

GUARDIANSHIP AND VOTING: HOW TO KEEP THE RIGHT TO VOTE IN A GUARDIANSHIP CASE

The capacity to vote is one of the issues a court considers when deciding whether to appoint a guardian for an individual alleged to be incompetent. This guide contains information on how to keep the right to vote when a court is deciding whether to appoint a guardian.



KEY POINTS ABOUT WISCONSIN'S GUARDIANSHIP LAW

It's important to understand the key points of Wisconsin's guardianship law in order to understand how the law impacts the right to vote.

Wisconsin has a **limited guardianship system**. This means an individual (who the law calls the proposed ward or ward) does not automatically lose all their rights. The individual loses a right only if the court specifically decides to remove that right. It is possible for a ward to lose some rights and keep others. For example, an individual might lose the right to make health care decisions but keep the right to vote.

Wisconsin has **two types of guardians** – guardian of the person and guardian of the estate.

- A *guardian of the person* is appointed by the court to make decisions about specific personal matters, like health care or where the individual lives.
- A *guardian of the estate* is appointed by the court to make decisions about specific financial matters, like how to spend money or manage property.

Which type of guardian is appointed and what their authority is depends on what decisions the court decides the individual is incapable of making. In some cases, both a guardian of the person and guardian of the estate are appointed. In others, only a guardian of the person is appointed. And in others, only a guardian of the estate is appointed.

The capacity to vote is not reviewed when the appointment of a guardian of the estate is being considered. If an individual only has a guardian of the estate, the right to vote cannot be removed.



The capacity to vote is only reviewed when the appointment of a guardian of the person is being considered. But the appointment of a guardian of the person does not mean that the individual automatically loses the right to vote. For the right to vote to be taken away when a guardian of the person is appointed, the court must expressly state that the right to vote is being removed.



The right to vote can only be taken away by a court. No one – not an election official, guardian, family member, activated Power of Attorney, caregiver, service provider, or medical provider - can take away an individual's right to vote. The right to vote can only be taken away by a court.

HOW TO KEEP THE RIGHT TO VOTE

CONSIDER ALTERNATIVES TO GUARDIANSHIP

When a petition to appoint a guardian of the person is filed, the right to vote is at risk. Voting is one of the rights the court can consider taking away when deciding if a guardian of the person should be appointed. Even if the petitioner or proposed ward does not want the court to remove the right to vote, the court can still remove it.

The best way to protect the right to vote is to use alternatives to guardianship. They should always be considered before resorting to guardianship. These alternatives do not place the right to vote at risk. Alternatives include Powers of Attorney for Health Care and/or Finances, and Supported Decision-making Agreements. For more information on supported decision-making, see wi-bpdd.org/index.php/supporteddecision-making/

WHAT TO DO TO PROTECT THE RIGHT TO VOTE IF GUARDIANSHIP IS THE BEST OPTION

If appointing a guardian of the person is the best option to safeguard the physical health and safety of the individual, do not ignore the issue of the right to vote. Often guardianship petitions are filed due to an emergency or urgent situation, and the issue of voting is overlooked. Aside from not filing for guardianship, the best way to keep the right to vote is to make sure the court doesn't take it away in the first place. It's easier to keep the right to vote in the initial guardianship case than to go back to court later to get the right to vote restored.

DON'T CHECK THE BOX TO TAKE AWAY THE RIGHT TO VOTE WHEN FILING THE PETITION

A guardianship case is started when a form called a petition is filed in court. The petition contains checkboxes. The person filing the petition (called the petitioner) checks the boxes that apply to the proposed ward's situation. Checking a box means the petitioner is asking the court to remove a right. Too often petitioners assume they must check every box in the petition. But they don't. If the petitioner thinks the proposed ward is capable of voting, the petitioner should not check the box asking to take away the right to vote. The court is less likely to remove the right to vote if the petitioner does not request removal.

Below is the section of the petition that refers to voting. Since the petitioner is asking the court to appoint a guardian of the person, the box in front of number 15 should be checked. BUT do not check the box in front of A. (3) – or any other box – if you believe the proposed ward is capable of exercising that right.

15. **GUARDIAN OF THE PERSON**

I request the appointment of a guardian of the person. If granted, I understand 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 the court declare the individual has incapacity to exercise the right to

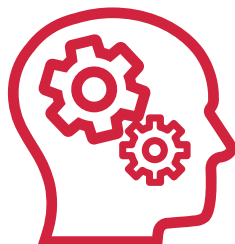
- (1) execute a will.
- (2) serve on a jury.
- (3) register to vote or to vote in an election because the individual is unable to understand the objective of the elective process.

UNDERSTAND THE LEGAL STANDARD FOR VOTING

The legal standard for removing the right to vote is different than the standard for appointing a guardian of the person. The standard for appointing a guardian of the person focuses on protecting the physical health and safety of the individual. The standard for voting has nothing to do with physical health and safety. Wisconsin law says the right to vote can only be removed if there is “clear and convincing evidence” that the person is “incapable of understanding the objective of the elective process.”

What does “understanding the objective of the elective process” mean?

Wisconsin law does not define this phrase. Definitions are found in the dictionary.



- “*objective*” means “something toward which effort is directed: an aim, goal, or end of action.”
- “*elective*” means “relating to an election.”
- “*process*” means “a series of actions or operations conducing to an end.”

So, understanding the objective of the elective process means to *understand the purpose of an election. And the purpose of an election is to vote for the candidate who the voter wants to win.*

If the individual does not understand the purpose of an election, their right to vote can be taken away. If they do understand the purpose of an election, they can keep the right to vote.

It is also helpful to remember that there is no standard imposed on people not alleged to be incompetent to vote.

