

Competency, Guardianship, and Voting in Wisconsin

In Wisconsin, anyone 18 years old or older is legally an adult and is presumed by law to be able to manage all personal and financial affairs, including the ability to register to vote and to vote. However, an adult may have their right to vote taken away by a court under Chapter 54 of the Wisconsin Statutes.

Loss of Right to Vote

There are two ways a person may lose their right to vote due to allegations of incompetency:

1. Under the **process for appointing a guardian**, if an adult is found by a court to be “incompetent,” a guardian of the person will be appointed.
 - As part of the process, the judge or court commissioner will determine if the person should lose their right to vote.¹
 - A person will lose the right to vote if the judge or commissioner determines that the individual is “incapable of understanding the

¹ The issue of whether a person should lose the right to vote arises only when a guardian of the person is being appointed. The issue of voting does not arise if only a guardian of the estate is being appointed.

objective of the elective process.” (Wis. Stat. § 54.25(2)(c)1.g.)

- Even if a guardian of the person is appointed, the person will retain the right to vote if the judge or commissioner determines that the person is capable of understanding the objective of the elective process.



- The court’s decision regarding the right to vote will be recorded in a court form called a “Determination and Order on Petition for Guardianship Due to Incompetency.”
- A person who has lost the right to vote may request that their right to vote be restored (see below).

Nobody has the right to vote instead of you, or to tell you how you should vote – not even your guardian.

2. A person may also lose their right to vote through a **petition to the circuit court** that has been filed for the **sole purpose** of finding the person “incapable of understanding the objective of the electoral process.”
 - This petition can be brought by any other voter who lives in the individual’s municipality.
 - If the court grants the petition, a person will lose their right to vote even though they have not been found incompetent through the guardianship process, and no guardian has been appointed. (Wis. Stat. §§ 54.25(2)(c) and 6.03(3)).

Restoration of Right to Vote

Lost voting rights may be restored in one of two ways:

1. A person who has a guardian and who has lost the right to vote, may **petition the court** to restore their right to vote. (Wis. Stat. § 54.64(2)(a)).
 - The form to petition the court can be found at: www.wicourts.gov (look for the link to forms, then circuit court, then guardianship, then form GN-3660).
 - The court will appoint a guardian ad litem and schedule a hearing.
 - The person has the right to their own attorney to advocate for their wishes, and if the person is indigent, the county will pay the attorney’s fee.

2. People who are protectively placed can ask to have their right to vote restored during **the annual Watts review**.

- People who are found incompetent may also be ordered by a court to be protectively placed by the county human services agency. The county, in turn, finds the appropriate placement and/or services for the person. (Chapter 55, Wisconsin Statutes).
- The courts must review every placement every year. This is called a Watts review or Watts hearing.
- During the period of the Watts review, the person should tell the guardian ad litem that they want their right to vote restored.
- The person has the right to their own attorney to advocate for their wishes, and if indigent, the county will pay the attorney's fee.
- Since this annual review includes a review of the person's guardianship status, the person's right to vote could be restored if appropriate.

Power of Attorney for Health Care

A person who has an activated Power of Attorney for Health Care still has the right to vote as long as that right has not been taken away through a

guardianship proceeding or the separate proceeding to determine eligibility to vote.

How can I find out if I have the right to vote?

If you are under guardianship, you can find out whether or not you have the right to vote from your Determination and Order form. You may ask your guardian or the Office of the Register in Probate (Probate Court) for a copy. Each copy costs approximately \$2.

You can also ask your attorney, or another person who has a signed release from you or your guardian, to request a copy of the Determination and Order form.

You or another person requesting a copy of the Determination and Order form should do so in the Probate Court where you receive services, or in the county that is paying for your services. If neither county has the form, contact the county in which your guardian resides.

If you have any questions about voting and people with disabilities, call:

DISABILITY RIGHTS WISCONSIN
Toll Free 800-928-8778
TTY: 888-758-6049

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