

The Iowa State Bar Association

Young Lawyers Division



Guardianship and

Conservatorship

Handbook

625 East Court Avenue
Des Moines, IA 50309
515-243-3179

“Serving the Public and the Profession Since 1874”

This handbook was prepared by the:
YOUNG LAWYERS DIVISION
SERVICES TO THE ELDERLY COMMITTEE
THE IOWA STATE BAR ASSOCIATION



PARTICIPATING COMMITTEE MEMBERS:

Nathaniel Blake	Annette Boehlje
Dawn Bowman	Jessica Chandler
Anne Cook	Christine Cownie
Susan Crane	Denise Flory
Matthew Gardner	Robert Hancock
Mark Hudson	Andrew Johnson
LuAnn Julstrom	Monte McCoy
Ann McCrea	William Miller
Stacy Morris	Melissa Peterson
Marty Rowlet	

A special thank you to all past committee members and others for creating the superb foundation on which the present edition of this handbook is built.

© 2007

The Young Lawyers Division, Services to the Elderly Committee,
of The Iowa State Bar Association

The copyright holder expressly prohibits any company or individual from inserting a name or attaching any materials to this publication without the express permission of the copyright holder.

The committee would like to thank the following for their funding of the development and publication of this handbook:

- ◆ Administration on Aging to the Iowa Department of Elder Affairs
- ◆ The American Bar Association Young Lawyers Division through a grant from the American Bar Association Fund for Justice and Education
- ◆ Iowa Bar Foundation
- ◆ Iowa Department of Human Services
- ◆ Iowa State Bar Association, Young Lawyers Division

The committee would also like to thank the following for their past and present support in authoring and developing this handbook:

- ◆ Scott Riemenschneider, J.D.
- ◆ Angela Lange Gammill, J.D.
- ◆ Deanna Clingan-Fischer, J.D.
- ◆ Iowa State Bar Association, Young Lawyers Division
- ◆ Iowa State Bar Association, Probate Section
- ◆ Iowa Department of Elder Affairs
- ◆ Polk County Attorney's Office
- ◆ Hon. Ruth Klotz, Associate Probate Judge
- ◆ Chris Luzzie, J.D.
- ◆ Thomas T. Tarbox, J.D.

To obtain additional copies of this handbook please contact:

The Iowa State Bar Association
625 East Court Avenue
Des Moines, Iowa 50309

The printing of this publication was made possible by a grant from the Administration on Aging to the Iowa Department of Elder Affairs. The content of this publication is from Iowa law and does not necessarily represent the official views of the Administration on Aging.

Table of Contents



Use of this Handbook	5
Introduction	6
Part One:	
Guardianship	7
Court Approval	7
General, Limited or Standby Guardianships	7
Guardianship Reports	8
Guardianship Termination or Change	8
Questions and Answers	9
Part Two:	
Conservatorship	12
Duties of the Conservator	12
Court Approval	13
General, Limited or Standby Conservatorship	13
Conservatorship Reports	14
Conservatorship Termination or Change	14
Questions and Answers	15
Fiduciary	16
Appendix A	19
Appendix B	20
Appendix C	21
Appendix D	22
Appendix E-Resources	23
Index	31

USE OF THIS HANDBOOK



This handbook is designed to assist those who have been appointed as a guardian or conservator, those who are considering volunteering for such an appointment, those who are considering the need for a guardianship or conservatorship for themselves or others or those who have an interest in the subject. This handbook is a general overview of the law of guardianships and conservatorships and like most general overviews it will apply in most situations but not all. Small differences and individual circumstances can be very important in resolving legal problems and the general guidance provided by this handbook cannot take such differences into account. Keep in mind that the laws continuously change and some of the information in this handbook may be outdated by the time you read it. This handbook is not designed to take the place of legal counsel. An attorney should always be consulted before beginning a guardianship or conservatorship action.

IF YOU HAVE A LEGAL PROBLEM, DO NOT ATTEMPT TO SOLVE IT ON THE BASIS OF THE INFORMATION PROVIDED IN THIS HANDBOOK. GET AN ATTORNEY'S ADVICE.

INTRODUCTION



Whether you have been appointed a guardian, a conservator, or both, you probably have some questions on your mind. This handbook is designed to assist you in understanding the duties, powers and responsibilities that accompany your new position. Part One explores the role and responsibilities of a guardian. Part Two deals with the role and responsibilities of a conservator. Following each section you will learn the answers to some of the most commonly asked questions about guardianships and conservatorships.

As a guardian and/or conservator, you are now a fiduciary. This means the court has placed trust and confidence in you to act appropriately on behalf of someone else—the ward. All of your decisions must be based on the ward’s best interests. If you always make decisions based on what is best for the ward, rather than what is best for you, you will have fulfilled your responsibilities and served your ward well.

IOWA SUPREME COURT CHIEF JUSTICE MARSHA TERNUS

PART ONE: GUARDIANSHIP

A guardian is appointed to make decisions about the ward's needs or affairs other than financial matters. These may include decisions about things like medical treatment, where the ward lives, and arrangements for services such as meals, personal care, training and education, to mention just a few.

COURT APPROVAL

A guardian's duties and powers are divided into two distinct categories: those powers and duties that can be exercised without prior court approval, and those powers and duties that can be exercised only with the court's prior approval.

Powers that a guardian can exercise without prior court approval include: providing for the care, comfort and maintenance of the ward, including appropriate training and education intended to maximize the ward's potential; taking reasonable care of the ward's clothing, furniture, vehicle and other personal effects; assisting the ward in developing maximum self-reliance and independence; ensuring that the ward receives necessary emergency medical services and routine medical care; ensuring that the ward receives professional care, counseling, treatment and services as needed; plus any other powers and duties that the court may specify.

Even though the guardian has been appointed to make decisions, there may be times that the guardian will need to ask the court's permission before acting. **Powers that a guardian can exercise only with prior court approval include:** changing the ward's permanent residence if the proposed residence is more restrictive than the current residence; arranging the provision of major elective surgery or any non-emergency major medical procedure; and consenting to the withholding or withdrawal of life-sustaining procedures. From time to time the court may alter the responsibilities of the guardian.

