



“Advocating for All Generations”

The Coalition of Wisconsin Aging Groups is a nonprofit, nonpartisan, statewide membership organization that was founded in 1978.

Coalition of Wisconsin Aging Groups

*Intergenerational Leadership Development ▪ Education ▪ Advocacy ▪ Elder Law Center*

## THE BASICS OF GUARDIANSHIP

### 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, 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)
      - [www.dhfs.state.wi.us/forms](http://www.dhfs.state.wi.us/forms)
      - <http://cwagwisconsin.org/publications/guardianship-support/>
    - 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 Ch. 54, Wis. Stats.
  5. Decisions made pursuant to Ch. 51 and Ch. 55 of the statutes.

**C. A guardian is needed if a person is "incompetent," and**

1. he or she was never mentally capable of doing advance planning to appropriately select someone in accordance with state law to make decisions on their behalf (such as Powers 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 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/neglecter 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 Ch. 54, Stats.,
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
7. to be "incompetent."

**QUESTIONS? Call the Guardianship Support Center at 1-800-488-2596 ext. 314. Or e-mail at [guardian@cwag.org](mailto:guardian@cwag.org).**

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