardian or conservator understand the nature of what is being consented to?
- Does the guardian or conservator understand the benefits and/or the risk of harm to the protected person if consent is, or is not, given?
- Has the guardian or conservator weighed the benefits and/or the risk of harm?
- Does the guardian or conservator know about alternatives?
- Can the guardian or conservator give a reason for selecting this particular alternative?
- Has the guardian or conservator considered the protected person’s preferences or been

able to determine what the protected person would have decided if still competent?

- Has the guardian or conservator talked to any necessary experts to get their opinions?
- Are all interested parties in agreement with this decision?
- Is this decision a reasonable decision that would be made for any person regardless of disability, age, race, ethnicity, or place of residence?
- Has the guardian or conservator determined what funding resources are necessary and available to pay for this alternative?
- Is the necessary funding available?

Additional Resource

The National Guardianship Association listed below has developed ethics and standards of practice for guardians and conservators. This information is available on its website.

National Guardianship Association
174 Crestview Drive
Bellefonte, PA 16823
Phone: 877-326-5992
Fax: 814-355-2452

Website: www.guardianship.org

Updated January 2020

By Iowa Legal Aid
1111 9th Street, Suite 230
Des Moines, Iowa 50314
1-800-532-1503

Funding was provided by
the Iowa Developmental
Disabilities Council



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.

Guardianship and Conservatorship in Iowa

Issues in Substitute Decision-Making

Before taking certain actions, a guardian must get prior approval of the court.

Guardianship Decisions Requiring Court Approval

Based on the evidence produced at the guardianship hearing, the court may grant a guardian a range of powers and duties which may be carried out without prior court approval. These are decisions on care, maintenance, health, education, and safety of the protected person. This includes health care decisions and establishing a protected person's permanent residence. For a broad overview of the guardian's role in making decisions, see the section "Guardianship of the Person: Powers Duties and Responsibilities."

Before taking certain actions, a guardian must get prior approval of the court.

What Health Care Decisions Can a Guardian Make?

A guardian can consent to and arrange for medical, dental, and other health care treatment and services for the protected person except as otherwise limited by the court or requiring prior court approval.

There are some limits. The guardian will not be able to make certain health care decisions if:

- The protected person has named someone other than the guardian to make health care decisions under a valid Durable Health Care Power of Attorney (HCPOA) or
- The protected person has a valid Living Will.

A HCPOA designates someone to make health care decisions for the protected person if the protected person is not able to make those decisions. The person named in the HCPOA would have the right to make health care decisions for the protected person even if there is a guardianship. The guardian would not be able to make those decisions. A living will states what kind of life sustaining procedures the protected person wants. The protected person's wishes must be followed.

Prior Court Approval Required for a Guardian to Consent to the Following:

- The withholding or withdrawal of life-sustaining procedures from the protected person under Iowa Code Chapters 144A or 144D.
- The performance of an abortion on the protected person.
- The sterilization of the protected person.

Other Decisions Requiring Prior Court Approval:

A guardian is required to get prior court approval for:

- Changing the protected person's permanent residence to a nursing home, other secure facility, or secure portion of a facility that restricts the protected person's ability to leave or have visitors, unless advance notice of the change was included in the guardian's initial care plan that was approved by the court.
- Denying all communication, visitation, or interaction by the protected person with a person 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.

Changing the Protected Person's Residence

The protected person should be able to live in the least-restrictive setting possible. This means a place that gives the protected persons as much freedom and as many choices as the protected person can handle. In an emergency situation, the court will review the request for approval on an expedited basis.

What Decisions Can a Guardian Make About Communication, Visitation, and Interaction?

An adult protected person under a guardianship has the right to communicate, visit, and interact with other persons.

- 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 an adult protected person all communication, visitation, or interaction with a person with whom the adult protected person has expressed a desire to communicate, visit, or interact or with a person who seeks to communicate, visit or interact with the adult protected person.

How to Ask for Court Approval

The guardian must file a written application with the court. A hearing will be set. A notice of the hearing will be sent to the protected person and other interested parties.

The guardian must give the court:

- Complete details of the procedure or decision, including all risks and benefits;
- A written application asking the court to approve the procedure or decision.

The court may appoint an attorney to represent the protected person if the court decides it is in the protected person's best interest. Based on the information given to the court, the court will make its decision and enter an order.

If the court approves the request, the guardian may carry out the decision. If the court does not approve it, the guardian will have to find other ways to meet the protected person's needs.

Iowa has a specific law that deals with the stopping or not giving of life-sustaining procedures. Guardians must follow those rules. For more information about these issues, please look at the section "Making Decisions to Limit Medical Procedures."

There are other rights that cannot be taken away from a protected person without specific court action. This includes the right to vote and the right to marry. See the section "Rights of the Protected Person" for more information about these rights.

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.

Updated January 2020

By Iowa Legal Aid
1111 9th Street, Suite 230
Des Moines, Iowa 50314
1-800-532-1503
Funding was provided by the
Iowa Developmental
Disabilities Council

IOWA DDCouncil

Preparation, Participation, Power



Guardianship and Conservatorship in Iowa

Issues in Substitute Decision-Making

The court may give a guardian the responsibility of deciding what medical treatment the protected person will receive.

Medical Treatment Decisions

The court may give a guardian the responsibility of deciding what medical treatment the protected person will receive. The guardian must be sure that all decisions about medical treatment are given careful consideration. Each decision should be based on informed consent.

