

WHAT IS A GUARDIAN OF THE PERSON?

A guardian of the person is an individual or corporation appointed by a probate court pursuant to Chapter 54 of Wisconsin Statutes (Chapter 880 prior to December 1, 2006) to make decisions for another adult (called the ward) who the court has determined is incompetent. The guardian of the person has no authority over the ward's property or finances, unless she or he is also appointed as the ward's guardian of the estate.

WHY IS A GUARDIAN OF THE PERSON NEEDED?

A guardian of the person is needed to provide a decision-maker when an adult does not have the mental capacity to make his or her own decisions and did not execute advance directives, such as a Power of Attorney for Health Care document. A guardian of the person might be needed when there is no valid Power of Attorney for Health Care and a decision is needed about where that person should live and/or what health care or other services are needed, or a decision is needed about proposed admission to a nursing home or group home. The court will only appoint a guardian of the person if it finds that there is no less restrictive intervention available.

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

The court may also appoint a standby guardian of the person. 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 IS THE AUTHORITY OF THE GUARDIAN OF THE PERSON?

The "Letters of Guardianship" issued to the guardian by the court state the scope of the guardian's authority. In many guardianships

ordered prior to December 2006, the Letters will state "you are granted Letters of Guardianship with the powers and duties of a general guardian." In those cases, the guardian has all the duties and powers listed below. For guardianships ordered on or after December 1, 2006, the specific powers of the guardian will be listed in the Letters; the duties are not listed but nevertheless apply.

WHAT ARE THE DUTIES OF A GUARDIAN OF THE PERSON?

All guardians of the person (regardless of when appointed) are 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.
- Endeavor to secure necessary care or services that are in the ward's best interests based upon regular in-person inspection of the ward's condition, surroundings, and treatment; examination of ward's health care and treatment records; attendance at staffings; inquiry into the risks and benefits and alternatives to proposed treatment; and consultation with providers of health care and social services.
- Make an annual report to the court and county.
- Notify the court of any change of address of the guardian or ward.

When exercising his or her authority, the guardian of the person, consistent with meeting the ward's essential requirements for health and safety and protecting the ward from abuse, exploitation and neglect, is required to:

- Place the least possible restriction on personal liberty and exercise of constitutional and statutory rights, and promote the greatest possible integration of the ward into his or her community.

- Make diligent efforts to identify and honor the ward's preferences.
- Consider whether the ward's estate is sufficient to pay for the needed services.

WHAT RIGHTS DO WARDS ALWAYS RETAIN?

The ward *always* retains (and does not need consent of the court or the guardian to exercise) the right to:

- Have access to and communicate privately with the court / government,
- Have access to, communicate privately with, and retain legal counsel,
- Have access to and communicate privately with the protection & advocacy agency (Disability Rights Wisconsin) and the ombudsman,
- Protest a placement, review the need for guardianship and/or protective services,
- Exercise constitutional rights.

WHAT RIGHTS/POWERS CAN THE COURT REMOVE FROM THE WARD?

There are three categories of rights/powers that the court can remove from the ward: rights that can be *extinguished* (removed from the ward but the guardian cannot exercise), rights that can be *shared* (the ward can exercise only with the guardian's consent), and powers that can be *transferred* (removed from the ward and the guardian can exercise on the ward's behalf). Effective December 1, 2006, wards retain all rights and powers unless the court specifically removes them.

For guardianships ordered on or after December 1, 2006, the "Determination and Order on Petition for Guardianship Due to Incompetency" issued by the court will indicate which of the ward's rights, if any, have been extinguished. Both the "Determination and Order" and the "Letters of Guardianship" will indicate which rights, if any, are shared between the ward and the guardian, and which powers are transferred to the guardian.

Possible *extinguished* rights include the right to consent to marry, execute a will, serve on a jury, hold a driver's or hunting license, hold a professional license, consent to sterilization, consent to organ, tissue or bone marrow donation, or vote.

Possible *shared* rights include the right to marry, hold a license, consent to sterilization, and consent to donate organ, tissue or bone marrow donation.

Possible *transferred* powers include the following:

- Consent to voluntary or involuntary medical examination and treatment, if in the ward's best interest. This includes the voluntary receipt by the ward of medication, including any appropriate psychotropic medication that is in the ward's best interest, if the guardian has first made a good-faith attempt to discuss with the ward the ward's voluntary receipt of the psychotropic medication, **and the ward does not protest**. A guardian may only consent to the involuntary administration of psychotropic medication under a court order for protective services. In determining whether medication or medical treatment is in the ward's best interest, the guardian must consider the invasiveness of the medication or treatment, the likely benefits of the medication or treatment and the side effects of the medication or treatment.
- Consent to participation in research under certain conditions.
- Consent to social and supported living services.
- Consent to release of confidential records other than court, treatment, and patient health care records.
- Make decisions related to mobility and travel.
- Choose providers of medical, social, and supported living services.
- Make decisions regarding initiating a petition for the termination of marriage.

- Receive all notices on behalf of the ward.
- Act in all proceedings as an advocate of the ward.
- Apply for protective placement or commitment.
- Have custody of the ward.
- Any other power the court specifically identifies.

MAY A GUARDIAN ADMIT A WARD TO A NURSING HOME OR GROUP HOME?

Generally, a guardian of the person may *not* admit a ward to a nursing home or group home *unless* there has also been a court order "protectively placing" the ward. Protective placement is ordered by the court when a person has been found to be incompetent; to be so totally incapable of providing for his or her own care or custody as to create a substantial risk of serious harm to oneself or others; and to have a disability which is permanent or likely to be permanent.

A protective placement order is not needed if the facility is licensed for less than 16 beds. In addition, there are other circumstances when a protective placement order is not needed. guardians should seek legal information and advice before admitting their ward into a facility.

MAY A GUARDIAN CONSENT TO THE WITHHOLDING OR WITHDRAWAL OF LIFE SUPPORT?

Under certain circumstances a guardian of the person may have the authority to consent to the withholding or withdrawal of life support, including feeding and hydration tubes.

Because of the complexity of the law in this area, guardians facing these decisions should seek legal information and advice before taking action.

WHO CAN A GUARDIAN OF THE PERSON CALL WITH QUESTIONS?

Contact the Wisconsin Guardianship Support Center at 1-800-488-2596, ext. 314 or via email at guardian@cwag.org.



GUARDIAN OF THE PERSON: Duties and Powers

Reproduction of this brochure is encouraged, provided credit to the Wisconsin Guardianship Support Center of the Coalition of Wisconsin Aging Groups is retained.



"Advocating for All Generations"

Coalition of Wisconsin Aging Groups
Intergenerational Leadership Development ■ Education ■ Advocacy ■ Elder Law Center

2850 Dairy Drive, Suite 100
Madison, Wisconsin 53718-6751
1-800-488-2596, ext. 314
guardian@cwag.org
www.cwag.org

05/01/2011