



Guardianship & Conservatorship in Iowa

IOWA DDCouncil

Preparation, Participation, Power

Words To Know

You will see these words in bold through the booklet.
You can look back to this page for the meaning.

Agent in a power of attorney, it means the person who gets the power to act on behalf of the **principal**.

Authority the power to decide or give orders.

Beneficiary a person who receives the benefits from a trust.

Cognitive anything related to thinking, learning, and understanding. It's how our brain helps us remember things, solve problems, and make decisions.

Conservator a person or organization appointed by the court to have control of the property and money of a person.

Conservatorship the court case where a person or organization is appointed to have control of the property and money of a person.

Durable in a power of attorney, it means a power of attorney that continues even when the person cannot make decisions for themselves.

Functional Capacity a person's ability to meet personal needs or take action to have needs met. The court looks at:

- how well the person can perform activities to meet their needs, and
- how much help is needed with decision-making.

Grantor a person who creates a trust.

Guardian a person or organization appointed by the court to make decisions for another person.

Incompetent Iowa law has a definition of incompetence. It focuses on a person's decision-making ability and whether the person's decisions will cause physical injury or illness. Just because someone disagrees with your decision doesn't mean you need someone to make decisions for you or that you are **incompetent**.

Principal in a power of attorney, it means the person who gives power to another to act for them.

Prognosis predicting how someone will recover from an illness.

Protected Person a person who is under a **guardianship** or **conservatorship**.

Third-Party Assistance help that a person receives from friends, family or service providers which allows them to make appropriate personal and financial decisions.

Trustee a person or financial institution which holds and manages the property in a trust.

The Iowa DD Council works to create change

with and for persons with developmental disabilities so they can live, work, learn, and play in the community of their choosing.

Determining if Guardianship or Conservatorship is Necessary

Is Guardianship or Conservatorship Needed?

Family members often take on informal decision-making roles for a person. A common example would be an adult son who assists his aging father with financial matters. A bank may ask whether the father understands enough to make decisions. If he does not, the son may need a court order appointing him as **guardian** or **conservator**. Then he would have legal **authority** to make decisions for his father.

Who Needs a Guardian or Conservator?

People in different situations may need a **guardian** or **conservator**. Some examples could include:

A person with an intellectual or cognitive disability.

A person with a mental health condition.

A person who has experienced a stroke or head injury which has resulted in a mental disability.

A person who has a disease such as Alzheimer's which affects decision-making ability.

Some people in these situations don't need a **guardian** or **conservator**. Whether they need one depends on how well the person can make good choices about their health, safety, and personal needs. It also depends on how much help they get from family or friends. Sometimes, a power of attorney or informal help can be enough to take care of the person's needs.

What are the Standards for Creating a Guardianship or Conservatorship?

What are the Standards for Creating a Guardianship or Conservatorship?

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

- The person has barriers in decision making. Iowa law defines this as **incompetent**. This may be the word you hear used.
- The person needs the supervision and protection of a **guardian** or **conservator**.
- There are no appropriate less restrictive options.



The court will consider who else is available to help the person, such as friends or family.

How is Incompetency Determined?

The court decides if someone is **incompetent**. Under Iowa law, an **incompetent** person is someone who meets one or both of the following definitions:

To have 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 for the person such as food, shelter, clothing, or medical care, without which physical injury or illness may occur.

- Can the person keep themselves safe?
- Can the person take care of their needs such as a place to live, food to eat, clothes to wear, and going to the doctor when sick?

To have 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.

- Can the person handle their money?
- Can the person decide how to spend their money?
- Can the person tell others what they want to do with their money?
- Can the person make sure that what they do with their money is what the person wants?

What are the Standards for Creating a Guardianship or Conservatorship?

How is Incompetency Determined? Continued

The court looks at a person’s functional limitations. 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.
- This means that the court looks at what the person does to take care of themselves.

The court looks at three things 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.

