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RIGHTS OF WARDS

You may be reading this because you are a ward and have a guardian or because you know someone who is a ward. This publication will focus on what rights a ward retains once a guardian is appointed in Wisconsin.¹

A ward is a person who has been appointed a guardian by a Wisconsin circuit court. The court appointed the guardian because it found that person, the ward, met the legal standard for incompetency and needed a guardian.

All Wisconsin wards have certain rights that cannot be removed from them. These rights include the following:

1. To have access to, communicate privately with, and retain legal counsel.
2. The right to a jury trial if contesting the guardianship. The ward must request a jury trial at least 48 hours before the time the hearing is scheduled. If not, the right is waived.
3. The right to an independent medical or psychological examination relevant to the reason why the guardianship was established. If the ward is not indigent, then the examination will be at his or her own expense. If the ward is indigent, then the county where the petition will be heard is required to pay for the cost of the examination.
4. The right to be present at any hearing about the guardianship.
5. The right to have the hearing in a location and manner that is accessible to the ward.
6. To have access to and communicate privately with the court and governmental representatives.
7. To provide input into plans for support services.

¹ If a person resides in an in-patient facility and receives services for mental illness, a developmental disability, substance abuse, or if a person receives services under Wis. Stat. Ch. 55, one may also review the specific rights found in Wis. Stat. § 51.61. A person who is under a protective placement or protective services order may also have specific rights which may be found within Wis. Stat. Ch. 55.



8. To file grievances, including under state and federal law as well as those related to resident or patient rights.
9. To participate in administrative hearings and court proceedings.
10. To have access to and communicate with the protection and advocacy agency, Disability Rights Wisconsin (DRW), and with the Board on Aging and Long-term Care (BOALTC).
11. To protest a residential placement made without court involvement and to be discharged from a residential placement unless the ward is protectively placed or meets the requirements for emergency protective placement.
12. To petition for the court's review of the guardianship, protective placement, protective services, or commitment orders.
13. To give or to withhold consent reserved to an individual under Wis. Stat. Ch. 51.
14. To exercise any other rights specifically reserved to the individual by statute or the constitutions of the state or the United States, including the rights to free speech, freedom of association, and the free exercise of religious expression.
15. To exercise any legal right not expressly removed by the court or statute.

See Wis. Stats. § 54.18, 54.25(2)(b), and 54.42.

16. To have the guardian inquire about the ward's opinion when making decisions affecting the ward. Note: Guardians are required to make decisions that are in the ward's best interest. Those decisions must comply with the best interest standard; compliance with that standard does not necessarily mean the guardian must choose what the ward wants although the ward's preference must be considered.

See Wis. Stats. § 54.18, 54.19, 54.20(1), and 54.25(3).

In addition to the above rights, there may be rights that were not removed as part of the guardianship. It is important to review closely the guardianship's Determination and Order to discover what rights may have been retained by the ward, removed wholly and no one may exercise that right, transferred to the guardian, or shared with the guardian. Be aware that some powers may only be exercised with court approval or with an additional court order, such as a protective placement or protective services order or selling the ward's real estate.



It is also important for one to be aware of what type(s) of guardianship was ordered and who was appointed as guardian. Guardians who are not another type of decision-maker may be limited in what they can do. For example, a guardian of the person may not manage the ward's income unless the guardian is also the guardian of the estate, power of attorney for finances agent, conservator, or representative payee (which is limited to the management of Social Security benefits). Likewise, a guardian of the estate cannot make health care decisions unless the guardian of the estate is also the guardian of the person or the activated health care power of attorney agent.

Those wards with corporate guardians as their guardians also have the following rights in addition to all of the preceding rights:

1. To be treated with respect and dignity by the staff and volunteers of the corporate guardian.
2. To be free from abuse, mistreatment, neglect and the misappropriation of property.
3. To have one's health and personal information and records be confidential, except when the corporate guardian is authorized to and gives informed consent to the disclosure.
4. To be informed of the services provided by the corporate guardian agency.
5. To be consulted about decisions on the ward's behalf, to the extent the ward is capable.
6. To have guardianship services provided in a way that is least restrictive.
7. To communicate freely with the advocates of the ward's choice.
8. To file a grievance or a complaint without retaliation.

See Wis. DHS Admin. Code § 85.13.

QUESTIONS? Call the Wisconsin Guardianship Support Center at 1-855-409-9410 or email at guardian@gwaar.org.

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