



UNDERSTANDING GUARDIANSHIP AND ALTERNATIVES TO GUARDIANSHIP IN WISCONSIN

This training is part of Act 97 and is intended to provide the knowledge you will need as a guardian in the State of Wisconsin.

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Introduction: Welcome to Understanding Guardianship and Alternatives to Guardianship in Wisconsin

Welcome to Understanding Guardianship and Alternatives to Guardianship in Wisconsin!

This training is part of 2021 Wisconsin Act 97 and is intended to provide the knowledge you will need as a guardian in the state of Wisconsin.

The Wisconsin Training Registries Customer Service is available **M-F 8am-4:30pm** by phone at **(920) 465-2691** or by email at guardian@uwgb.edu.

On order to be put on the Guardianship Training Registry, you must complete the course in its entirety, meaning you must read through **all** of the sections in this packet, complete **all** of the knowledge checks, and **mail in** and/or **scan** your **registration form, answer sheet and survey**.

This training is a collaboration with UW-Green Bay and several other stakeholders including the Wisconsin Department of Health Services (DHS), and other aging and disability advocates across the state.

Before we begin, it is important to note that this training is not intended to replace legal advice. In every situation, application of the information learned depends on the individual circumstances and facts.

Please note, statues, regulations and case law are subject to change without notice.

In this training, we will cover a variety of topics that will help you better understand your role as a guardian, alternatives to guardianship, and resources available to you.

The topics covered include:

- Fundamentals of Decision-Making and Our Rights
- Alternatives to Guardianship
- Understanding the Guardianship Petition Process
- Protective Placement
- Least Restrictive
- Duties and Required Responsibilities of a Guardian Under the Law
- Best Practices for a Guardian to Solicit and Understand the Wishes and Preferences of the Individual
- Restoration of an Individual's Rights and the Process for Removal of Guardianship
- Future Planning and Identification of a Potential Standby or Successor Guardian
- Guardian of the Estate
- Inventory and Annual Accounting

Fundamentals of Decision-Making and Our Rights

I. Rights –

In Wisconsin, the law presumes that people are competent, and considers anyone over the age of 18 an adult.

All adults have the right to make choices and direct their lives, unless a court finds them legally incompetent and restricts *some* or *all* of their rights.

Rights under guardianship that apply to all members of society, according to the Wisconsin Constitution, include:

- “All people are born equally free and independent, and have certain inherent rights; among these are life, liberty and the pursuit of happiness...”
- There is a ‘common law right to self-determination’, under which “no right is held more sacred, or is more carefully guarded..., than the right of every individual to the possession and control of their own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.”
- “Liberty of the person and control of one’s own property are very sacred rights which should not be taken away or withheld except for very urgent reasons.”

II. How Guardianship Changes Rights –

Under guardianship, some or all of an individual’s civil rights are removed. Therefore, the responsibility of a guardian is big – guardian’s make decisions that impact where the individual lives, what medical treatment they do and do not get, and even decisions related to life or death. Within the guardian’s areas of authority, the guardian makes final decisions for the individual’s life.

Guardianship is the *most restrictive* option, it has a far-reaching impact on an individual’s life, freedom, and autonomy to make their own decisions. Therefore, it should be sought *only* after other options to assist the individual have been reviewed, such as a Power of Attorney or Supported-Decision Making.

III. Misconceptions About Decision-Making and Guardianship –

The guardianship process is often misunderstood, and as a result families and professionals often believe myths about the process.

Families may hear and believe many misconceptions about guardianship. It is important to be aware of misconceptions in order to carry out the best interest of the individual and to know some of the limitations you have as a guardian.

Some common misconceptions that families may hear are:

- “I need to be a guardian to attend an IEP or other meeting.” (*False*)
- “If I am a guardian and the individual violates the law, they will not go to jail.” (*False*)
- “A guardianship can be easily changed later.” (*False*)

- “I can pick who will be the next guardian.” *(False)*
- “If you are the guardian, you make *all* the decisions.” *(False)*
- “I tell the court how we want the guardianship set up.” *(False)*

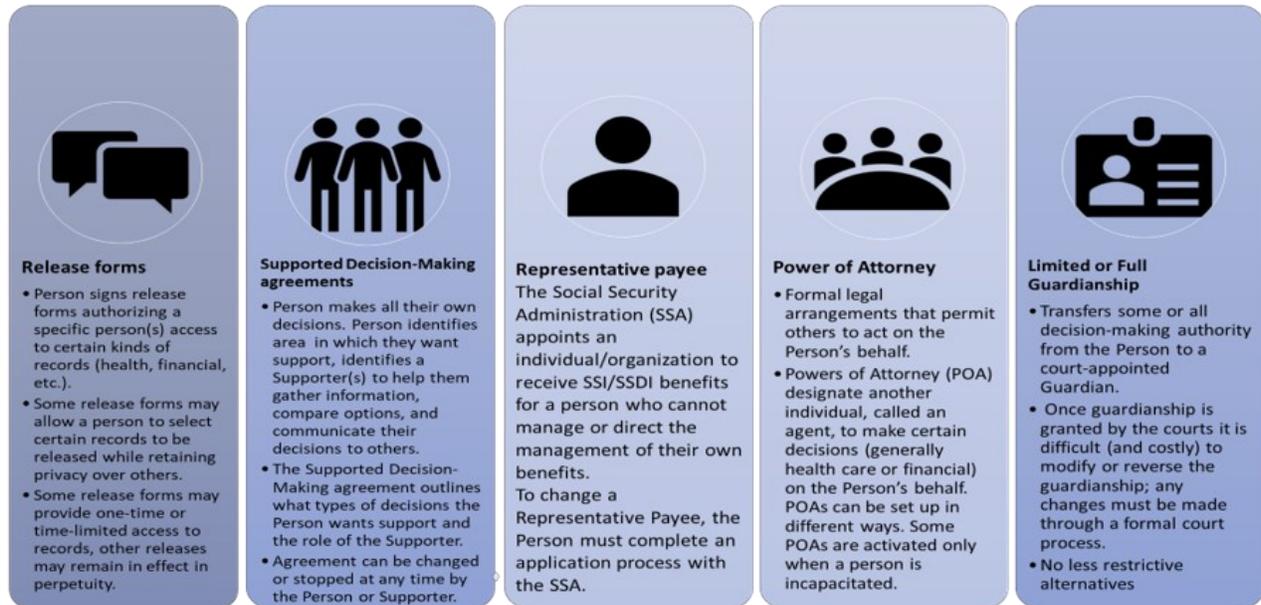
Much like families, there are many misconceptions that professionals hear as well. Some of them include:

- “All people with I/DD or physical disabilities have a guardian to make decisions for them.” *(False)*
- “I can’t ask for documentation from a guardian to prove they have been granted decision-making authority.” *(False)*
- “When an individual has a guardian, the guardian makes all the decisions.” *(False)*
- “I must call and ask the guardian for permission for all decisions.” *(False)*
- “An individual with a disability either must be able to complete tasks completely independently or have a guardian do it; they can’t have someone assist who is not a legal guardian.” *(False)*
- “All guardians are acting in the best interest of the individual.” *(False)*

Alternatives to Guardianship

There are alternatives that are available and must be explored prior to guardianship. If we can help the individual retain their rights, we are obligated to do so.

The alternatives to guardianship that must be explored include Supported Decision-Making Agreements, Advance Planning (Powers of Attorney, trusts, etc.), support services and assistive devices, training or education, representative payee and conservatorship.



This decision-making continuum represents the options that range from least restrictive, like release of information forms, to most restrictive, being guardianship.

Did you know that individuals with greater self-determination, or who are given the opportunity to make their own choices, are healthier, more independent, more well-adjusted, safer and more able to recognize and resist abuse, and are more likely to be employed at higher paying jobs?

Allowing people to retain self-determination is one of the many reasons we should seek alternatives to guardianship whenever possible.

When people exercise rights, are treated fairly, are respected, choose where and with whom to live, and choose the services they access, their lives improve.

I. Common Biases about People with Disabilities and Decision-Making

Bias is a preference toward one thing, person, or group compared to another. All of us have bias that occur naturally based on our experience in life and it is important to recognize what those are for each of us.

Just as there are many myths about guardianship, there are many common biases and misconceptions that occur as well.

Here are some common biases that people hold about people with disabilities, especially cognitive disabilities:

People with disabilities...

- Cannot make their own decisions
- Cannot learn
- Are all the same and their disability defines them
- Cannot have a high quality of life or lead full, productive lives
- Should be protected; we need to keep them safe

If you have ever had someone assume something about you, you may understand how these assumptions can feel. For individuals with a disability or other cognitive issue, assumptions can cause them to feel as though their preferences do not matter, or that they can never say no, and must always comply with what others say and do. This can also create a learned helplessness which is when someone has things repeatedly assumed about their abilities, they come to believe those things are true, even if they are not.

The following are examples of how a Person with Disability's (PWD) family member may act if they hold these types of biases:

- They may make decisions for the individual
- They may not include the individual in meeting, ask what they want, or listen to them
- They may see decisions driven by service system (medical, disability services/supports, etc.) needs and requirements instead of the individual

Professionals are not exempt from bias either. The following are examples of how a professional may act if they hold these types of biases:

- Assume the individual has a guardian
- Speak only to the individual's family member(s) instead of the individual
- Fail to distinguish between the decision-making authority of a guardian, health care agent (POA), and supporter (Supported Decision-Making Agreement)
- Set policies and protocols that assume there is a guardian or do not allow space for supporters to participate as directed by the individual

It is normal to enter in with some bias, recognizing it is the key. Remember:

- People with disabilities or cognitive issues can and do make a lot of decisions
- With practice, people with disabilities or cognitive issues can learn and do improve decision-making ability, which will, at times, include making poor decisions
- With the right services and supports, they can lead full, productive lives
- People with disabilities may need diverse advocacy and decision-making tools at separate times in their lives when facing various types of decisions to protect them from abuse, neglect and exploitation

As mentioned previously, in Wisconsin, people over age 18 are considered adults and adults have inherent rights unless the court restricts them. It is easy to assume that if something happens to us, our family will be able to step in to make decisions when we are not able. However, Wisconsin is not a ‘next of kin”, or “family consent” state; this means that Wisconsin law treats family members, including spouses, as strangers for decision-making purposes unless they have been legally designated to do so through a process like a Power of Attorney or Guardianship.

II. Supported Decision-Making –

The first alternative we will explore is Supported Decision-Making.

Supported Decision-Making believes that everyone has the right to make decisions and individuals can get help with decision making without giving up their rights. Individuals will often need help understanding, making, and communicating their decisions.

All of us use supported decision-making when we consult people we know (gather information), talk through potential decisions (compare options), and then make our own decision.

While we all use the concept of supported decision-making daily, only certain people in Wisconsin can use formal Supported Decision-Making Agreements per Wis. Stats. Ch. 52. Supported Decision-Making was signed into law in Wisconsin in 2018.

Individuals who can use Supported Decision-Making Agreements are defined within Wisconsin’s law as individual’s with “functional impairments” and includes:

- Adults with degenerative diseases
- Adults with conditions that substantially interfere with the ability to provide self-care
- Adults with physical disabilities or conditions that substantially limit one or more of their major life activities
- Adults with Intellectual/Developmental Disabilities
- Adults with mental health conditions

A medical diagnosis is not required to create a formal Supported Decision-Making Agreement; anyone who self-identifies as having one or more of the criteria may enter an agreement.

Agreements can be used for any decisions for which the individual feels they need additional support – such as housing, health care, financial affairs and employment.

Supported Decision-Making Agreements are flexible and can be updated easily as the individual’s ability and capacity to make decisions changes over time.

Supported Decision-Making Agreements do not restrict an individual’s rights to make any decisions.

- Having a Supported Decision-Making Agreement does not preclude the individual from acting independently of the agreement or making decisions that the supporter does not agree with.

- The individual is always in control of their own decisions.

Supported Decision-Making Agreements do not give supporters any new rights.

- The supporter has no authority to make the individual's decisions. The individual makes all of their own decisions.
- Supporters cannot sign legal documents for the individual or bind an individual to a legal agreement.
- Supporters only have the authority/role granted by the individual under the terms of the Supported Decision-Making Agreement.

An individual can have multiple Supported Decision-Making Agreements, choose different supporters for different decisions, and identify more than one supporter in the same Supported Decision-Making Agreement.

