

Dunn County Register in Probate		
GUIDELINE	GUARDIANSHIP OF PERSON and ESTATE	Revised: August 30, 2019

NOTE: This guideline is provided only as a public service and is not meant to be legal advice. The Register in Probate office cannot give legal advice or complete forms for you; please contact an attorney if you have legal questions.

I. INVENTORY

- A. The guardian of a person’s estate shall take possession of the ward’s property and provide an accounting (“inventory”) to the court. The inventory lists the property value as of the date the Court appointed the guardian.
- B. Inventory must be filed with the Court within 60 days of the guardian’s appointment. The inventory becomes the starting point of the accounting process.
- C. A filing fee of 0.20% (2/10th of 1.0%) of the value of the estate must be paid at the time the inventory is filed. If the assets are \$50,000.00 or less, the fee is \$20.00.
- D. Failure to file inventory:
 - 1. The Court shall order guardian to file the inventory.
 - 2. The Court may adjudge the costs of the action against the guardian.

II. GUARDIANSHIP PROPERTY

- A. Title to the assets and income of the ward remains in the ward’s name.
- B. The guardian of the ward’s estate only has possession of property and the right to exercise control over it, subject to the orders of the Court.

III. DUTIES OF GUARDIAN OF THE ESTATE

- A. General duties and limitations (not all inclusive):
 - 1. Ward retains rights ordered by the Court.
 - 2. Guardian may exercise only those powers authorized by statute and the Court.
 - 3. Exercise care, diligence and good faith when acting on behalf of the ward.
 - 4. Advocate for the ward’s best interest.
 - 5. Exhibit the utmost degree of trustworthiness, loyalty and fidelity in relation to the ward.
 - 6. Notify the Court of any change of address of the guardian or ward.
- B. Guardian duties:
 - 1. Take possession of the ward’s real and personal property and prepare an inventory.
 - 2. Retain, expend, distribute, sell or invest the ward’s property.

3. Determine if the ward has executed a will, where the will is located, determine the appropriate persons to be notified in the event of the ward's death, and notify those persons if the death occurs.
4. Use the ward's income and property to maintain and support the ward and any dependents of the ward.
5. Prepare and file an annual account for the Court.
6. At the termination of the guardianship, deliver the ward's assets to the persons entitled to them.
7. Pay any legally enforceable debts (claims) of the ward, including filing tax returns and paying taxes.
8. File with the Register of Deeds in any county the ward possesses real property a sworn and notarized statement that specifies the legal description, date ward determined incompetent, guardian information and information on guardian's bond.
9. Apply to be the ward's representative payee, if receiving governmental benefits and there is no current representative payee, or ensure that one is appointed.
10. Keep the Register in Probate informed of your current mailing address.
11. Perform any other duty required by court order.

C. Guardian shall NOT:

1. Lend funds of the ward to himself or herself;
2. Lend funds of the ward to another individual or entity, unless the Court approves and orders;
3. Purchase property of the ward, unless the Court approves and orders.

IV. POWERS OF GUARDIAN OF THE ESTATE

A. General (not all inclusive):

1. Use judgment and care in management of the ward's funds;
2. Consider, consistent with the functional limitations of the ward: the ward's understanding of the harm ward would likely suffer as a result of ward's inability to manage funds; ward's personal preferences and desires regarding management of daily living activities; and the least restrictive form of intervention for the ward.
3. Any expenditure of the ward's funds of \$500 or more on a single item or single expense (excluding housing and medical) **must have prior approval of the Court.**

B. Requiring approval of the Court, the guardian of the estate may do any of the following only with the Court's prior written approval following a petition and any notice and hearing the Court requires:

1. Petition the Court to make gifts of the ward's funds.
2. Transfer assets to an existing revocable living trust.
3. Establish and transfer assets into a trust.
4. Purchase an annuity or insurance contract; change beneficiaries under insurance and annuity policies; and surrender policies for their cash value.
5. Ascertain, establish, and exercise any rights available to the ward under a retirement plan or account.
6. Sell, mortgage, pledge, lease or exchange any asset of the ward.

7. Exercise any elective rights that accrue to the ward as the result of the death of the ward's spouse or parent.
8. Release or disclaim any interest of the ward that is received by will, intestate succession, nontestamentary transfer at death, or other transfer.
9. Exercise, if appointed for a married ward, management and control right over the marital property or property other than marital property that the married ward could exercise under Chp. 766.
10. Provide support for an individual whom the ward is not legally obligated to support.
11. Convey or release an interest in marital property, right of survivorship property that is incidental to joint tenancy or marital property.
12. Continue the business of the ward unless ordered by the Court.
13. Adjust any claims against the ward incurred prior to the guardianship or the filing of a lis pendens.

C. Powers that **do not require** Court approval:

1. Provide support for an individual whom the ward is legally obligated to support.
2. Enter into a contract, other than a contract prohibited as listed above that requires court approval.
3. Exercise options to purchase securities or other property.
4. Authorize access to or release of ward's confidential financial records.
5. Apply for public and private benefits.
6. Retain any real or personal property the ward possesses when the guardian is appointed or that is acquired by gift or inheritance.
7. Invest and reinvest the proceeds of sale of any asset of the ward and any of the ward's monies in guardian's possession.
8. After notice as the Court directs, invest the proceeds of the sale of any assets of the ward in the guardian's possession in real or personal property that is determined by the Court to be in the best interest of the ward's estate.
9. Settle all claims and accounts of the ward; appear for and represent the ward in all actions and proceedings except those for which another person is appointed.