GENERAL, LIMITED OR STANDBY GUARDIANSHIPS

Before any action is taken, it should be determined whether the guardianship is general or limited. A **limited guardianship** gives the guardian only those specific powers that are set out in the court order. By this, the court is saying that in all other matters, the ward can still make decisions for himself or herself. The court must, by law, only give the guardian the powers necessary for the guardian to meet the needs of the ward.

By contrast, a **general or full guardianship** gives the guardian the authority to make all decisions on behalf of the ward, except those that require prior court approval.

A person may currently be able to handle his or her affairs but anticipate a time when they may not be able to do so. To pre-determine who will serve as guardian, if in the future a guardianship becomes necessary, a person of sound mind can establish a **standby guardianship**. The standby guardianship takes effect only upon the occurrence of an event specified in the document (petition). With standby petition, a person can retain control over his or her personal and financial affairs until the event specified occurs. A person may file a petition for a standby guardianship under the same procedures and requirements as a standby conservatorship.

To establish a standby guardianship, a verified petition must be executed for the voluntary appointment of a guardian. The petition shall contain the express condition that the petition be acted upon by the court only upon the occurrence of an event specified or the existence of a described condition of mental or physical health of the petitioner. The occurrence of the event, or the existence of such condition, shall be established in the manner directed by the petition. The petition may be revoked by the petitioner before the need for appointment, provided the petitioner is of sound mind.

GUARDIANSHIP REPORTS

One of the guardian's most important responsibilities as a guardian is to make written reports to the court on the status and progress of his or her ward.

Reports must include information about the current mental and physical condition of the ward; his or her present living arrangements, including a description of each residence where the ward has resided during the reporting period; a summary of medical, educational, vocational and other professional services provided for the ward; a description of the guardian's visits with and activities on behalf of the ward; the guardian's recommendation as to the need for continuing guardianship; plus any other information requested by the court or, in the guardian's opinion, useful to the court.

To facilitate accurate and timely reporting, the guardian will want to keep records which summarize the ward's physical and mental condition. These records should include a care plan for the ward, or summaries of the visits that the guardian had with the ward at his or her residence. Additionally, it is helpful to maintain a record of conversations the guardian has had with any health care professionals and family members regarding the ward's condition and any changes in his/her activities.

There are three different types of reports the guardian is responsible for filing. An **initial report** must be made within 60 days of the guardian's appointment. Every year thereafter the guardian must make an **annual report** within 90 days of the close of the reporting period. When the guardianship is terminated, the guardian must make a **final report** within 30 days of the termination. It is the guardian's responsibility to ensure that these reports are filed on time.

GUARDIANSHIP TERMINATION OR CHANGE

A guardianship terminates if any of the following events occur: the ward, if a minor, reaches the age of 18, the ward is deceased, the court decides that the ward can make decisions for him or herself, or the court decides to terminate the proceeding for any other reason.

The person under guardianship can ask to have the guardianship terminated. To terminate a guardianship, it must be shown that the ward no longer meets the requirements to maintain the guardianship. If the ward wishes to terminate the guardianship, he/she must show some capacity for decision-making. The guardian may agree with the ward and join in asking for termination. If the guardian does not agree, the guardian must show that the ward still meets the criteria for guardianship. The court

may decide to appoint an attorney to represent the ward.

A guardianship may also be modified if circumstances change, either for better or worse. Any time a change or modification is proposed, the court must consider whether a limitation on the guardian's powers is appropriate. As with termination, the court may decide to appoint an attorney to represent the ward.

If the guardian wishes to be removed as guardian, the guardian can ask the court to relieve the guardian of his/her responsibility. However, in the event that the guardian is removed, the guardian will need to serve until a replacement is found. The ward can also petition to have the guardian removed. In addition, the court can decide to remove the guardian.

QUESTIONS AND ANSWERS ABOUT GUARDIANSHIPS

Q. How will I know when to file a report?

A. In some cases you will be notified by the attorney or the county agency which helped to establish the guardianship, but the actual responsibility for knowing when to file the reports is yours. The annual report will be due within 90 days of the close of the reporting period, so it is a good idea to keep a calendar or record system to know when the reports are due.

Q. Where do I get report forms?

A. Not all counties in Iowa are alike, but generally if there is an attorney of record in the case, you must go to that attorney to obtain report forms. The attorney of record is designated by you at the beginning of the guardianship to assist you with all legal matters. If for some reason there is no attorney of record, then you can get the report forms from the Clerk of Court for your county. The information you will need to submit in each report is listing in Appendix A at the end of this handbook.

Q. What happens if the reports are not filed on time?

A. There are new reporting deadlines and requirements as a result of 2007 legislation. You have 90 days from the close of the reporting period to have the report filed and not be considered delinquent. If the report is NOT filed within the 90 days, the Clerk will send a notice of delinquency which will need to be cured within 60 days or additional sanctions may occur, including removal of the guardian or conservator. This 60 day notice is not a safety net for late filed reports

Q. Can the ward vote?

A. Yes, unless he or she has been found, in a separate proceeding, to have an unsound mind. But the guardianship does not in itself stop a ward from voting.

Q. Does the ward have the right to marry?

A. Yes, the ward has the ability to marry unless the court finds that the ward lacks the capacity to contract a valid marriage.

Q. Can the ward execute a will?

A. In most cases, yes. Being under the guardianship does not by itself disqualify a ward from being able to sign a will.

Q. Can the ward sign powers of attorney forms or living wills?

A. No. In addition, the guardian cannot sign these forms on behalf of the ward.

Q Can I sign a release of information or sign other documents that will enable the ward to obtain medical treatment?

A. It depends. As always, you should read the forms carefully and make certain that the information being requested is appropriate. If it is an emergency situation, you may sign documents or consent to treatment. For major elective surgery or any other non-emergency major medical procedure, you will need to receive court approval to sign any consent forms.

Q Can I sign a consent form which allows hospital, home health or nursing facility staff to not resuscitate my ward in the event his/her heart and/or breathing stops?