Does the Protected Person Participate in Medical Treatment Decisions?

The statute does not require that the protected person take part in treatment decisions when decision-making authority for those decisions has been given to the guardian. However, many protected persons are able to understand and give preference. A protected person should normally be told about the diagnosis or medical condition, treatment alternatives, prognosis with or without treatment, benefits and risks of treatments, and treatment goals.

What Is Informed Consent?

In making decisions on behalf of a protected person, the guardian may need to consent to some treatment or course of conduct. Consent should be informed consent. "Informed consent" means that consent is valid only if the person giving the consent understands:

- The nature of what is being consented to;
- The benefits and/or the risks of harm; and
- What the available alternatives are.

The person giving consent should be able to give a reason for selecting a particular alternative.

Informed consent requires that the person giving consent:

- Has the knowledge available to make a reasonable decision;
- Has the capacity or ability to make reasoned decisions based upon information that applies to the situation; and
- Be giving consent voluntarily and without coercion, intimidation or pressure.

How Does this Apply in Medical Emergencies?

In a medical emergency, guardians consider the information available at the time and uses their best judgment to make a decision.

When Must the Court Approve Medical Treatment?

- The court must approve the withholding or withdrawal of life-sustaining procedures as set out in Iowa Code Chapter 144A (Life-Sustaining Procedures) and 144D (Physician Orders for Scope Of Treatment).
- The court must approve the performance of an abortion.
- The court must approve sterilization procedures (permanent method of birth control).

The court may initially grant a guardian broad or limited approval to make other health care decisions based on the evidence produced at the initial hearing. If health decisions are limited, the guardian would need to get court approval for a health decision not granted. It could be that the court has limited health decisions to health care procedures excluding major surgery.

If court approval is or might be needed, guardians should consult with their attorneys. A court may appoint an attorney to represent the protected person in a proceeding to approve medical treatment. If the protected person objects to a particular medical treatment, it may also be appropriate to obtain court approval.

Can a Guardian Consent to Limit Treatment?

A guardian can only consent to the withholding or withdrawal of life-sustaining procedures after obtaining court approval. See the article "Making Decisions to Limit Medical Procedures" for more information about this topic.

Can a Protected Person Refuse Treatment?

If the power to make a decision has been given to the guardian by the court and any necessary court approval has been obtained, the protected person does not have the right to refuse treatment. The protected person may ask the court to review any decision made by the guardian. A guardian should use caution when overriding a protected person's refusal. Less restrictive and other alternatives must be considered.

Medical Treatment Consent Check List

The following questions can be used as a guideline when making medical decisions. Some may not apply to every situation. If the decision-maker is unsure of the answer to any of the questions that apply, he or she may not be ready to give informed consent for a care plan or for medical treatment:

- Is the decision legally the guardian's decision to make (refer to the court's order setting out the guardian's power)?
- Is there a regular physician? Is the physician aware of the protected person's living arrangements and current care or assistance being provided by others?
- Is the protected person following the recommended medical procedures? If not, what are the reasons?
- Can the protected person remember and correctly follow medical advice, medication schedules, and report warning signs of possible problems?
- Are there laws governing the requested care or treatment?
- Are there less restrictive options? What are they, and have they been considered prior to this current request?

- Has the guardian visited the protected person recently? Does the situation the guardian sees reflect the facts being described to the guardian by others?
- Have the guardian and protected person talked about the protected person's opinion regarding the requested care or treatment?
- Is the requested care or treatment in conflict with prior wishes expressed by the protected person, either in a living will or other document or conversation?
- Has the guardian asked the opinions of the protected person's family and friends?
- Should the guardian ask the opinions of other experts such as advocates, medical specialists, psychiatrists, or others?
- Is there evidence that the care or treatment being requested discriminates against the protected person? Would it be requested if the person were not elderly/developmentally disabled/mentally ill/brain injured?
- Is there agreement among the professionals that have been consulted?
- Does the guardian have the necessary information documented in writing?

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.

Updated January 2020

By Iowa Legal Aid
 1111 9th Street, Suite 230
 Des Moines, Iowa 50314
 1-800-532-1503
 Funding was provided by the
 Iowa Developmental
 Disabilities Council

IOWA DD Council
 Preparation, Participation, Power



Guardianship and Conservatorship in Iowa

Issues in Substitute Decision-Making

There may come a time when a guardian will have to decide about limiting life-sustaining medical procedures for the protected person.

Making Decisions to Limit Medical Procedures

There may come a time when a guardian will have to decide about limiting life-sustaining medical procedures for the protected person. A guardian may find it helpful to think about how to make these decisions before the situation becomes critical.

What are Life-Sustaining Procedures?

A life-sustaining procedure is a medical procedure, treatment, or intervention that uses a mechanical or artificial means that serves only to prolong the dying process. Providing food and water through a feeding tube may be a life-sustaining procedure. A life-sustaining procedure does not include any treatment needed to provide comfort, care, or control pain.

What is a Terminal Condition?

A condition is terminal when there is no cure and the doctor believes it will result in death in the near future or a state of permanent unconsciousness.

Who May Decide that Life-sustaining Procedures Are Not to be Provided?

A competent adult may make a “living will” at any time directing that “life-sustaining procedures” be withheld or withdrawn. The “living will” shall be given effect only if the person’s condition is determined to be terminal and the person is not able to make treatment decisions. A living will made by a protected person when he or she was competent can be used even if the person is now incompetent.

