

HF610 – CHANGES TO ADULT
GUARDIANSHIP AND CONSERVATORSHIP
AS OF 1/1/2020, OR...

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OH GOOD, EVERYTHING IS CHANGING



CAVEATS



HF610, HISTORY AND OVERVIEW

- Iowa Supreme Court appointed a 72-member reform task force in 2015
- University of Iowa College of Law/Professor Gittler reviewed 4,000 guardianship/conservatorship case files
- Task Force final report identified problems and made 272 recommendations for reform
- HF610 and HF591 passed both houses of the legislature and were signed into law on May 1, 2019.
- New laws take effect on January 1, 2020

WHAT STAYED THE SAME?

- Criteria for appointment
- Standard for appointment
- Standard for termination
- Limited guardianships still required in all cases (633.560)

SO WHAT CHANGED?

- Numbering
- Terminology
- Bonding
- Petition requirements
- Voluntary G/C
- Hearing requirements
- Mediation
- Respondent's rights
- Court visitors
- Professional evaluations
- Background checks
- G/C for minors nearing 18
- Emergency appointment
- Standby
- Reporting requirements

NUMBERING

- Adult guardianships and adult and minor conservatorships are still governed by chapter 633
- Minor guardianships now in Iowa Code 232D (Juvenile court)
- Statutory Citations have changed – lots of sections repealed or transferred
- More of a concern for attorneys than anyone else, but something to keep in mind if you have a template or form

TERMINOLOGY

OLD

- “Ward”
- “Proposed ward”
- “Guardian ad Litem”
- Limited guardianship?

NEW

- “Protected Person”
- “Respondent”
- “Court visitor”*
- Limited guardianship

BOND



- 633.174, 175
- No bond required for guardians
- Bond or bond substitute required for all conservators, except Iowa institutions with trust powers
- Bond alternative requires review and approval by the court

NO MORE “VOLUNTARY” APPOINTMENTS

- HF 610 eliminates the code sections that allowed voluntary appointment of guardians and conservators for adults (633.557, 572)
- BUT, someone who wants to set up a substitute decision-maker for themselves can still file their own petition
- Major difference:
- Due process for the respondent

WHO CAN FILE A PETITION?

OLD

- “Any person” may file a verified petition for the appointment of a guardian or conservator (633.552, 566)

NEW

- “A person with an interest in the welfare of the adult, which may include the adult who is the subject of the petition” (633.556)

WHAT DO YOU HAVE TO PUT IN A PETITION? 633.556

- A “concise statement of the factual basis” for the petition, or,
 - Why does this person need a guardian or conservator?
- A “concise statement of why there is no less restrictive alternative” to a guardian or conservator, or,
 - What else have you tried first, or thought about trying?
- Brief description of functional limitations (conservatorship)

WHAT DO YOU HAVE TO PUT IN A PETITION? (CONT.)

- Name and address, if known, of:
 - Spouse, Adult children, Parents
 - Any adult who has had primary care of the respondent or who he/she has lived with for six months prior to the petition
 - Any legal representative or representative payee
 - Attorney in fact under durable HCPOA
 - Anyone else who may have an interest

WHO NEEDS TO KNOW?

- Now that you've listed all those people in the petition...
- **NOTIFY THEM (633.558; ICRP Rule 1.302)**
- Court can authorize notice by mail

HEARING REQUIREMENTS

633.560

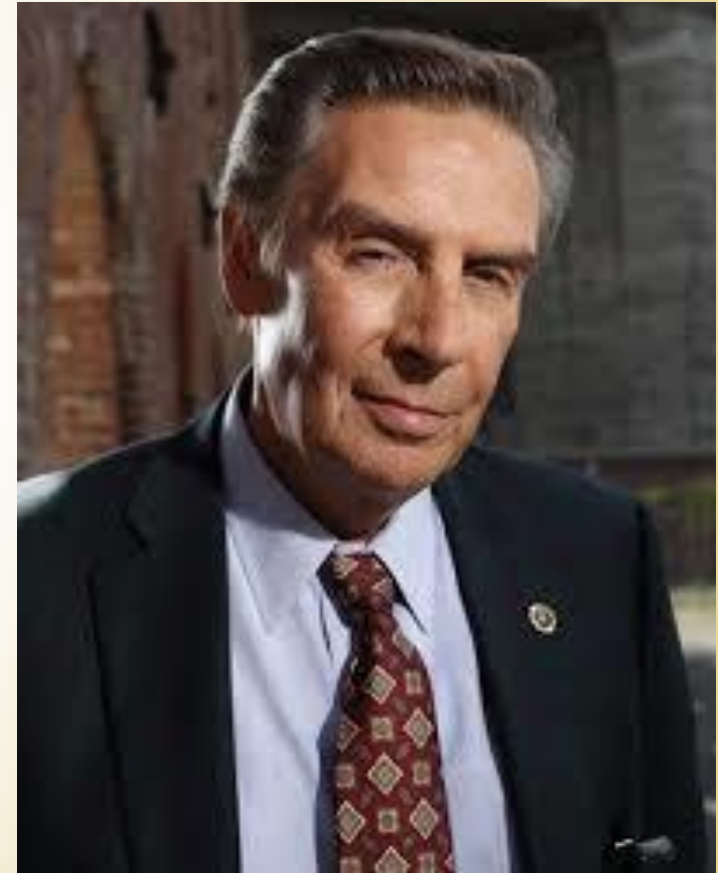
- Everybody gets a hearing on the record
 - “A complete record of the hearing shall be made” Respondent is entitled to attend, and entitled to reasonable accommodations
 - Court can waive attendance for good cause, but must make a record of why
- Proposed guardian/conservator shall attend; guardian can be excused for good cause.
- Court visitor shall attend; can be excused for good cause
- Any other interested person can apply to participate; court has discretion