A. Not without prior court approval. You may be requested to sign such a form but you as guardian do not have the authority to give this consent unless you have received court approval. When asked to sign such a form you may hear the words “Do Not Resuscitate” or “DNR.” A Do Not Resuscitate order is not the same thing as having an advance directive, which is a durable power of attorney for health care or a living will. Hospitals and long term care facilities (nursing home) will automatically attempt CPR on anyone whose heart and/or breathing stops, unless there is a Do Not Resuscitate order on file for the patient. A Do Not Resuscitate order, also known as a “No Code,” can only be written by a doctor with permission of the patient, his/her family, or the guardian. However, as guardian, in order to give this permission, you will need to request this authority from the court.

Q. If I am unsure of what medical decisions to make, what should I do?

A. Remember that you are to act in the best interests of the ward. But it is always a good idea to speak with medical staff so that you will be fully informed in your decision-making.

Q. If there is a durable power of attorney for health care and I am the guardian, who makes the health care decisions for the ward?

A. The law says that health care decisions made by the durable power of attorney for health care regarding care and treatment of the ward will take priority over the guardian’s wishes.

Q. Do I have the ability to place the ward in a nursing facility if appropriate?

A. Yes. However, if the placement is a more restrictive setting than the one in which the ward is currently living, you will need to get the court’s permission.

Q. Am I responsible for providing information to complete a Medicaid application or a Medicare claim?

A. Yes. As guardian, you may be the only individual with the information needed to fill out the forms or to appeal denials.

Q. Are there community resources that can help provide services for the ward?

A. Yes. One way of obtaining information is to contact an information and assistance service in your area. For wards 60 and over, contact your local Area Agency on Aging or the Iowa Department of Elder Affairs. For wards under 60, contact your local Department of Human Services office. See Appendix E.

Q. When talking to people to set up services, is there certain information that is confidential and should not be discussed?

A. While it is necessary to talk to service providers for the ward, it is also important to only disclose information that is related to the matter being discussed. Refrain from discussing the ward's care plan, finances, wishes or condition during casual talk with people who are not involved with the ward's care. In fact, you may need to actually withhold information from family or friends if it is not in the best interests of the ward.

Q. What rights does the guardian have to restrict the ward's ability to visit or associate with others?

A. Look at the powers specified in your appointment papers. It should be the ward's decision unless that decision is harmful. You should always remember to act in the best interests of the ward. The probate court has authority to resolve visitation issues.

Q. Is the guardian's responsibility different regarding visitation for a minor ward?

A. The guardian's rights with respect to custody and control of a minor ward extends to refusing to permit other persons access to the ward, but this is subject to the power of the court to permit certain persons to have access. There is no reason to prevent visitation merely because a person seeking visitation is not entitled to it by right. The best interest of the child should determine visitation. The probate court does have the authority to grant grandparent access to a minor ward, subject to the best interest of the child.

Q. Can a person be both a guardian and conservator?

A. Yes, this is often the case. But it is also possible for two different people to serve as guardian and conservator. Keep in mind that a guardian handles the ward's personal affairs and a conservator handles the ward's financial affairs.

Q. Is there a required amount of time to spend in performing my duties as guardian?

A. No. But good judgment should always be used and a personal relationship is encouraged so that you have a better understanding of the ward and the situation with which he/she is confronted. In order to understand the ward's needs, it is a good idea to visit him or her regularly.

Q. Can I be paid for my services as guardian?

A. That depends on the ward's resources. If they are sufficient to allow for your compensation, you may be able to receive an annual fee, but only by first making application to the court for approval. No fees can be paid to a guardian without a court order authorizing them first.

Q. Is a guardian legally liable if the ward destroys property? Will the guardian have to pay for it out of his/her own pocket?

A. No. The fact that a person is guardian does not make him or her personally liable for damages for the acts of the ward.

Q. Who should take over if something happens to me and I cannot continue to act as guardian?

A. It is recommended that you have an alternate guardian selected to fill the position so that the needs of the ward will not be neglected. Any guardian replacing you must be approved by the court.

Q. What should I do if the ward dies?

A. The death of the ward terminates the guardianship, but you must file a final report with the court. If someone is designated to handle arrangements, you should defer to that person but be available to assist if needed.

* * *

PART TWO: CONSERVATORSHIP

A conservator is responsible for making decisions about the financial affairs of the ward. The ward's estate includes assets - such as stocks, bonds, bank accounts, cash and real estate - for which the conservator has assumed responsibility. Generally, the conservator controls all of the ward's income and property, takes care of paying bills, and handles other matters.

DUTIES OF THE CONSERVATOR

The conservator's duties are to first take possession of all the real and personal property of the ward. The conservator should immediately establish a bank account on which they have signature authority. All of the ward's income, including Social Security, investment income and other sources should go into this account so the conservator can control it and render appropriate accounting when it is required.

It is also the conservator's duty to preserve and protect the ward's property. At all times the conservator should exercise the same diligence that he/she would practice handling his/her own financial affairs. The conservator should invest prudently, keep records, and return the assets at the termination of the conservatorship. The conservator must be careful not to mix his/her property with the ward's property.

The conservator also has a duty to search for the ward's will. If there is one, the conservator must deposit it in the Clerk of Court's office.

COURT APPROVAL

A conservator's powers are divided into two distinct categories: those powers that can be exercised without prior court approval, and those powers that can be exercised only with the court's approval. **Powers that the conservator can exercise without prior court approval** include: collecting principal and income from any source; suing or defending claims in favor of, or against, the ward; selling or transferring perishable personal property - for example, selling grain for a ward who is a farmer; voting for the ward at corporate meetings; and receiving additional property from any source.

The powers that the conservator can exercise only with the court's approval include: making payments to or for the benefit of the ward, including payments for nursing homes, medical expenses; investing the ward's funds; executing leases on behalf of the ward, for example, a nursing home or assisted living complex lease; applying any part of the ward's income or property for the support of anyone else, like a child or dependent parent; settling a legal claim; selling any property of the ward's, canceling contracts entered into by the ward that are no longer beneficial to the ward; and making gifts.