What happens if someone is in a coma, has a terminal condition, and does not have a living will?

Iowa law sets out specific procedures that must be followed before life-sustaining procedures can be withdrawn or withheld. There must be a written agreement to withhold life-sustaining procedures between the physician and an individual or individuals authorized by law to act on behalf of the comatose person. The law sets out in order who can make that decision. First is a person who has durable power of attorney to make medical decisions for the patient. If no one has durable power of attorney for medical decisions, a court-appointed guardian has the authority to make the decision with court approval. If there is no person with durable power of attorney and no guardian, the law specifies, in order, who can make the decision. The list includes the spouse, children, and other relatives. Under the law, the express or implied intentions of the patient must guide whoever decides what to do.

What is Comfort Care?

Comfort care, or palliative care, is care intended to relieve pain, enhance comfort, and promote dignity and hygiene. Curing the disease is not the goal. The goal of treatment is comfort and pain management. The patient may desire and benefit from hospice care. Hospice care addresses medical, social, and spiritual needs the patient and/or family and caregivers may have. This can be provided in a variety of settings, including, but not limited to, a hospital, a nursing facility, or in the person's home.

What Are Artificial or Mechanical Means to Sustain, Restore, or Supplant a Spontaneous Vital Function?

Artificial or mechanical means to sustain, restore or supplant a spontaneous vital function include:

- The provision of nutrition or hydration that is provided parenterally (other than introduced through the intestine) or through intubation, such as through the nose and throat (nasogastric tube- NG tube) or through the veins (IV line);
- The use of a ventilator to assist breathing;
- Heart and lung machines.

Administering medication through the veins (IV) is not considered artificially administered nutrition or hydration.

When Should Discussions About Limited Treatment Occur?

When a medical diagnosis of terminal illness has been made, discussions should begin. It is better to start before hospitalization or a medical emergency occurs. That way there is more time to make a decision.

What Information is Needed to Make a Limited Treatment Decision?

These decisions must take into account several things such as: the protected person's dignity and life as a human being; whether life-sustaining treatment would extend life, preserve or restore function, relieve pain, enhance comfort, or affect the protected person's present and future ability to enjoy life as defined by the protected person; and the protected person's preferences, values and beliefs regarding life-sustaining treatment, if he or she is or was able to express them. A guardian should be careful about considering benefits to third parties or the cost of providing the life-sustaining procedures in question.

Since the court must approve any consent to limit treatment, the reasons for any decision should be clearly thought through and documented. The things to consider include, but are not limited to:

Protected Person's Condition

- What is the protected person's diagnosed condition(s)?
- What is the protected person's prognosis and life expectancy?
- Are there other underlying or secondary medical conditions affecting treatment options?
- Is the recommendation to limit medical procedures based on the protected person's medical condition?
- Would this procedure be reasonable for a competent person with similar health and medical status?

Medical Risks and Benefits

- How likely is the procedure to benefit the protected person (will it relieve pain and suffering; will it restore previous functioning levels)?
- What is the degree of the benefit of the treatment (the difference in outcome between treatment and no treatment; to what degree will it relieve pain and suffering; and to what degree will it restore functioning levels)?
- How long is the benefit of the treatment expected to last?
- Is the treatment likely to cause harm or to cause or increase pain and suffering?
- Are there alternative treatments that should be considered that may be beneficial?
- What is the likelihood that the protected person will die, with or without the treatment?
- Will the treatment prolong the dying process?

Protected Person's or Family's Preferences

- What do the protected person and any near relatives think about death and dying, pain and suffering, and level of functioning?
- Do the protected person or near relatives have religious concerns regarding the limitation of treatment?
- Are there any disagreements among any of the involved interested persons?

OTHER LIMITED TREATMENT TERMS AND CONSIDERATIONS

What Does DNR (Do Not Resuscitate) Mean?

A DNR Order is an order from a doctor saying a patient is terminally ill and does not want to be revived if the heart or breathing stops. It does not mean the patient would not receive proper medical care. The patient would still be kept as comfortable and free from pain as possible. Originally, DNR Orders were often not followed unless the patient was in a hospital. A law passed in 2002 changed that. Under that law, terminally ill patients can ask the doctor to prepare an "Out-of-Hospital" DNR Order. The doctor will prepare the Order and give the patient a copy. If paramedics or other emergency personnel know about this Order, they will not revive the patient.

How Should DNR and Limited Treatment Decisions Be Documented?

The guardian must make sure that any documentation required by the hospital, nursing care facility or other residential facility, other care or service providers, and the local emergency medical services provider is properly completed and available in emergency situations.

The guardian must make sure that each of these providers is aware of limited treatment decisions and that the declaration or agreement is in each care or service provider's chart or file for the protected person. The guardian should not assume that all service and care providers will recognize or honor a previously made DNR order or limited treatment decision made by a guardian after receiving court approval. Each provider should be asked what their policies and procedures are for responding to and following such orders.

If a provider refuses to honor such an order, the guardian should request a copy of the provider's policy that defines a person's right to challenge or appeal the decision or policy. The guardian may have to seek alternative service or care providers who will honor, or follow, the limited treatment directive or court order.