- An individual may choose their brother, who is money savvy, to help support financial decisions, while choosing their mom, who is a realtor, to support them through housing decisions.

A Supported Decision-Making Agreement may not be used as evidence of incapacity or incompetency of the individual.

In a guardianship proceeding, the judge is required to consider:

- Whether any alternatives to guardianship, including Supported Decision-Making, have been tried
- Whether less restrictive means, including Supported Decision-Making, could be used

***Schools are required to provide students and parents with information on Supported Decision-Making and other alternatives to guardianship.*

We have discussed a few benefits of Supported Decision-Making, but there are many more. Some additional benefits include:

- Ensures that non-family members are recognized as carrying out roles and responsibilities specified by the individual, however, family members can be supporters as well.
 - Many individuals with functional impairments do have close relationships and social networks with non-family members who want to help.
- Many individuals may need a little help for a long time, these allow for a transition to more support when it is needed.
- Individuals may be more clearly understood by medical or other staff.
 - Individuals who have challenges with speech, use sign language or communication devices, and/or who are non-verbal communicators, might use a supporter to ensure the other party understands them.
- Supporters can help people understand information and their options in ways that make sense to them.

- A supporter can help professionals more effectively communicate complex information and understand the person's questions and/or concerns.
- Individuals can learn to make decisions.
- The individual maintains control of their life.
- Agreements can be set up for free and can be easily changed.
- An individual can have multiple supporters and multiple agreements.

Supported Decision Making Video: <https://www.youtube.com/watch?v=qPC1VoFRCx0>

- To watch the video on Supported Decision-Making, open any web browser (Google Chrome, Microsoft Edge, Firefox, etc.), and type in "Youtube.com"
- In the **Youtube Search** bar, type in "**supported decision-making self-determination channel**"
- Select the video titled "**Supported Decision-Making | Self-Determination | WI Board for People with Developmental Disabilities**"

It is highly encouraged you watch the video, however if you are unable the summary is below.

- Jordan Anderson, age 19, of Auburndale Wisconsin, is an individual with a disability. He is on several boards and committees for individuals with disabilities, and he is talking to the viewers of the Self-Determination Channel about Supported Decision-Making.
- Jordan tells his personal story of being moments away from having his rights taken away through guardianship when he learned about Supported Decision-Making as an alternative.
- Many individuals may need help managing their day to day lives, but do not know there are alternatives to guardianship available to them. Jordan's story shows how avoiding an unnecessary guardianship has allowed him to remain autonomous in his life, with the support of his parents.

Remember, you must explore ALL alternatives before moving to guardianship.

III. Powers of Attorney –

You may have heard of a power of attorney (POA) before, or even have one for yourself. These legal documents allow an adult of sound mind to grant a trusted person (called an agent) the power to make certain decisions and provide guidance on what those decisions should be.

Powers of attorney are an alternative to guardianship because the individual chooses who they want to make decisions, what those decisions should look like, and they do not lose any decision-making rights. The agent is required to follow the individual's wishes if known, unlike in guardianship, where the guardian can override the individual's wishes.

In Wisconsin, there are 2 types of powers of attorney:

- Power of Attorney (POA) for Finance and Property
- Power of Attorney (POA) for Health Care

There are two important terms related to powers of attorney; first is the **principle**. The principle is the individual creating the document, and whose decisions will be made by another individual when necessary. The principle selects the decision-maker, identifies what decisions that person can make on their behalf, and knowingly and willingly signs the POA document. The second term is the **agent**. The agent is the person chosen by the principle to make those decisions. It is not possible for an agent to create or sign a POA document for someone else.

Health care as it relates to power of attorney, is any care, treatment, service or diagnosis for an individual's physical or mental condition. A health care decision is an informed decision made by the agent on behalf of the principal to accept, maintain, discontinue or refuse health care.

Now, let's take a closer look at the differences between a Power of Attorney for Health Care and Power of Attorney for Finance and Property.

- **Power of Attorney for Health Care –**
 - An individual who is of sound mind and has attained age 18 may voluntarily execute a Power of Attorney for Health Care.
 - This is a legal document that grants a trusted agent the power to make and execute health care decisions for another individual.
 - There is a standard state form that is used, and legal counsel is not required to create a Power of Attorney for Health Care.
 - Unless otherwise specified on the POA form, an individual's Power of Attorney for Health Care only takes effect upon a finding of incapacity by 2 medical professionals who personally examine the principle.
 - The medical professionals sign the document to activate the Power of Attorney.
 - Old age, eccentricity, or physical disability, either singly or together, are not grounds for activation.
 - Neither medical professional who makes a finding of incapacity may be a relative of the principal nor have knowledge that he or she is entitled to or has a claim on any portion of the principal's estate.
- **Power of Attorney for Finance and Property**
 - This is a legal document that grants a trusted agent the power to make and execute financial decisions.
 - In Wisconsin, financial powers of attorney are automatically durable and remain in effect after the person becomes incapacitated.
 - This means that financial powers of attorney go into effect immediately after they are created, unless the individual states a future date or occurrence for activation, and do not require the same activation as the health care powers of attorney.
 - It is recommended that this document is signed in front of a notary.

IV. Conservatorship –

If an individual is still able to make some or all of their own decisions but is unable or unwilling to manage their property or finances, they can request the court appoint a person of their choice to act as a conservator per Wis. Stats. Ch. 54.76.

A conservatorship can be limited so that the individual retains some power to manage their own finances, i.e., to manage their own earnings from work.

A conservatorship is voluntary, therefore there is no finding of incompetence for the individual. The individual is able to ask the court to end the conservatorship at any time, but would only be continued if the court find that the individual is now incompetent and unable to handle their finances.

Along with conservatorships being voluntary, they have several other advantages too, including:

- In order to create a conservatorship, the individual only needs to be unable or unwilling to manage their finances, and they choose the individual to act as their conservator.
- They court oversees the conservator, can require annual (or other) accounting, and can review the conservator's actions as it would the actions of a guardian.
- Conservatorship does not establish that the individual is not competent to sign contracts, however, if businesses know that the individual does not control their own funds, they may be less likely to make contracts with the individual.

V. Representative Payees –

There are two types of representative payees; those who are appointed by the Social Security Administration (SSA) and/or the Department of Veteran's Affairs (VA) to handle **only those specific benefits**, and those who handle **all** of an individual's money.

Representative payee appointments do not give the payee control over any other funds the individual may own, such as earnings from work or money received from an inheritance, unless otherwise designated through a legal document or process. No court action is needed to appoint a rep payee; a hearing is only held if the individual requests it.

These may not provide sufficient protection if the individual has substantial other income or resources that are at risk of being mismanaged or lost, or if the individual needs a legally authorized substitute decision-maker to help with finances in other ways, such as to sign contracts or assist with legal proceedings.

A representative payee does not directly take away the individual's control over other aspects of their life.

On the other hand, control over an individual's only source of income can give a rep payee power almost as great as a guardian of the estate's power without many of the procedural protections.

If the Social Security Administration (SSA) decides that an individual is incapable of managing their Social Security or Supplemental Security Income (SSI) benefits, they have the authority to appoint a representative payee to receive the checks on the individual's behalf, and to manage and use the funds for the individual's support.

- SSA can decide to appoint a rep payee on its own or because someone asks to be made the payee.
- SSA will make this decision based on medical evidence received from a physician or psychologist.
- The individual can appeal both SSA's finding that there is a need for a rep payee and their decision about who the payee will be. *Similar rep payee procedures exist for Railroad Retirement and Veterans Administration Benefits.*
- If an individual's only source of income is from Social Security, the rep payee does hold a great deal of financial power of the individual.
- The rep payee is required to hold the SSA funds in a separate account for the individual and must first use the money to pay for the individual's basic needs. This provides some assurance that the individual's basic source of income for living expenses will be protected and used to meet their basic needs.

Accounting requirements are minimal for rep payees, although Social Security may require yearly accounting and can investigate any allegations of misuse of the individual's funds.

VI. Conclusion –

After learning about the alternatives to guardianship that exist, there is still time to see if one of the options outlines in this section may work in your situation.

Guardianship is the *most restrictive* option and is very difficult to undo once it is in place. We have an obligation to explore all of the options available before pursuing guardianship, so take time to review all the options before continuing with the guardianship process.

Understanding the Guardianship Petition Process

In some cases, even after all alternatives have been explored, guardianship is still necessary. This section will take through the guardianship petition process.

To outline the guardianship process, one can expect:

- A petition for guardianship is filed
- The individual has a competency evaluation
 - This and the petition for guardianship being filed can happen *in either order*
- A Guardian ad Litem (GAL) is appointed
- There are one or more hearings in front of a judge

The guardianship process requires a judge to examine the evidence and apply the law to determine if the individual meets the legal definitions of incompetence, if a guardian should be appointed, and how limited or broad the guardianship should be.

In this section, we will discuss the laws that the judge uses during this process.

There are several findings the court must determine before appointing a guardian. These include:

- Age – the individual must be at least 17 years and 9 months.
- Presence of an impairment – the individual must have at least one of the required impairments:
 - Developmental disability
 - Serious and persistent mental illness
 - Degenerative brain disorder
 - Or other like incapacities
- A physical disability alone cannot be a basis unless the individual cannot communicate.
- A physician or psychologist must provide a medical opinion of the impairment.
- All disabilities must be substantial and have a long-term impact.
- Unless the proposed individual (ward) is unable to **communicate decisions effectively in any way**, determination may not be based on mere old age, eccentricity, poor judgement, physical disability, or the existence of a supported decision-making agreement.

As we have mentioned, it is not the existence of an impairment by itself that results in a finding of a need for guardianship. Rather, the central issue for the court is the impact of the impairment on the individual's functional ability to make decisions that are important to their health and safety.

Evaluative capacity is the functional ability to take in and evaluate information effectively and/or to use the information to make decisions.

Evaluative incapacity may take one or more of the following three forms:

- Inability to understand essential information.

- Inability to use the information to make decisions.
- Inability to communicate decisions.

The court must determine if the individual has a “lack of evaluative capacity” during the guardianship appointment. They must decide if, because of the impairment, the individual is unable to evaluate information effectively, or to make or communicate decisions, about their personal health and safety (for guardianship of the person) and/or about protecting and using their property (for guardianship of the estate).

The court must also decide if the individual’s inability to make or communicate decisions creates a serious risk of harm to the individual. And finally, the court will determine if all less restrictive alternatives, as we discussed in the previous section, have been explored.

It is important to note that while an individual may have a permanent impairment, that does not mean that their incapacity is also permanent.

An individual may gain a greater understanding on how to make different types of decisions by being involved in the decision-making process over time, so that they can regain partial control over their life, or reach a stage where they no longer need a guardian.

If you believe that the individual you are going to be guardian for can understand decisions or could grow into decision making, then this is the time to look at alternatives to guardianship. Restoring rights can be difficult and it is better to retain rights now than to lose them and try to get them back.

Once the court determines that the individual has an impairment, lacks the ability to evaluate risk or lacks the ability to communicate decision placing them at risk of harm, and that guardianship is the appropriate means of decision-making support, the court can appoint a **guardian of the person**, a **guardian of the estate**, or **both**. Each guardianship order is tailored to the abilities and circumstances of the individual.

Guardianship will vary from person to person based on the needs of the individual, and the level of capacity to understand information is different for various rights or decisions.

The intent of Wisconsin’s guardianship statute is to have individuals retain as many of their civil rights as possible.

As a guardian, it is important to read the **Determination and Order** and the **Letters of Guardianship** thoroughly so you understand the individual’s unique situation.

I. Rights –

A judge will evaluate and decide whether an individual’s rights are:

- Kept by the individual
- Removed by the court and not transferred to or shared with the guardian
- Transferred to the guardian
- Shared between the individual and the guardian

Regardless of how the rights are assigned, the guardian should include the individual in the decision-making process to the extent they are able to participate.

- For example, an order might allow an individual to make routine health care decisions, but authorize the guardian to make decisions about major surgery or high-risk medications. Or, it may reinforce the individual's right to be involved in the discussion of a decision, even though the final decision is made by the guardian.

The court tailors each guardianship order to the abilities and circumstances of the individual. When a guardian of the person has been appointed the individual retains rights both during the appointment process and post-appointment.