GENERAL, LIMITED OR STANDBY CONSERVATORSHIP

A conservatorship may be general or limited in nature. A **limited conservatorship** gives only those specific powers that are set out in the court order. By doing this, the court says that in all other matters, the ward can still make his or her own decisions. By law, the court must attempt to give the conservator the fewest powers necessary to meet the needs of the ward. By contrast, a **general or full conservatorship** gives the conservator the authority to make all but a few decisions on behalf of the ward.

A person may currently be able to hand his/her affairs but anticipate a time when he/she may not be able to do so. To plan for any infirmities without giving up present control over property, a person of sound mind can establish a **standby conservatorship**.

To establish a standby conservatorship, a verified petition must be executed for the voluntary appointment of a conservator. The petition shall contain the express condition that the petition be acted upon by the court only upon the occurrence of an event specified or the existence of a described condition of mental or physical health of the petitioner. The occurrence of the event, or the existence of such condition, shall be established in the manner directed by the petition. The petition may be revoked by the petitioner before the appointment, provided the petitioner is of sound mind.

CONSERVATORSHIP REPORTS

An important part of the conservator's responsibility is making reports to the court to keep it apprised of his/her activities on behalf of the ward. This is done by filing an initial report and inventory, and periodic reports every year thereafter. Forms are available to assist the conservator in making reports or he/she may simply submit the information needed as set out in Appendices B & C.

The **initial report** includes an inventory of all the property that has come into the conservator's hands or of which the conservator has knowledge. It is important to be as accurate as possible on the initial report because all future reports are based on this information. Property includes real estate; stocks and bonds; mortgages, notes, deposits and cash; life insurance policies; and any jointly-owned or miscellaneous property.

The initial report must be filed with the court within 60 days of the conservator's appointment as conservator. Plus, whenever additional property comes into the conservator's hands, supplemental inventory reports must be filed with the court within 30 days.

Every year within 90 days of the close of the reporting period, the conservator must file an **annual report** showing all receipts and disbursements from the conservatorship. The receipts are the money or property that comes in, and the disbursements are the money or property that goes out. In addition, the conservator must also show the balances on hand at the beginning of the last accounting period and the end of this accounting period. The balance on hand at the end of the accounting period must equal the balance on hand at the beginning of the period plus all income less all disbursements.

When the conservatorship ends for any reason, the conservator must provide a **final report** with accompanying schedules. This final report includes receipts, disbursements, other assets, changes in investments and the reason for termination of the conservatorship. It must also include the conservator's accounting since the last annual report and a statement indicating to whom the assets of the conservatorship are being delivered. This final report is due within 60 days of the event causing the termination of the conservatorship.

If the conservator fails to file reports when due, the conservator will probably receive a delinquency notice from the Clerk of Court's office. You have 90 days from the close of the reporting period to have the report filed and not be considered delinquent. If the report is NOT filed within the 90 days, the Clerk will send a notice of delinquency which will need to be cured within 60 days or additional sanctions may occur, including removal of the guardian or conservator.

CONSERVATORSHIP TERMINATION OR CHANGE

A conservatorship terminates if any of the following events occur: the ward, if a minor, reaches the age of 18; the ward is deceased; or the court decides that the ward is competent and capable of managing his or her property and affairs and that continuation

would not be in the ward's best interests, or the court decides that it is no longer necessary for any other reason. At any time that the assets of the ward do not exceed the amount of charges and claims against it, the court may direct the conservator to proceed to terminate the conservatorship.

To terminate a conservatorship, it must be shown that the ward no longer meets the requirements to maintain the conservatorship. If the ward wishes to terminate the conservatorship, he/she needs to show some capacity for financial decision-making. The conservator may agree with the ward and join in asking for the termination. If the conservator does not agree, the conservator must show that the ward still meets the criteria for needing a conservatorship.

A conservatorship may be modified at any time if circumstances change, either for better or worse. Any time a change or modification is proposed, the court must consider whether a limitation on the conservator's powers is appropriate.

If the conservator wishes to be removed as conservator, he/she can ask the court to be relieved of his/her responsibility. However, in the event that the conservator is removed, the conservator will need to serve until a replacement is found. The ward can also petition to have the conservator removed, or the court can decide to remove the conservator.

PART THREE: FREQUENTLY ASKED QUESTIONS

Q. How will I know when to file a report?

A. In some cases you will be notified by the attorney or the county agency which helped to establish the guardianship/conservatorship, but the actual responsibility for knowing when to file the report is yours. The annual report will be due within 90 days of the close of the reporting period, so it is a good idea to keep a calendar or record system to know when the reports are due. It is the guardian's/conservator's responsibility to ensure that these reports are filed on time.

Q. Where do I get report forms?

A. Not all counties in Iowa are alike, but generally if there is an attorney of record in the case, you must go to that attorney to obtain report forms. The attorney of record is designated by you at the beginning of the guardianship to assist you with all legal matters. If for some reason there is no attorney of record, then you can get the report forms from the Clerk of Court for your county. Guardians see Appendix A. Conservators see Appendices B, C, and D.

Q. What happens if the reports are not filed on time?

A. There are new reporting deadlines and requirements as a result of 2007 legislation. You have 90 days from the close of the reporting period to have the report filed and not be considered delinquent. If the report is NOT filed within the 90 days, the Clerk will send a notice of delinquency which will need to be cured within 60 days or additional sanctions may occur, including removal of the guardian or conservator. This 60 day notice is not a safety net for late filed reports

Q. Can the ward vote, execute a will, or contract a valid marriage?

A. Yes, unless he or she has been found, in a separate proceeding, to have an unsound mind. A guardianship/conservatorship does not automatically stop a ward from voting, getting married or executing a will. However, you will want to find out if the court has restricted the ward's right to vote, execute a will, or contract a valid marriage.

Q. Can a person be both a conservator and guardian?

A. Yes, this is often the case. But it is also possible for two different people to serve as guardian and conservator. Keep in mind that a guardian handles the ward's personal affairs and a conservator handles the ward's financial affairs.

Q. Is there a required amount of time to spend in performing my duties as conservator?

A. No. But good judgment should always be used and a personal relationship is encouraged so that you have a better understanding of the ward and the situation with which he/she is confronted. In order to understand the ward's needs, it is a good idea to visit him/her regularly.

