

GUARDIANSHIP AND VOTING: THE BASICS OF WISCONSIN'S GUARDIANSHIP LAW AND ITS IMPACT ON THE RIGHT TO VOTE



Guardianship is governed by Wisconsin law.

One of the issues the court decides when appointing a guardian of the person is whether the individual has the capacity to vote.

Here are **key points** about Wisconsin's guardianship law and how it impacts the right to vote:

- **An individual (who the law calls the ward) retains all rights unless a right is expressly removed by the court.** No right is ever automatically removed in a guardianship case.
- **There are two types of guardianships: guardianship of the person and guardianship of the estate.**
 - The guardian of the person and guardian of the estate have separate and distinct duties and powers.
 - The guardian of the person is authorized by the court to make decisions about specified personal matters, such as health care, where the individual lives, etc. A guardian of the person is appointed when the individual is unable to meet the “essential requirements for his or her physical health and safety.”
 - The guardian of the estate is authorized by the court to make decisions about specified financial matters.
 - The capacity of the individual to vote is only examined when the appointment of a guardian of the person is being considered. It is not examined when the appointment of guardian of the estate is being considered.
 - When an individual is capable of managing their personal affairs but is not capable of managing their financial affairs, only a guardian of the estate will be appointed.
 - The right to vote cannot be removed when only a guardian of the estate is appointed.
 - Depending on the capacities and incapacities of the individual, the court can appoint:
 - ◆ both a guardian of the person and a guardian of the estate.
 - ◆ only a guardian of the person.
 - ◆ only a guardian of the estate.

- **The appointment of a guardian of the person does not mean that the individual automatically loses the right to vote.**
 - Wisconsin has a limited guardianship system, which means the court can decide that the ward can retain some rights. One of these rights is the right to vote.
 - A court has several options, depending on the individual's capacities and incapacities. The court may decide that the individual may:
 - ◆ retain certain rights,
 - ◆ lose certain rights (which are not transferred to the guardian),
 - ◆ have some rights transferred to the guardian,
 - ◆ and/or share decision-making with the guardian.
 - One of the rights that can be retained is the right to vote.
 - Each guardianship case is different.
- **The standard for determining whether an individual retains or loses the right to vote when a guardian of the person is appointed is whether they “understand the objective of the elective process.”**
 - It is a different and lower standard than the standard for appointing a guardian of the person which focuses on the physical health and safety of the individual.
 - This means the individual needs to be capable of understanding the purpose of an election.
 - The purpose of an election is to vote for a candidate so that the candidate wins.
- **If the individual has lost the right to vote,** they can ask to have the right restored by filing a petition in court and proving they are capable of understanding the purpose of an election.

FOR MORE INFORMATION:

DRW Voter Hotline: 844-347-8683 or info@disabilityvote.org
disabilityrightswi.org/resource-center/guardianship-and-voting/

Wisconsin Disability Vote Coalition: disabilityvote.org/

ACKNOWLEDGEMENT

This project was supported by the Help America Vote Act to provide education, training, and assistance to individual with disabilities to promote their participation in the electoral process.

disability**rights** | WISCONSIN