- Does the person know what they need?
- Can the person take care of needs like food, clothes, a place to live, and going to the doctor?
- Does the person know and understand the options available?
- Does the person understand the choices made and the good and the bad of those choices?
- Is the person able to express a choice?

Impairment “Impairment” refers to the person’s ability to meet personal needs or take action to have needs met. The court looks at:

- How well the person can perform activities to meet their needs, and
- how much help is needed with decision-making.

Functional Capacity “Functional capacity” means a person’s ability to meet personal needs or take action to have needs met. The court looks at:

- How well the person can perform activities to meet their needs, and
- How much help is needed with decision-making?

What are the Standards for Creating a Guardianship or Conservatorship?

Court-ordered Professional Evaluation

The court may order a professional evaluation of the person to help explain what the person can and cannot do for themselves. The court can choose to do this if it thinks having more information will help decide if the person is **incompetent**. The ordered report must include certain information:

- A description of the person’s **cognitive** and functional abilities. “**Cognitive**” means anything related to thinking, learning, and understanding. It’s how our brain helps us remember things, solve problems, and make decisions.
- Evaluation of the person’s mental and physical condition.
- **Prognosis** for improvement. “**Prognosis**” means predicting how someone will recover from an illness.
- Recommendation for treatment, support or habilitation plan.

The cost of the evaluation will be paid by the person. If the person is not able to pay, the county will pay the costs.

Issues to be Considered in the Evaluation

The evaluation will look at the person’s ability to make decisions to care for themselves. Some possible areas are:

Medical A physician or medical professional would do this. It would include diagnoses, medications and their side effects, and treatment and **prognosis** for the impairments.

Behavioral A psychologist, care provider, or other behavioral professional would do this assessment. This would address how behavior may affect a person’s ability to make decisions.

Activities of Daily Living A care provider (maybe a family member), service provider, occupational therapist, or physical therapist would do this. It would include activities of such as, getting dressed, cooking, personal hygiene care, household cleaning, budgeting money and paying bills, etc.

Social History The person, family members, or the service provider should complete this. It would include the person’s history of past and present decision-making skills.

Intelligence A psychologist or psychiatrist would do this. It would include the ability to make decisions for personal and financial needs.

Alternatives to Guardianship

Many people have situations where a family member of a trusted friend may help with decisions or daily activities. Such as paying bills and help with doctors. You may be told that a guardianship or conservatorships is needed. That may not be the case.

What are Guardianships and Conservatorships?

Guardianships and **conservatorships** are court cases. The court makes a person or entity a decision-maker for another person (called the **protected person**). A **guardian** makes non-financial decisions. A **conservator** makes financial decisions.

Alternatives to Guardianship

What are Guardianships and Conservatorships?

A **conservator** is a person or organization appointed by the court to make decisions about the property of a person.

A **guardian** is a person or organization appointed by the court to make decisions about a person. A **guardian** has the power to make those personal care decisions on behalf of a person that the court has given to the **guardian**. Some personal care decisions require prior court approval.

Guardianships and **conservatorships** can be costly. They can take away some or even all of a person's right to makes decisions. A **guardian** or **conservator** must file reports each year. A **guardian** or **conservator** must keep records and ask for court approval for some actions. Let's look at alternatives that may be better.

Consider alternatives before trying a guardianship or conservatorship.

Supported decision-making may be all that is needed. It means finding tools and supports to help people understand and make their own choices.

Many of the following examples involve supported decision-making.

See the Standards and Principles of Supported and Substitute Decision-Making section for more information.

For Personal Needs:

Health - Durable power of attorney for health care:

A person may sign a paper that names another person to make health care decisions. This paper is a **durable** power of attorney for health care. The person named to make heath care decisions is the **agent**. The **agent** has the **authority** to make decisions about care, treatment, and health care services. The **agent** has **authority** to make decisions only if the person is unable to make health care decisions. That is usually decided by the attending physician. The person who signs this paper must understand what they are signing. The person who signs the paper is called the **principal**.