Q. Can I be paid for my services as conservator?

A. That depends on the ward's resources. If they are sufficient to allow for your compensation, you may be able to receive an annual fee, but only by first making application to the court for approval. No fees can be paid to a guardian without a court order authorizing them first.

Q. Is a conservator legally liable if the ward destroys property? Will the conservator have to pay for it out of his/her own pocket?

A. No. The fact that a person is conservator does not make him or her personally liable for damages for the acts of the ward.

Q. Who should take over if something happens to me and I cannot continue to act as conservator?

A. It is recommended that you have an alternate selected to fill the position prior to the establishment of the conservatorship so that the needs of the ward will not be neglected. Any successor conservator must be approved and appointed by the court.

Q. What should I do if the ward dies?

A. The death of the ward terminates the conservatorship. However, as conservator you must safeguard the ward's assets until you are formally discharged by the court and the assets are turned over to the ward's estate. Do not turn over assets until you receive a court order allowing you to distribute. You must also file a final report and inventory with the court.

***This material, not included in the video presentation,
has been added for your information.***

FIDUCIARY

A person appointed by the court as a guardian or conservator is a fiduciary. A fiduciary can be a natural person and resident of the state who is at least 18 years old and not mentally retarded or ill, a chronic alcoholic, spendthrift or a person the court determines to be unsuitable. Banks and trust companies, and in some cases a private non-profit corporation, can also serve as a fiduciary.

Once appointed, a fiduciary submits to the jurisdiction of the court making the appointment. In addition, the fiduciary agrees that all property coming into the fiduciary's hands is subject to the jurisdiction of the court and the fiduciary is subject to all orders entered by the court in the guardianship or conservatorship proceedings.

As a fiduciary, a conservator is required to exercise the care, skill, prudence and diligence, when managing the ward's property, that a prudent person acting in a similar capacity would use. The law specifies limitations on investments that can be made by the conservator.

A fiduciary is prohibited from self-dealing or engaging the conservator's estate in business with the fiduciary's personal business, without prior approval of the court. The fiduciary cannot personally profit from an increase in the value of the conservatorship.

A fiduciary is liable for the acts of agents and advisers the fiduciary employs if the agent or adviser engages in acts, in the place of the fiduciary, that would be considered a breach of duty by the fiduciary, if:

1. The fiduciary directed or permitted the breach;
2. The fiduciary did not use reasonable care in selecting and retaining the advisor or agent,
3. The fiduciary did not properly supervise the advisor or agent; or
4. The fiduciary approved, acquiesced or cooperated in the neglect, omission, misconduct or default by the advisor or specialist.

It is a breach of the fiduciary's duty and the fiduciary is liable and chargeable for neglect or unreasonable delay in collecting the credits or other assets of the conservatorship, or in selling, mortgaging or leasing the property of the conservatorship; for neglect in paying over money or delivering property to the conservatorship; for failing to account for or to close the conservatorship when required; for loss to the conservatorship arising from the fiduciary's embezzlement or commingling of the assets of the conservatorship with other property; for loss to the estate for self-dealing; for loss to the estate arising from wrongful acts or omissions which could have been prevented by the exercise of ordinary care and for other negligent or willful acts or non-feasance by the fiduciary which cause loss to the estate. Fiduciaries are also personally liable for willful or wanton misconduct in the official discharge of their duties.

A fiduciary is not liable for damage caused by the ward's acts.

A fiduciary is required to take an oath as an officer of the court that he/she will faithfully discharge the duties imposed by the law according to the best of the fiduciary's ability. The conservator will also be required to post a bond at the expense of the conservatorship, in an amount equal to the value of the personal property of the conservatorship plus the gross annual income of the conservatorship. The bond will be conditioned upon the faithful discharge of all the duties of the fiduciary's office according to the law, including the duty to account. A guardian will normally not be requested to post a bond and there are circumstances where the requirement for a bond for a conservator may be waived.

It is important that the guardian and conservator, as fiduciaries and officers of the court, comply with the requirements of the law and the court and use their best efforts to assist the ward and protect the ward's property.

IF YOU HAVE A LEGAL PROBLEM, DO NOT ATTEMPT TO SOLVE IT ON THE BASIS OF THE INFORMATION PROVIDED IN THIS HANDBOOK. GET AN ATTORNEY'S ADVICE.

APPENDIX A

INITIAL/ANNUAL/FINAL REPORT OF GUARDIAN AND ORDER

The guardian must state:

- The county of the guardianship;
- Name of the ward;
- Probate Number;
- Which report is being submitted: initial, annual or final.

The guardian must address the following:

- Time period the report covers;
- Current mental and physical condition of the ward;
- Present living arrangement of the ward, including a description of residence where the ward has resided during the reporting period;
- Summary of the medical, educational, vocational and other professional services provided for the ward;
- Description of the guardian's visits with and activities on behalf of the ward;
- Ward's date of birth (initial report only);
- Whether the ward is single, married or divorced;
- Names and addresses of parents if the ward is a minor;
- Recommend the guardianship to be continued or terminated (if termination is recommended, give reason);
- Other information pertinent to the court;
- Whether final court costs have or have not been paid with name of guardian, address and telephone number.

The guardian must sign and give his/her address as well as date the report and certify under penalty of perjury and pursuant to the laws of the State of Iowa that the report is true and correct.

APPENDIX B

INITIAL REPORT OF CONSERVATOR AND INVENTORY

The conservator must state:

- The county of the guardianship;
- Name of the ward;
- Probate Number;

List and describe the ward's real and personal property as of the date the conservator was appointed and the property's value:

- Real Estate;
- Stocks and Bonds;
- Mortgages, Notes, Deposits and Cash;
- Life Insurance;
- Jointly Owned Property;
- Miscellaneous Property;
- Total Value.

The conservator must address the following:

- The address of the ward;
- Name and address of guardian, if any;
- Name and address of financial institution where the conservatorship checking account has been established;
 - whether it is an interest bearing account
 - account number
- Name and address of financial institution where the conservatorship savings account has been established;
 - account number
- Whether all of the ward's assets have been changed to the conservatorship's name;
- List source and amounts of the ward's income; and

The conservator must sign and date the report and certify under penalty of perjury and pursuant to the laws of the State of Iowa that the report is true and correct.