II. Rights Retained During Appointment Process –

There are certain rights that an individual will retain during the appointment process. As a guardian, it is important to understand these rights.

The rights retained during the appointment process include:

- To have access to, communicate privately with, and retain legal counsel.
- The right to a jury trial if contesting the guardianship.
 - The individual must request a just trial at least 48 hours before the time the hearing is scheduled. If not, the right is waived.
- The right to an independent medical or psychological examination relevant to the reason why the guardianship was established.
 - If the individual is not impoverished, then the examination will be at their own expense.
 - If the individual is impoverished, the county where the petition will be heard is required to pay for the cost of the examination.
- The right to be present at any hearing about the guardianship.
- The right to have the hearing in a location and manner that is accessible to the individual.

III. Rights Retained Post-Appointment –

There are also certain rights that an individual will retain post-appointment. It is important for you as a guardian to know and understand these rights as well.

The rights retained post-appointment include:

- To have access to, communicate privately with, and retain legal counsel.
- The right to be present at any hearing about the guardianship.
- The right to have the hearing in a location and manner that is accessible to the individual.
- To have access to and communicate privately with the court and governmental representatives.
- To provide input into plans for support services.
- To file grievances, including under state and federal law as well as those related to resident or patient rights.

- To participate in administrative hearings and court proceedings.
- To have access to and communicate with the protection and advocacy agency.
- To protest a residential placement made without court involvement and to be discharged from a residential placement unless the individual is protectively placed or meets the requirements for emergency protective placement.
- To petition for the court's review of the guardianship, protective placement, protective services, or commitment orders.
- The right to give or withhold consent for mental health treatment and psychotropic medications (Wis. Stats.Ch. 54.25(2)(b)6).
- To protect personal liberties (Wis. Stats. Ch. 54.001(2)).
 - No person who can be treated adequately outside of a hospital, institution or other inpatient facility may be involuntarily treated in such a facility.
- The right to leave upon submission of a written request to the staff, unless the facility director or designee files an emergency detention petition (Wis. Stats. Ch. 54.10(5)).
- The right to refuse to perform labor while receiving treatment/admitted (Wis. Stats. Ch. 54.61(1)(b)).
- The right to refuse all medication and treatment except as ordered by court as part of a commitment/involuntary meds order (Wis. Stats. Ch. 54.61(1)(g)).
- The right to be free from unnecessary/excessive medication and the right to refuse certain treatments on religious grounds (Wis. Stats. Ch 54.61(1)(h)).
- To exercise any other rights specifically reserved to the individual by statute or the constitutions of the state or the United States, including the rights to free speech, freedom of association, and the free exercise of religious expression.
- To exercise any legal right not expressly removed by the court or statute.
- To have the guardian inquire about the individual's opinion when making decisions affecting the individual.
 - Note: Guardians are required to make decisions that are in the individual's best interest. Those decisions must comply with the best interest standard; compliance with that standard does not necessarily mean the guardian must choose what the individual wants although the individual's preference must be considered.

As a guardian, there will be rights the individual loses that you **can** exercise on their behalf. However, there are certain rights they may lose that you as the guardian **cannot** exercise on their behalf, including voting, creating a will and serving on a jury.

There are also rights that the individual may have the capacity to exercise in some circumstances but not in others, and thus the court may give the guardian the ability to consent or veto the exercise of that right.

The court can also remove these rights entirely, in which case, a guardian may or may not exercise them on behalf of the individual.

- These include the right to apply for a license, the right to marry, the right to consent to sterilization and the right to consent to organ donation.

IV. Voting –

The standard for incapacity to vote is that the individual must be incapable of understanding the purpose of an election.

This is a different standard than the standard for appointing a guardian which focuses on the physical health and safety of the individual.

The capacity to vote is only examined when a guardian of the person is being appointed.

No individual may be denied the right to vote on the grounds of incapacity unless a prior court determination of incapacity to vote has been made. Without a court order, no one – not an election official, guardian, family member, or agent for power of attorney – can stop the individual from voting.

If the right to vote is retained, a guardian cannot vote for the individual but can, and should, assist the individual with all aspects of voting. A guardian **cannot** vote on behalf of the individual.

How I Got My Right to Vote Back Video: <https://www.youtube.com/watch?v=twTGFuNCbq0>

- To watch the video on getting the right to vote back, open any web browser (Google Chrome, Microsoft Edge, Firefox, etc.), and type in “**Youtube.com**”
- In the **Youtube Search** bar, type in “**how I got my right to vote back Wisconsin**”
- Select the video titled “**How I Got My Right to Vote Back: Jennifer Kratsch, Voter and Self-Advocate**”

It is highly encouraged you watch the video, however if you are unable the summary is below.

- Jennifer Kratsch, a voter and self-advocate shares how she got her right to vote back in Wisconsin.
- She tells her story of the judge in her guardianship case determined she was incompetent and lacked the knowledge and process of voting.
- In 2015, at the Self-Determination Conference, Jennifer heard a lawyer telling the story of another individual regaining their right to vote back.
- Jennifer called her guardian the following day and they discussed her want for gaining the right to vote back.
- Susan Howard, an advisor at the Ozaukee People First chapter, helped Jennifer with the petition process for regaining this right back.
- Jennifer met with a Guardian ad Litem prior to her upcoming court hearing, and at the hearing Jennifer was granted her right to vote back.
- She also shares why gaining her right to vote back is and was important to her.

V. Executing a Will –

In order to create a will, the court requires the individual to have the mental capacity to understand not only what they own, but who they may want to give those things to and what the effect of signing a will does.

The court may decide that the individual is incapable to execute a will during the guardianship proceeding. If this occurs, the guardian may not execute a will on behalf of the individual.

VI. Serving on a Jury –

A juror must be able to understand the English language, and an individual may be excused from serving if they “cannot fulfill the responsibilities of a juror”.

The court may decide that the individual is not able to serve on a jury; if this is the case, a guardian cannot serve on behalf of the individual.

The following rights can be left to the individual in full, can be removed in full, or exercised by the individual only with the consent of the guardian of the person, depending on what the court orders, these are often called *shared rights*.

VII. Consent to Marriage –

Marriage is a legal contract and because of this, both parties must be capable of consenting to the marriage for it to be valid.

The court will determine if the individual understands the nature and consequences of legal marriage. If the court determines the individual retains the right to marry, the court may also require that the individual only be able to marry with the consent of the guardian. Thus, the right to consent to marriage is a shared right, as the individual retains and shares the ability to exercise it with the guardian’s required consent.

VIII. Apply for a License –

Individuals may retain the right to apply for a number of licenses, such as a driver’s license, fishing or hunting license, or a job-related permit. However, just because the individual is able to apply for those licenses does not guarantee the individual will meet the requirements to qualify for the license.

Just as with marriage, the individual may solely retain this right, or may require consent from the guardian to apply for a license.

IX. Consent to Sterilization –

Under Wisconsin law, neither a guardian nor a court has the authority to consent on the individual’s behalf to a procedure for the purpose of sterilization. The only way sterilization occurs is if the individual has both the capacity to consent and gives the informed consent.

While the court and guardian cannot consent on an individual's behalf, the court may remove the right to consent altogether if it finds that the individual is incapable of understanding the nature, risks, and benefits of sterilization after they have been presented in a form that the individual is most likely to understand.

If the individual retains the right to consent to sterilization, they may solely retain the right, or may require consent from the guardian.

X. Consent to Organ Donation –

Pertaining to the right to consent to organ donation, under Wisconsin law, neither a guardian nor a court can consent on behalf of the individual to organ, tissue, or bone marrow donation.

As with sterilization, the court may remove the individual's right to consent to organ, tissue, or bone marrow donation if they believe the individual is incapable of understanding the nature, risks, and benefits after they have been presented in a form that the individual is most likely to understand.

Now, let's take some time to discuss the powers of a guardian of the person. As a guardian, you are assigned certain powers through the court hearing(s), these include:

- The power to give informed consent to medical and mental health examination and treatment and to choose providers of medical, social and/or supported living services.
- The power to give informed consent to medical examination and treatment over the individual's objection.
 - the guardian does not have the power to consent to mental health treatment over the individual's objection.
- The power to authorize participation in research or to consent to experimental treatment.
 - These powers require case-by-case court approval of consent under some circumstances
- The power to give informed consent to social and supported living services and make decisions about educational and vocational placement.
- The power to give informed consent to releasing confidential records in addition to court, treatment, and patient health care records, and to redisclose as appropriate.
- The power to make decisions related to mobility and travel.
- The power to petition for divorce, annulment, or legal separation if the individual is married.
- The power to receive all notices on behalf of the individual.
 - Notices that relate to property should be directed, or passed on, to the guardian of the estate.

The court may also authorize additional powers to the guardian including:

- The power to act as an advocate in proceedings, other than proceedings about the individual’s property.
- The power to petition for protective placement or commitment.
- The power to have custody of the individual.
- Any other power the court may specifically identify.

There are two important documents to read and understand as a guardian; the Determination and Order on the Petition for Guardianship Due to Incompetency and the Letters of Guardianship.

I. Determination and Order on Petition for Guardianship Due to Incompetency –

This document outlines what rights the guardian of the person or the estate has the authority to exercise, and what rights the individual has retained.

If the Guardianship Order does not specify that a right has been transferred to the guardian, the guardian **does not** have the authority to make that type of decision for the individual.

Keep a copy of this document to refer back to if you have any questions.

II. Letters of Guardianship of the Individual –

The Letters of Guardianship is issued to the guardian by the court, and it states the scope of the guardian’s authority.

It will cover all of the rights that have been assigned to you – voting, jury duty, and creating a will are not listed on the letters but can be found on the Determination and Order document.

Use this document to show the scope of authority that you have as a guardian.

Understanding the Guardian Petition Process Knowledge Check

Please fill in your answer for each of the following questions on the Guardianship Training Answer Sheet that was provided. Use the pictures provided to help answer each question.

1. Which of the following rights are still fully retained by the individual?

(If any box is not checked the individual retains that right in full)	Individual may not exercise this right. Remove right in full	Individual may exercise only with the consent of the Guardian of the Person
(1) consent to marriage	X	
(2) apply for an operator’s/driver’s license	X	
(3) apply for a fishing license		
(4) apply for a license under Ch. 29, Wis. Stats., other than fishing		X

(5) apply for any other license or credential under Ch. 54.25(2)(c)1.d., Wis. Stats. Specifically: _____	X	
(6) consent to sterilization	X	
(7) consent to organ, tissue, or bone marrow donation	X	

- a. Consent to marriage
- b. Apply for an operator's/driver's license
- c. Apply for a fishing license
- d. Consent to organ, tissue, or bone marrow donation

2. True/False – The guardian can consent to marriage.

(If any box is not checked the individual retains that right in full)	Individual may not exercise this right. Remove right in full	Individual may exercise only with the consent of the Guardian of the Person
(1) consent to marriage	X	
(2) apply for an operator's/driver's license	X	
(3) apply for a fishing license		
(4) apply for a license under Ch. 29, Wis. Stats., other than fishing		X
(5) apply for any other license or credential under Ch. 54.25(2)(c)1.d., Wis. Stats. Specifically: _____	X	
(6) consent to sterilization	X	
(7) consent to organ, tissue, or bone marrow donation	X	

- a. True
- b. False

3. True/False – The guardian can consent to allow the individual to apply for a license other than fishing under Wis. Stats. Ch. 29.

(If any box is not checked the individual retains that right in full)	Individual may not exercise this right. Remove right in full	Individual may exercise only with the consent of the Guardian of the Person
(1) consent to marriage	X	
(2) apply for an operator's/driver's license	X	
(3) apply for a fishing license		
(4) apply for a license under Ch. 29, Wis. Stats., other than fishing		X

(5) apply for any other license or credential under Ch. 54.25(2)(c)1.d., Wis. Stats. Specifically: _____	X	
(6) consent to sterilization	X	
(7) consent to organ, tissue, or bone marrow donation	X	

- a. True
- b. False

4. True/False – The individual retains the right to register to vote in an election.

GUARDIAN OF THE PERSON

The individual is in need of a guardian of the person

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

(1) execute a will

(2) serve on a jury

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

- a. True
- b. False

Protective Placement

We have come across the term *protective placement* a few times already, but now let's dive deeper into the protective placement process as it relates to guardianship.