Alternatives to Guardianship

For Personal Needs: Continued

Living Will: A person may also sign a “living will.” A living will says that “life-sustaining procedures” should be withheld or withdrawn. A living will is only used if the signer’s condition is terminal and if the signer is not able to make treatment decisions. The person who signs this paper must understand what they are signing.

Community-based services: A person may be eligible for a wide variety of community-based services. These services can help meet a person’s personal needs. The services include supported living services, home nursing, home health aides, homemakers, home-delivered meals, telephone service assistance, mental health services, transportation, employment supports, and other services. With these services in place, a **guardian** or **conservator** may not be necessary.

Case management services: Case management is a service that can assess a person’s needs. A case manager can also coordinate and monitor services. Case management is available for some people with disabilities. This includes persons with an intellectual disability or mental illness and some older persons. Case management services can help people stay in their own homes.

For information on case management for other needs (persons with brain injuries, intellectual disability, or chronic mental illness) contact:

The Iowa Department of Health and Human Services
Lucas Building - 312 East 12th Street, Des Moines, IA 50319
1-800-972-2017 or <https://hhs.iowa.gov>

For information on case management programs for older Iowans contact:

Your local Area Agency on Aging by calling 1-866-468-7887.
Find the agency in your area:
<https://hhs.iowa.gov/aging-services/aaas>

Alternatives to Guardianship

For Personal Needs: Continued

If community services are not enough: Sometimes a person’s care needs can only be met in a nursing home, residential care facility, assisted living, or similar place. A person and their family and friends can help make this decision. That would be a voluntary decision.



For Financial Needs:

Banking Options:

- A person may be able to take care of their financial needs with automatic bill payments, direct deposits, banking by mail, phone, or online banking.
- A person can add a trusted friend or family member to bank accounts. This is done by naming the person as a signatory on the account. Either person can take money from the account. Other banking options are also available.

The above options require third-party supervision.

Alternatives to Guardianship

For Financial Needs: Continued

Financial Powers of Attorney: A person may sign a paper that names another person to act for them about money, income and bills. This paper is a financial power of attorney. The person named to make decisions is the **agent**. The **agent** has the **authority** to make decisions. The person who signs this paper must understand what they are signing. The person who signs the paper is called the **principal**.

- This power of attorney is in effect right away unless it says otherwise. The person can continue to make their own decisions as long as they are able.
- The power of attorney is **durable** unless it says otherwise. **Durable** means the **agent** can make decisions and act when the **principal** is able to act or make decisions on their own, but also when they are no longer able to make decisions.
- The financial power of attorney **agent** is not authorized to make health care decisions for the **principal**.

The **agent** should be a trustworthy person. The **agent** should always do what is best for the **principal** and act in good faith. The power of attorney paper can say when it ends. The **agent**'s authority to act always ends when the **principal** dies or ends the power of attorney. It also ends if the **agent** resigns or is unable to act.

A financial power of attorney can give **authority** to the **agent** for all finances and property. It can also be limited to specific things. The financial power of attorney form is in Iowa Code Chapter 633B.

The **principal** can end a power of attorney at any time. This should be done in writing. Immediately notify any bank, brokerage firm, or other person or company involved. The drawback of a financial power of attorney is that there is no required court supervision, bonding, or annual accounting. This increases the risk of theft or mismanagement.

Alternatives to Guardianship



For Financial Needs: Continued

Trusts: A trust is when one person holds property for the benefit of another. The person who holds the property is called a **trustee**. The other person is the **beneficiary**. The property can be any kind of real or personal property. It could be money, real estate, stocks, bonds, collections, business interests, personal possessions, and other property. Trusts can be useful planning tools. They can be established and controlled by a competent person. If the person who established the trust becomes unable to manage their property, a new **trustee** can take over.

Sometimes, one person sets up a trust for the benefit of another.

- 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**.
- Those who receive the benefits from the trust are called the **beneficiaries**.

