

# **GUARDIANSHIP TUTORIAL**

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## INTRODUCTION

A guardian is an individual appointed by the Court to make ongoing decisions for an individual who has been determined by the Court to be unable to appropriately handle matters related to his/her care, safety and/or financial and property affairs.

**This tutorial specifically identifies the duties and responsibilities for guardians appointed in Outagamie County only.** All guardians appointed in Outagamie County are expected to follow the guidelines set forth in this tutorial. All guardians, including family, friends and volunteers, will be expected to read the tutorial BEFORE appointment and sign a document acknowledging the tutorial was read. Guardians and prospective guardians will also have the opportunity to attend group training sessions that will be available at different times throughout the year should they desire additional training or assistance.

**Purpose:** The tutorial has been designed for the purpose of assisting both new and existing guardians to better understand their duties as guardian of person and guardian of estate. In this tutorial, the following information will be explained:

- guardianship terminology: commonly used terms and titles
- how a guardian is appointed
- general responsibilities
- duties of guardian of estate
- duties of guardian of person
- final duties of the guardian
- helpful hints
- general resource information

While this tutorial is intended to provide prospective and existing guardians in Outagamie County with guidance relating to the expectations and guidelines for their role as a guardian, it should not be construed as legal advice. A list of “Resources for Guardians” appears at the end of this tutorial. A guardian requiring assistance beyond the information provided in this tutorial, and beyond what may be available through the “Resources for Guardians” and the group training sessions offered through the County as mentioned above, may wish to consider consulting a private attorney.

Please note this tutorial does not address the duties of a **Power of Attorney**. A guardian is not the same as a Power of Attorney and the terms are not interchangeable.

## **GUARDIANSHIP TERMINOLOGY: Commonly used terms and titles**

**ADRC**-- Aging and Disability Resource Center

**AFH**-- Adult family home, up to four non-related individuals living together. There are two types of AFH:

- The traditional or owner occupied (OO): the owner of the home provides assistance to non-related individuals. The traditional AFH is typically certified by either the County or Managed Care Organization. If the traditional home serves more than two individuals the home must be licensed by the State of Wisconsin Division of Quality Assurance.
- Corporate: an agency provides shift staff to provide assistance in individuals. These are typically three to four bed homes and licensed by the State.

**Adversary Counsel**-- The attorney appointed by the Court to represent the ward's wishes if the ward is objecting to a guardianship related court proceeding.

**Annual Accounting**-- The guardian must complete a detailed accounting of how the ward's money was spent. This accounting is due by ***April 15*** of each year and **MUST** be completed by the guardian. The accounting requires all income be reported and verified how the money was spent, bank statements, ledgers and any other assets (funeral trusts, stocks, home, vehicles, insurance policies, etc.).

**CCI**-- Community Care Inc. One of two managed care organizations serving Outagamie County.

**CBRF**-- Community based residential facilities, as referred to as a group home, with five (5) or more unrelated people living together. The CBRF is licensed by the State of Wisconsin Department of Quality Assurance (DQA).

**Chapter 51**--The chapter of the Wisconsin State Statute that explains a mental health commitment process.

**Chapter 54**-- The chapter of the Wisconsin State Statute that explains the guardianship process.

**Chapter 55**-- The chapter of the Wisconsin State Statute that explains a protective placement process.

**Corporation Counsel**--The attorney (legal office of the County) that represents the Outagamie County Dept. of Health and Human Services.

**DHHS**-- The Outagamie County Department of Health and Human Services.

**GAL or Guardian ad Litem**--The attorney appointed by the Court to represent the ward's **BEST INTERESTS**. The ward cannot choose the GAL and cannot request a different attorney.

**Guardian**-- An individual or agency appointed by the Court to act in the ward's best interests. This may include making decisions for health care, living environments and managing all financial and property affairs.

- **Co-Guardian**-- 2 individuals appointed by the Court to act individually or together in the ward's best interest.
- **Standby Guardian**-- An individual appointed by the Court to act in the ward's best interest when guardian(s) can no longer act. Until Standby is activated by the Court he/she has no legal authority to act.

