

GUARDIANSHIP & VOTING: Preserving and Restoring the Right to Vote

September 14, 2022

disability**rights** | WISCONSIN



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- ▶ WI Guardianship Association
- ▶ Wisconsin Guardianship Support Center

About Disability Rights Wisconsin

- ▶ DRW is the federally mandated Protection and Advocacy system for Wisconsin
- ▶ DRW helps protect the voting rights of people with disabilities, as required by the Help America Vote Act
- ▶ Contact the DRW Voter Hotline for assistance or questions about voting
844-347-8683 / info@disabilityvote.org
- ▶ Join the Wisconsin Disability Vote Coalition, coordinated by DRW and BPDD: <https://disabilityvote.org/>

Program Logistics

Please remain muted throughout the session to limit background noise.

Use the chat feature to type your questions.

Sign language interpreters are provided. If you need help accessing the interpreter, put your request in the chat.

Auto-captioning is provided. Click the CC Live transcript button.

Speakers, please say your name before you speak to help with accessibility.

Links to the presentation and resources will be emailed to all who registered for this event, and will be posted on the DRW and Disability Vote Coalition website.

How to Preserve and Restore the Right to Vote

- ▶ Ellen Henningsen, J.D.
 - ▶ Director, Voting Rights & Guardianship Project at Disability Rights Wisconsin

New Resources

- ▶ Guardianship & Voting: How to Get Your Right to Vote Back: A Summary
 - ▶ 4 pages
 - ▶ Quick reference
 - ▶ Will be available on websites of DRW, DVC and others.
 - ▶ Links will be emailed to registrants.

GUARDIANSHIP & VOTING: HOW TO GET YOUR RIGHT TO VOTE BACK

A SUMMARY BY DISABILITY RIGHTS WISCONSIN



This guide briefly explains the steps you must take if you have lost your right to vote in a guardianship case and want to get it back. It may be helpful to ask a friend, family member, teacher, or guardian to read this with you. You may also have them help you follow all the steps.

A detailed guide is available on the Disability Rights Wisconsin (DRW) website at disabilityrightswi.org, or contact the DRW Voter Hotline at 844-347-8683 or info@disabilityvote.org.

HOW DO I KNOW IF I LOST THE RIGHT TO VOTE?

If a guardian was named by a court to make decisions for you, there will be a written decision. It is called a "Determination and Order on Petition for Guardianship Due to Incompetency." These are your guardianship papers. These papers show if you have the right to vote or if it was taken away.

Look for paragraph 3. A. (3). It looks like this:

☒ 3. **GUARDIAN OF THE PERSON**
The individual is in need of a guardian of the person.

A. **Rights to be removed in full. If removed, these rights may not be exercised by any person.**
The individual has the incapacity to exercise the right to

- ☐ (1) execute a will.
- ☐ (2) serve on a jury.
- ☒ (3) register to vote or to vote in an election.

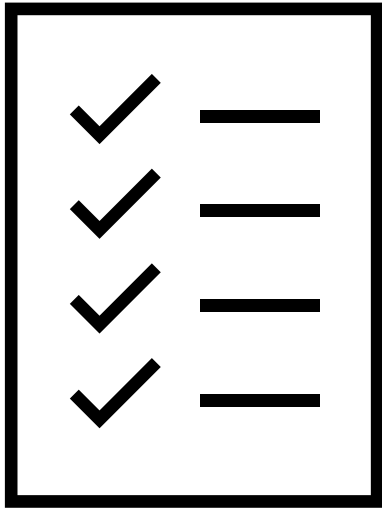
If the box is checked, you cannot vote. Use this guide to help you get your right to vote back.

New Resources

- ▶ **Guardianship & Voting: How to Get Your Right to Vote Back**
 - ▶ Detailed, step-by-step guide
 - ▶ 19 pages
 - ▶ Includes legal forms & instructions
 - ▶ Will be available on websites of DRW, DVC and others.
 - ▶ Links will be emailed to registrants.