BE ABLE TO ANSWER QUESTIONS ABOUT VOTING

The proposed ward shouldn't have to do anything to protect their right to vote unless the petitioner introduces evidence supporting removal of that right. But sometimes courts expect the proposed ward to prove they understand the purpose of the elective process. The proposed ward should be prepared to prove they do.



Questions the individual should be able to answer are:

- Why are there elections?
- Why do I want to vote?
- What is the purpose of voting?

The answers can be simple. What matters is that the proposed ward communicates that they “understand (know) the objective (purpose) of the elective process (elections)”.

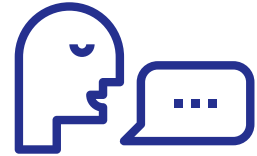
Additional questions the court may ask include:

- How do people vote?
- How do you decide who to vote for?
- What offices are on the ballot?
- What experience do you have voting, such as in school clubs?
- Do you have a photo ID and proof of residence?

One question that should not be asked – and does not have to be answered – is who you want to vote for.

UNDERSTAND THE ROLE OF THE GUARDIAN AD LITEM (GAL) AND EXAMINING PHYSICIAN OR PSYCHOLOGIST

The court appoints a Guardian ad Litem (GAL) and a physician or psychologist to interview or examine the proposed ward. They are expected to be independent, and do not represent the proposed ward. Their opinions on whether the individual is capable of voting will influence the court. Ideally, the GAL and physician or psychologist will state that the proposed ward is capable of understanding the purpose of an election. Second best is if they state they have no opinion. Even if one or all state they believe the proposed ward is not capable of voting, the proposed ward and any advocate can still present evidence that they are.



Petitioner or another advocate should:

- prepare the proposed ward for the discussions with the GAL and the examining physician/psychologist so that the proposed ward can convince them of the capacity to vote.
- share their opinion with the GAL and the examining physician or psychologist about why the individual should not lose the right to vote.
- educate the GAL and physician/psychologist about the standard for voting. As noted above, it is quite different than the standard for appointing a guardian of the person. Point out that there is no standard imposed on a voter not alleged to be incompetent.

UNDERSTAND THE RIGHTS OF THE PROPOSED WARD

Ideally, the petitioner and the proposed ward agree that the proposed ward should keep the right to vote. Unfortunately, sometimes the petitioner wants the court to remove the right to vote, but the proposed ward wants to keep it. The proposed ward still has the right, whether by themselves or through an advocate, to present evidence that they should keep the right to vote.



Sometimes the GAL, the physician, and/or the psychologist believe the proposed ward should lose the right to vote. The proposed ward still has the right, whether by themselves or through an advocate, to present evidence that they should keep the right to vote.

HIRE AN ATTORNEY

The proposed ward also has the right to hire an attorney to advocate for what they want. The attorney can advocate to dismiss the case or to keep certain rights, including the right to vote. If the proposed ward cannot afford to hire an attorney, the court must appoint one at the county's expense. Make sure the attorney understands how important it is for the individual to keep the right to vote.

Sometimes legal assistance is available in your community at no cost through law firms, legal clinics, or law schools. This is called "pro bono" assistance.

In Milwaukee County, the Adult Guardianship Forms Clinic of Marquette Law School can explain the guardianship process and provide assistance completing guardianship forms prior to filing for guardianship.

Learn about the Marquette Volunteer Legal Clinic: law.marquette.edu/mvlc

In Kenosha and Racine Counties, assistance explaining the process and completing forms is available at the ELCA Outreach Center.

Learn about the ELCA Outreach Center:
elcaoutreachcenter.org/forms/legal-intake-form/

ASK FOR ACCOMMODATIONS, IF NEEDED

The proposed ward has the right to request and receive accommodations so they can fully participate in the guardianship case. This includes discussions with the GAL and examining physician/psychologist, and appearing at the hearing. The proposed ward can ask to have the hearing held at their home if they are not able to get to the courthouse. The proposed ward can ask for an augmentative/assistive communication device or a sign language interpreter if they have difficulty speaking or hearing.

PREPARE FOR THE COURT HEARING

Before the hearing, the proposed ward should practice what they will tell the court about why they should keep the right to vote. Suggested questions are noted above. Advocates can also ask teachers, family members, friends, care givers, and medical providers to write letters of support or give testimony in court. Advocates should be prepared to state and explain the legal standard for voting.

CONCLUSION

With preparation and advocacy, individuals with a guardian of the person can keep the right to vote. Remember –

- Consider alternatives to guardianship
- If guardianship is the best option, don't check the box in the petition to take away the right to vote
- Understand the legal standard for voting
- Be able to answer questions about voting
- Understand the role of the GAL and physician/psychologist
- Understand the rights of the proposed ward
- Hire an attorney
- Prepare for the court hearing

IF YOU WANT MORE INFORMATION OR HAVE QUESTIONS

- **Disability Rights WI Guardianship and Voting Resource Page:** disabilityrightswi.org/resource-center/guardianship-and-voting
- **Wisconsin Disability Vote Coalition:** disabilityvote.org
- **Wisconsin Guardianship Support Center**
For information and assistance on issues related to adult guardianship, protective placement, and advance directives.
 - ◇ **Website:** gwaar.org/guardianship-resource
 - ◇ **Toll-Free Helpline:** (855) 409-9410
 - ◇ **E-mail:** guardian@gwaar.org

FOR VOTING QUESTIONS, CONTACT US YEAR-ROUND:



DISABILITY RIGHTS WISCONSIN VOTER HOTLINE

- **Phone Number:** 844-DIS-VOTE | 844-347-8683
- **E-mail:** info@disabilityvote.org

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