

WHAT IS A GUARDIAN OF THE ESTATE?

A guardian of the estate is an individual or corporation appointed by a probate court pursuant to Ch. 54 the Wisconsin Statutes (Ch. 880 prior to December 1, 2006) to manage the financial affairs of another person (called the ward) who the court has determined is either incompetent or a spendthrift. The guardian of the estate has no authority over personal and health care decisions, such as determining needed services, consenting to or refusing health care treatment, or admitting the ward to a nursing home, unless she or he is also appointed as the ward's guardian of the person.

WHY IS A GUARDIAN OF THE ESTATE NEEDED?

A guardian of the estate is needed to act as a decision-maker when an adult does not have the mental capacity to make his or her own financial decisions and did not execute appropriate advance directives, such as a trust or Durable Power of Attorney for Finances. A guardian of the estate may also be needed to manage the finances of an individual who is a spendthrift; that is, someone who engages in a wasteful course of conduct (e.g. excessive gambling) that endangers his or her support or the support of dependents.

The court will only appoint a guardian of the estate if it finds that there is no less restrictive intervention available to manage the individual's finances that the individual will accept. Also, the court has discretion to not appoint a guardian of the estate for individuals with small estates.

The court may appoint co-guardians of the estate. The co-guardians must agree on all decisions unless the court directs otherwise.

The court may also appoint a standby guardian of the estate. The standby guardian is appointed to step into the role of guardian if the guardian dies, resigns or is temporarily unavailable due to illness or vacation. The standby guardian must contact the Register in Probate in the county

that ordered the guardianship to obtain Letters of Guardianship in order for his or her authority to be effective.

WHAT ARE THE DUTIES AND POWERS OF A GUARDIAN OF THE ESTATE?

The "Letters of Guardianship" issued to the Guardian by the court will state the scope of the guardian's authority. In many guardianships ordered prior to December 1, 2006, the Letters state: "you are granted Letters of Guardianship with the powers and duties of a general guardian." Guardians with this authority have all the duties and powers included in this publication. For guardianships ordered on or after December 1, 2006, the specific powers of the guardian will be listed in the Letters.

The guardian's authority is divided into four categories:

- What a guardian of the estate may never do.
- What a guardian of the estate must do (duties of guardians of the estate).
- Powers a guardian of the estate may exercise without approval of the court.
- Powers a guardian of the estate may exercise only with specific approval of the court.

Because of the complexity of the law governing a guardian's authority, a guardian of the estate is encouraged to seek legal information and assistance.

WHAT MAY A GUARDIAN OF THE ESTATE NEVER DO?

A guardian of the estate may never:

- Loan any of the ward's money or property to himself or herself.
- Use any of the ward's money or property for the benefit of the guardian.

WHAT ARE THE DUTIES OF A GUARDIAN OF THE ESTATE?

A guardian of the estate is required to:

- Exercise the degree of care, diligence, and good faith when acting on behalf of a ward that an ordinarily prudent person exercises in his or her own affairs.
- Advocate for the ward's best interests.
- Exhibit the utmost degree of trustworthiness, loyalty, and fidelity in relation to the ward.
- In light of the ward's functional level, understanding, and appreciation of his or her functional limitations, provide the ward with the greatest amount of independence and self-determination with respect to property management, consider the ward's personal preferences and desires, and consider the least restrictive form of intervention.
- Use the judgment and care that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, including the permanent, rather than speculative disposition of their funds and consideration of the probable income and safety of their capital.
- File an inventory of the ward's property within 60 days after appointment or by the date specified by the court.
- Account for all funds received and spent by filing an annual account by April 15, or the date specified by the court, for the preceding year. The court may waive the accounting requirement in some circumstances. Additionally, if the ward's income and assets are less than \$50,000, the court may not require an account.
- Take possession of the ward's real and personal property. (Ownership or title remains with the ward.)
- Use the ward's income and property to maintain and support the ward and any dependents.
- Determine if ward executed a will and, if so, the will's location and the appropriate persons to be notified of ward's death; if death occurs, notify them of death.

- Upon the ward's death, deliver the ward's assets to the entitled persons.
- File with the register of deeds of any county in which the ward possessed real property a sworn statement that describes the property, the date the ward was determined to be incompetent, and the contact information of the guardian.
- Apply to be appointed representative payee for any governmental benefits if none is already appointed, or ensure that one is appointed.
- Notify the court of any change of address of the guardian or ward.
- Other duties as required by the court.

WHAT POWERS MAY A GUARDIAN OF THE ESTATE EXERCISE WITHOUT APPROVAL OF THE COURT?

Assuming the guardian's authority has not been limited by the court, a guardian of the estate has the authority without the approval of the court to:

- Support another individual whom the ward is legally obligated to support.
- Enter into a contract.
- Exercise options to purchase securities or other property.
- Authorize access to or release of confidential financial records.
- Apply for public and private benefits.
- Pay the ward's legally enforceable debts, including any taxes owed, from the ward's assets and income.
- Retain real or personal property that ward already possesses or acquires by gift or inheritance during the guardian's appointment.
- Sell the ward's personal property at fair market value.
- Manage investments in accordance with Ch. 881, including the Prudent Investor Act.
- Settle all claims and accounts of the ward, and appear for and represent the ward in actions.

WHAT POWERS MAY A GUARDIAN OF THE ESTATE EXERCISE ONLY WITH SPECIFIC PRIOR APPROVAL OF THE COURT?

The guardian of the estate needs the approval of the court before she or he does any of the following:

- Make gifts of the ward's property.
- Sell, mortgage or lease the ward's real estate in accordance with Ch. 786.
- Transfer ward's funds to an existing revocable living trust.
- Establish special needs trusts.
- Purchase an annuity or insurance contract and exercise ownership rights.
- Exercise rights under a retirement plan or account.
- Exercise any elective inheritance rights (for example, disclaiming an inheritance to which the ward is entitled.)
- Exercise marital property management and control rights, including estate and Medical Assistance planning.
- Support an individual whom the ward is not legally obligated to support.
- Convey or release a contingent or expectation interest in property.
- Continue the business of the ward.
- Loan funds of the ward to another individual or entity. The court must approve the terms, rate of interest, and any security requirements of the loan.
- Be paid for the guardian's own time or services or be reimbursed for out-of-pocket expenses incurred on behalf of the ward.
- Purchase property of the ward.

WHO CAN A GUARDIAN OF THE ESTATE CALL WITH QUESTIONS?

Guardians and others with questions about guardianship can call the Wisconsin Guardianship Support Center at 1-800-488-2596, ext. 314. Or e-mail guardian@cwag.org.



GUARDIAN OF THE ESTATE: Duties and Powers

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