V. **IS A GUARDIAN ENTITLED TO COMPENSATION FOR SERVICES.**

- A. The Court can authorize compensation and/or reimbursement for the guardian in an amount the Court deems "just and reasonable".
- B. Any reimbursement and/or compensation must be specifically authorized by the Court before payment is made.
- C. The guardian should submit a Petition and Order for Guardian Fees form in the current year. (Form available at the Probate Office)

VI. **ANNUAL ACCOUNT**

- A. Every year by **April 15**, each guardian of the estate shall file an account, under oath, of his/her handling of the estate for the prior calendar year.

- B. The annual account has four basic sections: the beginning balance (inventory); additions during the year (income, interest, etc); disbursements made during the year for expenses; and the ending value of the assets at the end of the accounting period.
- C. Annual account forms are sent to the guardian by the Court in January of each year.
- D. Guardian must be prepared to display to the Court evidence of assets (such as bank statements, CDs, etc.) reported by the guardian.
- E. From the moment the guardian is appointed, it is important that he or she keep a written record of all receipts and expenses. The guardian must be able at all times to account for every penny of the ward's assets.
- F. Probate Court staff **cannot** complete the annual account for the guardian.

VII. GUARDIAN OF 'PERSON' OF WARD

- A. Duties of guardian of person:
 - 1. Make an annual report to the Court and to the county department regarding the condition of the ward.
 - 2. Secure any necessary care, services, and appropriate protective placement for the ward that are in the ward's best interest.
 - 3. Guardian to: make regular inspection, in person, of ward's conditions, surroundings and treatment; examine ward's health care records; attend and participate in staff meetings if the meetings include discussion of the ward's treatment and care; inquire into the treatment of the ward; consult with health care providers and social workers.
- B. Powers of guardian of person.
 - 1. Guardian only has those powers authorized by statute, rule or by the Court. Any other right or power is retained by the ward unless the ward has been declared incompetent to exercise that right.
 - 2. The Court will order that certain rights be retained by the ward.
 - 3. The Court will order that the ward does not have the capacity to exercise certain rights.
 - 4. Any question regarding the rights of the ward should be directed to the ward's Social Worker, the ward's Guardian ad Litem, or the ward's attorney.

VIII. ANNUAL REPORT

- A. Every year each guardian of the person must file an annual report on the condition of the ward with the court, and when there is a protective placement, to the Department of Human Services. The report is due **April 15** of each year.
- B. The purpose of the annual report is to provide information to the Court on the health, welfare and condition of the ward.

IX. IF A GUARDIAN DOES NOT FILE THE ACCOUNT OR REPORT

- A. The Court can remove the guardian.
- B. The Court can issue an Order to be served by the Sheriff on the guardian to show cause why the guardian should not immediately make and file the accounting or report.
- C. If the guardian fails to do so or respond, the Court may issue a warrant directed to the sheriff ordering that the guardian be brought before the court to show cause why the guardian should not be punished for contempt.

X. HOW IS A GUARDIANSHIP TERMINATED

A. Guardianship of the person terminates:

- 1. When a minor ward becomes 18.
- 2. When a minor lawfully marries.
- 3. When the Court adjudicates a former incompetent to be competent.
- 4. When the ward changes residence from this state to another state and a guardian is appointed in the new state of residence.
- 5. When the ward dies.

B. Guardianship of the estate terminates:

- 1. When a minor becomes 18.
- 2. When a minor lawfully marries and the Court approves the termination.
- 3. When the ward changes residence from this state to another state and a guardian is appointed in the new state of residence.
- 4. When the court adjudicates a former incompetent to be competent.
- 5. When the ward dies, except: If the estate can be settled by Summary Settlement under section 867.01, Wis. Stats., the Court may approve a Summary Settlement petition filed by the guardian.

C. Guardian's responsibilities upon death of ward.

- 1. Guardian of the person does not have any formal duties at termination except to notify the Court of the ward's death. The guardianship powers simply end.
- 2. Guardian of the estate must file a final accounting from the time of the last accounting to the date of death and transfer the property to the personal representative or other person(s) entitled to receive it.

D. Guardian may resign from position.

- 1. Guardian must continue in role until a successor is appointed.
- 2. Guardian is discharged from responsibility when the Court receives the final account and the property is transferred to the new guardian.

PROTECTIVE PLACEMENTS

I. WHAT IS A PROTECTIVE PLACEMENT

Court ordered placement made to provide for the care and custody of an individual.

II. WHAT IS NECESSARY FOR A PROTECTIVE PLACEMENT

A. The ward must have been determined by a Court to be legally incompetent and in need of a guardian.

B. The ward must have a primary need for residential care and custody.

C. The ward must be so totally incapable of providing for his or her own care or custody as to create a substantial risk of serious harm to him/herself or others; condition must be result of: developmental disabilities, degenerative brain disorder, serious and persistent mental illness, or other like incapacities.

D. The ward has a disability that is permanent or likely to be permanent.

III. IF THE COURT ORDERS PLACEMENT, WHO MAKES THE DECISION AS TO WHERE THE WARD SHOULD BE PLACED

A. Under Chapter 55 of the Wisconsin Statutes, placement authority is given to the County Human Services Board.

B. The Court, in determining placement, would designate a specific facility or a 'like' facility to receive the ward that is the 'least restrictive environment' consistent with the needs of the ward.

IV. IS THE PROTECTIVE PLACEMENT EVER REVIEWED

A. Protective placements must be reviewed annually.

B. Court appoints a GAL for the ward to conduct an investigation and make a report to the Court advising whether a full hearing is necessary; and

1. Whether the person still meets all the requirements for a protective placement; and
2. Whether the ward is still in the least restrictive placement.

C. A summary hearing is held before the Court to determine continued protective placement.

D. The guardian is responsible for paying the Guardian ad Litem fees out of the guardian's funds unless the ward is found indigent by the Court.