

Types of Guardianship

➤ **What is Full Guardianship?**

A full guardianship is when a Guardian of the Person or a Guardian of the Estate or both is appointed by the court, and the court does not limit the powers of the guardian in the area in which they are appointed. Full Guardianship is used only when it is not realistic for the ward to retain rights and duties because he/she is unable to care for his/her property or self. A ward may need only one type of guardianship or both. Similarly, a court may appoint different individuals as guardians for the two roles or the same individual for both roles.

➤ **What is Limited Guardianship?**

In a Limited Guardianship, the ward retains more rights than in a Full Guardianship, except for the specific rights granted to the guardian. As with Full Guardianship, the ward is adjudicated incompetent. The Court is willing to consider tailoring guardianship to the abilities of a ward.

➤ **What is Guardianship of the Person?**

The Guardian of the Person has responsibility for overseeing the care and living situation of the ward, as well as medical decision-making. The guardian's role is to assist the ward in making decisions about the support services the ward will receive, where the ward will reside, and medical treatment for the ward. If the ward is unable to make decisions, even with assistance, the guardian of the person has the authority to make decisions for the ward.

➤ **What is Guardianship of the Estate?**

The Court will order a Guardianship of the Estate for a ward who is unable to handle his/her property and financial obligations. The Guardianship of the Estate may be full, with the guardian exercising a great deal of authority over the ward's financial and property matters, or a ward may be able to handle some of his/her finances or property.

➤ **What is Limited Guardianship of the Property?**

In a Limited Guardianship of the Property, the guardian manages the ward's assets that do not come from wages or earnings. The ward continues to have the right to receive and spend all wages and other earnings from employment and to make contracts for sums up to the greater of one month's earnings or \$300. Unless the Court specifically orders other limitations on the ward, there are no other limits to the ward's rights.

➤ **What is a Standby Guardian?**

The Standby Guardian is a person who has the same responsibilities as the appointed guardian, but only assumes responsibility if the appointed guardian dies, becomes incapacitated or resigns. It is best to designate a Standby Guardian at the initial guardianship hearing. At the time he/she is to assume responsibility, the Court must find the Standby Guardian acceptable, after which letters of guardianship will be issued.

➤ **How does a Standby Guardian become activated?**

The Standby Guardian must notify the Court to activate the Standby Guardianship.

➤ **What is a Successor Guardian?**

The Successor Guardian takes on responsibilities that were handled by the appointed guardian. If, at the initial guardianship hearing, a Standby Guardian was not appointed, a new proceeding to replace the appointed guardian must occur. The person appointed at this later time is the Successor Guardian.

➤ **What is Temporary Guardianship?**

Temporary Guardianship is one that is limited to a specific period of time. By law, the Temporary Guardianship is limited to 60 days with the possibility of one extension of another 60 days if the Court allows it. Temporary Guardianship may avoid the more serious results of Full Guardianship. The statute allows the Court to appoint a Temporary Guardian when the welfare of a person requires immediate attention. If authorized and the ward doesn't protest, the Temporary Guardian is then able to have the ward put in a hospital, nursing home or elsewhere for short-term care. This type of guardianship is used primarily for medical emergencies. Temporary Guardianship also can be limited in scope of authority. For example, the Temporary Guardian may be appointed for the sole purpose of consenting to medications during the ward's hospital stay.

➤ **What is Co-Guardianship?**

Two people are appointed as guardian for the same ward. Generally, Co-Guardianship of the ward requires the Co-Guardians to be spouses, and/or the parents of an adult with developmental disabilities. A potential pitfall of this type of guardianship is when Co-Guardians disagree about the care of the ward.

➤ **What is a Corporate Guardian?**

A professional guardianship agency that is independent of any other services for the ward becomes the guardian. Corporate Guardians are regulated by the Wisconsin Department of Health and Family Services.

What is the difference between a guardian and a Representative Payee for Supplemental Security Income (SSI) or Social Security Disability Income (SSDI)?

The Social Security Administration (SSA) can appoint a Representative Payee for someone who receives SSI or SSDI benefits if this would be in the person's best interests due to mental or physical incapacity. Appointing a Representative Payee avoids a finding of legal incompetence and is limited to only handling the funds from the government benefits. The payee is to use the money for the person's benefit and is accountable to the SSA on how the funds are used. In general, the Representative Payee helps a person pay his/her monthly bills, balance his/her checkbook, file taxes, do banking, assist with personal spending, and create a budget. The Guardian of the Estate is not required to be the Representative Payee. However, the Guardian of the Estate should serve as an advocate and auditor related to expenditures on behalf of the ward.