TOPICS



- ▶ Voter Eligibility Basics
- ▶ Guardianship Law Basics
- ▶ How to Keep Your Right to Vote
- ▶ How to Get Your Right to Vote Back
 - ▶ if lost in a guardianship case
- ▶ How to Convince the Court that You Should Get Your Right to Vote Back

Basics of Voter Eligibility

You are eligible to vote if:

- ✓ You are a U.S. Citizen
- ✓ You will be at least 18 years old on or before Election Day
- ✓ You have resided at your current address in WI for 28 days prior to the election
 - ✓ Must vote at former address if residence at current address is less than 28 days
- ✓ You are not currently serving a sentence for a felony conviction.
 - ✓ including incarceration, parole, probation, or extended supervision (also known as being “on paper”)
- ✓ You have not been determined by a court to be ineligible to vote.

Basics of Guardianship Law

- ▶ Two types of guardians
 - ▶ Guardian of the Person
 - ▶ Authorized to make specified personal decisions
 - ▶ Guardian of the Estate
 - ▶ Authorized to make specified financial decisions
- ▶ Options for court
 - ▶ depends on capacity of individual
 - ▶ Guardian of the Person and Guardian of the Estate
 - ▶ only a Guardian of the Person
 - ▶ only a Guardian of the Estate

Basics of Guardianship Law

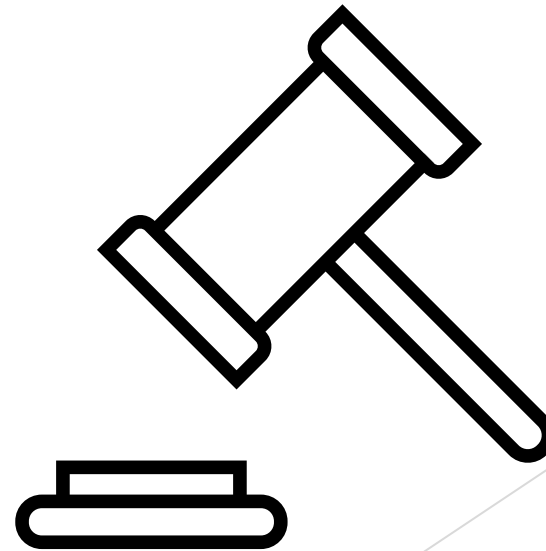
- ▶ Many people assume guardianship automatically means the individual with a guardian cannot vote.
 - ▶ That's wrong.
- ▶ Rights are retained unless expressly removed.
- ▶ What type of guardian was appointed?
 - ▶ Guardian of the Estate only?
 - ▶ Capacity of individual to make financial decisions.
 - ▶ Voting rights can never be removed if only a Guardian of the Estate is appointed.

Basics of Guardianship Law

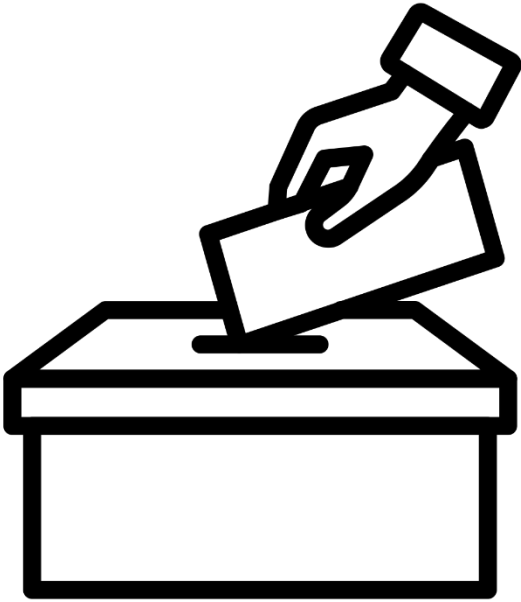
- ▶ Guardian of the Person?
 - ▶ Capacity of individual to make personal decisions.
 - ▶ What is the scope of the guardianship of the person?
 - ▶ What rights has the individual retained?
 - ▶ What rights have they lost (not transferred to the guardian)?
 - ▶ What rights have been transferred to the guardian?
 - ▶ What rights are shared with the guardian?
 - ▶ The answer is in the court's "Determination and Order".
 - ▶ "Guardianship papers"