Iowa Physician Orders for Scope of Treatment (IPOST)

Iowa has a health care form for patients making decisions about end-of-life health care treatment. This is called Iowa Physician Orders for Scope of Treatment (IPOST).

The form makes the full range of a patient's end-of-life health care wishes clearer with complete

information in one place. It is to be available to all a patient's health care providers in all medical settings. This is to make sure the patient's wishes are carried out no matter where the patient is getting care or treatment.

- IPOST is for use by persons who are frail and elderly or have a chronic, critical medical condition or a terminal illness.
- It does not replace a Durable Power of Attorney for Health Care, living will or Out-of-Hospital Do-Not-Resuscitate Order which a person may already have. These decisions would be included in the IPOST form.
- The form is prepared by the patient's physician, nurse practitioner, or physician's assistant with the patient's help.
- The completed form contains medical orders to carry out the patient's wishes for end-of-life medical care.

The form is not yet in wide use. The patient should ask their doctor, nurse practitioner, or physician's assistant about completing the IPOST form. The form and more information about IPOST can be found on the Iowa Department of Public Health website.

<http://idph.iowa.gov/ipost>

Updated January 2020

By Iowa Legal Aid
1111 9th Street, Suite 230
Des Moines, Iowa 50314
1-800-532-1503

Funding was provided by
the Iowa Developmental
Disabilities Council



IOWA DD Council
Preparation, Participation, Power

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.

Guardianship and Conservatorship in Iowa

Issues in Substitute Decision-Making

Why Modify a Guardianship or Conservatorship?
When Does a Guardianship or Conservatorship End?

Modification and Termination of Guardianship and Conservatorship

Why Modify a Guardianship or Conservatorship?

Sometimes a conservator or guardian may need to get more powers over the protected person than the court originally granted. Sometimes the protected person's decision-making may improve, lessening the need for someone else to make the protected person's decisions.

Changing (or modifying) a guardianship or conservatorship is similar to setting one up. A petition for "modification" is filed with the court. A hearing date is set. Interested persons may present facts at the hearing. The court must decide if a "limited" guardianship or conservatorship is right for the protected person. The court must try to limit the powers of the guardian or conservator to those that are really needed.

When Does a Guardianship or Conservatorship End?

A guardianship or conservatorship ends (the statute uses the word "terminates") when the protected person dies or if the court says that the protected person is able to make decisions. A protected person may ask the court to end the guardianship or conservatorship. A protected person can do this by filing a petition in court.

If the court ends the guardianship or conservatorship, all rights taken from the protected person are returned. The protected person is no longer considered "incompetent."

Ending a guardianship or conservatorship is much the same as setting one up. The guardian or conservator or protected person files a petition to end or terminate the guardianship or conservatorship. The court sets a hearing date. Notice of the hearing is given to all interested persons.

If the guardian or conservator is filing the petition, the burden of persuading the court of the need for a change remains with the guardian or conservator. If the protected person is filing the petition, the protected person has to present evidence to show that the protected person has some decision-making capacity. The burden of persuasion then shifts to those opposing the termination to show the court by clear and convincing evidence that the protected person is incompetent.

A guardianship can end even if the protected person is still disabled. The facts may show that the person now has the ability to take care of personal matters and/or manage property. A person who is able to care for self or property may be considered “competent” and not need a guardian. This may be true even if the person has a mental disability.

When a protected person dies, the guardian or conservator can no longer make any decisions. The guardian or conservator still has to tell the court what he or she did before the death of the protected person. The guardian or conservator has to file a final paper with the court saying what he or she did. The court has to approve the accounting or report before the guardianship or conservatorship case is ended.

What Happens When the Guardian or Conservator has to be Changed?

The court will need to replace a guardian or conservator who dies, is removed, or resigns. A guardian or conservator may be removed for mismanagement or improper actions.

If the protected person still needs a guardian or conservator, the court can pick a new “successor” guardian or conservator. The process for picking a successor guardian or conservator is similar to the other legal proceedings described above. Often, the biggest problem is finding someone to act as the conservator or guardian. The court does not have a list of people. It is up to the people involved to offer someone as a successor guardian or conservator. Notice will be given to interested parties. A hearing may be needed to approve the successor guardian or conservator. It is possible that the Iowa Office of Public Guardian might be able to function as a guardian or conservator. Information is available at <https://www.iowaaging.gov/programs-services/elder-justice-adult-protective-services/office-public-guardian>

Updated January 2020

By Iowa Legal Aid
1111 9th Street, Suite 230
Des Moines, Iowa 50314
1-800-532-1503

Funding was provided by
the Iowa Developmental
Disabilities Council



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.

Guardianship and Conservatorship in Iowa

Issues in Substitute Decision-Making

Frequently Asked Questions About Guardianships and Conservatorships

Frequently Asked Questions About Guardianships and Conservatorships

The following are frequently asked questions about guardianships and conservatorships.

What is the difference between a guardian and a conservator?

In a conservatorship:

- The court appoints a person (the conservator) to control the property (assets and income) of a protected person.
- A conservatorship deals with the person's financial decisions.

In a guardianship:

- The court appoints a person (the guardian) to be responsible for the personal needs of the protected person.
- A guardianship deals with non-financial decisions such as where the protected person lives and what type of medical care the protected person gets.

One person may be both the guardian and conservator. Guardianship and conservatorship cases may be combined into one court action.

The words "guardian" and "conservator" 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" in other states. A person who is called the conservator in Iowa might be called the "guardian of the estate" somewhere else.