Trusts that can be changed or ended at any time by the **grantor** are called revocable. Trusts that cannot be changed or ended before the time set in the trust are called irrevocable.

There are several kinds of trusts that are used to plan for when someone is not able to make decisions. There are also other kinds of trusts that are used for different purposes. Special needs trusts are used to help people who use programs that restrict savings account limits. Talk to a trust attorney to learn more.

Alternatives to Guardianship

For Financial
Needs:
Continued



Social Security Representative Payee: The Social Security Administration (SSA) can appoint a Representative Payee for those unable to manage their own Social Security benefits. This includes retirement, disability, or Supplemental Security Income (SSI) benefits. This can be done with or without the consent of the person receiving the benefits.

The Social Security Administration (SSA) has a process to set up a representative payee. This is a good alternative to **conservatorship**. It is good when Social Security or SSI is the only income and there is no other property to manage. A **conservator** must apply to become the representative payee 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 responsible for taking care of the money they manage. If they use the money incorrectly, they can get in trouble. It can be hard to show that they did something wrong or locate the misused money. Be careful when choosing a representative payee. A payee may be a reliable relative or friend. A residential facility (nursing home or group home) where the person resides may be a payee.

Alternatives to Guardianship

For Financial
Needs:
Continued

The SSA requires annual reports for spending the benefits. The SSA may remove payees for misusing funds. There isn’t close monitoring of payees. A payee can only manage Social Security benefits and doesn’t have the right to handle other property or money.

The person can challenge the appointment of a representative payee. The representative payee appointment can be ended if the person can show they are able to manage their benefits again. A person can also ask to change their payee to someone else.



Standby Conservatorship or Guardianship: A court-supervised **conservatorship** or **guardianship** can be set up as a standby (if needed). A person can ask the court to appoint a **conservator** or **guardian** when certain conditions have been met. These could be specific events or if someone has a physical or mental health issue.

Your Rights if you have a **Guardian**

If you have a **guardianship**, you still have rights. You and your **guardian** may not always agree. A **guardian** should consider your wishes. You might need a **guardian** if you need help making personal care decisions like where you live and what support services you need.

These are your rights:

- The right to vote.
- The right to decide what will happen to property upon death (make a will).
- The right to marry.
- The right to have children or not.
- The right to have friendships.
- You may also have rights about your health care choices and choices about your services.

The court will decide what areas of your life your **guardian** controls. Your **guardian** must help you use the rights you keep and cannot limit them. You can also ask the court to let you to do more.

Once a **guardian** is appointed, the **guardian** must do an initial care plan report and then a report every year. These reports must be based on your needs. They also consider your likes and prior choices

The reports must include:

- Where you are living or plan to live.
- How your bills will be paid.
- Your health care needs and how you are meeting those needs.
- If you are working or going to school or plan to.
- What things you do for fun and what contact you have with family and friends.
- How often the **guardian** meets with you.
- Any changes that need to be made.

The reports should also include the need for a **guardian**. You have a right to look at these plans. You have the right to ask the court to change the plan.

Your Rights if you have a **Conservator**

I do not control my money. This may mean that I am under a **conservatorship**. My **conservator** and I don't always agree on how much money I should get or what I can spend it on. What can the **conservator** decide? What are my rights?



Conservators are helpful if you do not understand money or do not understand spending and sometimes spend too much. If you are confused or made big mistakes with money, you may have a **conservator**.

The court will decide what money the **conservator** controls. Your **conservator** must help you use your rights and cannot limit them. You can also ask the court to let you do more.

Once a **conservator** is appointed, the **conservator** must do an initial care plan report and then a report every year. These reports must be based on your needs. They must also consider your likes and prior choices

The initial plan must include:

- A budget containing planned expenses and income.
- Any fees the **conservator** charges.
- Your debts.
- Your assets (like a car or savings account and the plan for assets).
- How the **conservator** will help you with your money.

You must be given a copy of the plan. You can tell the court that you do not agree with the plan within 20 days. The Court will review and make the final decision.