How to Keep the Right to Vote

- ▶ A person under guardianship keeps the right to vote unless a **court** expressly removes it.
- ▶ **Only a court** can take away your right to vote.
- ▶ People who can not take away your right to vote -
 - guardian
 - parent/other family member
 - election official
 - service provider
 - teacher
 - power of attorney



How to Keep the Right to Vote -

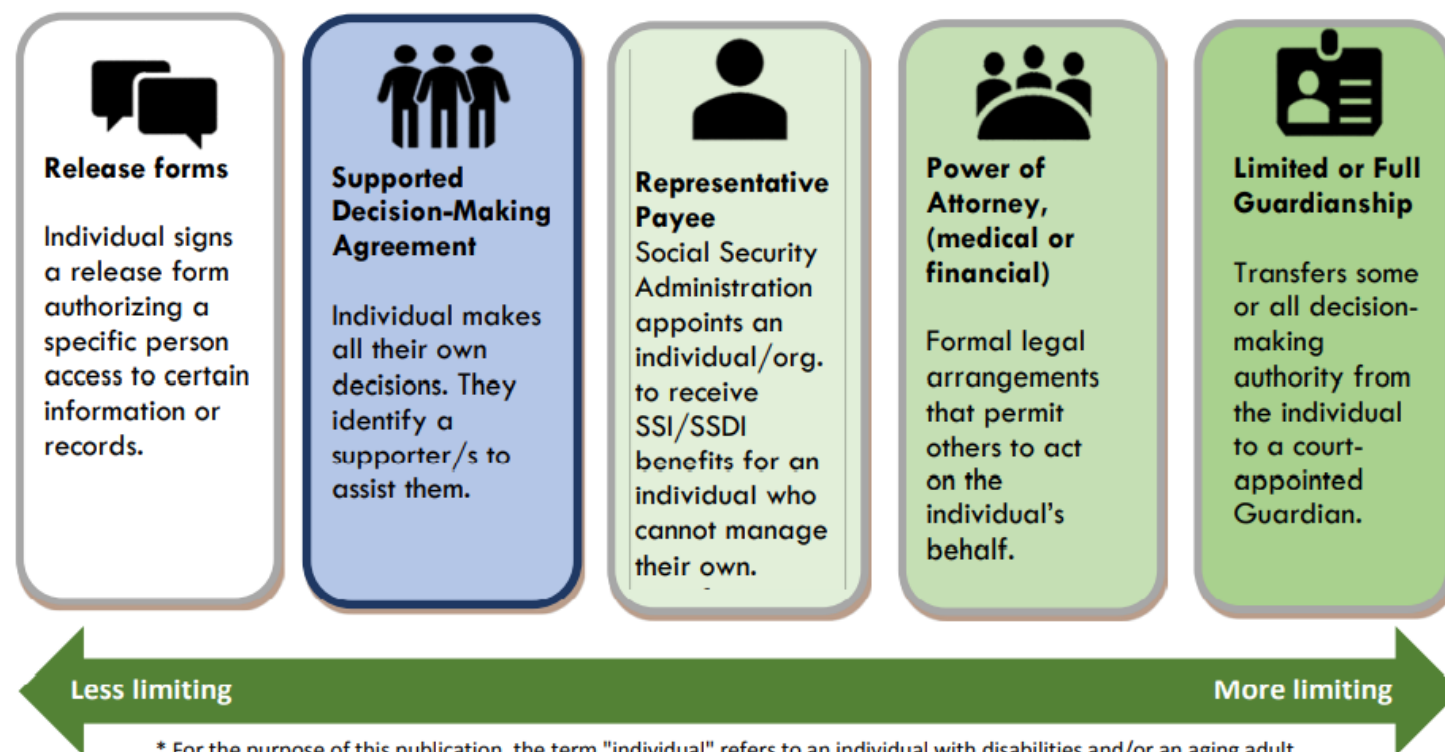


- ▶ Your right to vote is at risk in the guardianship process.
 - ▶ One of the issues the court considers when appointing a Guardian of the Person.
- ▶ You do not control the outcome.
 - ▶ The court controls the outcome.
- ▶ The court may remove the right to vote even if that is not what the petitioner requested or the individual wants.