In Iowa, a person over whom a guardianship or conservatorship is being sought is called a respondent until the court decides that a guardian or conservator should be appointed. The person is then called a protected person.

How much does it cost to file for a guardianship or conservatorship?

Court fees and attorney fees can vary. It may depend on the area of the state and the persons who need to get notice of the action. Fees may increase if the action will be contested by anyone. The attorney's fee and court costs for these cases are typically paid from the protected person's funds. If a protected person is poor, the court may enter an order waiving prepayment of the court costs. The county will pay the fees charged by the protected person's attorney if the protected person is poor. However, public funds generally are not available to pay the guardian or conservator's attorney, if the protected person cannot pay. The guardian or conservator must pay his or her attorney according to the agreement worked out between the guardian or conservator and the attorney. There will also be a court-ordered criminal record checks and checks of the child abuse, dependent adult abuse, and sexual offender registries in this state. The charge for carrying out background checks must be paid by the guardian or conservator.

Am I responsible to provide services or pay for services or debts of the protected person out of my own personal funds?

A guardian or conservator has no duty or obligation to pay for any services for the protected person from the guardian's or conservator's personal funds. The protected person's funds pay for services and debts of the protected person. Governmental benefits may also be available to pay for services.

The guardian or conservator should find federal, state, or county benefits, entitlements, and services for which the protected person is eligible. The guardian makes decisions about the service needs of the person but does not need to provide or pay for needed services. The guardian does not have to act alone to determine which services or benefits are needed or availa-

ble. There are many places to get information. Case management services, the coordinator of disability services employed by the county, providers, and other advocates can be helpful. The guardian can receive assistance to understand and obtain various benefits and services for the protected person.

What are my ongoing legal duties and responsibilities as guardian?

In general, the guardian must know about the protected person's physical and mental status, be familiar with the protected person's needs and be available to carry out all the powers granted by the court.

To carry out these responsibilities, the guardian should be actively involved in:

- Planning for services (usually done in conjunction with service providers, case managers, and funding personnel);
- Ensuring that the services provided meet the needs of the protected person;
- Making informed decisions by weighing the risks and benefits to the protected person and the protected person's preferences, if known.

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 vocation 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.

A guardian must file an annual report which cannot be waived by the court. 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 arranging for provision of care to protected person.

What is the scope of authority that I have as guardian or conservator?

The court will grant the conservator or guardian only the specific powers necessary to protect and supervise the protected person. The guardian or conservator should exercise that power in a way that will maximize the protected person's self-reliance and independence. The guardian or conservator must exercise that power consistent with the authority granted by the court.

Both guardians and conservators must file an initial plan with the court that sets out how the guardian or conservator will meet the needs of the protected person. Those plans once approved by the court set out the authority of the guardian or conservator to act.

Guardian

A guardian may make decisions about:

- Care, comfort, and maintenance (food, clothing, shelter, health care, social and recreational activities, training, education);
- Giving necessary consents for and ensuring that the protected person receives needed professional care;
- Taking reasonable care of personal property;
- Ensuring the protected person receives necessary emergency medical services and professional care, counseling, treatment or services as needed.

With prior court approval, a guardian may have the following powers and make decisions about:

- Changing the protected person's permanent residence to one more restrictive of the person's liberty unless advance notice of the change was included in the guardian's initial care plan;
- Denying all communication or interaction with a person with whom the protected person has expressed a desire to interact which can only be done upon a showing of good cause;
- Consenting to the withholding or withdrawal of life-sustaining procedures, performance of an abortion or sterilization.

Conservator

A conservator must:

- Act as a fiduciary and exercise duties of prudence and loyalty to the protected person;

- Consider any estate plan or other document of the protected person regarding investing and selecting property for distribution;
- Act in accordance with a valid power of attorney under chapter 633B;
- Report to the Department of Human Services the assets and income of the protected person if the person is getting medical assistance through the state.

The conservator must follow the financial plan approved by the court and seek modification of that plan as needs arise.

With court approval, a conservator may:

- invest funds belonging to the protected person;
- sell, mortgage or lease the protected person's real or personal property;
- make payments to or for the benefit of the protected person;
- compromise or settle a claim;
- make elections for a protected person who is a surviving spouse or under chapter 633E;
- apply any portion of the protected person's income or assets for the support of any person for whose support the protected person is legally liable.

May co-guardians be appointed? If so, how many can there be?

Co-guardians may be appointed. There are no legal restrictions about the number of co-guardians that the court may appoint for one protected person. Normally one and no more

than two co-guardians should be appointed. This is because with more people it is difficult to get decisions made and come to an agreement. The guardians will have to work together and agree on an action. However, the court could direct that decisions could be made by only one of the guardians or conservators.

A person who is not a resident of Iowa can be a guardian. A non-resident guardian would usually be required to serve with a resident guardian. However, the court can decide, for good cause, that the non-resident may serve alone.

When does a guardianship end?

Modification

At times a protected person may not need as much decision-making help. The court may modify a guardianship or conservatorship to allow the protected person to make more decisions. The court also may modify a guardianship or conservatorship to allow the guardian or conservator to make more decisions for the protected person.

In a proceeding to modify, the court must make specific findings when deciding whether the powers of the guardian should be increased or decreased. This decision must be based on the evidence presented and must support the powers given to the guardian.