APPENDIX C

ANNUAL REPORT OF CONSERVATOR

The conservator must state:

- The county of the conservatorship;
- Name of the ward;
- Probate Number;

The conservator must address the following:

- Time period the report covers;
- Total cash on hand at the close of the last accounting period;
- A list of total funds received during this report period;
- A list of total disbursements (expenses) made during this report;
- Balance of cash on hand at the close of this report period;
- Other assets of the ward at the close of this report;
- Changes that may have been made in investment during this report period;
- Total value of assets of the ward at the close of this report period;
- Amount of conservator's bond as well as surety;
- Name and address of the guardian, if any;
- Ward's address and general physical and mental condition;
- Other information pertinent to the court;
- Whether the fees for the conservatorship are applied for or waived;
- Fees applied for by the conservator's attorney.

The conservator must sign, give his/her address, date the report and certify under penalty of perjury and pursuant to the laws of the State of Iowa that the report is true and correct.

APPENDIX D

FINAL REPORT OF CONSERVATOR

The conservator must state:

- The county of the guardianship;
- Name of the ward;
- Probate number;

The conservator must address the following:

- Time period the report covers;
- Total cash on hand at the close of the last accounting period;
- A list of total funds received during this report period;
- A list of total disbursements made during this report period;
- Balance of cash on hand at the close of this report period;
- Other assets of the ward at the close of this report;
- Changes that may have been made in investment during this report period;
- Total value of assets of the ward at the close of this report period;
- Status of the termination;
- To whom the funds and assets of this conservatorship will be distributed upon termination;
- Whether or not the notice of hearing on final report has been waived;
- Amount of conservator's bond as well as surety;
- Name and address of guardian, if any;
- The ward's general physical and mental condition;
- Residence of the ward;
- Other information pertinent to the court;
- Whether final court costs have been paid;
- Whether the fees for the conservator are being applied for or waived;
- Fees applied for by the conservator's attorney;
- Receipt(s) of the distributee(s) for the funds and assets of the conservatorship.

The conservator must sign, give his/her address, date the report and certify under penalty of perjury and pursuant to the laws of the State of Iowa that the report is true and correct.

APPENDIX E

RESOURCES

ADULT DAY CARE: Adult day care service is any program which provides an organized program of supportive care during the day in a group environment to older persons who need a degree of supervision and assistance or both. Services may include, but are not limited to rehabilitation services, personal care, transportation services, social/recreational activities and preventive or restorative services. Contact your local area agency on aging for the location of the nearest adult day care program.

AGING PROGRAMS

Iowa Department of Elder Affairs
Jesse Parker Bldg
510 E. 12th Street, Suite 2
Des Moines, Iowa 50319
515-725-3333

AREA 1

Northland Agency on Aging
808 River Street
Decorah, Iowa 52101
563-382-2941 or 1-800-233-4603
www.northlandaging.com

AREA 2, 5, 12

Elderbridge Area Agency on Aging
22 North Georgia, Suite 216
Mason City, Iowa 50401
641-424-0678 or 1-800-243-0678
Fort Dodge 515-955-5244 or 1-800-543-3280
Carroll 712-792-3512 or 1-800-543-3265
www.elderbridge.org

AREA 3

Northwest Aging Association
714 10th Avenue, E
Spencer, Iowa 51301
712-262-1775 or 1-800-242-5033
www.nwaging.org

AREA 4

Siouxland Aging Services, Inc.
2301 Pierce Street
Sioux City, Iowa 51104
712-279-6900 or 1-800-798-6916
www.siouxlandaging.org

AREA 6 & 7

Hawkeye Valley Area Agency on Aging
2101 Kimball Avenue, Suite 320
Waterloo, Iowa 50702
319-272-2244 or 1-800-779-8707
www.hvaaa.org

AREA 8

Scenic Valley Area Agency on Aging
3505 Stoneman Road, Suite 4
Dubuque, Iowa 52002-5218
563-588-3970 or 1-888-238-0831
www.scenicvalley.org

AREA 9

Generations Area Agency on Aging
935 East 53rd Street
Davenport, Iowa 52807
563-324-9085 or 1-800-892-9085
www.genage.org

AREA 10

The Heritage Agency
6301 Kirkwood Blvd SW
PO Box 2068
Cedar Rapids, Iowa 52406-2068
319-398-5559 or 1-866-432-4324
www.heritageaaa.org

AREA 11

Aging Resources of Central Iowa
5835 Grand Avenue, Suite 106
Des Moines, Iowa 50312-1437
515-255-1310 or 1-800-747-5352
www.agingresources.com

AREA 13

Southwest 8 Senior Services, Inc.
300 W. Broadway, Suite 240
Council Bluffs, Iowa 51503
712-328-2540 or 1-800-432-9209
www.southwest8.org

AREA 14

Area XIV Agency on Aging
215 East Montgomery Street
Creston, Iowa 50801
641-782-4040 or 1-800-262-0378
www.areaxivaaa.org

AREA 15

Seneca Area Agency on Aging
117 North Cooper Street, Suite 2
Ottumwa, Iowa 52501
641-682-2270 or 1-800-642-6522
www.seneca-aaa.org

AREA 16

Southeast Iowa Agency on Aging
509 Jefferson Street
Burlington, Iowa 52601-5427
319-752-5433 or 1-800-292-1268

ALZHEIMER'S ASSOCIATION

Big Sioux Chapter
502 11th Street
Sioux City, Iowa 51105
712-279-5802 or 1-800-272-3900

East Central Iowa Chapter
1570 42nd Street NE
Cedar Rapids, Iowa 52402
319-294-9699 or 1-800-272-3900

Greater Iowa Chapter
1730 28th Street
West Des Moines, Iowa 50266
515-440-2722 or 1-800-272-3900

CASE MANAGEMENT PROGRAM FOR THE FRAIL ELDERLY: The Case Management Program for the Frail Elderly is a multidisciplinary approach to coordinating community based services to frail and vulnerable elderly which helps the elderly and their families to make long term care choices and avoid inappropriate or premature institutionalization. To learn more about the Case Management Program for the Frail Elderly, contact your local Area Agency on Aging or the Iowa Department of Elder Affairs at 515-725-3333.