In some cases, the court will issue a protective placement order for an individual. These orders are intended to keep the individual safe, or protected, by placing them in an appropriate facility.

Certain living situations require protective placement orders. Any individual under guardianship who lives in a licensed facility with more than 16 beds, like a large assisted living home, or who lives in a skilled nursing facility, more commonly referred to as a nursing home, is required to have a protective placement order from the court.

A protective placement must always be in the least restrictive setting and these orders are reviewed by the court annually.

We mentioned Adult Protective Services (APS) in the beginning of the training, and that they are not always involved in guardianship cases. Protective placements are a proceeding that APS is involved in, as they will assist the court in performing the yearly review of the placement to ensure it is still needed. This is called a Watts Review.

A court may order protective services for the person to help meet their needs in *any* setting. A wide range of services may be available to the individual including:

- Case management
- In-home care
- Nursing services
- Adult day care
- Counselling and referrals

Guardians should seek legal information and advice before admitting the individual into a facility.

Additional information and support are available at your county's Adult Protective Services agency.

Least Restrictive

One of the most important principles of guardianship is that of *least restrictive*.

With respect to the guardianship order and the exercise of power by the guardian, *least restrictive* means choosing the decision or approach which:

- Places the least possible restriction on the individual's personal liberty and exercise of rights, and that promotes the greatest possible integration of the individual into their community; and
- That is consistent with meeting their essential requirements for health, safety, habilitation, treatment, and recovery, and protecting them from abuse, neglect and financial exploitation.

As we have learned, guardianship is the legal process of removing an individual's rights. This is not something taken lightly by the law, and in order to ensure there is a balance between the removal of rights and the personal freedom of the individual. Guardians need to always seek the least restrictive environment for the individual.

This balancing test requires the court and the guardian to weigh and strike a balance between the individual's interests in health and safety, freedom from abuse, personal liberty, legal rights, community integration, personal autonomy and choice, appropriate treatment and habilitation, and personal experience and growth.

The goal is not to eliminate all risk from the individual's life, but rather to protect the individual from decisions that they are not capable of making, and that would result in an unacceptable risk of serious harm.

In the context of placement for residential and other treatment and services, the goal should be to choose the least restrictive setting in which the individual's needs could effectively be met.

In addition to personal liberty issues and integration in the community, a service setting should be analyzed to the extent to which it allows the individual to develop or retain skills that will be useful in real-life, community situations.

Under a support model, the presumption is that an individual should always be supported to live in their own community and to have normal life experiences of personal relationships, work, play, etc.

This does not mean that services aimed at maintaining or developing skills and abilities should not be provided, but that they should be provided in ways that also support the individual to have a normal life.

Duties and Required Responsibilities of a Guardian Under the Law

Now that we have a better understanding of the guardianship appointment process, let's take a look deeper into the duties and responsibilities you have as a guardian.

As a guardian, you may need to make life choices that affect the individual's day to day activities.

We've talked about self-determination a great deal, and the importance of including the individual in the decision-making process as much as possible. In order to do this, you need to learn about your individual's values and beliefs so you can encourage them to be as self-reliant as possible.

As the guardian of the person, you will receive notices, either via mail or email, related to the individual, and you will need to act on those as well as act as an advocate if needed.

If the individual requires care, social services, or needs to be placed in a protective environment, you as the guardian will need to work to secure those things.

The court also requires that you complete and file an annual report on the individual – where were they living? What is their health status? Do you have any recommendations as the guardian?

While your role as a guardian has a lot of requirements, here are a couple of things you **are not** required to do:

- The guardian does not have a legal responsibility to financially support the individual with their own money or resources.
- The guardian may take the individual into their home, but they are not required to do so.

The statutory duties of a guardian are to:

- Receive notices and act in all proceedings as an advocate of the individual (except that a guardian of the person who is not also the individual's financial guardian may not represent the individual where their property is involved).
- To secure necessary care, services, or appropriate protective placement for the individual
- Complete and file an Annual Report to the court on the condition of the individual, including where they live, their health, any recommendations by the guardian, and a statement of whether the individual is living in the least restrictive environment consistent with their needs.

When making decisions, the guardian of the person should exercise the degree of care, diligence, and good faith when acting on behalf of the individual that an ordinarily prudent person exercises in his or her own affairs.

They should advocate for the individual's best interest, and if applicable, advocate for the individual's applicable rights.

In simpler terms, the guardian should try to decide what a reasonable person would do in the situation for the individual under guardianship.

A guardian does not need special expertise, but does need basic common sense and a willingness to learn about the individual's needs and rights, and sources of support and services.

The responsibility of the guardian should be seen as far more than arranging food and a warm place to live for an individual.

A guardian is responsible for seeking services that will allow the individual to reach or maintain their fullest potential and that will allow the individual to live in the least restrictive environment possible.

The guardian is also responsible for assuring that the individual's rights and dignity as a person are defended. To fulfill this responsibility, a guardian of the person should learn about the sources of funding and appropriate services for the individual.

The guardian is not required to serve as a caregiver, but *is* responsible for making sure that care and services are provided to the individual.

In order to fulfill this responsibility, a guardian of the person should:

- Know the circumstances and condition of the individual.
- Knowing what supports and services are needed will mean consulting with the individual, learning about the disability, and talking to professionals and others involved in the individual's life.
- Guardians should try to attend care conferences and should learn to ask questions and seek more than one opinion.
- Although the statute does not specify a level of contact, a good guideline is that the guardian should visit the individual at least every month.
- Act as an advocate for the individual, not only in obtaining services, but also in ensuring their rights are defended.
 - This means that the guardian must learn about basic rights of people receiving services for mental or developmental disabilities and about specific rights for the individual's residential setting.
- Place the least possible restriction on the individual's person liberty and exercise of constitutional and statutory rights, and promote the greatest possible integration of the individual into their community.
- As much as possible, give the individual an opportunity to make choices and participate in decisions.

All guardians of the person, regardless of when appointed, are required to:

- Make diligent efforts to identify and honor the individual's preferences with respect to the choice of place of living, personal liberty and mobility, choice of associates, communication with others, personal privacy, and choices related to sexual expression and procreation.

- In deciding to act contrary to the individual's expressed wishes, the guardian shall consider the individual's understanding of the nature and consequences of the decision, the level of risk involved, the value of the opportunity for the individual to develop decision-making skills, and the need of the individual for wider experience.

Initially as a guardian, you will want to do several things:

- Meet with the individual as often as reasonably possible; monthly or more often is best.
- Patiently and kindly discuss with the individual your desire to help make decisions that honor their values, desires, and needs.
- Locate the other resources referred to in this guide and learn where to turn for more help.
- Monitor the individual's health. Encourage them to set personal standards and make sure they see doctors and other professionals as needed.

If the individual regains decision-making ability or significantly worsens, ask an attorney, APS worker, or adult guardianship program social worker for guidance.

Keep a log of what you do for the individual and when you do it. Maintain a file with important information about the individual.

Prepare your annual report (GN-3480) for the court. This form will be mailed to you in January and needs to be returned to the Register in Probate by April 15th.

- On this form, you will provide information regarding the condition of the individual such as the individual's location and health condition.
- State any recommendations for changes in the individual's treatment, services, and/or living arrangements.

If yourself and/or the individual moves, you need to notify the court by completing and returning the Notice of Change of address form (GN-3520).

All forms referred to in this training can be found in the resource section.

As you work with the individual, it is best practice to create and maintain a file of any important documents related to the individual's needs. The following information is helpful to keep in a file:

- The individual's name, date of birth, address, telephone number, Social Security number, medical coverage, physician, diagnoses, medications, and allergies to medications.
- A recent photograph of the individual.
- All legal documents involving the individual, including advance directives.
- A list of key contacts.
- A list of the individual's service providers and their contact information, descriptions of services provided, and progress/status reports.

- A list of the individuals over-the-counter and prescribed medications, the dosages, the reason each is taken, and the name of the prescribing doctor.
- Documentation of all contacts you make for the individual, including the date, time, and activity (this is particularly important if you are being paid to serve as the individual's guardian).
- Detailed progress notes that reflect contacts made and work done for the individual.
- The guardianship plan you prepared with the individual.
- Assessments of the individual's past and present medical, psychological, and social functioning.
- Documentation of the individual's known values, lifestyle preferences, and wishes for medical and other care and service.

I. Role of a Guardian of the Person

The individual retains the right to free association, which can include friendships and intimate relationships.

Don't stop the individual from forming and maintaining relationships with others. You may need to supervise these relationships, if necessary, but the individual should be allowed and even encouraged to make social connections.

The guardian should not override or interfere with the individuals' relationships unless there is a risk of harm to the individual. If there is a risk of harm, the guardian should identify the least restrictive option, which might include scheduled or supervised visits.

Let's take a look at some things you **should not** do as a guardian.

- Do not attempt to manage the individual's money or property, or enter the individual into any contracts, unless you are also the guardian of the estate.
- Do not let the individual be moved to another facility or let their treatment plan be changed without your permission or notification.
 - Be informed and authorize medication and medication changes with the individual's doctor.
- Do not give up if you are trying to get something important for the individual's care. On the other hand, don't push too hard if the matter isn't that important.
- Do not vote on behalf of the individual.
- The guardian may not consent on behalf of the individual for marriage, organ donation (for someone else's benefit), or sterilization.
- Do not look at the facility, the agency, the doctor, or the staff working with the individual as "the enemy"; if you are on good terms with them, you will have a better chance of getting what the individual needs without trouble.
- If you work for a facility or program, don't try to have the individual placed in that facility or become involved in that program. This is a conflict of interest.

Your responsibilities as a guardian begin the moment the court appoints you. Your responsibilities only end if:

- The individual dies.
- You are unable to serve.
- You resign and your resignation is accepted by the court.
- The court removes you, either voluntarily or involuntarily.

If the individual asks that someone else be their guardian, or if the individual regains decision-making ability and no longer needs a guardian's protection, you may contact an attorney, APS worker, or adult guardianship program social worker to learn how the court terminates an individual's guardianship.

Duties and Responsibilities of a Guardian Under the Law Knowledge Check

Please fill in your answer for each of the following questions on the Guardianship Training Answer Sheet that was provided.

- 1. When making decisions for the individual, the guardian should:**
 - a. Make the decision the guardian would pick for themselves
 - b. Make the easiest decision
 - c. Make the decision based on what is in the best interest of the individual, considering their preferences in the decision
 - d. Seek the court's opinion for all decisions
- 2. True/False – A guardian can make any and all decisions for the individual.**
 - a. True
 - b. False

Best Practices for a Guardian to Solicit and Understand the Wishes and Preferences of the Individual

Imagine what it would be like if you heard the word “no” all of the time. What would it feel like to not be able to make your own decisions?

What if every day you woke up, someone told you what you had to wear, what foods you were going to eat, and where you were going to go?

Imagine you get up and are going to get dressed in your favorite shirt, but someone takes it away from you and tells you that you wore that shirt too many times this week, and you have to wear a different one. Then, you go to have your morning cup of coffee, but the cook tells you that you are not allowed to have caffeine, so you can't have coffee anymore. And when you ask for eggs and bacon, you are told that isn't health for you, so you get oatmeal instead.

How would you be feeling at this point? I would bet not very happy, but this can very often be the type of experience an individual has.

Guardians are often well-intentioned in making decisions for an individual; they try to make the right decision, and often don't realize how those decisions may limit the rights of the individual.

As a guardian, your goal is to make decisions in the individual's best interest; this includes:

- Considering cultural and personal preferences.
- Remembering to put the individual in the center of your decision-making.
- If the individual makes a decision you don't agree with, that doesn't mean it is a bad one.

You should set aside plenty of time to explain your role to the individual. Just as you would with anyone you are getting to know in your life, take time to ask the individual questions to learn more about them.

- Ask what name the individual prefers to be called – do they want a more formal address, like Mr. or Mrs., or would they prefer you call them by an informal nickname?
- Find out the individual's priorities.
- Learn how to help coordinate the things that keep them safe, engaged with life, and doing what they enjoy.
- Agree on what to do now, what you need more time to arrange, and what you will need professional help with.
- Write out your plan and keep it available to both you and the individual.
- Refer to the plan to help guide your choices for the individual.
 - The individual may want to review it or show a copy to other care providers.
- Ask the individual how they prefer you communicate with them.