Termination

A guardianship ends when the protected person dies. A guardianship may also end when the court decides that the protected person is no longer incompetent or that the guardianship is no longer necessary for any other reason.

Updated January 2020

By Iowa Legal Aid
1111 9th Street, Suite 230
Des Moines, Iowa 50314
1-800-532-1503

Funding was provided by
the Iowa Developmental
Disabilities Council



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.

Guardianship and Conservatorship in Iowa

Issues in Substitute Decision-Making

The legal terms used in guardianship and conservatorship can be confusing.

NOTE: legal terms used in jurisdictions outside of Iowa may be different from some legal terms used in Iowa.

Definitions of Legal Terms

The legal terms used in guardianship and conservatorship can be confusing. Below is a list of some legal terms. NOTE: legal terms used in jurisdictions outside of Iowa may be different from some legal terms used in Iowa.

Types of Conservatorships and Guardianships

Guardianship This type of substitute decision-making can cover all or only some decisions about a person's medical care, nutrition, clothing, shelter or residence, and other matters regarding the person, but not the person's finances. A guardianship can be full (or "general"), covering all aspects of the ward's personal life, or it can be "limited," only covering certain specific areas of the person's life.

Conservator This type of substitute decision-making can cover all or only some decisions about a person's finances, property, and real estate. A conservatorship can be full (or "general"), covering all aspects of the person's finances, or it may be "limited," only covering certain specific portions of the person's finances.

Standby Conservatorship The Iowa Code sets out a procedure for a competent adult to plan for a court-supervised conservatorship. In a written petition, the person can say that a conservator shall be appointed when certain conditions have been met. These could be a particular event or the occurrence of a physical or mental condition. The petition also says how the occurrence of these events or conditions must be proven.

Standby Guardianship The Iowa Code sets out a procedure for a competent adult to plan for a court-supervised guardianship. In a written petition, the person can say that a guardian shall be appointed when certain conditions have been met. These could be a particular event or the occurrence of a physical or mental condition. The petition also says how the occurrence of these events or conditions must be proven.

Legal Terms

Adult An individual who is eighteen years of age.

Affidavit A written statement made under oath. The signature is usually witnessed by a notary public. The law allows an oath to be taken without requiring a notary public witnessing the signature. Specific language has to be used. Court forms for guardianships and conservatorships may use that form that does not require a notary public.

Affiant The person who makes an affidavit.

Appeal To bring a case before a higher court to review a decision of a lower court.

Bond A promise by a bonding company to pay if there is a financial loss because of mismanagement or fraud by the conservator. The promise protects the protected person (see definition below) from mismanagement by the conservator. In the event of mismanagement, the court may decide that the bond will reimburse the conservatorship for the missing money. In that case the company that issued the bond can try to get the money back from the conservator.

Burden of Proof Duty of a party to prove a fact. The amount of proof required depends on the type of case. In some guardianship and conservatorship matters, the amount of proof is "clear and convincing evidence." In others, it is probably a "preponderance of the evidence." (Preponderance means more than half of the available evidence must support a certain decision. This is a lower standard than clear and convincing evidence.)

Change of Venue To move the court case from one county to another.

Civil Lawsuit A legal action brought to get relief for injuries or financial loss. This is different than a criminal lawsuit. Civil lawsuits are usually brought by private parties (people or companies) against other private or public parties.

Conservator (also called Conservator of the Estate or, in some states, Guardian of the Estate or Property) A person appointed by the court to handle the property, assets and income of a protected person.

Co-conservator/Co-guardian One of two or more persons appointed to serve as a decision-maker. There is no limit on the number of co-conservators or co-guardians that can be appointed. However, having more than one conservator or guardian may make decision-making more complicated. The co-guardians and co-conservators will have to agree on decisions made for the ward, unless the court directs otherwise.

Court For guardianship or conservatorship protective proceedings in Iowa this is the district court.

Court Visitor Person appointed by the court to interview the respondent, determine the views of the respondent in regard to guardianship and conservatorship matters and any other actions as directed by the court. The court visitor and attorney representing the respondent cannot be the same person.

Contested When any party objects to the petition or opposes it at the hearing, the case is "contested."

Constitutional Rights Rights guaranteed by the Federal or State Constitution.

Continuance A postponement of the hearing or trial date.

Estate A person's income, assets, real estate, or any other financial holdings all make up an estate.

Evidence Evidence includes documents, material, or testimony presented during a legal case which are used to prove the claims made in the case.

Fiduciary A person having duties involving good faith, trust, special confidence, and candor towards another. This includes such relationships as executor, administrator, trustee, guardian, and conservator.

Foreign Judgment This is a judgment, decree, or order of a court from outside of Iowa that is entitled to full faith and credit in Iowa. An out of state court order which Iowa courts will uphold.

Guardian (also called Guardian of the Person) A person appointed by the court to make decisions for the person of the ward about non-financial matters such as medical treatment, education, living arrangements, etc.

Hearing A hearing is a court proceeding presided over by a judge. The judge “hears” the petition or request for action that has been filed. The judge listens to the evidence presented and the arguments of the parties. Based on the evidence presented in the hearing, the judge decides the case and enters an order.

Incompetency Determination that a respondent has a decision-making capacity that 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, the court has decided that a respondent has a decision-making capacity that is so impaired that the person is unable to make, communicate, or carry out important decision concerning the person’s financial affairs.