**LCI**-- Lakeland Care Incorporated, a managed care organization serving Outagamie County.

**Managed Care Organization (MCO)**-- Organization contracted with the State of Wisconsin to provide long-term care services for individuals with disabilities and elderly. Various programs are available to individuals:

- **Family Care** -- Publicly funded program that helps frail seniors and adults with disabilities manage health, medical and long-term care needs. An individual must be on Medicaid to qualify.
- **Partnership**-- Publicly funded program that helps frail seniors and adults with disabilities manage health, medical and long-term care needs. This program has specific providers that must be used. The care team also includes a nurse practitioner that coordinates with medical professionals. An individual must be on Medicaid to qualify.
- **IRIS**-- Include, Respect, I Self-Direct. A program for self-directed long-term supports. The member or guardian is responsible for managing services and supports within an individual budget and guidelines of allowable supports and services to meet the needs. Must be eligible for Medicaid, functionally in need of nursing home or Intermediate Care Facility (Does not mean the person must be in or go to such facility).

**Medicaid, also known as MA/Medical Assistance/Title 19**-- A government insurance program for individuals. In order to qualify individuals must ongoing meet assets requirements. Currently the limit is \$2,000 in total assets.

**Medicare**-- A federal entitlement program for citizens over the age of 65 and individuals with disabilities. This covers parts A, B, C, and D.

- **Part A:** Hospital coverage.
- **Part B:** Outpatient medical services.  
\*Identified on a white card with red and blue stripes for Part A & B
- **Part C:** A network plan (Medicare Advantage) that the federal government pays for private health coverage.  
\*Separate card
- **Part D:** Covers outpatient prescription drugs through private plans.  
\*Separate card

**Ombudsman**-- A person who protects and promotes the rights of long-term care recipients, working with consumers and their families to achieve quality care and quality of life. The Ombudsman Program, by statute, has authority to obtain access to all residents and tenants of Wisconsin nursing homes, CBRFs, RCAC and those involved in Family Care & Partnership programs.

**Protective Placement**-- A procedure (and resulting Order) under Chapter 55 of the Wisconsin Statutes whereby the Court directs placement of a ward who is under guardianship to a particular placement facility or to a particular type of care facility based upon the care needs of the individual.

**Register in Probate (Probate)**-- The Outagamie County office responsible for maintaining records of all guardianship, protective placements or mental health orders. The office is also responsible for ensuring guardians complete the required annual accounting and condition of the ward. At any of the hearings a staff from this office is required. All records are kept sealed or confidential and not open for public inspection. While this office may answer questions about how to complete the annual accountings, they cannot assist in completing the accountings. This office is responsible for auditing and approving the accountings, therefore it is a conflict of interest to complete the forms.

**Room and Board**-- A monthly payment for living expenses the ward is responsible for which includes rent, groceries, and utilities.

**SNF**-- Skilled nursing facility, also known as a nursing home.

**SSA**-- Social Security Administration. There are multiple forms of benefits from this agency:

- Social Security (SS)
- Supplemental security Income and Medicaid (SSI)
- Supplemental Security Income-Exceptional Expense (SSI-E)  
\*\*This must be assessed for need by DHHS or the MCO
- Social Security Disability Insurance (SSDI)

**Substitute Living Arrangement**-- Any type of residential placement that is not owned or leased by the ward (adult family home, group home, skilled nursing home, etc).

**Ward**-- An incompetent individual under guardianship. Only a Court can adjudicate a person as being incompetent after a doctor provides an opinion supporting that determination.

## HOW A GUARDIAN IS APPOINTED

Only the court is able to make a determination that an individual is incompetent and order the appointment of a guardian. The process to determine if a guardianship is needed and how a guardian is appointed is explained below. While a wide variety of circumstances may prompt the need for a guardianship, the following briefly explains the standard practice.

- An individual is evaluated by a physician, psychiatrist or psychologist. The doctor completes testing on the individual and makes a written recommendation as to the need for guardianship.
- Based on that evaluation and the need for guardianship, a suitable candidate is sought to become the proposed guardian. The proposed guardian must undergo a Department of Justice criminal background check and, if being nominated as guardian of estate, a full credit report must be submitted.
- An ***Acknowledgment Regarding Guardian Tutorial*** is also signed, confirming the proposed guardian has read through and reviewed this Guardianship Tutorial.
- The proposed guardian must complete a notarized the ***Statement of Acts by Proposed Guardian and Consent to Serve as Guardian*** (GN-3140), a State form disclosing any past or current legal issues and confirming they understand the expectations of completing the required annual reports.
- A petition is filed with the Court outlining the need for guardianship, the information of the proposed guardian and identifying all interested parties in the matter. The Statement of Acts, background and credit checks, and Acknowledgment Statement are included with the petition. A hearing date is scheduled, with all parties receiving notice at least ten (10) days prior to the hearing.
- A Guardian ad Litem is appointed for the individual, to ensure the individual's rights are protected and to represent the best interests of the individual.
- If the individual objects to the proposed guardianship the Guardian ad Litem will be responsible for obtaining Adversary Counsel on behalf of the individual.
- The hearing is held before a Circuit Court judge. Upon receiving reports and hearing testimony, if necessary, and reviewing all information presented to the Court, the Court makes a ruling on the issue of incompetency and need for guardianship. If the Court determines that the individual is incompetent and in need of guardianship, the Court will establish guardianship and appoint a guardian.