Your Rights if you have a **Conservator**



Your conservator must also report on your money every year. The report must include:

- Money paid and received.
- A budget for next year.
- Plan for your assets.
- Request for court approval of what the **conservator** and the attorney charge for the **conservatorship**.

You have a right to look at these plans and see what the **conservator** is supposed to do. You can ask the court to change the plans.

What Can I do if my **Guardian** or **Conservator** isn't doing their Job?

Since the court is involved, the **guardian** or **conservator** must follow the court's rules and decisions. You should tell the court if you think the **guardian** or **conservator** is not doing what is best for you or is not doing their job.

You can ask the court to change or end the **guardianship** or **conservatorship**. You can ask the court to remove the **guardian** or **conservator** and appoint a new **guardian** or **conservator**. You may ask to have the **guardianship** or **conservatorship** ended if it is not needed.

Your Rights under the Law

You keep all other rights that the court does not give to the **guardian** or **conservator**. Iowa law says that a court must give a clear reason before it can take away some of your rights.

The law talks about a few specific rights that you keep. One is the right to communicate and visit with others. The right has some rules. The **guardian** can set rules about time, and when and where and how communication or a visit takes place. A **guardian** must get approval from the court to deny your right to communicate or visit with others.

You also have the right to:

- Appeal any orders issued by the judge.
- Be represented by an attorney you choose.
- Have an attorney chosen for you.
- Have an annual report filed.
- Try to change or end the **guardianship** or **conservatorship**.

You may have disagreements with your **guardian** or **conservator**. You can take your disagreements to the court. You can also use a mediator. A mediator is a trained professional who helps two sides reach an agreement.

The people that help you like **guardians** or **conservators** must think about your likes, dislikes, and ideas when they make decisions. Make sure they know your opinions.

Standards and Principles of Supported and Substitute Decision-Making

Supported Decision-Making:

Supported decision-making uses tools and supports to help persons understand, make, and communicate their choices. By using supported decision-making, persons are able to make choices and be more independent for a longer time. Supported decision-making can be used in **guardianships** or **conservatorships** to help protected parties make choices. Iowa law doesn't use the phrase "supported decision-making." But the **guardianship** and **conservatorship** statute requires that "**third-party assistance**" be considered in deciding if a **guardianship** or **conservatorship** is needed. With enough **third-party assistance**, a **guardianship** or **conservatorship** may not be needed. **Third-party assistance** can be help provided by family, friends or service providers. This assistance can use supported decision-making.

Standards and Principles of Supported and Substitute Decision-Making

Supported Decision-Making:

Supported decision-making is based on the needs of the person. Some people may need help with only a few things, such as financial issues or medical problems. Others may be fine going to the grocery store alone but may need someone to assist at a doctor's appointment.



Types of support may include:

- Taking more time to make decisions.
- Making a list of pros and cons.
- Providing information in a different format—written or video.
- Setting up a joint bank account. Please note that there may not be anything that can be done if a supporter misuses funds.
- Using plain language materials to describe the issue.
- Bringing someone to appointments to help the person remember and discuss options.

Friends, family or service providers can develop or provide these supports.

For more information:

National Resource Center for Supported Decision-Making
<https://supporteddecisionmaking.org/>

Standards and Principles of Supported and Substitute Decision-Making

Substitute Decision-Making:

Substitute decision-making is different than supported decision-making. When people cannot make decisions for themselves, **guardians** and **conservators** must make decisions for them. This is called substitute decision-making. The **guardians** or **conservators** must act in the **protected person's** best interest, not their own interest.



A **guardian** or **conservator** needs to think about several factors when making decisions for someone else:

- Remember how you would like to be treated if someone was making decisions for you.
- Take actions and make decisions that maximize independence.
- Use the powers that the court gives you but allow the **protected persons** to make decisions they are able to make. Supported decision-making should be used.

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.
- Ask questions and seek opinions about how to meet the needs of the **protected person**.