CITIZEN'S AIDE OMBUDSMAN: This office receives, investigates and tries to resolve complaints concerning state and local government. Note that complaints concerning county care facilities are within the Citizen's Aide's activities, but other nursing home (long term care facility) complaints are referred to the State Long Term Care Ombudsman.

Citizen's Aide-Ombudsman
1112 East Grand
Des Moines, Iowa 50319
Local: 515-281-3592
Toll free: 1-888-426-6283

CONSUMER PROTECTION DIVISION: Provides information and assistance with

a variety of consumer matters, focusing primarily on problems related to consumer fraud, such as unfair practices and deceptive advertising. Call the number below for assistance, and to find out how you can lodge a complaint.

Iowa Attorney General
Hoover Building
1300 East Walnut
Des Moines, Iowa 50319
515-281-5926

DEPENDENT ADULT ABUSE & NEGLECT REPORTING: This toll free hotline of the Iowa Department of Human Services (DHS) is for reporting suspected instances of abuse or neglect of dependent adults. By reporting such abuse or neglect through this hotline, an evaluator from Iowa Department of Human Services will be assigned to find out whether the dependent adult is being abused or neglected and, if so, what steps should be taken.

**If you suspect dependent adult abuse, please call:
1-800-362-2178 (24hours a day, 7 days a week)
or call you local DHS office.**

DISABILITY PROGRAMS

Alliance for the Mentally Ill
5911 Meredith Drive, Suite E
Des Moines, Iowa 50322
515-254-0417 or 1-800-417-0417

ARC of Iowa
715 East Locust
Des Moines, Iowa 50309
515-283-2358

Iowa Association of Community Providers
7025 Hickman Road, Suite 5
Urbandale, Iowa 50322
515-270-9495

Governor's Developmental Disabilities Council
River Hills Business Park
617 East 2nd
Des Moines, Iowa 50309
515-281-9082 or 1-800-452-1936

Iowa Protection & Advocacy Services, Inc.
950 Office Park Road, Suite 221
West Des Moines, Iowa 50265
515-278-2502 or 1-800-779-2502

GENERAL RELIEF: General Relief is the county program which provides a range of basic services to needy persons. While any need may be brought to the attention of the county relief director, the main services provided relate to food, clothing and shelter. General Relief is intended to provide help in fulfilling those needs which cannot be fully met by other programs. Thus, the General Relief director is often very well versed in the various assistance programs available. To reach the General Relief office, contact the Department of Human Services or the county auditor in your county.

HEALTH PROMOTION OF THE IOWA DEPARTMENT OF PUBLIC HEALTH:

This statewide agency promotes the adoption of personal habits that will improve health and well being, primarily through the provision of technical assistance to other groups and agencies. Although the Bureau can provide direct services to individuals upon request, a person needing health information may first wish to contact the local public health nursing agency or the county extension service.

Bureau of Health Promotion
Iowa Department of Public Health
Lucas State Office Building
Des Moines, Iowa 50319
515-281-6779

IOWA COMPASS: A free information and referral service on assistive technology. Iowa Compass provides free, up-to-date product information on commercially available adaptive equipment for people with disabilities or people who are elderly.

Iowa Compass
1-800-779-2001
www.iowacompass.org

INSURANCE DIVISION: Insurance Division personnel are available to investigate complaints as well as to answer your questions about insurance companies and practices.

For inquiries concerning Life Insurance:	515-281-4222
For inquiries concerning Health Insurance:	515-281-4409
For inquiries concerning Property and Casualty Insurance:	515-281-4409
	Or 515-281-4445

Insurance Division
Department of Commerce
330 East Maple
Des Moines, Iowa 50319
1-877-955-1212

IOWA CIVIL LIBERTIES UNION: The Iowa Civil Liberties Union (ICLU) is a private membership organization which can assist individuals and groups in asserting or protecting their constitutional rights. The ICLU works through the courts, the legislature and through the education of the public to protect such rights as freedom of

speech and freedom of religion, among others.

Iowa Civil Liberties Union
505 5th Avenue, Suite 901
Des Moines, Iowa 50309
515-243-3576

IOWA CIVIL RIGHTS COMMISSION: This statewide office receives, investigates and tries to resolve complaints involving age discrimination (as well as illegal discrimination on other grounds, such as race, sex, disability, national origin or religion). For more information or to file a complaint, contact either your local human rights commission (if you live in a city that has one) or contact the statewide Commission at the number below.

Iowa Civil Rights Commission
400 East 14th Street
Des Moines, Iowa 50309
Local: 515-281-4121
Toll free: 1-800-457-4416

IOWA DEPARTMENT OF HUMAN SERVICES: The Iowa Department of Human Services (DHS) provides a wide range of services, including food stamps, Medicaid and state papers. To contact your local office, check your telephone book or get the help of directory assistance.

IOWA HOSPICE ORGANIZATION: Hospice is a program of caring for the terminally ill and their families, providing practical care and human support in ways that will add to the comfort and quality of life. There are currently about 48 hospices in Iowa. To see if there is one near you, check your telephone book or directory assistance under hospice or call the number below.

Iowa Hospice Organization
515-243-1046
www.iowahospice.org

IOWA STATE UNIVERSITY EXTENSION SERVICE: There is an Extension Service office for each county, providing a wide range of education related services, including seminars on such subjects as nutrition, family economics, and human relations. Free publications available through the extension service cover such subjects as retirement planning, selecting nursing home insurance, housing for the elderly, and wellness. For more information, contact your county office, by checking the telephone book under Iowa State University Extension Service, or in some areas, United States Department of Agriculture (USDA).

IOWA CONCERNS LINE: 1-800-447-1985

LAWYER REFERRAL SERVICE: This service of the Iowa State Bar Association can locate an attorney in your area willing to help with legal problems like yours. The cost for any service beyond the initial meeting is to be agreed upon between the attorney and client.