- These days, some people prefer text messaging to calling on the phone. Sometimes this is better for an individual's comprehension.
- Work with the individual to find out what the best process is.
- Ask the individual who in their life supports them – do they have friends, family, or professionals that are particularly important to them? Get to know these people if possible.
- Find out their dietary preferences, the type of exercise they prefer, and what they believe their skills and strengths are.
- Ask them what works best for them if they are upset and how you can help support them.
- Some people with guardians may have had their impairment from birth, but many others have had it come on later in life – it is important to know about the individual's past before their impairment set in.
 - Did they have a job? Have they gone to tech school or college? Are they involved, or would they like to get involved in their community? Where would they like to live if they had the choice?

Your duties to care for and be loyal to the individual are the same whether you are a guardian for a spouse a family member, or someone you do not know well yet.

Your efforts to help the individual should focus, as necessary, on supporting their choices for work, social, health care, and other life events.

The individual's goals, desires, and abilities will change over time; guardian's must continually consult with the individual about their wants and preferences, and adjust support for their decisions, or decisions made on their behalf, accordingly.

Focusing on the individual's wants, needs, and life choices will foster independence and whenever possible helps ensure you are making the decisions the individual would have made for themselves.

There will be times when you and the individual have different preferences for life choices. Focus on the individual's desires, not your own, and remember that what they want is likely to change over time.

Your plan, developed with the individual's help, should say what needs to be done to help them and roughly when. Also include how to meet his or her social needs, possible future changes in residence, financial or estate planning, and, when appropriate burial planning.

I. Informed Consent

Informed consent is an individual's agreement to a particular course of action. It is based on full disclosure of the facts needed to make an intelligent decision and the individual voluntarily acting without coercion.

- Try to give informed consent by consulting with the individual before acting on their behalf.
- Consult with the individual again after you learn more about the situation.

- You must make the decision for them based on understanding all available information and determining what is in the individual's best interest.

As a guardian, you stand in the place of the individual and are entitled to the same information and choices as the individual would have had if they were not under guardianship.

II. Confidentiality

Confidentiality is ensuring the individual's personal details are kept private and not shared with others who do not have a proper need to know.

- Make sure you only share information about the individual's private life, health care arrangements, finances, relationships, medications, and life choices with those professionals, agencies, or service providers that need to provide benefits or care to the individual.
- Limit information sharing to only what is necessary and relevant to the issue.
- A guardian must respect the individual's privacy and dignity, and not gossip about his or her private affairs.
- If the individual wants family members, friends, or professionals to know personal information but cannot easily relay it, you may communicate it.

A good tip is to safeguard the individual's Social Security number, Medicare and medical identification numbers, banking information, and medical history as you would your own.

The need to keep the individual's information confidential does not mean that you should decide whom they can see. A guardian does not usually decide with whom an individual can spend time or when they can. However, a restraining order spelling out limitations may be necessary if someone may have abused, taken advantage of, or committed crimes against the individual. Contact your attorney, probate, APS, or adult guardianship program social worker if you believe you must restrict communication between the individual and someone else.

III. Best Interest Standard

In your role as a guardian, you are charged with making independent decisions on behalf of the protected individual that will be in their best interest as defined by more objective societal norms.

The decisions you make must not harm the individual.

The decisions you make should reflect the individual's values, needs, and wants, you should first make sure they are in a safe, secure environment with adequate food and drink, shelter, warmth, services and health care.

IV. Dignity of Risk

What if you could never do something again because a mistake or choice you made long ago?

What if every day you just waited – for the bathroom, to smoke, to eat, for a friendly face to make eye contact and acknowledge you?

What if your money was always kept in an envelope, you could not access, when all you wanted was to see how much was there?

What if people asked you to make a decision, but still did it their own way and did not tell you why?

What if you were never allowed to make a mistake?

What if you never got a chance? To...

A decision isn't the outcome or end-goal in and of itself. It is a step along the path of how an individual lives his or her life, or an aspect of life. Living life is a process, not a product. Understanding and supporting this process enables individuals to more successfully make decisions incrementally, perhaps, supplementing with support as needed instead of making the individual accept more than they need or what they absolutely do not want. Allowing the individual, the dignity of risk is another strategy to support their autonomy and self-determination.

Dignity of Risk Video: <https://www.youtube.com/watch?v=CTuD7rKNiKA>

- To watch the video on Dignity of Risk, open any web browser (Google Chrome, Microsoft Edge, Firefox, etc.), and type in “**Youtube.com**”
- In the **Youtube Search** bar, type in “**dignity of risk -preview**”
- Select the video titled “**Dignity of Risk - Preview**” by AlturaLearning

It is highly encouraged you watch the video, however if you are unable the summary is below

- This video defines the concept of dignity of risk as autonomy and self-determination; or the right to make your own decisions without interference.
- They say that in residential care, it is about supporting residents to make the choices that they have always made, even if there is some risk
- They talk about positive risk as acknowledging there is the possibility of risk but seeing the benefits of doing that choice.
- In residential care they say it is important to balance and understand the dignity of risk and duty of care and to understand that as an organization you can achieve both of those in partnership with the residents.

Human beings are complex and the individual will be no different. You may come across some difficult and challenging decisions in your time as a guardian.

You may disagree with the individual about smoking, food choices, romantic relationships and friendships, living arrangements, and medical orders.

Let's take a look at some strategies to use if these situations come up for you and the individual.

When faced with a challenging situation, the decision-making framework can help to navigate the challenges:

- First, consider what the individual wants and what the risks are of that want.
- Can you lower the risks through a compromise?
- Are there alternative options that can meet the same goal?
- If needed, have you consulted with medical providers?

Based on all of these questions, the guardian must make a decision that balances risk and preference.

We will now go through some example scenarios to better show how you can use this decision-making framework.

I. Scenario 1

Sally has a sweet tooth and loves her Mt. Dew soda. She refuses to drink any other liquids or drink diet Mt. Dew. She is a diabetic, and her blood sugar has been running high causing other medical issues. The staff has attempted to get her to drink less soda, but she refuses. They have called you, her guardian, to decide what to do.

First, talk to Sally and discuss her feelings related to her blood sugar being high and the amount of Mt. Dew soda she drinks, and see if she is willing to compromise.

- Would she drink water with two meals and Mt. Dew soda with dinner?

Discuss with her doctor the risk of her Mt. Dew consumption and explore options that allow the balance of her preference with her health.

If Sally is not willing to compromise, and there are no alternative options that allow balance of Sally's preference and her health, you must decide how to protect and respect her desires.

- This could look like limiting the number of Mt. Dew that is purchased each week so that Sally is still getting her Mt. Dew soda, but the number is limited to protect her health.

II. Scenario 2

Joe lives in an adult family home, and has a friendship with Bob who likes spending evenings at the bar down the street. Joe has started going with Bob to the bar several times a week. The staff has called you because they are concerned that Joe is going to the bar. As the guardian, you are concerned that Bob is a bad influence. As his guardian, can you stop Joe from being friends with or going to the bar with Bob?

Ask Joe about his relationship with Bob – does he enjoy it? Does he feel safe?

Discuss with the staff if anything happens when he comes home. Are there any concerns after he has been to the bar?

Unless there are any dangers or risks to Joe, the guardian does not get to pick Joe's friends. If there are issues with Joe going to the bar, you can explore other options of where they can hang out together as friends.

III. Scenario 3

Heidi is an adult with a disability and lives in an adult family home. She has told you that she is attracted to Jim, who also lives at the adult family home. She wants to date Jim and has said they have discussed having an intimate relationship. As her guardian, what should you do?

First, you should acknowledge Heidi's right to interpersonal relationships and sexual expression. You must take steps to ensure that Heidi's sexual expression is consensual both on her side and on Jim's.

Encourage a healthy relationship and ensure that an environment conducive to this expression in private is provided if all the above are met.

Restoration of an Individual's Rights and the Process for Removal of Guardianship

Over time, the individual may gain or lose decision-making skills, or their situation may change so that he or she needs greater (or less) protection, or so that their ability to make a particular decision on their own becomes more important.

In these cases, the court can be asked to review and modify the guardianship order. The court can remove rights or increase any powers assigned to the guardian.

Individuals have the right to legal counsel if they are asking the court to restore their rights, or if rights are being removed.

A guardian or any interested individual may contest the restoration of rights or the removal of rights, and submit a statement to the court requesting the restoration or removal of rights, or transfer of powers to the guardian. The statement should include reasons for the change, and the facts that support it.

- This could be in the form of a physician's statement about changes in the individual's condition, or a statement by the guardian about risks to the individual's health or safety that have occurred.

The court must appoint a Guardian ad Litem to review the issue and report to the court about whether the change is in the individual's best interest.

If no one objects to the change within 10 days, or a shorter period set by the court, the court can order the change without a hearing. If there is an objection within 10 days of the notice, or the court decides that a hearing should be held, the court will hold a hearing to decide whether to grant the request.

The court can restore rights that the individual lost in the initial guardianship proceeding, reduce the powers assigned to the guardian, or terminate the guardianship.

The guardian, the individual, or anyone acting for the individual, may file a petition asking the court to review whether the individual has the capacity to exercise certain rights or make certain decisions, and/or whether the individual continues to meet the standards for a finding of incompetence.

If the individual is found to have the capacity to exercise a right or power, the court can amend the guardianship order so that their authority to exercise the right or power is restored.

The petition to restore a right can sometimes be used to allow the individual to make a specific decision. For example, the individual may have decided that they want to marry, vote, be sterilized, or donate an organ to another person. It is sometimes easier to show capacity in the context of this kind of specific decision. The individual can be assessed by a professional, for example a counselor, service provider, or program staff who work with the

individual, to ensure that the individual understands the decision, the risks and benefits of the decision, and has been consistent about the decision.

If the court finds that the individual is no longer incompetent, the court must end the guardianship.

The court must appoint a Guardian ad Litem to look into the issue and report to the court about whether ending the guardianship is in the individual's best interest. The court must hold a hearing before taking any action, and the individual has rights very much like those in the original guardianship proceeding.

The court can refuse to review the case if a review has happened within the past 180 days.

Future Planning and Identification of a Potential Standby or Successor Guardian

Future planning in all situations is important, but it is especially important for guardianships. Establishing a standby or successor guardian makes transitions easier and reduces anxiety and uncertainty for the individual.

Wisconsin statute allows there to be either a **standby** or **successor** guardian.

- **Standby guardian** – someone who has been pre-approved by the court to take over either temporarily or permanently if the initial guardian is unable or unwilling to act.
- **Successor guardian** – someone who can take over if the initial guardian is unable or unwilling to act, and no standby has been appointed or available.

I. Standby Guardian

Under Wis. Stats. Ch. 54.52, a standby guardian's appointment is immediately effective upon the death, unwillingness, or inability to act, resignation, or court removal of the initial guardian.

A standby guardian can also take over temporarily if the initial guardian cannot perform their duties due to an extended vacation or illness.

The standby guardian will take on the same powers and duties as the initial guardian.

The initial guardianship petition allows the petitioner to propose a standby guardian, but they can also be added later. Adding a standby guardian later requires a hearing to ensure that the guardian is fit to serve and appropriate for the individual. The individual has all the same rights at this hearing as they do at any other hearing regarding the guardianship.

If a standby guardian was not appointed in the initial guardianship petition, or if a new standby is proposed, a petition to appoint one can be filed at any time.

The standard court forms used in this process are listed below; they are also available on the Wisconsin Court Website, listed in the resource guide.

- **GN-3435:** Petition for Appointment of Standby/Successor (with hearing)
- **GN-3140:** Statement of Acts and Consent to Serve as Guardian (to be completed by proposed standby/successor; must be notarized)
- **GN-3120:** Affidavit of Service
- **GN-3121:** Certificate of Service
- **GF-131A:** Appointment of Guardian ad Litem
- **GN-101:** Notice and Order for Hearing

When the initial guardian is unable or unwilling to act, either temporarily or permanently, the standby guardian must notify the court that they will be assuming the duties of the guardian; standard form **GN-3220 Notification to Court of Assumption of Duties of Standby Guardian** may be used for this purpose.

The court will issue letters of guardianship to the standby guardian specifying the duration of the standby's authority.

If the appointment of the standby guardian is permanent, the initial guardian or their personal representative must provide a final accounting to the court, the person, and the new guardian, per Wis. Stats. Ch 54.66(1).