Incapacitated Person Term used in the Iowa Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act to refer to a person who has been determined to be incompetent and requires a guardianship.

Indigent A person with little money and property. If a respondent or protected person is indigent, he or she may be entitled to have an attorney

appointed, at no charge to the protected person. A person who is indigent may be able to file without prepaying fees or costs. This may be called “in forma pauperis” or deferral of fees.

Inventory A conservator must make a list of all of the protected person’s property that the conservator has or knows about.

Litigation Litigation is a trial and associated proceedings. A litigant is a party to a lawsuit.

Notarize Process where an authorized person (a notary public) verifies the signature on a document. The signing must be done in the presence of the notary.

Oath Taking an oath is swearing something is true.

Order Statement by the court, usually in writing requiring, authorizing or allowing something be done.

Order to Show Cause An order requiring a person to appear and show why he or she did not comply with a previous order or why a proposed order should not be made.

Party or Parties The person(s) who take part in a legal proceeding. In a guardianship or a conservatorship, the parties are the petitioner, respondent, guardian, conservator, or any other person allowed by the court to participate in the proceeding.

Petition A legal paper asking for action or relief from the court. A petition is the first document filed with a court in a lawsuit. It starts the lawsuit.

Petitioner The person who files a petition with the court.

Probate Code Chapter 633 of the Iowa Code which is the main law over the probate of wills and administration of deceased persons’ estates. This also includes the law on guardianships and conservatorships.

Pro Se A party who acts as his or her own attorney. Also called self-represented litigant.

Protected Person The person subject to guardianship or a person subject to conservatorship or both.

Protective Order Term used in the Iowa Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act to refer to an order appointing a conservator under Iowa's conservatorship law (not to be confused with civil or criminal protective orders and no contact orders for domestic abuse, adult & child abuse, and victim protection).

Protective Proceeding Term used in the Iowa Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act to refer to a court action dealing with a conservatorship.

Respondent The person who is alleged to be a person in need of a guardianship or conservatorship or both.

Subpoena An order requiring a witness to appear and testify in a court proceeding.

Substitute Decision-Maker A person who makes decisions regarding personal and medical issues and /or financial issues for a person who is incompetent. This can be done either informally, as a family member or friend, or formally, as an agent (attorney in fact) under a power of attorney, proxy, guardian, or conservator.

Testimony Oral statements made under oath at a legal proceeding.

Venue The county in which legal proceeding is held.

Witness A person called to testify in a legal proceeding. Also, a person who witnesses the signing of a legal document.

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.

Updated January 2020

By Iowa Legal Aid
1111 9th Street, Suite 230
Des Moines, Iowa 50314
1-800-532-1503
Funding was provided by the
Iowa Developmental
Disabilities Council

IOWA DD Council
Preparation, Participation, Power



Guardianship and Conservatorship in Iowa

Issues in Substitute Decision-Making

Resource Guide for Guardians and Conservators

Resource Guide for Guardians and Conservators

Advocacy

Iowa Department on Aging (<http://www.aging.iowa.gov/>)
(515) 725-3333 or 800-532-3213

Area Agencies on Aging

Elderbridge Agency on Aging - www.elderbridge.org

Serving: Audubon, Buena Vista, Calhoun, Carroll, Cerro Gordo, Clay, Crawford, Dickinson, Emmet, Floyd, Franklin, Greene, Guthrie, Hamilton, Hancock, Humboldt, Kossuth, Lyon, Mitchell, O'Brien, Osceola, Palo Alto, Pocahontas, Sac, Sioux, Webster, Winnebago, Worth, and Wright Counties

Mason City Office:

1190 Briarstone Drive, Suite 3
Mason City, IA 50401
(641) 424-0678 or (800) 243-0678

Carroll Office:

603 N West Street
Carroll, IA 51401
(712) 792-3512 or (800) 243-0678

Ft. Dodge Office:

308 Central Avenue
Fort Dodge, IA 50501
(515) 955-5244 or (800) 243-0678

Spencer Office:

714 10th Avenue East
Spencer, IA 51301
(712) 262-1775 or (800) 243-0678

**Northeast Iowa Area Agency on Aging
(NEI3A) - www.NEI3A.org**

Decorah Office:
607 Washington Street
Decorah, IA 52101
(563) 382-2941 or (800) 233-4603
Serving: Allamakee, Clayton, Fayette, Howard
and Winneshiek

Waterloo Office:
3840 West 9th Street
Waterloo, IA 50702
(319) 874-6840
Serving: Black Hawk, Bremer, Buchanan, But-
ler, Chickasaw, Grundy, Hardin, Marshall,
Poweshiek, and Tama Counties

Dubuque Office:
Fountain Park Springs Bldg.
2728 Asbury Road
Dubuque, IA 52001
(563) 588-3970 or (888) 238-0831
Serving: Delaware, Dubuque, and Jackson
Counties

**Aging Resources of Central Iowa -
www.agingresources.com**

Serving: Boone, Dallas, Jasper, Madison, Mari-
on, Polk, Story, and Warren Counties

Des Moines Office:
5835 Grand Avenue, Suite 106
Des Moines, IA 50312-1444
(515) 255-1310 or (800) 747-5352

**Milestones Area Agency on Aging –
www.milestonesaaa.org**

Davenport Office:
935 E 53rd Street
Davenport, IA 52807
(563) 324-9085 or (855) 410-6222
Serving: Clinton, Muscatine, and Scott Counties

