

# Guardianship Support Center

## TEMPORARY GUARDIANSHIPS

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Unfortunately, family members and friends sometimes are in the position of needing a temporary guardianship for a loved one who has no legal decision-maker, did not perform any advance planning or the advance planning performed is insufficient, and who needs significant and immediate assistance with decision-making. This article is intended to answer some of the frequently asked questions for those in that position.

### **Who can file a petition for temporary guardianship?**

“Any person” may file a petition for temporary guardianship. See Wis. Stat. § 54.50(3)(a). A non-lawyer as well as an attorney may file a petition for temporary guardianship.

### **What is the standard for obtaining a temporary guardianship?**

A person is not determined to be incompetent as part of a temporary guardianship. In a temporary guardianship, the court must determine whether there is a “reasonable likelihood that the proposed ward is incompetent.” Wis. Stat. § 54.50(3)(c). This is shown by the petitioner presenting a report or the testimony of a physician or psychologist evidencing the person’s state. Id.

### **What information must be contained within the petition for temporary guardianship?**

Certain information must be provided including the proposed ward’s name, date of birth, and address; the identity and address of all interested persons; the proposed ward’s assets and income; whether the proposed ward had performed any advance planning; and details about the person’s alleged incapacity. Wis. Stat. § 54.50(3)(a) and 54.34(1).

### **What type of situations might necessitate a temporary guardianship?**

There is not one specific situation that might require a temporary guardianship; often, the appointment of a temporary guardian is fact-dependent. Situations where the GSC has seen the reoccurring need for a temporary guardianship include when an individual has had a serious accident or injury, does not have the ability to communicate, and needs a decision-maker because no advance planning was performed. There may be times where the individual’s state has diminished significantly because of a progressive illness, no advance planning was performed, and a decision-maker was also needed to make decisions to help prevent harm to the individual. A temporary guardian might also be needed in specific situations involving invalid or insufficient advance planning or an issue with a POA agent.



**What forms are typically filed with the court to initiate a temporary guardianship?**

Forms often used to initiate a temporary guardianship in Wisconsin are as follows: 1) GN-3100: Petition for Guardianship Due to Incompetency; 2) GN-3110: Order and Notice of Hearing; 3) GF-131: Order Appointing Guardian ad Litem or Attorney; 4) GN-3140: Statement of Acts; and 5) GN-3230: Consent to Serve as Temporary Guardian. Another form that could be filed with these forms is the form GN-3115: Waiver and Consent, which can be signed by an interested person who supports the petition for guardianship. Once service has been performed, the petitioner should also prepare the form GN-3120: Affidavit of Service as would be appropriate. Because each county may have its own practices related to guardianship, a review of local practices is also recommended before petitioning for any guardianship.

**May a temporary guardianship be petitioned for at the same time as a permanent guardianship?**

Yes, both types of guardianships may be petitioned for at the same time. The same form, GN-3100: Petition for Guardianship Due to Incompetency, can be used for both. If both types of guardianship are petitioned for at the same time, careful review of the applicable requirements for each type must be performed. For example, in a temporary guardianship, the petitioner might provide a physician's or psychologist report or their testimony. The report or testimony is about the proposed ward's likelihood of incompetency. In a permanent guardianship, the petitioner must submit a completed examining physician's or psychologist's report, at least 96 hours before the hearing, as well ensure the applicable expert can provide testimony at the hearing.

**What are the service requirements for a temporary guardianship on the proposed ward?**

The petitioner is required to provide notice of the petition to the proposed ward. With that notice, the petitioner must include notice of the proposed ward's right to counsel and notice of the proposed ward's right to petition for reconsideration or modification of the temporary guardianship at any time. The petitioner must perform service of the notice of hearing on the proposed ward before the hearing; or, if service before is not possible, no later than three calendar days after the hearing. However, if service is performed after the hearing, the petitioner must also provide the ward with the court order for temporary guardianship. Wis. Stat. § 54.38(6).

**Will a guardian ad litem be appointed?**

Yes, a guardian ad litem (GAL) will be appointed. The GAL will report to the court on whether temporary guardianship is advisable either at the hearing or, if afterward, within ten calendar days after the hearing. The GAL is required to try to meet with the ward before the hearing or as soon as possible after the hearing. If the GAL meets with the ward after the hearing, the GAL must meet with the ward within the first seven calendar days after the hearing. Wis. Stat. § 54.50(3)(b).



### What timelines might apply?

A hearing for temporary guardianship cannot be held any earlier than 48 hours after the petition was filed unless good cause is shown. Wis. Stat. § 54.50(3)(c). How soon after the 48-hour period the hearing is held often depends on local practices. The period for a temporary guardianship may not exceed sixty days except, upon the showing of good cause, the court can extend the temporary guardianship for another sixty days. The possible total length for a temporary guardianship is one hundred and twenty days. After the expiration of the temporary guardianship and any extension, no other temporary guardianship may follow for at least ninety days. Wis. Stat. § 54.50(2).

### When does a temporary guardianship end?

A temporary guardianship will end (1) at the expiration of the time period for which it was ordered, (2) when the court has determined a temporary guardianship is no longer needed and terminates the temporary guardianship, (3) when the ward dies, or (4) when an order for a permanent guardianship is entered.

### Any particular concerns with the temporary order?

The court must specify the temporary guardian's authority and that authority must be reasonably related to the reasons for appointment stated in the petition for temporary guardianship. Unless approved of by the court, the guardian may not sell real estate or expend more than \$2,000. Wis. Stat. § 54.50(2).

Careful review of the proposed ward's needs prior to filing the petition is recommended.

**QUESTIONS? Call the Wisconsin Guardianship Support Center at 1-855-409-9410 or email at [guardian@gwaar.org](mailto:guardian@gwaar.org).**

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