

# ***GUARDIANSHIP & CONSERVATORSHIP IN IOWA***

## ***Issues in Substitute Decision Making***

**In this article,  
the basic steps  
to set up a  
guardianship or  
conservatorship  
are discussed.**

### **How to Set Up a Guardianship or Conservatorship**

#### **Is a Guardianship or Conservatorship Needed?**

A family member or other person helping someone must decide whether a guardianship or conservatorship is needed. The family member or other person will need the help of doctors, nurses, social workers, care givers and other people in order to make this decision. The person trying to get the guardianship or conservatorship must be able to show that the person who may need a guardianship or conservatorship (called the ward) is “incompetent.” It is not enough that a person has a mental illness. The mental illness must result in serious limits on the person’s ability to function. There should be no other less restrictive alternatives that will meet the needs of the person. (See the article “Determining if Guardianship or Conservatorship is Necessary.”) The person has the right to contest any guardianship or conservatorship.

#### **How to Get a Guardianship or Conservatorship**

An appropriate guardian or conservator is needed. A guardian or conservator may be a relative, other person or an agency. In Iowa, two or more people may be conservators or guardians. Guardians or conservators should live in Iowa. A guardian or conservator who does not live in Iowa may be appointed. 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.

A petition stating the reason for the guardianship or conservatorship must be filed with the court. A Petition for Appointment of a Guardian or Conservator is a legal form asking the court to appoint a person or agency to act as guardian or conservator. 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 petition should be filed in the county where the person who would be the ward lives.

#### **Can Persons Pick Who Will be their Guardian or Conservator?**

A person who can make some decisions can file a petition to set up a guardianship or conservatorship. That person can pick someone to serve as guardian or conservator. This is called a “voluntary” petition. An adult of “sound mind” may sign a petition

that sets up a guardianship or conservatorship on a stand-by basis. This kind of petition only goes into effect when a specific event happens or when a particular mental or physical condition exists.

## What Information has to be in the Petition?

### For a Guardianship:

The petition must state:

- name, age and post office address of the proposed ward (the person who may need the guardianship);
- the proposed ward is a person whose decision making capacity is so impaired that the person is unable to care for the person's personal safety or attend to or provide for necessities for the person such as food, shelter, clothing, or medical care without which physical injury or illness might occur;
- name and post office address of the proposed guardian
- statement that proposed guardian meets the test to be a guardian.
- the proposed ward is a resident of Iowa or present in the state;
- the proposed ward's best interests require the appointment of a guardian in Iowa;
- name and address of any person or institution having care, custody, or control of the proposed ward.

Other information is usually included in the petition. The proposed ward must get the following information:

- the actions the guardian or conservator may take without prior court approval and
- the actions the guardian or conservator may take only with prior court approval.
- the right to an attorney
- the right to have the court appoint an attorney if the proposed ward does not have money
- a guardianship or conservatorship takes away rights

### For a Conservatorship:

The petition includes the same information as needed for a guardianship. However, a petition asking for a conservator looks at the proposed ward's ability to manage financial affairs. The petition must include more information about the estimated value of the proposed ward's assets.

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

## Paying the Costs to File a Petition

There are costs to file a petition. In the case of a conservatorship, the fees would be paid out of the ward's assets. If the ward does not have enough assets, there normally is no need for a conservatorship.

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

## Notice to the Proposed Ward

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

- a copy of the petition;
- a notice telling the proposed ward that he or she has 20 days to file an "answer" in the lawsuit.

## The Proposed Ward's Right to Representation

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

- does not have money or
- cannot ask to have an attorney appointed.

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

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

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

The attorney must also do the following:

- Represent the proposed ward; and
- Make sure that the way the guardianship is set up meets the requirements of Iowa law.

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

- Tell the proposed ward about the effects of the order;
- Tell the ward about his or her rights to petition to change or end the guardianship; and
- Tell the ward of the rights they still have.

After a guardianship has been set up, the court may again appoint an attorney to represent the ward in any other proceedings in the guardianship case. The court does this if it is in the ward's best interest to have legal representation.

In a case where a conservatorship is set up, the proposed ward is entitled to representation in a similar way.

## **Preparing for the Hearing**

The hearing is a time for the petitioner to say why a guardianship or conservatorship should be set up. The petitioner has to show the court why it is needed.

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

## **Who Must Contact Witnesses and Gather Evidence?**

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

## **What Kind of Information does the Court Want to Hear?**

The court will want to know about specific examples of how the proposed ward has acted 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, current service or care plans, and any other current assessments.

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

## **Should the Proposed Ward Attend the Hearing?**

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

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

## The Hearing

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

After hearing the facts, the court can decide:

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

## What is a Bond and When is it Necessary?

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

## After the Hearing

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

If the guardianship or conservatorship is set up, the ward has 30 days to appeal the order. If the ward appeals, a "stay" may be entered. A stay stops the guardian's or conservator's powers

during the appeal process. Stays are not easy to get.

## Acceptance of Appointment by the Guardian or Conservator

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

## Letters of Appointment

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

## Inventory and Appraisal

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

## Annually, After the Hearing

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

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

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

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

A conservator must file a report too. If additional property comes into the estate, the conservator must tell the court about this within 30 days.

Additionally, an annual accounting must be provided. The annual accounting report must include the balance of funds, income, payments made, changes in investments, and other information.

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.***

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