How to Keep the Right to Vote -

- ▶ To be 100% sure the person does not lose the right to vote -
 - ▶ do not file a guardianship petition.
- ▶ Consider other options -
 - ▶ release forms
 - ▶ supported decision-making
 - ▶ rep payee
 - ▶ powers of attorney
 - ▶ rep payee

Current decision-making support tools



How to Keep the Right to Vote -

- ▶ If guardianship is the best option -
 - ▶ try to keep the right to vote.
 - ▶ Petitioners should be careful how they describe the individual's abilities and disabilities so as not to jeopardize the right to vote.

How to Keep the Right to Vote -

- ▶ To minimize the risk of losing the right to vote -
 - ▶ In the Petition - don't check the box.

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY	
IN THE MATTER OF	<input type="checkbox"/> Amended
_____ Name	Petition for
_____ Date of Birth	<input type="checkbox"/> Temporary
	<input type="checkbox"/> Permanent
	Guardianship Due to Incompetency (Adult Guardianship)
	Case No. _____

I STATE:

1. I am interested as _____

☐ 15. GUARDIAN OF THE PERSON

I request the appointment of a guardian of the person. If granted, I understand that this may result in a prohibition of the individual's ability to possess firearms pursuant to §54.10(3)(f), Wis. Stats.

A. Rights to be removed in full. If removed, these rights may not be exercised by any person.

I request that the court declare the individual has incapacity to exercise the right to

- ☐ (1) execute a will.
- ☐ (2) serve on a jury.
- ☐ (3) register to vote or to vote in an election.

How to Keep the Right to Vote -

- ▶ The court relies on -
 - ▶ their own judgement
 - ▶ the Guardian ad Litem (GAL)
 - ▶ the examining doctor or psychologist
 - ▶ the petitioner (the person asking to have a guardian appointed)
- ▶ Some or all of them may believe that if a person needs a guardian for any reason, they should lose their right to vote.

How to Keep the Right to Vote -

- ▶ Negative reports from the GAL and the doctor/psychologist can influence the court.
- ▶ Talk to the Guardian ad Litem about why the individual should keep the right to vote

☐ 14. **GUARDIAN OF THE PERSON**

A. **Rights to be removed in full. If removed, these rights may not be exercised by any person.**

I recommend that the court declare the individual has incapacity to exercise the following rights to

- ☐ (1) execute a will.
- ☐ (2) serve on a jury.
- ☐ (3) register to vote or to vote in an election.

- ▶ Talk to doctor/psychologist about why the individual should keep the right to vote

9. Does the individual have the evaluative capacity to

- A. execute a will?
- B. serve on a jury?
- C. register to vote or vote in an election?

☐ Yes
☐ Yes
☐ Yes

☐ No
☐ No
☐ No

How to Keep the Right to Vote -

- ▶ Consider getting an attorney for the individual.
 - ▶ Tell the GAL
- ▶ Be prepared to present evidence that the individual should keep their right to vote.
- ▶ But remember, petitioner and individual don't control the outcome.
 - ▶ The court decides.

How to Keep the Right to Vote -

- ▶ The outcome you want is an empty checkbox on this form.

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY
IN THE MATTER OF _____ ☐ Amended
Name _____
Date of Birth _____
**Determination and Order on Petition for Guardianship
Due to Incompetency
(Adult Guardianship)**
Case No. _____

A Petition for Guardianship Due to Incompetency was filed and a hearing was held on [Date] _____.
After consideration of the reports and other documents on file, all factors required by the statutes, and such
additional information presented;

THE COURT FINDS:

1. JURISDICTION, VENUE, NOTICE, APPEARANCES AND EVALUATIONS TO COURT

- A. This court ☐ does ☐ does not have jurisdiction over the subject matter and the individual.
☐ Wisconsin is not the individual's home state but the court has jurisdiction because: _____
B. This court ☐ is ☐ is not a proper venue.
C. Notice ☐ was ☐ was not properly served.
D. The individual is
☐ present.
☐ not present because the guardian ad litem waived the individual's attendance.
☐ Other: _____

☐ 3. GUARDIAN OF THE PERSON

The individual is in need of a guardian of the person.

