

The Basics of Guardianship

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I. What is guardianship of an adult?

Guardianship is a legal relationship created by a court when an individual is unable to make or communicate their own decisions regarding their personal welfare, their finances, or both. The court appoints a guardian to make certain decisions on behalf of the individual (the “ward”). Guardians may be appointed if the individual has not been able to do any advance planning via power of attorney documents, if the individual’s agents are unavailable, or if the individual’s agents don’t have sufficient authority to act on their behalf.

Because Wisconsin guardianship law starts from the belief that every adult has the right to make their own decisions, guardianship does not mean that an individual loses all their decision-making rights. While guardianship of a minor may provide the guardian with the authority to make any decisions in the best interests of the minor, the same is not true for adults. Part of the court process to appoint a guardian is to determine what types of decisions should be transferred to the guardian, and to what extent. The individual under guardianship retains all rights that have not been transferred to the guardian.

II. When is guardianship needed?

Wisconsin splits guardianship of an adult into guardianship of the person (matters to do with health and safety, living and employment situations, etc.) and guardianship of the estate. An individual can have one or both. They may have the same guardian for both, or different guardians for each.

Wisconsin is not a “next of kin” or “family consent” state, which means that in most circumstances, if an individual is unable to make their own decisions, spouses and relatives don’t automatically have the right to make decisions for them. These are a few instances in which friends and family can make decisions without having to get the court involved:

- Delegation of authority to others via previously completed power of attorney for health care and/or power of attorney for finances documents;
- Admission to hospice is needed and the individual does not have a power of attorney;
- Implied consent in emergency situations;
- Representative payees appointed to manage Social Security/SSI benefits.



III. What is “incompetence” for guardianship proceedings?

If the individual is not able to make or communicate their own decisions and does not have a power of attorney, the agent and alternates are unavailable, or the power of attorney document doesn't grant the agent sufficient authority to act, guardianship may be necessary to make sure that someone has the authority to make decisions for the individual.

For a permanent guardianship, the court must find that an individual is “incompetent.” This means that the court must decide that the person has an impairment that is probably permanent, that the impairment causes the individual to be unable to make or communicate decisions with informed consent, and that the individual's physical or financial well-being are at risk. The court must also determine whether less-restrictive options are available or acceptable to the individual, including a power of attorney or supported decision-making.

An impairment is defined as “a developmental disability, serious and persistent mental illness, degenerative brain disorder, or other like incapacities.” Note that old age, physical disability, eccentricity, etc. are not sufficient without evidence that they impact the individual's decision-making ability.

For a temporary guardianship, an evaluation from a physician or psychologist must indicate that there is a reasonable likelihood that the individual is incompetent. Temporary guardianships may last up to 60 days, with one 60-day extension possible if necessary. A temporary guardianship may be appropriate in a situation where the individual's condition might improve (e.g., following a stroke), where the individual is unconscious but expected to awaken, and similar scenarios. A temporary guardianship can also be put in place while a permanent guardianship petition is pending.

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

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