II. Successor Guardian

Successor guardianship is governed by Wis. Stats. Ch. 54.54. If the initial appointed guardian dies, is removed by court order, or resigns, and no standby guardian is in place, any interested person may file a petition to be a successor guardian.

The court may also appoint a suitable person on its own motion, with or without a hearing. If the court appoints the successor without a hearing, the individual and any other interested person may petition for reconsideration.

III. Guardian Resignation

If the current guardian would like to step down, they must complete for **GN-3400 Resignation of Guardian or Conservator**.

A guardian's duties only end when the court formally discharges them.

Court procedure can vary from county to county; check with the Register in Probate to see if any additional forms may be needed.

Guardian of the Estate

In this section, we will learn the basics of a guardian of the estate. We will learn what it means to be a guardian of the estate, the duties and responsibilities you have as guardian of the estate, and the limitations for them.

A guardian of the estate is an individual or corporation appointed by a probate court pursuant to Wis. Stats. Ch 54., to manage the financial affairs of another individual who the court has determined is either incompetent or a spendthrift.

It is important to note that someone can be appointed to be both the guardian of the person and the guardian of the estate.

A guardian of the estate is appointed when the court determines that an individual is **incompetent** and there is no other more least restrictive option. This means that, because of an impairment, an individual is unable effectively to receive and evaluate information, or to make or communicate decisions related to management of his or her property or financial affairs to the extent that any of the following applies:

- The individual has property that will be dissipated in whole or in part.
- The individual is unable to provide for his or her support.
- The individual is unable to prevent financial exploitation.

Spendthrift is when an individual is unable to manage effectively their financial affairs because of using alcohol or other drugs, gambling, or other wasteful conduct.

As a guardian, there is a standard to which you are held. The standard that a guardian is held when acting on behalf of the individual is to use the judgement and care that persons of prudence, discretion and intelligence exercise in the management of their own affairs.

- In simpler terms, you should handle the individual's affairs in a way that you would responsibly handle your own affairs.

Consistent with the individual's functional limitations, the guardian of the estate shall consider:

- The individual's understanding of the harm they may suffer as the result of their inability to manage property and financial affairs.
- Their personal preference and desires for managing their activities of daily living.
- The least restrictive forms of intervention for the individual.

As the guardian, it is important that you use the same judgement and care when exercising duties and powers that you would use if it was your own estate.

I. Duties as the Guardian of the Estate

As a guardian of the estate, it is important that you provide the individual with the most independence as possible with respect to property management in light of their functional level and understanding of their limitations.

Guardians should consider the individual's functional level, understanding, and appreciation of their functional limitations, and the individual's personal wishes and preferences regarding managing the activities of daily living.

A full list of the duties for guardians of the estate can be found in Wis. Stats. Ch. 54.19.

As the guardian, you have duties in regard to the individual's income and assets; some of the duties include:

- Taking possession of or control of the individual's real and personal properties, any rents, income and benefits accruing from the property, and any proceeds from the sale, mortgage, lease or exchange of property.
- Complete an **Inventory of Assets and Income**, as well as prepare and file **Annual Accounting** with the county register in probate.
 - We will go over these 2 forms in detail in the Inventory and Accounting section.
- If the individual owns any real estate, file a notarized statement with the county register of deeds specifying the legal description of the property, the date the individual is determined incompetent, and the name, address, and telephone number of the individual's guardian and any surety on the guardian's bond.
- If the individual receives governmental benefits where a representative payee is appropriate, apply to be appointed as the representative payee or ensure one is appointed.
- Determine if the individual has executed a will, and if so, its location, as well as determine the people to be notified in the event of the individual's death, and if death occurs, notify those people.
- Retain, expend, distribute, sell, and/or invest the individual's assets and account for them all.
 - Use their income and property to support them and any of their dependents.
- Pay any debts and/or claims from their estate, income, and assets. This includes filing tax returns and paying any taxes owed from their estate, income, and assets.
- At the termination of the guardianship, deliver all the individual's assets to the persons entitled to them.
- Perform any other duties required by court order.
- File a final accounting.

II. Powers of a Guardian of the Estate

As the guardian of the estate, you have powers in regard to the individual's income and assets. Some of the powers require the courts prior written approval, while others require no court approval. Always check to make sure you have the authority to exercise a power. A full list of the powers for guardians of the estate can be found in Wis. Stats. Ch. 54.20.

As the guardian, you have powers in regard to the individual's income and assets that **require the courts approval** following any petition and upon any notice and hearing that the court requires; these include:

- Making gifts or accessing the individual's online accounts.
- Exercising elective rights that come to the individual because of a death of a parent or spouse, or disclaiming any interest of the individual by will or other transfer.
- Establishing and transferring assets into a Special Needs Trust or purchasing insurance contract(s) and electing options to change beneficiary or surrender the policy for cash value.
- Transferring any assets of the individual to existing revocable living trusts that they have created for themselves.
- Determining any rights the individual has under retirement accounts or plans.
- Applying to the court for adjustments of any claims the individual incurred before the guardian was appointed.
- Providing support to anyone the individual **is not** legally obligated to support.
- Conveying or releasing a contingent or expectation interest in property, including marital property.
- If appointed for a married individual, exercising any control or management over marital property, property other than marital property, and rights in any business affairs that the married individual could exercise themselves.
- If the court determines it is favorable to continue the individual's business, continue it on any terms specified in the court order.

As the guardian, you also have powers in regard to the individual's income and assets that **do not require the courts approval**; these include:

- Providing support to anyone the individual **is** legally obligated to support.
- Entering into a contract, except for contracts prohibited by Wis. Stats. Ch. 54.
- Exercising options for the individual to purchase securities or other property.
- Authorizing access to the individual's confidential records and the release of the records.
- Retaining any property (real or personal) that the individual has at the time the guardian is appointed, and those that are acquired during guardianship by gift or inheritance.
 - Note that Ch. 786 of the Wisconsin Statutes required court approval for the sale, mortgage, pledge, lease, or exchange of real estate.
- Applying for public and/or private benefits the individual may qualify for and benefit from.
- Settling all claims and accounts.
- Appearing and representing the individual in any actions and proceedings unless someone other than the guardian is appointed.
- Sell, mortgage, pledge, lease, or exchange any assets of the individual at fair market value, and invest or reinvest the proceeds of the sale and/or any other money in the guardian's possession, or in the real or personal properties determined by the court to be in the best interest of the individual.

- Note that Ch. 786 of the Wisconsin Statutes requires court approval for the sale, mortgage, pledge, lease, or exchange of real estate.
- Take any other action that is reasonable and appropriate to the duties of the guardian of the estate, except those specified under the **powers requiring court approval**.

III. Limitations to the Guardian of the Estate

Guardians of the estate also have limitations, much like guardians of the person, imposed by statutes or court order.

A full list of limitations for guardians of the estate can be found in Wis. Stats. Ch. 54.18(3). Some of the limitations include:

- Do not lend funds of the individuals to yourself.
- Do not lend funds of the individuals to another person or to an entity, unless the court first approves the terms, rate of interest, and any requirement for security.
- Do not purchase property of the individual, except at fair market value (subject to Wis. Stats. Ch. 786), and with approval of the court.

As a guardian, you are responsible for ensuring whatever money an individual has is used wisely and only for the benefit of the individual. Your primary responsibility as the guardian of the estate is to see an individual's best interests, not to build up their estate.

An individual should live at the standard of living that they can afford while still making sure a reasonable amount of funds is available for future needs.

Let's discuss some **do's** and **don'ts** for guardians of the estate.

- **Do –**
 - Consider the individual's wishes and preferences.
 - Explain to the individual why they need help with their finances.
 - Help the individual to understand how to use their money in the best way.
 - Help the individual apply for benefits that may provide them support.
 - Keep accurate records of the finances of the individual.
 - Review any reports the guardian creates with the individual.
- **Don't –**
 - Use your own finances to support the individual.
 - Lend or loan the money to yourself or anyone else without first obtaining court approval.
 - Refuse to give any money to the individual for spending.
 - Deny a request of the individual to spend money unless it places them at harm or cannot be accommodated.

Lastly, we will discuss some helpful hints and things to keep in mind as the guardian of the estate.

First, it is important to keep good records. When you are first appointed guardian of the estate, you will have to complete a list of all the individual's property, and an estimate of what each item is worth; this is call the **Inventory** (form **GN-3440**). You will have 60 days to complete the inventory form and return it to the county register in probate.

Keep an accurate record of all receipts and disbursements made on the individual's behalf. The court will require **Annual Accounting** (form **GN-3500**), and this form will be mailed to guardians of the estate in December or early January of each year. This form is due to the register in probate by April 15th.

- Some requirements for reporting may not apply to small estates (under \$50,000). Check with the county register in probate to determine the reporting requirements.

We will go over in detail the **Inventory** and **Annual Accounting** forms and how to fill them out.

Notify the probate court, and if the individual is protectively placed, notify APS, for the following:

- If there are any changes in the guardian's address and phone number.
- If there are any changes in the individual's address or phone number.

Keep the facility, caregivers, or someone local informed of any travel plans you may have and provide the number of where you can be reached.

Guardian of the Estate Knowledge Check 1

Please fill in your answer for each of the following questions on the Guardianship Training Answer Sheet that was provided.

1. True/False – As a guardian, you should consider the individual's wishes and preferences.
 - a. True
 - b. False
2. True/False – As a guardian, you should use your own finances to support the individual.
 - a. True
 - b. False
3. True/False – As a guardian, you should not explain to the individual why they need help with their finances.
 - a. True
 - b. False
4. True/False – As a guardian, you should not lend or loan money to yourself or anyone else without first obtaining court approval.
 - a. True
 - b. False
5. True/False – As a guardian, you should refuse to give any money to the individual for spending.
 - a. True
 - b. False

6. True/False – As a guardian, you should help the individual apply for any and all benefits that may provide them support.
 - a. True
 - b. False
7. True/False – As a guardian, you should not deny a request of the individual to spend money unless it places them at harm or cannot be accommodated.
 - a. True
 - b. False
8. True/False – As a guardian, you should not help the individual understand how to use their money.
 - a. True
 - b. False

Guardian of the Estate Knowledge Check 2

Please fill in your answer for each of the following questions on the Guardianship Training Answer Sheet that was provided.

1. True/False – An individual can be appointed to be either a guardian of the person OR a guardian of the estate. They cannot be appointed to both.
 - a. True
 - b. False
2. True/False – it is important to keep an accurate record of all receipts and disbursements made on the individual's behalf.
 - a. True
 - b. False
3. At the termination of a guardianship of the estate, you are required to:
 - a. Deliver all the individual's assets to the people entitled to them
 - b. Keep all the individual's assets, you deserve it
 - c. Let the courts handle it
 - d. Keep a portion of the assets as a tip
4. Guardians should notify the Probate Court and Adults Protective Services when:
 - a. The guardian and/or individual's address changes
 - b. The individual's phone number and address changes
 - c. The guardian's phone number changes
 - d. The guardian and/or the individual's address and/or phone number changes
5. True/False – The standard the Guardian of the Estate is held when acting on behalf of the individual is to use the judgement and care the persons of prudence, discretion, and intelligence exercise in the management of their own affairs.
 - a. True
 - b. False
6. An important thing to remember as a guardian is:
 - a. To find the least restrictive forms of intervention for the individual
 - b. To be the individual's friend, they are probably lonely
 - c. To do what you want, the individual won't even notice
 - d. None of the above
 - e. All of the above

Record Keeping

One of the most important responsibilities of a guardian is to complete accurate record keeping of the individual.

A guardian should keep careful records of what they do with the individual's assets and property. Make sure and keep good records of any financial accounts, like checking and savings accounts. The records should show any property or assets the guardian has received on behalf of the individual; ***the guardian should never put the individual's assets together with their own.***

The individual's records should be kept separate at all times. You are responsible to ensure that all records are kept in a safe place, for example, stock certificates should be kept in a safe deposit box.

Any money paid out by the guardian for the individual should be paid out from the individual's assets or accounts. The guardian should not write a check from their personal account and then reimburse themselves. The records the guardian keeps should reflect any and all transactions performed on behalf of the individual, such as purchases and sales.