## **GENERAL GUARDIANSHIP RESPONSIBILITIES**

A **Guardian** is an individual or agency appointed by the Court to act in the ward's best interests. This may include making decisions for health care, living environments and managing all financial and property affairs.

### **General Responsibilities of a Guardian:**

- The appointed guardian must have Letters of Guardianship signed by the Court to be recognized as the legal guardian. The guardian should try to safeguard all original Letters of Guardianship (banks, doctor's offices, Social Security Administration, etc. may make copies).
- Provide interested parties with COPIES of Letters of Guardianship (i.e.: landlords, utilities, medical providers, ward's employers, insurance providers, pension companies, residential providers, Managed Care Organization).
- Never represent yourself as the ward.
- Read all paperwork provided to you at the Court hearing within 72 hours.
- Notify the Register in Probate and DHHS of changes of address and telephone numbers of guardian and ward.
- Respect confidentiality of ward.
- Use all required statutory forms or forms provided by Register in Probate office. When in doubt, please contact Register in Probate office.
- Consent to the release of confidential information and records.
- Receive all notices on the ward's behalf.
- Act in all proceedings as an advocate for the ward's best interest.
- Required to visit the ward in the residential setting at least once every three months.
- Maintain routine collateral (phone, email, mail, etc) contact with the ward and/or service providers monthly.
- Never transfer your duties as guardian to another person.
- Follow all Court orders.

The Court may appoint the same person as guardian of person and estate OR may appoint two different individuals, one as guardian of estate and one as guardian of person. The Court may also appoint two individuals to act together as co-guardians. While co-guardians may be authorized by the Court to act individually when necessary for convenience purposes, they are generally expected to consult with one another in regards to effectively meeting the ward's needs.

## GUARDIAN OF ESTATE

The **Guardian of Estate** has the authority to make all decisions relating to the financial and property affairs for the ward.

### **Responsibilities:**

- Locate, itemize and receive all income (wages, Social Security benefits, Veteran's benefits, retirement benefits, etc).
- Locate and itemize all financial accounts (checking, savings, pension, CDs, money markets, insurance policies and burial trusts, etc.).
- Locate and itemize all real estate holdings and vehicles (cars, boats, motorcycles, snowmobiles, etc).
- All joint accounts owned by the ward and another individual must be separated. There is absolutely no co-mingling of funds allowed.
- Provide Letters of Guardianship to the SSA to apply and/or receive your ward's Social Security benefits.
- Establish guardianship bank account in the name of the ward. All guardian(s) name(s) must be listed on the account. This may not be a joint account with the ward.
- Keep all receipts and financial statements (accounts for bank, credit union, investment, funeral trusts, etc) for seven (7) years.
- Never let the ward have access to any financial accounts.
- Establish a ledger sheet to record all income and expenses made on behalf of the ward. Ledger sheets should be clearly written with a font size at least 10 pt.
- Establish a ledger sheet to record the ward's personal allowance expenditures. Ledger sheets should be clearly written with a font size of at least 10 pt.
- If the ward is in a substitute living arrangement the guardian must receive the income and expense ledgers from the provider, including all receipts.
- Complete an Initial Inventory of the ward's assets and sources of income as of the date you were appointed guardian or as of the date appointed Temporary Guardian, if applicable.
- Submit Initial Inventory to the Register in Probate within 60 days of the final court hearing. It is required that the statutory fee accompany the filing of the Initial Inventory.
- Complete a credit check on the ward to determine outstanding debt ([www.annualcreditreport.com](http://www.annualcreditreport.com)).
- Ensure all bills are paid promptly and arrange payment plans for any outstanding debts.
- Apply for any appropriate public assistance programs (i.e. Social Security, long-term care services, rental assistance, Food Share, Weatherization, etc.).
- Establish irrevocable funeral trust if funds are available and appropriate.