A. Rights to be removed in full. If removed, these rights may not be exercised by any person.

The individual has the incapacity to exercise the right to

- ☐ (1) execute a will.
☐ (2) serve on a jury.
☐ (3) register to vote or to vote in an election.

B. Rights to be removed in full or exercised by individual only with consent of guardian of person

- ▶ What needs to be done to convince the court will be discussed later.

How to Get the Right to Vote Back

- ▶ Find out if you lost the right to vote.
 - ▶ Look at Determination and Order.
 - ▶ Not in Letters of Guardianship
- ▶ If the box is not checked, you can vote.

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY

IN THE MATTER OF _____ ☐ Amended

**Determination and Order on Petition for Guardianship
Due to Incompetency
(Adult Guardianship)**

Name _____

Date of Birth _____ Case No. _____

A Petition for Guardianship Due to Incompetency was filed and a hearing was held on [Date] _____.
After consideration of the reports and other documents on file, all factors required by the statutes, and such additional information presented;

THE COURT FINDS:

1. **JURISDICTION, VENUE, NOTICE, APPEARANCES AND EVALUATIONS TO COURT**

A. This court ☐ does ☐ does not have jurisdiction over the subject matter and the individual.
☐ Wisconsin is not the individual's home state but the court has jurisdiction because: _____.

B. This court ☐ is ☐ is not a proper venue.

C. Notice ☐ was ☐ was not properly served.

D. The individual is
☐ present.
☐ not present because the guardian ad litem waived the individual's attendance.
☐ Other: _____

☐ 3. **GUARDIAN OF THE PERSON**

The individual is in need of a guardian of the person.

A. **Rights to be removed in full. If removed, these rights may not be exercised by any person.**

The individual has the incapacity to exercise the right to

☐ (1) execute a will.

☐ (2) serve on a jury.

☐ (3) register to vote or to vote in an election.

B. **Rights to be removed in full or exercised by individual only with consent of guardian of person**

How to Get the Right to Vote Back

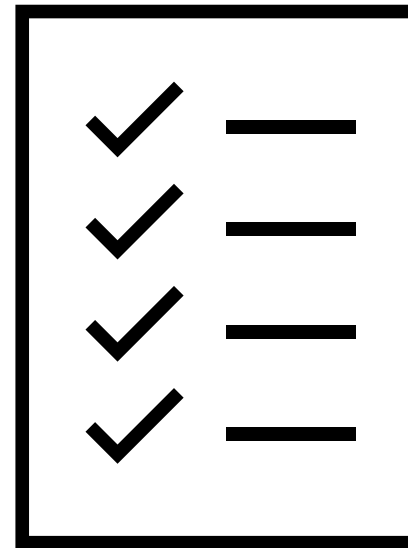
- If the box is checked, you cannot vote.

	(3)	The individual is unable to prevent financial exploitation.
<input checked="" type="checkbox"/>	3.	GUARDIAN OF THE PERSON
		The individual is in need of a guardian of the person.
	A.	Rights to be removed in full. If removed, these rights may not be exercised by any person.
		The individual has the incapacity to exercise the right to
	<input type="checkbox"/>	(1) execute a will.
	<input type="checkbox"/>	(2) serve on a jury.
	<input checked="" type="checkbox"/>	(3) register to vote or to vote in an election.
R		Rights to be removed in full or exercised by individual only with consent of guardian of person

- You can ask to get your right to vote back.