Some helpful hints for record keeping include:

- Documentation of the individual's name, date of birth, address, telephone number, social security number, medical coverage, physicians, diagnoses, medications and any allergies, both general and to medications.
- Keeping record of all legal documents involving the person.
- Documentation of advance directives.
- Keeping a list of key contacts.
- A list of service providers, contact information, a description of the services provided to the individual, and progress/status reports.
- Keeping documentation of all contacts, including date, time, and activity with the individual.
- Keeping progress notes that are as detailed as necessary to reflect contacts made and work done regarding the individual.
- Keeping record of the guardianship plan.
- Keeping an inventory.
- Keeping assessments regarding the individual's past and present medical, psychological, and social functioning.
- Keeping documentation of the individual's known values, lifestyle preferences, and known wishes regarding medical and other care and services.
- Check with tax professionals, Social Security, and other entities you may be working with to find out how long they suggest you retain records.

Inventory and Annual Accounting

As the guardian of the estate, you are required to complete two forms – **Inventory (GN-3440)** and **Annual Accounting (GN-3500)**. Both of these forms require a signature from the guardian that must be witnessed by a notary public.

The guardian of the estate is required to complete and return an **Inventory form (GN-3440)**, that lists all of the individual's income and assets. This includes interests in property and any marital property interest, regardless of how the asset is titled.

If you are appointed guardian of the estate, each January the probate court will send an **Annual Accounting form (GN-3500)** to complete and return by April 15th. This lists the individual's income and expenses for the previous year (or since appointment), and assets on hand.

I. **Inventory Form (GN-3440)**

You should be given an Inventory form at the time you are given certified guardianship. If you need a new form, it can be accessed by visiting www.wicourts.gov/forms.

This form should be completed and returned to the register in probate office *with the filing fee* within 60 days of being appointed guardian of the estate.

The court will specify to whom, if anyone, the guardian of the estate will provide copies of the inventory.

The filing fee for the Inventory form is \$20 if the individual's estate is **less than** \$50,000.

If the estate is **more than** \$50,000, the fee is 0.2% of the net estate.

- For example, if the net estate is \$150,000, the fee is calculated as: $0.2 \times 150,000 = 30,000 / 100 = 300$
- The filing fee for the Inventory would be \$300 if their net estate for the individual is \$150,000.

The Inventory form must be signed by the guardian in the presence of a notary public.

When filling out the Inventory form, include county the case is in, the individual's name, date of birth, and case number.

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY	
IN THE MATTER OF	
_____	Guardianship or
Name _____	Conservatorship Inventory
_____	(Adult Guardianship and Conservatorship)
Date of Birth _____	Case No. _____

In the center of the page, write the date you were issued Letters of Guardianship; it is shown in the example below as 07/04/2010.

In box (a) write the total dollar amount of ALL the individual's assets. In this example, the assets are \$212,013.

- We will go over listing the assets and their dollar amounts in order to get the amount for filing in this box.

In box (b) write the total dollar amount of the mortgage(s) or any other loans. The two most common are a mortgage or car loan. In this example, the mortgages and loans are \$19,385.

- We will go over listing mortgage(s) and any other loans and their dollar amounts in order to get the amount for filing in this box.

Subtract boxes (a) and (b) to get the net value of the assets for the guardianship and write the total in box (c). In this example, we subtract \$19,385 from \$212,013 to get a total for box (c) of \$192,628.

SUMMARY OF PROPERTY (Value of Ward's or Individual's Estate as of date Letters of Guardianship or Conservatorship were issued.)	Date Letters Issued
The following is a listing of all the ward's or individual's property at its fair market value on date Letters of Guardianship or Conservatorship were issued.	07/04/2010
(a) The ward's or individual's interests in property and any marital property interest regardless of how asset is titled	\$ 212,013.00
(b) Minus total value of encumbrances, liens or other charges upon each item	\$ 19,385.00
(c) Net value of property subject to this guardianship or conservatorship	\$ 192,628.00

The following section must be signed by the guardian in the presence of a notary public. Therefore, you can skip this section until you are with a notary to witness the signature.

- Tip: it may be helpful to put a sticky note near the signature line to remind you this section needs to be witnessed when signed.

Note: This form with the statutory filing fee shall be filed within 60 days of appointment.

Signature of Guardian/Conservator
State of _____
County of _____
Subscribed and sworn to before me on _____

Notary Public/Court Official

Name Printed or Typed
My commission/term expires: _____

Signature of Co-Guardian
State of _____
County of _____
Subscribed and sworn to before me on _____

Notary Public/Court Official

Name Printed or Typed
My commission/term expires: _____

On page 2 in the empty space provided, list all of the individual's assets and their worth in dollar amount. This includes **bank accounts**, both checking and savings, the account type, number and institution the account is located, **certificates of deposit**, including the certificate of deposit number and name of institution it is located, **stocks and bonds**, including the name of the stock(s), number of shares owned, and value of each share.

List any **personal accounts** at nursing or group homes, **land contracts** or **mortgage interests**, **promissory notes** owed to the individual, **person property**, **jewelry**, **automobiles** with make, model and year, **life insurance policies**, including the name of the insurance company and policy number.

List any **real estate** they have an interest in and include a legal description and type of ownership, as well as **funeral**, **vault** or **casket trusts**, including the account number, name of the institution the account is located, and the name of the funeral home.

Once all assets are listed, total the assets together. The **TOTAL** amount will go in box (a) on page 1.

The guardian should also list any personal property that has significant value, such as jewelry or collectibles. Other personal items, such as most books or personal clothing items do not need to be listed. If someone has a collection of rare first editions, those should be included.

Next, list and add together any mortgages and/or other charges on assets, or debts on loans, that the individual has. The **TOTAL** amount will go in box **(b)** on page 1.

Lastly, list any and all sources of income the individual may have. **DO NOT** include this total in the summary of property on page 1.

Supporting Inventory Schedules	
<p>ASSETS: List all of the ward’s assets including interests in property and any marital property interest regardless of how the asset is titled. Carry these totals to line (a) and line (b) in the summary of property on page 1.</p> <p>INCOME: In addition, separately list all of the ward’s sources of income. Do not include income in the totals in the summary of property on page 1.</p>	<p>Value of ward’s or Conservatee’s Interest on Date Letters Issued:</p>

Any Bank Checking Acct #256354	\$259.00
Any Bank Saving Acct #1054653	\$2954.00
Real Estate Parcel #25/059-714-2 Rosemary Smith Owner	\$162300.00
Edward Jones Annuity #586358	\$45000.00
2004 Jeep Cherokee	\$1500.00
	<hr/>
Total Assets*	\$212013.00
Mortgage on property Loan #698352	\$19385.00
2015 Wayward Lane Madison, WI Parcel #25/059-714-2	
Income	
Social Security	\$1354.00
ETF Pension	\$935.56
	<hr/>
Total Monthly Income	\$2289.56

*Total Assets should be listed in the Summary of Property section on page 1 in row (a).

**The total for mortgages and all other loans should be listed in the Summary of Property section on page 1 in row (b).

II. Annual Accounting Form (GN-3500)

The Annual Accounting form will be sent out by the Register in Probate annually in December or early January, and must be completed and returned by April 15th. This form must be signed by a notary or court official.

If you need a new form, it can be accessed by visiting www.wicourts.gov/forms.

There is no filing fee for the Annual Accounting form.

For a married individual, the court may waive the filing of an Annual Account or permit the filing of a modified account.

When filling out the Annual Accounting, include the county, the individual's first and last name, date of birth, and case number.

The accounting period is from **January 1st through December 31st of the previous year**. If you are completing the **first accounting** for the individual, the accounting period is **the date you were appointed guardian through December 31st of the previous year**. This information will go on the lines provided in the section below **Under Oath, I State**.

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY	
IN THE MATTER OF _____ Name	Account of Guardian/Conservator <input type="checkbox"/> Annual <input type="checkbox"/> Interim <input type="checkbox"/> Final (Adult Guardianship and Conservatorship)
Date of Birth _____	Case No. _____
UNDER OATH, I STATE: I am the Guardian or Conservator of the above named ward or individual. I certify that this is an accurate account of the administration of the guardianship or conservatorship for the period from _____ to _____.	

Under **Summary Explanation**, record the **beginning balance** on **line 1**. If it is your first-time accounting for the individual, the beginning balance will be the **inventory balance**; if it **is not** your first-time accounting, the **ending balance** (found on line 5) **from the previous year's accounting form** will be the beginning balance.

On **line 2** and **line 4**, you will copy the **TOTAL** amount of **income received** and **assets**, and the **TOTAL** amount of **losses, disbursements, and distributions**. These total amounts will be calculated in **Schedule A** and **Schedule B** on page 2. You will copy the **TOTAL** amounts calculated on to **line 2** and **line 4** under **Summary Explanation**.

- We will discuss in detail how to calculate the totals for this section.

You will **add** the **TOTAL** amounts from **line 1** and **line 2** together to fill in **line 3**. You will **subtract** the **TOTAL** amounts from **line 3** and **line 4** to determine the **ending balance** for the year, which will go on **line 5**. The **ending balance** on **line 5** should match the **total assets** listed in **Schedule C**.

- We will discuss in detail how to calculate to total assets in Schedule C.

Line	Summary Explanation	Total
1.	Beginning Balance. Do not change this amount. <i>(Inventory net value or ending balance from prior account.)</i>	\$ 295,000.00*
2.	Total of newly discovered assets and income received during this period. (add) <i>(Attach Schedule A – Assets and Income Received.)</i>	\$ 3,050.00
3.	Subtotal	\$ 298,050.00
4.	Total disbursements, distributions and losses incurred. (subtract) <i>(List details in Schedule B – Disbursements, Distributions and Realized Capital Losses.)</i>	\$ 24,800.00**
5.	Ending Balance (Total Assets on Hand) at end of accounting period. <i>(List details n Schedule C – Assets on Hand.) Beginning Balance for next Account</i>	\$ 273,250.00***

*Copy Total Assets and Income Received from Schedule A on page 2 to Total for Line 1

**Copy Total Disbursements, Distributions, and Losses from Schedule B on page 2 to Total for Line 4

***Total listed in Line 5 should match Total assets from Schedule C on page 3

The following section must be signed by the guardian in the presence of a notary public. Therefore, you can skip this section until you are with a notary to witness the signature.

- Tip: it may be helpful to put a sticky note near the signature line to remind you this section needs to be witnessed when signed.

Note: This form with the statutory filing fee shall be filed within 60 days of appointment.

Signature of Guardian/Conservator
State of _____
County of _____
Subscribed and sworn to before me on _____

Notary Public/Court Official

Name Printed or Typed
My commission/term expires: _____

Signature of Co-Guardian
State of _____
County of _____
Subscribed and sworn to before me on _____

Notary Public/Court Official

Name Printed or Typed
My commission/term expires: _____

You will list and calculate the individual's **assets** and **income received** in **Schedule A** on page 2 of the Annual Accounting form.

In the space provided, list and explain **any income source** the individual had during the calendar year. This includes **social security, pension(s), interest, dividends, rental or other income, realized capital gains** from assets sold for *more than* the inventory value or purchase price, if acquired **after** the initial inventory of the individual, and **any other assets** discovered after filing the initial inventory.

Be specific when recording this information. In the example shown, the individual receives \$250 per month in social security. Therefore, the receive \$3,000 annually in social security.

When writing any interest received, include the institution name that it is held and the account number.

The **TOTAL** amount at the bottom of **Schedule A** will be copied on to **line 2** under **Summary Explanation** on page 1.

(If the space given is insufficient of any item, attach additional sheets.)

Schedule A – Assets and Income Received

See attached

Description <i>(Example: Social Security, pensions, interest, dividends, rental or other income, realized capital gains from assets sold for more than inventory value or purchase price if acquired after the initial inventory, assets discovered after filing initial inventory.)</i>	Amount
Social Security (\$250 x 12)	\$ 3,000.00
Interest Anchor Bank Acct #32123456	\$ 50.00
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$
Enter Total on Page 1 Summary explanation, Line 2.	\$ 3,050.00

You will list and calculate any **disbursements, distributions, and realized capital losses** the individual had during the calendar year in **Schedule B** on page 2 of the Annual Accounting form.

Be specific and include as much detail as possible. As a guardian, you may be asked to produce receipts or billing to support the information provided on this form. For example, you may be asked to provide a breakdown of expenses if you write ‘personal expenses’.

The **TOTAL** amount at the bottom of **Schedule B** will be copied on to **line 4** under **Summary explanation** on page 1.