- For receipts of Medicaid, ensure the ward remains under the appropriate asset level.
- Ensure the mandatory annual recertification process for Medicaid benefits is completed.
- Notify Economic Support and/or Managed Care Organization of any changes in income.
- If your ward receives an inheritance or back payment from Social Security please consult with the appropriate entity (Economic Support or benefit specialist).
- Any purchase/spend down must be for the benefit of the ward and comply with Court policy and statutory law. Any purchase for \$500 or more must have Court approval prior to the purchase.
  - ❖ This does not include rent, medical, dental, health care, medical equipment, eye care (glasses) or funeral trusts.
  - ❖ Examples which require Court approval include furniture, electronics, vehicles, and other luxury items.
- All recreational trips which include transportation and/or lodging over \$250, need Court approval, unless organized by an Agency. It is expected that food, souvenirs, and admission are to be directly paid from the ward's own funds.
- No gifting or donating of the ward's money without prior Court approval.
- The ward's money shall not be loaned to any other person.
- Never sell the ward's property (vehicles, real estate, stocks, etc.) without prior Court approval.
- Guardians are prohibited from dealing in cash transactions, except when providing the ward's allowance.
- Never divest or hide money in order to obtain/maintain eligibility for services.
- Never establish yourself as a beneficiary on any life insurance policies or funeral trusts after being appointed guardian.
- All wards residing with the Guardian or family members must complete and file the Monthly Budget Expense Form with verification to obtain Court approval. No payment should be made without approval.
- Guardians should maintain a clear ledger and records in the event of an untimely death.
- Complete statutory Annual Account form and file with Register In Probate on or before April 15 of each year. If Co-Guardians are appointed, both individuals must sign the Annual Account before a notary.
- All documents submitted to the Register In Probate Office can be no larger than 8 ½ x 11, per Wisconsin State Statute (801.145 (1): *Except for exhibits and wills, the size of all papers filed in court shall be no longer than 8 1/2 inches by 11 inches*).
- For record keeping and scanning purposes, the Register in Probate will not accept 2 sided documents. All documents must have one blank side.

## **GUARDIAN OF PERSON**

The **Guardian of Person** has the authority to make day-to-day decisions of a personal nature, except financial decisions, on behalf of the ward. These decisions would include arrangements for food, clothing, living arrangements, medical care, recreation and education. It includes consent for medical care and other treatment or service/training programs.

### **Responsibilities:**

- Choose medical providers based on ward's needs.
- Consent to medical treatment, which includes routine exams, treatment and health care based upon physician's recommendations.
- End of life decisions (i.e. removal of life support) require Court approval.
- Consent to living arrangement and services, unless under Court ordered placement/services (protective placement/services).
- Make decisions related to travel.
- Ensure the ward does not have access to firearms.
- Complete statutory Annual Report form and file with Register In Probate on or before April 15 of each year. If Co-Guardians are appointed, both must sign the Annual Report.

## **FINAL DUTIES OF GUARDIAN**

### **Termination of a Guardianship**

Guardianships terminate and end upon the death of the ward. However, there may also come a time when the ward is no longer in need of a guardian due to the ward regaining his or her competence. Only a circuit court judge can terminate and end a guardianship while the ward is still living. When the judge orders the guardianship to be terminated while the ward is still living, the duties of the guardian end effective immediately, *except* for the following responsibilities:

- Complete and file statutory notarized final account form with the Register In Probate Office within 30 days.
- Turn over all financial information, including money, to the former ward.
- You will not be legally discharged as guardian until submission and approval of final account (with respect to guardianship of estate).

**Successor Guardian appointed** (if you, as guardian, resign or if the court removes you as guardian in favor of a successor guardian)

- Upon notice of successor guardian appointment, **ALL** of your authority to act as guardian is terminated.
- Complete and file statutory notarized final account form with the Register In Probate Office within 30 days.
- Provide a copy of the final account and copies of current financial records to the successor guardian.
- You will not be legally discharged as guardian until submission and approval of final account (with respect to guardianship of estate).

### **Upon ward's death**

- Your legal authority to make decisions as guardian ends at the time of the ward's death.
- You are required to notify the next of kin of the ward's death.
- You are required to notify Social Security Administration, Register In Probate office, Department of Health and Human Services, the Managed Care Organization (if applicable) and all financial institutions of the ward's death.
- No final arrangements (i.e. funeral) shall be made by the guardian.
- No financial transactions may be made after the death of the ward (under the guardianship authority).
- Complete and file statutory notarized final account form with the Register In Probate Office within 30 days.
- You will not be legally discharged as guardian until submission and approval of final account (with respect to guardianship of estate).