How to Get the Right to Vote Back

- ▶ How do I start?
- ▶ Do I need to get anyone else's okay?
- ▶ Can I have someone help me?
- ▶ Do I need an attorney?
- ▶ What does it cost?
- ▶ Who can file the petition?
- ▶ Where do I go to start?
- ▶ What will happen after I start?



How to Get the Right to Vote Back

- ▶ How Do I Start?
 - ▶ You must go back to court.
 - ▶ You must file a form called a Petition with the court.



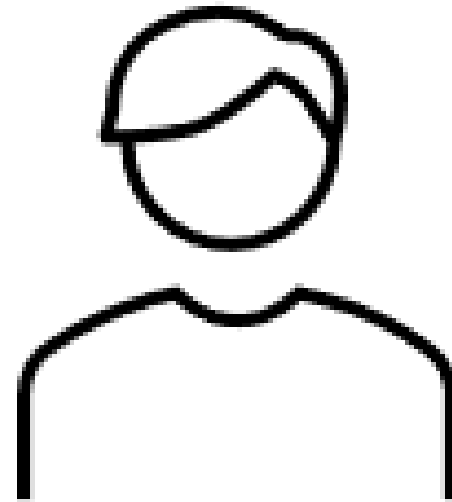
How to Get the Right to Vote Back

▶ Do I Need Anyone's Okay?

- ▶ No.
- ▶ You do not need to ask the county or anyone else to start.
- ▶ You decide if you want to ask to get your right to vote back.

How to Get the Right to Vote Back

- ▶ Can Someone Help Me?
 - ▶ Yes.
 - ▶ Your guardian, a friend, a family member, a service provider, a teacher can help you.
 - ▶ Someone who agrees that you should get your right to vote back.



How to Get the Right to Vote Back

- ▶ Do I Need an Attorney?
 - ▶ No.
- ▶ Easier if you have your own attorney.
- ▶ What are my options?

How to Get the Right to Vote Back

▶ Options -

- ▶ can do the whole process on your own.
- ▶ can find and pay for your own attorney.
- ▶ can start on your own and then get an attorney.
 - ▶ If you can't afford it, you can ask court to find and pay for your attorney.
 - ▶ There is a place in the Petition.

How to Get the Right to Vote Back

- ▶ What Does it Cost?
 - ▶ No cost or fee to file.
- ▶ Who can file?
 - ▶ you, your guardian, a friend, a family member, anyone.
 - ▶ someone who agrees that you should get your right to vote back.
- ▶ Where Do I File?
 - ▶ with court that granted the guardianship
 - ▶ or the court where it was transferred to



How to Get the Right to Vote Back

- ▶ Start by filling out **the Petition.**
- ▶ It's easy.
- ▶ Forms & instructions are included in the “how to” guide.
- ▶ Links will be emailed to registrants.
- ▶ Follow the instructions.

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY

IN THE MATTER OF THE GUARDIANSHIP OF

☐ Amended

Name

Date of Birth

**Ward's Petition to Restore
Ward's Right to Register
to Vote and to Vote**

Case No. _____

UNDER OATH, I STATE:

1. I am the ward and am 18 years of age or older.
2. This is a Petition to have my right to register to vote and to vote restored.

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY

IN THE MATTER OF THE GUARDIANSHIP OF

☐ Amended

Name

Date of Birth

**Petition on Behalf of Ward to
Restore Ward's Right to
Register to Vote and to Vote**

Case No. _____

UNDER OATH, I STATE:

1. I am _____ a person acting on the ward's behalf.
2. This is a Petition to have the ward's right to register to vote and to vote restored.

How to Get the Right to Vote Back

STATE OF WISCONSIN, CIRCUIT COURT, <input type="text"/> COUNTY	
IN THE MATTER OF THE GUARDIANSHIP OF <input type="text"/> Name <input type="text"/> Date of Birth	<input type="checkbox"/> Amended Ward's Petition to Restore Ward's Right to Register to Vote and to Vote Case No. <input type="text"/>

UNDER OATH, I STATE:

1. I am the ward and am 18 years of age or older.
2. This is a Petition to have my right to register to vote and to vote restored.
3. This Petition is filed more than 180 days after any previous hearing on the Petition for Guardianship or Petition for Receipt and Acceptance of a Foreign Guardianship.
4. By Order of this Court dated , I was determined to be incompetent and in need of a guardian. My right to register to vote and to vote were removed by that Order.
5. I believe I am capable of understanding the objective of the elective process and therefore the guardianship order should be modified and my right to register to vote and to vote should be restored in full.
- ☐ 6. I am indigent.