MEDIATION 633.560A

- The court can order or any party can ask for mediation (see chapter 679C)
- Parties can agree to or court can appoint a mediator
- Intended to attempt to have parties reach voluntary agreements as an alternative to using court time and resources
- Court can waive mediation if there is a history of domestic violence or an allegation of elder abuse

YOU HAVE THE RIGHT TO AN ATTORNEY 633.561

- So long as the respondent is an adult and not the petitioner, he or she has the right to appointed counsel.
 - In a standby petition, the court has discretion to appoint counsel, depending on the circumstances
 - Respondent can retain their own attorney too
- Attorney has to advocate for the respondent's wishes, or least restrictive alternative in his best interests if unknown



COURT VISITOR 633.563

- Replaces “Guardian ad Litem”
- Court has discretion to appoint CV, if necessary
 - Respondent pays, unless indigent.
- CV and respondent’s attorney cannot be the same person
- CV doesn’t have to be an attorney

COURT VISITOR (CONT)

- Duties of CV (unless otherwise modified by the court):
 - Interview respondent in person and explain the situation
 - Determine the respondent's views
 - Report to the court – limited guardianship? Less restrictive alternatives? Guardian appropriate? Respondent's opinion?
- Court can direct CV to:
 - Interview petitioner, and proposed guardian/conservator
 - Visit the place where the respondent will live if guardian appointed
 - Investigate and interview others as directed by the court

PROFESSIONAL EVALUATION 633.563



- Court SHALL order PE at hearing on appointment, modification, or termination
- But court has discretion to waive PE if it finds it has enough info or someone has already filed a PE
- BUT if the court still thinks it needs more info, it can order additional evaluation
- Evaluator has to be qualified
- Report has to include specific, detailed information (see statute)
- Report sealed upon request; made available only to petitioner, respondent, and their attorneys

BACKGROUND CHECKS

633.564

- Background checks now required for all prospective guardians/conservators
- Criminal, child abuse, dependent adult abuse, sex offender
 - Doesn't apply to financial institutions with trust powers
- Judicial branch to establish procedures
- \$15 fee to get all background checks through single contact repository
- No automatic disqualifiers – court still has discretion



G/C FOR MINORS NEARING 18 633.567

- Allows for an adult to file a petition for a minor who is at least 17 years and six months old, to start the proceedings for a guardianship/conservatorship
- If established, takes effect on the minor's 18th birthday

EMERGENCY APPOINTMENT

633.569

- Temporary basis only
- Must state a reason why emergency appointment is necessary
 - Avoid immediate or irreparable harm to respondent
- Order appointing can be issued ex parte (without hearing) BUT
- Powers of decision-maker are limited to only the things necessary to address the situation
- Respondent can request a hearing – must be held within seven days
- Temporary appointment automatically terminates after 30 days

STANDBY GUARDIANSHIPS/CONSERVATORSHIPS

- 633.568, 633.591
- You can still petition to ask for a guardianship/conservator to be appointed on the occurrence of some future condition
- When that condition occurs, petition can be brought forth for hearing
- All that remains of so-called “voluntary” petitions

REPORTING FOR GUARDIANS 633.669

- Within 60 days of appointment, guardian must file an Initial Care Plan with:
 - Current residence of PP and guardian's plan for PP's residence
 - Plan for payment of expenses
 - Health status and needs, and the plan to meet those needs
 - Other professional services, educational, vocational, training, social activities
 - Contact with other persons
 - Contact with guardian
- Reports cannot be waived

REPORTING FOR CONSERVATORS 633.670

- Conservators have to file initial care plan within 90 days
- Must take into account PP's wishes and preferences and include:
 - Projected budget and resources, including conservator's fee
 - How will conservator involve the PP in decisions
 - What is the conservator going to do to help restore PP capacity, if anything
- PP, their attorney, and CV all get copies of the proposed plan and can raise objections before approval
- Any significant change or deviation requires an amended plan to be filed

RESPONSIBILITIES OF GUARDIAN 633.635

- New requirements (No court approval required)
 - Order appointing shall state the basis for the guardianship
 - Establishing PP permanent residence*
 - Taking care of personal effects, including companion, assistance, assistive, or service animals
 - Maintaining contact with the PP
 - Making reasonable efforts to identify and facilitate supportive relationships with family and others

RESPONSIBILITIES OF GUARDIAN (CONT.)

- Court approval required for:
 - Changing the PP's permanent residence to a NF, other secure facility
 - Withholding/withdrawing life sustaining procedures
 - Abortion or sterilization
 - Denying ALL communication, visitation, interaction with particular person(s) for good cause
 - Reasonable time, place, manner restrictions still permitted

QUESTIONS?

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