## HELPFUL TIPS

- Always respond to any court notices in a timely manner.
- Never delegate your guardianship duties to another person/agency.
  - ❖ Never pre-sign checks to be used for the ward.
  - ❖ Do not allow another person or agency to manage the ward's income.
  - ❖ Never allow the ward to establish accounts (bank, credit cards, utilities, etc.) in their own name. All accounts must include the guardian's name.
- Always monitor the residential/nursing home ledgers you receive on a monthly basis, ensuring the ward's needs are met and monthly allowance is accounted for appropriately.
- Always pay the ward's bills on a timely basis.
- Always communicate with appropriate parties when available funds fail to meet monthly bills.
- Always negotiate with banks to eliminate monthly service fees. Avoid being charged additional fees, such as NSF or overdraft fees.
- Always complete annual eligibility requirements for benefits (Social Security, Medicaid, etc.).
- Always obtain court approval for all large ticket item purchases over \$500 and WAIT for Court response before purchasing.
- Always notify appropriate agencies when your ward has received a large amount of money placing them over the asset limit (SSA back payment, inheritance, settlements, etc.).
- When completing the Annual Account:
  - ❖ Sign the Annual Account before a notary.
  - ❖ Sign the Annual Report.
  - ❖ Copies of financial statements (for accounting period) for all assets listed on hand on page 3 (bank statements, investment accounts, stocks, residential/nursing home ledgers, burial trusts etc.) must be included.
  - ❖ For vehicles a copy of the Kelley Blue Book value printout must be included.
  - ❖ For real estate a copy of the most current tax bill must be included.
  - ❖ Always itemize residential/nursing home expenses on page 2 of the Annual Account.
  - ❖ Always include interest payments on page 2 of the Annual Account.
- Always be available to represent the interests of your ward within a reasonable time frame.
- Always participate in initial/review care plan meetings on behalf of your ward.
- Always ensure the basic rights of your ward are upheld.
- Never limit the ward's contact with friends or family without cause and Court approval.
- Your ward may not obtain a marriage license if the Court has removed that right.
- Never consent to experimental treatments, organ donations or involuntary psychotropic medications without Court approval.

- Guardians who request mileage reimbursement must first obtain Court approval prior to receiving any compensation from the ward. Per the Internal Revenue Service code IR-2016-169, the charitable standard mileage rate will be 14 cents per mile driven.
- Guardians who request reimbursement for their time when acting on behalf of the ward, must petition the Court for approval prior to receiving any compensation from the ward.
- **PLEASE NOTE THE FOLLOWING:**
  - ❖ Guardians may petition for mileage or their time; guardians are not permitted to seek compensation for both.
  - ❖ If the guardian requests any court-related fees incurred by the ward to be reduced or waived, the previously Court-approved compensation paid to the guardian will be rescinded immediately.
  - ❖ If there are co-guardians appointed, only one request is permitted.

## RESOURCES FOR GUARDIANS

- Outagamie County Guardian Assistance Program  
2331 E. Lourdes Drive  
Appleton, WI 54915  
920 572-6313  
[OutagamieGuardian@gmail.com](mailto:OutagamieGuardian@gmail.com).
- Register in Probate (for general questions)  
401 S. Elm St.  
Appleton, WI 54911  
920 832-5601
- Outagamie County DHHS -Aging and Disability Resource Center  
401 S. Elm St.  
Appleton, WI 54911  
920 832-5178
- Private attorney
- Private accountant or tax preparer
- GWAAR (Greater Wisconsin Agency on Aging Resources, Inc)  
[www.gwaar.org](http://www.gwaar.org)  
608 243-5670  
[info@gwaar.org](mailto:info@gwaar.org)
- Wisconsin Guardianship Support Center  
[www.gwaar.org](http://www.gwaar.org)  
855 409-9410  
email: [guardian@gwaar.org](mailto:guardian@gwaar.org)
- Wisconsin Department of Health Service (DHS) Client Rights' Office  
[www.dhs.wisconsin.gov/clientrights](http://www.dhs.wisconsin.gov/clientrights)  
608 266-9369
- Disability Rights of Wisconsin  
[www.disabilityrightswi.org](http://www.disabilityrightswi.org)  
800 928-8778
- Wisconsin Board on Aging and Long Term Care-Ombudsman Program  
<http://longtermcare.wi.gov>  
800 815-0015  
email: [BOALTC@Wisconsin.Gov](mailto:BOALTC@Wisconsin.Gov)
- DHS Division of Quality Assurance--for people living in substitute living arrangement and nursing home issues  
[www.dhs.wisconsin.gov/dqa](http://www.dhs.wisconsin.gov/dqa)  
608 266-8481
- Wisconsin Guardianship Association  
[www.wisconsinguardianshipassociation.com](http://www.wisconsinguardianshipassociation.com)