Ottumwa Office:
623 East Pennsylvania Avenue
Ottumwa, IA 52501
(641) 682-2270 or (855) 410-6222
Serving: Appanoose, Davis, Jefferson, Keokuk,
Lucas, Mahaska, Monroe, Van Buren, Wapello
and Wayne Counties

Burlington Office:
509 Jefferson Street
Burlington, IA 52601
(319) 752-5433 or (855) 410-6222
Serving: Des Moines, Henry, Lee and Louisa
Counties

**Connections Area Agency on Aging –
www.connectionsaaa.org**

Sioux City Office:
2301 Pierce Street
Sioux City, IA 51104
(712) 279-6900 or (800) 432-9209
Serving: Cherokee, Ida, Monona, Plymouth,
and Woodbury Counties

Creston Office:
109 North Elm Street
Creston, IA 50801
(641) 782-4040 or (800) 432-9209
Serving: Adair, Adams, Clarke, Decatur,
Ringgold, Taylor, and Union Counties

Council Bluffs Office:
231 South Main Street
Council Bluffs, IA 51503
(712) 328-2540 or (800) 432-9209
Serving: Cass, Fremont, Harrison, Mills, Mont-
gomery, Page, Pottawattamie, and Shelby
Counties

**Heritage Area Agency on Aging –
www.heritageaaa.org**

6301 Kirkwood Boulevard, SW
Cedar Rapids, IA 52404
(319) 398-5559 or (800) 332-5934
Serving: Benton, Cedar, Iowa, Johnson, Jones,
Linn, and Washington Counties

Adult Protection

Iowa Elder Abuse Hotline
800-362-2178

Long Term Care Ombudsman
515-725-3308 or 866-236-1430

Attorney General of Iowa – Consumer Protection Division (www.iowaattorneygeneral.gov/about-us/divisions/consumer-protection)
515-281-5926 or 888-777-4590

Consumer

Better Business Bureau – (<https://www.bbb.org>)
800-222-1600

Office of Citizens' Aide/Ombudsman – Des Moines (<http://www.legis.iowa.gov/ombudsman/>)
515-281-3592 or 888-426-6283

Funeral Consumers Alliance
(www.funerals.org)
802-865-8300

Iowa Department of Inspections and Appeals
(<http://dia.iowa.gov>)
515-281-7102

Iowa Utilities Board – Consumer Services
(<https://iub.iowa.gov>)
Utility consumer complaints: 515-281-5979 or 877-565-4450;
non-complaint questions: 515-725-7300

Iowa Insurance Division
(www.iid.iowa.gov)
General questions: 515-281-5705
Consumer complaints: 515-281-4033
Life: 515-281-5705
Health: 515-281-5705
Property: 515-281-5705

Iowa Civil Rights Commission
515-281-4121 or 800-457-4416

Internal Revenue Service (www.irs.gov)
800-829-1040

SHIIP – Senior Health Insurance Information Program (www.shiip.iowa.gov)
800-351-4664

Social Security Administration
(<http://www.ssa.gov/>)
800-772-1213

Tax Counseling for the Elderly –
(<http://www.irs.gov/individuals/tax-counseling-for-the-elderly>)
800-906-9887

Volunteer Income Tax Assistance (VITA)
(<http://www.irs.gov/individuals/free-tax-return-preparation-for-you-by-volunteers>)
800-906-9887

Federal Department of Veterans Affairs – Disability Programs (www.va.gov/)
800-827-1000

Iowa Department of Veterans Affairs
(<https://va.iowa.gov/>)
515-252-4698 or 1-800-838-4692
Emergency Hotline 800-273-8255
VA Health Care Eligibility 877-222-8387

Employment

Experience Works (formerly Green Thumb Senior Community Service Employment Program)
(www.experienceworks.org)
703-522-7272 or 1-866-EXP-WRKS (397-9757)

Iowa Vocational Rehabilitation Services –
(<http://www.ivrs.iowa.gov>)
800-532-1486

Health

Hospice and Palliative Care Association of Iowa
515-243-1046

Alzheimer's Association Offices
800-272-3900

Medicare (www.MyMedicare.gov)
1-800-MEDICARE

Legal Assistance

Iowa State Bar Association
Lawyer Referral Service
(www.iowafindalawyer.com)
515-243-3179 or 800-457-3729

Iowa Legal Aid
(www.iowalegalaid.org)
800-532-1275 or (Español) 800-272-0008

Legal Hotline for Older Iowans
515-282-8161 or 800-992-8161

Elder Law Legal Clinic at Drake University Law
School (www.law.drake.edu)
515-271-3851

National Alliance for the Mentally Ill of Iowa
(<http://www.namiiowa.com>)

515-254-0417 or (800) 273-8255 Helpline

ARC of Iowa
515-210-6686 or 800-362-2927

Iowa Association of Community Providers
(<http://www.iowaproviders.org/>)

515-270-9495

Disability Rights Iowa
(<http://disabilityrightsowa.org/>)

515-278-2502 or 800-779-2502

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.

Updated January 2020

By Iowa Legal Aid
1111 9th Street, Suite 230
Des Moines, Iowa 50314
1-800-532-1503
Funding was provided by the
Iowa Developmental
Disabilities Council

IOWA DD Council

Preparation, Participation, Power