Schedule B – Disbursements, Distributions and Realized Capital Losses

See attached

Itemize Disbursements, Distributions and Realized Capital Losses <i>(Example: Cost of care of the ward/individual; payments made from the benefit of the ward/individual; assets sold for less than inventory value or purchase price if acquired after the initial inventory.)</i>	Amount
Nursing Home	\$ 20,000.00
Prescriptions	\$ 1,000.00
House Expenses	\$ 500.00
Clothing and Person	\$ 300.00
Loss on Sale of Buick	\$ 3,000.00
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$
Enter Total on Page 1 Summary explanation, Line 4.	\$ 24,800.00

In **Schedule C**, which begins on page 3 of the Annual Accounting form, you are required to complete **any category that applies to the individual**. Every item under **Schedule C** needs to have a supporting document showing the ending balance, and must be verified by the register in probate.

Under **Schedule C**, you will list any **cash, checking accounts, savings accounts, and certificates of deposits**. The amounts in this section should accurately reflect the amounts listed as of December 31st for the accounting period.

You will also list any **investments** and their inventory value or purchase price if they were acquired after the initial inventory of the individual.

Schedule C – Assets on Hand (at end of accounting period) See attached

Cash, Checking Accounts, Saving Accounts, Certificates of Deposit [Include Institution Name(s) and Account Type]	Amount
Anchor Checking Account	\$ 12,250.00
Anchor Savings Account	\$ 61,000.00
	\$
	\$
	\$
	\$
Investments	Amount
<i>(List inventory value, or purchase price if acquired after the initial inventory.)</i>	\$
	\$
	\$
	\$
	\$

List any **real estate or property**, including mortgage(s) and/or other charges on property or assets. Include the inventory value or purchase price if they were acquired after the initial inventory of the individual.

And lastly, list any other assets, including burial trust(s), that the individual has. List the inventory value or purchase price if they were acquired after the initial inventory.

- *A burial trust is an irreversible trust with funds to pay for the individual's funeral and burial costs after death.*

Add together any assets listed in **Schedule C** and write next to **Grand Total**. The **Grand Total** will be copied on to **line 5** under **Summary Explanation** on page 1.

The **Grand Total** amount listed on page 3, and the amount listed on **line 5** under **Summary Explanation** on page 1 **must balance**. If you are unable to get the **Annual Accounting** to balance, you may have to seek help from an accountant or attorney to go over the year's records. The accountant or attorney should be paid from the individual's assets.

Real Estate/Property (Including Encumbrances) <i>(Description of property including digital property as defined under Ch. 711.03(10) Wis. Stats. Legal description of real estate, and related encumbrances, liens or other charges against each item.)</i>	Amount
<i>(List inventory value, or purchase price is acquired after the initial inventory.)</i> House	\$ 200,00.00
	\$
	\$
	\$
	\$

Other Assets (Including Burial Trusts)	Amount
(List inventory value, or purchase price if acquired after the initial inventory.)	\$
	\$
	\$
	\$
Enter Grand Total on Page 1 Summary Explanation, Line 5	\$ 273,250.00

And finally, this section of the **Annual Accounting** form is to be filled out **only** by the court or someone the court designated to review accounts, **not** the guardian.

<i>For Authorized Persons Only</i>	
Display of Assets and Examination of Accounts: I am not the guardian or conservator. I am authorized by the court to examine assets. I have examined all securities, depository accounts, and other investments, and such assets correspond with the account, except as indicated	
_____ Authorized Signature (not guardian/conservator)	
_____ Name Printed or Typed	
_____ Title	
_____ Address	
_____ Email Address	_____ Phone Number
_____ Date	_____ State Bar No. (if any)

Now that we have gone over how to fill out both the **Inventory (GN-3440)** and **Annual Accounting (GN-3500)** forms, lets discuss some helpful hints to keep in mind when filling out these forms.

Always record your **Inventory** and **Annual Accounting** on the forms provided by the register in probate. You **may not** substitute your own forms in place of these as they are mandatory forms provided by the state.

Always keep a copy of your completed **Inventory** and **Annual Accounting** forms for future reference.

When you receive your **Annual Accounting** form from the register in probate, check to make sure the **beginning balance** on **line 1** of page 1 accurately reflects the **ending balance** from the prior year, found on **line 5** of page 1 from the **previous year's** form.

The register in probate may, at any time, request a review of your accounting records, and/or perform an audit of the guardianship. If you fail to comply, the court may take action against you, including removing you as the guardian.

Keep all receipts, bills, deposit slips, bank statements, checkbook registers, etc., after the individual passes. It is best to check with professionals regarding how long to keep records.

When remembering what you have to do for the **Inventory** and **Annual Accounting** forms, some key things to remember are:

- The **Inventory (GN-3440)** form and fee need to be returned to the register in probate within **60 days** of being appointed guardian of the estate.
 - This document **must be** signed by the guardian and the signature **must be** witnessed by a notary public.
- The **Annual Accounting (GN-3500)** form, with all supporting documents, must be returned to the register in probate by **April 15th** of each year. It is sent annually in the mail by the register in probate in December or early January.
 - This document **must be** signed by the guardian and the signature **must be** witnessed by a notary public.

Inventory and Annual Accounting Knowledge Check

Please fill in your answer for each of the following questions on the Guardianship Training Answer Sheet that was provided. Use the pictures provided to help answer each question.

1. The Inventory Form (GN-3440) is to be completed and returned to the Register in Probate office within ____ days of being appointed guardian of the estate.
 - a. 30
 - b. 60
 - c. 75
 - d. 180
2. You are filling out the Inventory Form (GN-3440) for Sue. She has multiple stocks and bonds which you know need to be documented on the inventory page. When listing the stock, you need to include all of the following:

Supporting Inventory Schedules	
<p>ASSETS: List all of the ward's assets including interests in property and any marital property interest regardless of how the asset is titled.</p> <p>Carry these totals to line (a) and line (b) in the summary of property on page 1.</p> <p>INCOME: In addition, separately list all of the ward's sources of income. Do not include income in the totals in the summary of property on page 1.</p>	<p>Value of ward's or Conservatee's Interest on Date Letters Issued:</p>

- a. Name of stocks, number of shares owned, and value of each stock
- b. Value of each share, name of stock
- c. Name of stock, number of shares owned
- d. None of the above

3. True/False – there is a \$20 filing fee if the estate is under \$50,000.00. If the estate is over \$50,000.00 there is no filing fee.

- a. True
- b. False

4. True/False – when calculating the total Summary of Property on the Inventory form (GN-3440), you include the source(s) of income (done on page 2).

SUMMARY OF PROPERTY (Value of Ward’s or Individual’s Estate as of date Letters of Guardianship or Conservatorship were issued.)	Date Letters Issued
The following is a listing of all the ward’s or individual’s property at its fair market value on date Letters of Guardianship or Conservatorship were issued.	
(a) The ward’s or individual’s interests in property and any marital property interest regardless of how asset is titled	\$
(b) Minus total value of encumbrances, liens or other charges upon each item	\$
(c) Net value of property subject to this guardianship or conservatorship	\$

- a. True
- b. False

5. When is the Annual Accounting Form (GN-3500) due to the Register in Probate?

- a. January 1
- b. April 15
- c. June 5
- d. September 31

6. True/False – the Annual Accounting Form (GN-3500) has to be signed by the guardian and witnessed by a notary public.

- a. True
- b. False

7. You are now the guardian of the estate for Bill as of 02/17/2022 and you receive your first Annual Accounting Form (GN-3500). When filling out the ‘Under Oath’ section, what is the correct accounting period?

UNDER OATH, I STATE:

I am the Guardian or Conservator of the above named ward or individual. I certify that this is an accurate account of the administration of the guardianship or conservatorship for the period from _____ to _____.

- a. 01/01/2021 to 12/31/2021
- b. 12/31/2021 to 02/17/2022
- c. 02/17/2021 to 02/17/2022
- d. 02/17/2022 to 12/31/2022

8. Bill has multiple investments that contribute to his total assets. These investments were accounted for when doing the Inventory form (GN-3440) when you were first appointed as Bill's guardian. Do you need to include these investments in Schedule C under Investments on your Annual Accounting form (GN-3500)?

Schedule C – Assets on Hand (at end of accounting period)

See attached

Cash, Checking Accounts, Saving Accounts, Certificates of Deposit [Include Institution Name(s) and Account Type]	Amount
	\$
	\$
	\$
	\$
	\$
	\$
Investments	Amount
<i>(List inventory value, or purchase price if acquired after the initial inventory.)</i>	\$
	\$
	\$
	\$
	\$

- a. No, they only need to be listed if the investments were acquired after the initial inventory
- b. Yes, and include the list inventory or purchase price

9. On page 1 of the Annual Accounting form (GN-3500), line 2 is calculated and copied from ____ and line 4 is calculated and copied from ____.

Line	Summary Explanation	Total
1.	Beginning Balance. Do not change this amount. <i>(Inventory net value or ending balance from prior account.)</i>	\$
2.	Total of newly discovered assets and income received during this period. (add) <i>(Attach Schedule A – Assets and Income Received.)</i>	\$
3.	Subtotal	\$
4.	Total disbursements, distributions and losses incurred. (subtract) <i>(List details in Schedule B – Disbursements, Distributions and Realized Capital Losses.)</i>	\$
5.	Ending Balance (Total Assets on Hand) at end of accounting period. <i>(List details in Schedule C – Assets on Hand.) Beginning Balance for next Account</i>	\$

- a. Schedule A and Schedule C
- b. Schedule B and Schedule C
- c. Schedule A and Schedule B
- d. Schedule A, Schedule B **and** Schedule C

Resource Guide

Aging with Dignity – Five Wishes - <https://agingwithdignity.org/programs/five-wishes/>

Annual Accounting Form (GN-3500) - <https://www.wicourts.gov/formdisplay/GN-3500.doc?formNumber=GN-3500&formType=Form&formatId=1&language=en>

Consumer Guide – End of Life Planning -
<https://www.dhs.wisconsin.gov/guide/legal/index.htm>

Court Paperwork Requirements -
<https://www.wicourts.gov/forms1/circuit/formcategory.jsp?Category=17>

Get Legal Help – Legal Services Corporation - <https://www.lsc.gov/about-lsc/what-legal-aid/get-legal-help>

Guardian of the Estate Duties -
<https://docs.legis.wisconsin.gov/statutes/statutes/54/iii/19>

Guardian of the Estate Powers -
<https://docs.legis.wisconsin.gov/statutes/statutes/54/iii/20>

Guardian of the Estate Limitations -
<https://docs.legis.wisconsin.gov/statutes/statutes/54/iii/18/3/>

Guardian of the Estate Statutes - <https://docs.legis.wisconsin.gov/statutes/statutes/786>

Guardian Resignation - <https://www.wicourts.gov/formdisplay/GN-3415.doc?formNumber=GN-3415&formType=Form&formatId=1&language=en>

Inventory Form (GN-3440) - <https://www.wicourts.gov/formdisplay/GN-3440.doc?formNumber=GN-3440&formType=Form&formatId=1&language=en>

Power of Attorney and Living Wills -
<https://www.dhs.wisconsin.gov/forms/advdirectives/adformspoa.htm>

State Bar of Wisconsin - <https://www.wisbar.org/Pages/default.aspx>

Health Care: Answering Your Legal Questions -
<https://www.wisbar.org/forPublic/INeedInformation/Pages/Health-Care.aspx>

Lawyer Referral & Information Service -
https://www.wisbar.org/forPublic/INeedaLawyer/Pages/i-need-a-lawyer.aspx?gclid=CjwKCAjwvJyBhApEiwAWz2nLdg0Hct7TOfCpsb8b0xEjxGUBZjizogTRzE8z2ZOmL6wzqhTZ6wy2BoCEHIQAvD_BwE

Reduced Fee Services -
<https://www.wisbar.org/forPublic/INeedaLawyer/Pages/Reduced-Fee-Services.aspx>

Supported Decision-Making Form - <https://www.dhs.wisconsin.gov/forms/f02377.pdf>

Supported Decision-Making Statute - <https://docs.legis.wisconsin.gov/statutes/statutes/52>

Wisconsin Circuit Court Forms -

<https://www.wicourts.gov/forms1/circuit/ccform.jsp?Category=&FormName=&FormNumber=&StatuteCite=54.76>