➤ **What is a Power of Attorney (POA) for Health Care and how does it affect guardianship?**

The POA is a document that a person can complete while they are still competent regarding future medical treatment and care. In the document, he/she names another person to make healthcare decisions when and if he/she becomes incapable of making his/her own decisions. He/she can also direct the types of decisions made, including short-term admission to a nursing home, end of life healthcare decisions, types of medications and other treatments to be administered. This is a formal document, which requires witnesses and certain content spelled out in the Wisconsin Statutes. A person under guardianship (full or of the person) does not generally need a POA for Healthcare. The POA for Healthcare supercedes the Guardian of the Person for healthcare decisions when the Court has ordered that the POA should remain in full force and effect. Standard forms and instructions for POA for Healthcare may be obtained from the Elder Law Center of the Coalition of Wisconsin Aging Groups (608-224-0606 or 800-488-2596, or email guardian@cwag.org).

Competency

➤ **What is incompetence?**

The legal standard for incompetence is when the Court finds that a person is substantially incapable of managing his/her property or caring for him/herself because of mental impairment caused by the aging process, or because of a developmental disability, or because of conditions, like mental illness or alcoholism, having similar effects. When a person is incompetent, he/she does not have the ability to understand the consequences of his/her decisions and actions, and make choices based on available information.

➤ **Who decides if a person is incompetent?**

A medical doctor (M.D.) or a Ph.D. level psychologist must conduct an evaluation of a person's competence. The Court ultimately determines the individual's incompetence. An M.D. or psychologist who knows the person well should make the recommendation. A clinician who has experience working with people with developmental disabilities will be in a better position to know what the individual's capacity is to care for himself/herself and to make decisions with available supports.

➤ **Can a person regain competency after guardianship?**

Yes, the individual, or any interested party, may request that the Court reconsider the person's competency to make his/her own decisions about his/her life. The ward should seek an M.D. or Ph.D. level psychologist to re-evaluate his/her competence. In Dane County, the Court makes the determination of competence and incompetence.

➤ **If the ward is found incompetent in Court, does it mean that he/she is incompetent to stand trial in a criminal case?**

No, a separate standard for competence is used in a criminal trial.

Rights of a Ward Under Guardianship

➤ **What rights does the ward retain under guardianship?**

Wards under guardianship retain basic constitutional and civil rights, and also have client rights. Limitations or restrictions on these rights can occur when there is a well-documented significant risk of harm to self or others.

➤ **What rights can a ward retain in Limited Guardianship?**

Rights can be retained (or restored) with a Court finding of limited incompetence. These include the right to contract, vote, marry, obtain a motor vehicle operator's license or other state license, and hold or convey property.

➤ **What rights are lost with Full Guardianship that can be regained later?**

At any time a ward or other interested party may petition the Court to request a review and reinstatement of certain rights. The Court will likely appoint a GAL to review the situation and make recommendations to the Court.

➤ **Can a person challenge a guardianship?**

Any interested party may challenge a guardianship and/or ask the Court to review a guardianship. The Court will likely appoint a GAL to review the situation and make recommendations to the Court.

➤ **What are the rights of a ward regarding sexual expression?**

The central issue is the ward's capacity to appraise his/her personal and sexual conduct. If the ward's capacity in this area is subject to debate or controversy, an assessment should be made, possibly involving a therapist. A guardian is part of the support team and should provide input. However, a guardian cannot consent to sexual activity on behalf of the ward, nor unreasonably attempt to prevent all sexual expression. This is a complex issue, requiring careful consideration and discussion.

➤ **Can a guardian require service providers to restrict the food intake or comply with dietary restrictions of the ward?**

A ward has the right to express his/her choices in what he/she eats. A plan to encourage and support healthy choices does not mean others can forcibly deny food to a ward. An exception may be a situation where significant and imminent harm to the ward or others could occur. In this case, a treatment plan should be developed by the support team, which includes the guardian. The plan should be designed to help the ward understand the consequences of certain food choices. The use of any restrictive interventions should be documented and reviewed regularly.

➤ **Can a person under guardianship sign a rental lease, or any other legal contract?**

If Guardianship of the Person and Estate has been granted, the ward should not sign any legal contracts. It is possible under Limited Guardianship for the ward to retain certain rights if the Court has so ordered. If those rights aren't retained by the ward, the guardian should be asked to sign the lease or contract.

➤ **Who supports the ward in making decisions?**

Guardians, advocates, families, support staff, case managers/brokers, and friends all have a role in supporting and advocating for the ward's interests and assisting him/her with decision-making.