Lawyer Referral Service
625 East Court Avenue
Des Moines, Iowa 50309
515-280-7429 (in Des Moines area)
1-800-532-1108 (outside Des Moines area)

LEGAL HOTLINE for Older Iowans: Iowans 60 years and older can get free and confidential legal advice and referrals over the telephone.
1-800-992-8161
515-287-8161

IOWA LEGAL AID: Provides about 40 different pamphlets and booklets dealing with such law-related subjects as nursing homes, health care, Social Security, guardianships/conservatorships, age discrimination, funerals, small claims court, and landlord/tenant law. These publications are free to low-income Iowans, and others can purchase them at modest cost. For more information, call the central office of the Iowa Legal Aid at the number listed below.

Iowa Legal Aid
1111 9th Street, Suite 230
Des Moines, Iowa 50314-2527
515-243-2151
1-800-532-1275

MEDICARE AND MEDICAID FRAUD: If you have a concern about a bill or service charged to Medicare or Medicaid and you are not sure if the provider is entitled to be reimbursed for what was submitted, you can call Senior Medicare Patrol (SMP). This program of the Hawkeye Valley Area Agency on Aging works with a variety of agencies to educate Medicare and Medicaid beneficiaries on fraud, waste and abuse and can provide information, education and individual assistance. Please call 1-800-423-2449.

PUBLIC HEALTH OR VISITING NURSES: Each Iowa county has a public health nurse or visiting nurse. These professional nurses provide skilled nursing services as well as health instruction to patients in the patient's own home. A sliding fee scale is typically used to determine the cost of these services. To contact the public health or visiting nurse in your county, check the county section of your telephone book or contact the local area agency on aging.

RESPIRE CARE: Respite care provides temporary relief to the caregiver of a

dependent individual, one or both of whom are aged 60 or older. The respite may be brief, 23 hours in duration, or longer than 24 hours, and care may take place at the individual's residence or elsewhere. Contact your local area agency for the location of the nearest respite care program.

SENIOR HEALTH INSURANCE INFORMATION PROGRAM (SHIIP): The Senior Health Insurance Information Program (SHIIP) of the Iowa Insurance Division has trained local counselors in most parts of Iowa. The counselors are available to answer your questions concerning any of the following issues:

- Medicare Supplemental Insurance Policies
- Medicare, Part A and Part B
- Long-term Care Insurance Policies
- Medicare + Choices
- Comparing policy coverages
- Other types of health insurance sold to senior citizens
- Insurance and Medicare claims.
- Tips on how to deal with agents, phone solicitors and mailings
- How to file a complaint with the Iowa Insurance Division
- Medicare prescription drugs

This is a free confidential service. Counselors do not sell insurance or promote specific companies, policies or agents. For information about assistance in your area, contact the Iowa Insurance Division or your local area agency on aging.

SHIIP
Insurance Division
Iowa Department of Commerce
330 East Maple
Des Moines, Iowa 50319
1-800-351-4664

SOCIAL SECURITY ADMINISTRATION: To contact the Social Security Information Center, call the nationwide toll free number, 1-800-772-1213 from 7 a.m. to 7 p.m. The TDD toll free number is 1-800-288-7185. If you already know which of Iowa's Social Security Administration offices serves you, you may also get the number from the telephone book or directory assistance, and call that office directly. The Social Security Administration office can provide assistance with Social Security Retirement and Survivor Benefits, SSI (Supplemental Security Income), Social Security Disability, and Medicare enrollment.

STATE LONG TERM CARE OMBUDSMAN: The Long Term Care Ombudsman represents the interests of residents of long term care facilities in Iowa. This includes investigating complaints, acting as an advocate for long term care residents, and monitoring state and federal laws affecting long term care in Iowa.

Long Term Care Ombudsman
Jesse Parker Building
510 East 12th Street, Suite 2
Des Moines, Iowa 50319
1-800-532-3213

TAXPAYER SERVICE TAX COUNSELING FOR THE ELDERLY: The United

States Internal Revenue Service (IRS) maintains a Taxpayer Service which can attempt to answer your questions concerning federal taxes. For assistance in completing your tax return, you can call the same toll free number to get the help of a trained volunteer through the Tax Counseling for the Elderly program. There are more than 500 volunteers in Iowa who will assist the elderly (and also low income persons of any age) with their state and federal taxes, at no charge.

Taxpayer Service/Tax Counseling for the Elderly
Statewide: 1-800-829-1040

AARP Tax Aide: 1-888-227-7669

IOWA STATE DEPARTMENT OF REVENUE: The Iowa Department of Revenue staff can answer your questions concerning Iowa taxes, including questions about preparation of your Iowa income tax forms. Call the numbers listed below. For information about property tax credits, call 515-281-4040. For information about rent reimbursement, call 515-281-5722.

Iowa State Department of Revenue
Hoover Building
Des Moines, Iowa 50319
515-281-3114
1-800-367-3388

VETERANS ADMINISTRATION REGIONAL OFFICE: Provides assistance with the wide range of benefits available to veterans and certain relatives of veterans.

Veterans Administration Regional Office
210 Walnut Street
Des Moines, Iowa 50309
1-800-827-1000
515-323-2669

Index

Annual report	8,9,14,15,19,21
Best interests	6,10,11,14
Bond	17,18,21,22
Compensation	12,16
Confidentiality	11
Conservatorship reports	14,15
Court approval	7,10,12,13,16,17
Death	12,16
Do Not Resuscitate	10
Fiduciary	6,16,17,18
Final report	8,12,14,16,19,22
General or full conservatorship	7
General of full guardianship	13
Gifts	13
Guardianship reports	8,9
Initial report	8,14,19,20
Inventory	14,16,20
Liability	12,16,17
Life-sustaining procedures	7
Limited conservatorship	13
Limited guardianship	7
Living wills	10
Marry	9
Modification	9,15
Nursing facility	10,13,24,26,27,28
Power of attorney	10
Removal	9,14,15
Resources	10,11,12,16,23
Standby conservatorship	13
Standby guardianship	7,8
Terminate	8,12,14,15,16,19
Visits	8,11,12,16,19,28
Vote	9,15
Will	9,10,13,15



625 East Court Avenue
Des Moines, IA 50309
515-243-3179
www.iowabar.org

“Serving the Public and the Profession Since 1874”