

THE BASICS OF GUARDIANSHIP

Updated & Reviewed 07/17; 02/18

I. Why is Guardianship Needed?

- A. In Wisconsin, the general rule is that the only person who is authorized to make decisions for an adult is that adult.
1. Wisconsin, unlike many states, is not a “next of kin” or “family consent” state for adults – Wisconsin law does not authorize family members (except for hospice admissions) to make decisions for incapacitated adult family members.
 2. As a general rule, spouses cannot make decisions for spouses, parents cannot make decisions for adult children, and adult children cannot make decisions for parents.
- B. Examples of exceptions to general rule:
1. “Implied consent” in emergencies;
 2. Others chosen by an adult who is “of sound mind”:
 - a. Agent pursuant to a Power of Attorney for Health Care or Power of Attorney for Finances (Durable Power of Attorney)
 - <https://www.dhs.wisconsin.gov/forms/index.htm>
 - <http://gwaar.org>
 - b. Joint financial account holders
 - c. Joint property owners (except for sale of real estate)
 3. Representative payee selected by Social Security Administration to manage benefits.
 4. Guardian of the Person, Guardian of the Estate or Conservator appointed by a court pursuant to Wis. Stats. Ch. 54.
 5. Decisions made pursuant to Wis. Stats. Ch. 51 and Ch. 55.
 6. Those permitted by statute in specific situations under Wis. Stat. § 50.06 (nursing home admissions) Wis. Stat § 50.94 (hospice).



C. A guardian is needed if a person is “incompetent,” and:

1. He or she was never mentally capable to doing advance planning to appropriately select someone in accordance with state law to make decisions on their behalf (such as Power of Attorney for Health Care and Finances); or
2. He or she was mentally capable of doing advance planning prior to incompetency but did not; or
3. He or she did advance planning, but it is invalid or doesn't cover the specific issue that needs addressing; or
4. He or she is the victim of self-neglect, abuse, financial exploitation or neglect and the health care/financial agent is the abuser/exploiter/neglector or cannot protect the individual from self-neglect, abuse, exploitation or neglect.

II. What is Guardianship?

Guardianship is:

1. A legal relationship
2. Created by a county circuit (probate) court
3. After petitioner proves the necessary factual elements and the proposed ward has been provided due process rights
4. Pursuant to Wis. Stats. Ch. 54
5. Between a person called “the ward” and another person or persons called “the guardian of the person” and/or “the guardian of the estate”
6. When the ward is determined by the court to be “incompetent”

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

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