How to Get the Right to Vote Back

I REQUEST THE COURT:

- 1. Order a hearing on this Petition.
- ☐ 2. Appoint an attorney to represent me at the county's expense.
- 3. Designate the persons entitled to notice of hearing and the manner in which notice shall be given.
- 4. Limit the guardianship of the person and restore my right to register to vote and to vote in all elections.

State of

County of

Subscribed and sworn to before me on

Notary Public/Court Official

Name Printed or Typed

My commission/term expires:

☐ This notarial act involved the use of communication technology.

Signature

Name Printed or Typed

Address

Email Address

Telephone Number Date

How to Get the Right to Vote Back

- ▶ Take or mail the Petition to the Register in Probate office
 - ▶ [Directory of Wisconsin Probate offices \(wripa.org\)](http://wripa.org)

How to Get the Right to Vote Back



- ▶ What Happens Next?
 - ▶ Notice of Hearing
 - ▶ Appointment of Guardian ad Litem
 - ▶ Appointment of an examining doctor or psychologist?
 - ▶ Hearing
 - ▶ Decision

How to Get the Right to Vote Back

► Notice of Hearing

- The court will tell you when and where the hearing will be. This is called “Notice.”
- It is very important that you remember the date and time and place of the hearing.

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY		
IN THE MATTER OF _____		<input type="checkbox"/> Amended
Name _____		Notice and Order for Hearing Chapters 53, 54 and 55 (Minor and Adult Guardianship)
Date of Birth _____		Case No. _____
Notice of Hearing		
Date	Time	Location (Include Room No.)
Circuit Court Judge/Circuit Court Commissioner/Register in Probate		

- The court will want your guardian to be told the date and time and place of the hearing.
- The court may want other people to be told.

How to Get the Right to Vote Back

► Appointment of GAL

- The court will appoint a Guardian ad Litem or GAL (pronounced G-A-L)
 - not a guardian
 - an attorney
- The GAL is **not** your attorney.
- The GAL decides what she or he thinks is best, even if that is not what you want.
- The GAL tells the court.
- Tell the GAL why you should get your right to vote back.
- Even if the GAL believes that you should not get your right to vote back, you can still tell the court that you should.

How to Get the Right to Vote Back

- ▶ **Appointment of an examining doctor or psychologist?**
 - ▶ Not required.
 - ▶ Court may want opinion of doctor or psychologist.
 - ▶ You can have you own doctor or psychologist write a letter of support.

How to Get the Right to Vote Back

▶ The Hearing

- ▶ The hearing is the formal meeting at the courthouse.
- ▶ This is when you tell the court why you should get your right to vote back.
- ▶ You must attend the hearing.
- ▶ If you can't get to the courthouse, ask to have the hearing held where you live.
- ▶ At the hearing, the court will listen to you, your supporter, and the GAL.

How to Get the Right to Vote Back

► The Decision

- The court will decide whether you will get your right to vote back.
- The court’s decision will be written in an “Order.”

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY

IN THE MATTER OF THE GUARDIANSHIP OF _____ ☐ Amended

Name _____

Date of Birth _____

Order to Restore Ward’s Right to Register to Vote and to Vote

Case No. _____

A Petition to Restore Ward’s Right to Vote was filed on _____ and a hearing held on _____. After consideration of the report filed by the Guardian ad litem, _____, the testimony of the ward, and _____, and argument;

THE COURT FINDS:

- If the court gives you your right to vote back, the court will also fill out another form and send it to the election clerk.

