

GUARDIANSHIP & CONSERVATORSHIP IN IOWA

Issues in Substitute Decision Making

A guardian or conservator is appointed to make decisions for the ward and protect the ward's rights.

Rights of Wards

A person under guardianship or conservatorship keeps any rights that are not taken by the court. A guardian or conservator should help the ward to use these rights, not prevent the ward from using these rights.

A guardian or conservator does not need to know every law, right, benefit, or service which may help the ward. There are advocacy organizations and state and local agencies in the community which can help. These organizations can provide information about various services and benefits, how to get them, and how to help the ward use the rights which he or she kept. Such organizations are usually good sources of support for family members or care givers.

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 ward's wishes and beliefs before taking action. A ward 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 those rights that a ward keeps.

Does a Guardian or Conservator Also Act as an Advocate?

Yes. An advocate is a person who speaks in favor of something. An advocate argues for a cause, defends beliefs, or supports a position. An advocate does these things on behalf of another person. An advocate agrees to help another person understand what his or her rights are and how to use those rights.

There are laws which 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 ward, the rights of the ward, 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 in resolving the issue as well.

Additional advocacy support can be especially useful in areas like funding questions or placement problems. Sometimes the guardian or conservator believes that the ward is not getting the services which will allow the ward to live in the least restrictive environment. Sometimes the guardian or conservator believes the ward is not getting services which will help the ward in developing maximum self-reliance and independence. If either of these happens, 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 Ward 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 ward 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 ward or is not carrying out his or her duties.

The ward can apply to the court to change or end the guardianship or conservatorship. The ward may also ask to have the guardian or conservator removed and a new guardian or conservator appointed. This may be necessary if the guardian or conservator is not able or willing to fulfill his or her duties. The ward may also ask to have the guardianship or conservatorship ended if it is not needed.

Ward's Rights under the Law

The ward keeps all rights that the court has not given to the guardian or conservator. These rights could include the right to make health care decisions, the right to visit with persons of the ward's choice, and the right to make decisions about needed services. Iowa law does not talk about specific rights that a ward keeps. Rather, the law says a court has to make a specific finding that a ward is losing 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.

In addition to these rights, the ward has certain rights in the context of the guardianship or conservatorship. The ward 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, unless the court orders otherwise;
- the right to try to change or end the guardianship or conservatorship.

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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