Standards and Principles of Supported and Substitute Decision-Making

Substitute Decision-Making:

In making decisions for a **protected person**, a **guardian** or **conservator** may need to consent or agree to some treatment or plan. That consent or agreement should be “informed.” Informed consent is usually used for health care decisions but can be used in other areas. It means the person giving the okay about a decision or action understands:

- What is being agreed to.
- The good and bad things about it.
- Other options that are available.

The person giving consent should be able to give a reason for making the choice.

Informed consent requires that the person giving the okay:

- Understands how to make a good decision.
- Has the information to make a good decision.
- Has the ability to make good decisions.
- Is agreeing to something freely, without being forced or pressured by someone else.

Additional Resources

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

The Consumer Financial Protection Bureau has resources on managing someone else's money.

www.consumerfinance.gov/consumer-tools/managing-someone-elses-money/

Frequently Asked Questions

Why would I need a **guardianship** or **conservatorship**?

People in different situations may need a **guardian** or **conservator**:

Some examples could include:

- A person with an intellectual or **cognitive** disability.
- A person with a mental health condition.
- 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.

Some people in these situations don't need a **guardian** or **conservator**. Whether they need one depends on how well the person can make choices about their health, safety, and personal needs. It also depends on how much help they get from family or friends. Sometimes, a power of attorney or informal help can be enough to take care of the person's needs.

For more information, see Determining if a Guardianship or Conservatorship is Necessary.

Frequently Asked Questions

Are there other choices so I don't need one?

There are many alternatives available to help you. Supported decision-making may be all you need. You can make some decisions but need help with others. There are financial options like joint bank accounts and financial powers of attorney. There are personal options like a health care power of attorney or community-based services.

For more information, see Alternatives section.

If I am under a **guardianship** and **conservatorship**, what are my rights?

Your **guardian** or **conservator** are given rights to make decisions for you which are set out in a court order. You keep any rights not given to the **guardian** or **conservator**. In addition, you have rights:

- To an attorney.
- To ask the court to modify or end the **guardianship** or **conservatorship**.
- To see any reports or plans that the **guardian** or **conservator** have for you.
- You have other rights such as voting, making friends and others.

For more information, see Your Rights if you have a Guardian.

I've heard about supported decision-making. What is that and would it help me?

Supported decision-making uses tools and supports to help you understand, make, and communicate your choices. It is based on your needs. It could be giving you more time to make a decision or giving you the information in writing or in a video. It could be a joint bank account or bringing someone to meetings with you. It is as varied as your needs.

For more information, see Supported and Substitute Decision Making.

What is the difference between a **guardian** and a **conservator**?

A **guardian** is the person or organization appointed by the court to make personal care decisions for someone. Some personal care decisions require prior court approval.

A **conservator** is a person or organization appointed by the court to have control of the property and money of a person.

Frequently Asked Questions

How do I end a guardianship or conservatorship?

You must ask the court to end the **guardianship** or **conservatorship**. You will need to be able to show that you no longer need the help to make decisions.

See Your Rights if you have a Guardian.

How do I change my guardian or conservator?

You can ask the court to change the **guardian** or **conservator**. If you generally get along but have a particular issue that is a problem, you could try using a mediator to help the two of you resolve your problem.

See Your Rights if you have a Guardian.

This project is supported by the Administration for Community Living (ACL), U.S. Department of Health and Human Services (HHS) as part of a financial assistance award totaling \$774,176 with 100 percent funding by ACL/HHS. The contents are those of the author(s) and do not necessarily represent the official views of, nor an endorsement, by ACL/HHS, or the U.S. Government.

**A special thank you to Iowa Legal Aid and the State Alliance Team
from the Bridging Aging and Disability Networks Grant for their work on this project.**

Notes

[illegible]

IOWA DDCouncil

Preparation, Participation, Power

700 2nd Avenue Suite 101, Des Moines, IA 50309

(800) 452-1936

www.iowaddcouncil.org