STATE OF WISCONSIN _____ CIRCUIT COURT _____ COUNTY

In the Matter of _____ ☐ Amended

Date of Birth: 11- _____

Case No. _____

TO: State of Wisconsin/Wisconsin Elections Commission
212 East Washington Avenue, 3rd Floor
P.O. Box 7984
Madison, Wisconsin 53707-7984

The circuit court declared on March 4, 2022 that:

How to Get the Right to Vote Back

- ▶ Be sure to get a copy of the court's Order.
- ▶ Be sure to get a copy of the form for the election clerk.
- ▶ If you vote in person, bring copies with you.

How to Convince the Court to Give you Your Right to Vote Back

- ▶ What Is the Court Deciding?
- ▶ What Should I Do Before the Hearing?
- ▶ What Should I Do at the Hearing?

How to Convince the Court to Give you Your Right to Vote Back

▶ What Is the Court Deciding?

- ▶ Do you understand the objective of the elective process?
 - ▶ Do you know the purpose of an election?
 - ▶ Do you know why we have elections?
 - ▶ What is decided by an election?
- ▶ The purpose is to vote for a person (called a candidate) so that the person can win.

How to Convince the Court to Give you Your Right to Vote Back

- ▶ You need to explain that you know the purpose of an election.
- ▶ You need to explain that the purpose is to vote for a candidate so the candidate can win.
- ▶ You do not need to say which candidate you want to vote for.
- ▶ You can tell the court that other people do not have to pass any tests or explain anything before they can vote.

How to Convince the Court to Give you Your Right to Vote Back

- ▶ Before the hearing -
 - ▶ Think about
 - ▶ what it means to vote.
 - ▶ why you want to vote.
 - ▶ what you know about elections.
 - ▶ how you decide who to vote for.
 - ▶ Practice
 - ▶ what you want to tell the court.
 - ▶ in front of a supporter.

How to Convince the Court to Give you Your Right to Vote Back

- ▶ Find someone who agrees that you should be allowed to vote.
 - ▶ Friend, family member, teacher, aide, caregiver, or your guardian.
- ▶ Ask them to come to the hearing and tell the court why you should be allowed to vote.
- ▶ Or have them write a letter of support.

How to Convince the Court to Give you Your Right to Vote Back

- ▶ At the hearing -
 - ▶ Tell the court why you should be allowed to vote.
 - ▶ A simple way to explain is to tell the court you want to vote so that the person you vote for can win the election.
 - ▶ The person who has come with you should tell the court why you should be allowed to vote.
 - ▶ Give the court any letters of support.

How to Convince the Court to Give you Your Right to Vote Back

- ▶ The court will listen to you, your supporters, and the GAL.
- ▶ The court will make a decision.
- ▶ The decision will be written in an “Order” and a “Notice of Voter Eligibility.”
- ▶ If you don’t get your right to vote back, you can try again in 6 months.

Resources

- ▶ DRW Voting Resource Page
 - ▶ <https://disabilityrightswi.org/resource-center/voting/>
- ▶ DRW Self-Determination and Guardianship Resource Page
 - ▶ <https://disabilityrightswi.org/resource-center/self-determination-guardianship/>
- ▶ Wisconsin Disability Vote Coalition
 - ▶ <https://disabilityvote.org/>
- ▶ New “how to” resource guides mentioned earlier.

What do I do if I need help or run into a problem?

- ▶ DRW Voter Hotline
 - ▶ 844-DIS-VOTE/ 844-347-8683
 - ▶ info@disabilityvote.org
- ▶ Wisconsin Guardianship Support Center
 - ▶ For info & assistance on issues related to adult guardianship, protective placement, and advance directives.
 - ▶ Toll-Free Helpline (855) 409-9410
 - ▶ guardian@gwaar.org

Time for Your Questions!

Panel Members



- ▶ Mitch Hagopian
 - ▶ Managing Attorney at Disability Rights Wisconsin
- ▶ Peter Navis
 - ▶ Judicial Court Commissioner, Walworth County
- ▶ Polly Shoemaker
 - ▶ Wisconsin Guardianship Support Center Attorney

Please type your questions in the Chat