Guardianship and Alternatives

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What is Guardianship?

- A legal relationship
- Created by a county circuit (probate) court
- After court hearing in which Petitioner proves necessary elements
  - Medical evaluation specific to guardianship of adult is required
- Due process rights are provided
- Wisconsin statutes followed
  - Ch. 54 adults and minor guardian of estate
  - Ch. 48 minor guardian of person
- Guardian of person and/or guardian of estate for an adult called "the ward"

IF ward is found to be "incompetent"

Guardian of Person (Adult)

- Appointed if a person is found by a court to be incompetent:
  - At least 17 years and 9 months old
  - Impaired as a result of one of the following:
    - A Developmental disability
    - Degenerative brain disorder
    - Serious and persistent mental illness
    - Other like incapacities

Guardian of Person, con't.

- The individual's need for assistance in decision-making or communication is unable to be met effectively and less restrictively through appropriate and reasonably available training, education, support services, health care, assistive devices, or other means that the individual will accept

- Specific to guardian of person: The individual, because of impairment, is unable effectively to receive and evaluate information or to make or communicate decision to such extent that the individual is unable to meet the essential requirements for the individual's physical health and safety.

Guardian of Estate

- Specific to guardian of estate: the individual, because of an impairment, is unable effectively to receive and evaluate information or to make or communicate decisions related to management of the individual's property or financial affairs, to the extent that at least one of the following applies:
  - The individual has property that will be dissipated in whole or in part; or
  - The individual is unable to provide for the individual's support, or
  - The individual is unable to prevent financial exploitation.

When is a guardian needed?

- When a person is incompetent and did not engage in advance planning or the advance planning is insufficient
- When a person is incompetent and is the victim of self-neglect, abuse, financial exploitation or neglect and the health care/financial agent is the abuser/exploiter/neglector or cannot protect the individual from self-neglect, abuse, exploitation, or neglect.

Who can be a guardian?

- Any adult, Wisconsin residence not necessary
- Subject to sworn Statement of Acts regarding relevant record (crimes, bankruptcy, license suspensions or misconduct)
- Facts related to record are important
- Relationship of guardian and ward relevant
- Preference for person nominated Power of Attorney
- Corporate guardians are not uncommon
- Often friend or family member
- Limited availability of volunteer guardians
- Court may appoint standby guardian

Guardian Training

- New WI statute requires training for all guardians of adults before appointment as guardian of person or estate
- University of Wisconsin – Green Bay providing **free**, on-line training entitled,

  "In Their Best Interests"
- https://www.uwgb.edu/guardianship-training/
- Course recommended for anyone considering guardianship and alternatives

Protective Placement

- A placement that is made to provide for the care and custody of an individual
- Placement at a facility or unit with the primary purpose of residential care and custody such as a nursing facility
- A person who has been determined incompetent permanently or likely to be permanent
- Substantial risk of physical harm or deterioration if not protectively placed

Impact of Guardianship and Protective Placement

- LOSS OF RIGHTS including right to own or possess a firearm
- Loss of rights may include any of the following:
  - Execute a will
  - Serve on a jury
  - Register to vote or vote in an election
  - Consent to marry
  - Apply for licenses, such as driving & fishing
  - Management of assets
  - Ability to enter into a contract
  - Many other rights may be limited or removed in full

Possible Guardianship and Protective Placement Alternatives

- **Durable Power of Attorney (DPOA)** (financial) document allows you to grant authority to an agent to act in your place. The word "durable" means that the document does not terminate if you become incompetent.

- **Healthcare Power of Attorney (HC-POA)** document allows you to appoint another person known as a health care agent, to make health care decisions for you in the event you are unable to make decisions for yourself. HC-POA may authorize placement in nursing facility.

- **Conservatorship**: when an individual is not incompetent and wishes to name a conservator to manage their finances and report to the court (less than 50 per year in WI)

Possible Guardianship and Protective Placement Alternatives, continued

- Representative Payee - a person or entity appointed by Social Security to manage benefit payments for someone unable to do so on their own
- Dual signature bank accounts
- Release forms including health care providers
- Other means of assistance such as emergency response devices e.g. Life Alert, meals on wheels, bubble packs for medications, cleaning service, help going through bills and expenses, etc.
- Supported Decision-making Agreement (DHS F-02377)

Supported Decision-making Agreement (DHS F-02377)

- In WI, this is an option for a person with a "functional impairment."
- The person chooses a Supporter: a trusted friend, family member, co-worker, colleague, professional, etc.
- Supporter helps person gather information, understand options, make decisions, and communicate their decisions to others
- Decisions may relate to health, finances, care plans, home life, activities, relationships, or other matters

Authority to Act

- Authorizing document determines authority to act
- Specifics of documents vary
- Supporter in a Supported Decision-Making Agreement – Authorized to assist person as specified in the Agreement
- Guardian – Authorized by court, issued letters of guardian, during lifetime, incompetency found
- Conservator – Authorized by court, issued letters of conservator, during lifetime, no incompetency found
- Power of Attorney, during lifetime (DPOA, POA, HC-POA)

Ending a WI guardianship

- Death
- Competency regained
- Incompetent person marries someone not subject to guardianship
- Moves to another state

Guardianship Resources

- Refer to www.wripa.org for overview and list of all Registers in Probate statewide
- Greater Wisconsin Agency on Aging Resources – Guardianship Support Center www.gwaar.org/guardianship-resources
- Refer to attorneys
- Local Aging Disability Resource Center (ADRC)
- Wisconsin Bar Association www.wisbar.org
  - "A Gift to Your Family: Planning Ahead for Future Health Needs"
- Refer to Register in Probate who CANNOT give legal advice
- Wisconsin Department of Health Services www.dhs.wisconsin.gov
- Disability Rights Wisconsin www.disabilityrightswi.org
- Wisconsin Board for People With Developmental Disabilities

www.wi-bpdd.org

Guardianship Resources, cont.

- County Health and Human Services, Adult Protection, Aging Disability Resource Center (ADRC) or Corporation Counsel (Attorney for the County) are often involved in guardianship matters
- Statutes
  - https://wilawlibrary.gov/
    - Wisconsin statutes
- https://www.wicourts.gov/index.jsp
  - Wisconsin Court System
  - Forms
    - Circuit Court
      - Guardianship
        - Separate set of forms for Indian Child Welfare Act (ICWA)
        - Bottom of form references specific statute(s)

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