



Ready, Set, Retire!

Advance Directives:

What They Are
And Why You Need Them

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Advance Directives: Planning for the Future

Who will make decisions for you if you're unable to communicate?

What do you want for end-of-life care?

How will bills get paid if you are in the hospital or away from home?

Who do you want to manage funeral/burial decisions?

Power of Attorney: What Is It?

- A **Power of Attorney** document allows you to give someone else authority to act on your behalf
- You (the person creating the document) are the **Principal**
- The person you choose to act for you is your **Agent**
- Your **Agent** must follow your wishes

- Wisconsin splits into POA for Health Care and POA for Finances

Power of Attorney: Why You Need Them

- WI is not a “next-of-kin” state
- You can limit authority (or not) as you wish
- Still allows you to make your own decisions in most circumstances
- May avoid the need for guardianship

Power of Attorney: Who to Choose

- Trustworthy
- Particular skills
- Location/availability
- Does not have to be a family member
- Can have different agents for POA-HC and POA-F

Power of Attorney: Co-Agents and Successors

- Co-agents = two people have the authority at the same time
- Each acts independently unless otherwise stated
- Co-agents are allowed for POA-F (***not*** for POA-HC)
- Co-agents are typically ***not*** recommended

Instead, use alternate agent or successor agent in the event first person is unwilling or unable to act.

POA-HC: What Decisions Can Agent Make?

- Agent can only make health care decisions.
- “Health care” means any care, treatment, service or procedure to maintain, diagnose or treat an individual's physical or mental condition.
- “Health care decision” means an informed decision in the exercise of the right to accept, maintain, discontinue or refuse health care.

Wis. Stat. §155.01

POA-HC: What Decisions Can Agent Make?

- Specific directives:
 - End of life care
 - Admission to nursing home or CBRF for purposes other than rehab following inpatient stay
 - Authority to act if Principal is pregnant

POA-HC: Decisions *Can't* Make

- Non-health care decisions (e.g., who can visit)
- Admit/keep the person in a nursing home against their wishes
- Admit/hold the person in a locked unit
- Change health insurance
- Designate a successor agent
- Any decisions after death of the person

POA-HC: Long-Term-Care Admissions

- Admission to nursing home or CBRF

ADMISSION TO NURSING HOMES OR COMMUNITY-BASED RESIDENTIAL FACILITIES

My health care agent may admit me to a nursing home or community-based residential facility for short-term stays for recuperative care or respite care.

If I have checked “Yes” to the following, my health care agent may admit me for a purpose other than recuperative care or respite care, but if I have checked “No” to the following, my health care agent may not so admit me:

1. A nursing home - - Yes No
2. A community-based residential facility - - Yes No

If I have not checked either “Yes” or “No” immediately above, my health care agent may admit me only for short-term stays for recuperative care or respite care.

POA-HC: Signature Requirements

- Voluntary
- Valid signature
 - **Principal** is adult of sound mind
 - 2 disinterested witnesses
 - In writing, signed and dated
 - **Principal** can direct someone to sign for them in their presence

POA-HC: What Is “Sound Mind”?

- What does “of sound mind” mean?
 - Generally means they understand nature of the document and at least have periods of lucidity
 - Low standard
 - Judgment call of the 2 witnesses
 - Only time presumed not to be of sound mind is if they have a guardian of the person
- Board on Aging & Long-Term Care position – sound mind can exist after activation

POA-HC: Activation

- Typically activated on incapacity
 - Inability to receive/evaluate information and/or communicate decisions relating to **health care decisions**
 - Determined by 2 physicians or physician and advanced practice clinician (psychologist, nurse practitioner, physician assistant) OR as stated on POA document itself – **change in law eff. Feb 2020**

Power of Attorney Finances and Property

- Allows agent to manage property and finances
 - State law provides some limits/protections – may wish to consult with attorney if any specific needs
- Agent cannot:
 - Write a will for principal
 - Change beneficiary designations or set up special needs trust (unless expressly stated)
 - Appoint a new agent (unless expressly stated)
 - Act after death of principal

POA-F: Activation

- Can be effective immediately or on incapacity or other event (e.g., travel)
- “Durable” – continues even after incapacity

POA-F: Signature Requirements

- Principal must be over 18
- No witnesses required
- Recommended to be notarized



POA—changes to document

- Once signed, **cannot** make changes to document
- Must draft a new one to change agents or wishes
- Changes made to the face of the document could invalidate it

Revocation of Power of Attorney

- Person can revoke at any time
- Revoke in writing
- Tear up/burn document
- Execute new POA-HC
 - But note: executing a new POA-F does not automatically revoke the previous one!
You must specifically state in the new document that it revokes previous POA-Fs.



End of Agency

- An **Agent** may be in place until:
 - Capacity regained
 - Expiration of event for some POA-Fs
 - Revocation
 - Resignation
 - Removal by court
 - Death
 - Guardianship (possibly)

POA Legal Safeguards

- Interested party can petition for court review
- Court can:
 - Review conduct of agent
 - Remove agent
 - Order agent to follow the POA document
 - Order agent to return money

Top issues I see with POAs:

- Incorrect dates
- Didn't actually give agent authority
- POA-HC and POA-F agent not getting along
- Didn't list alternates or alternates unable, unwilling or have passed away
- Missing pages
- Not picking someone trustworthy
- Family issues
- Crossing things out
- Agent exceeds authority

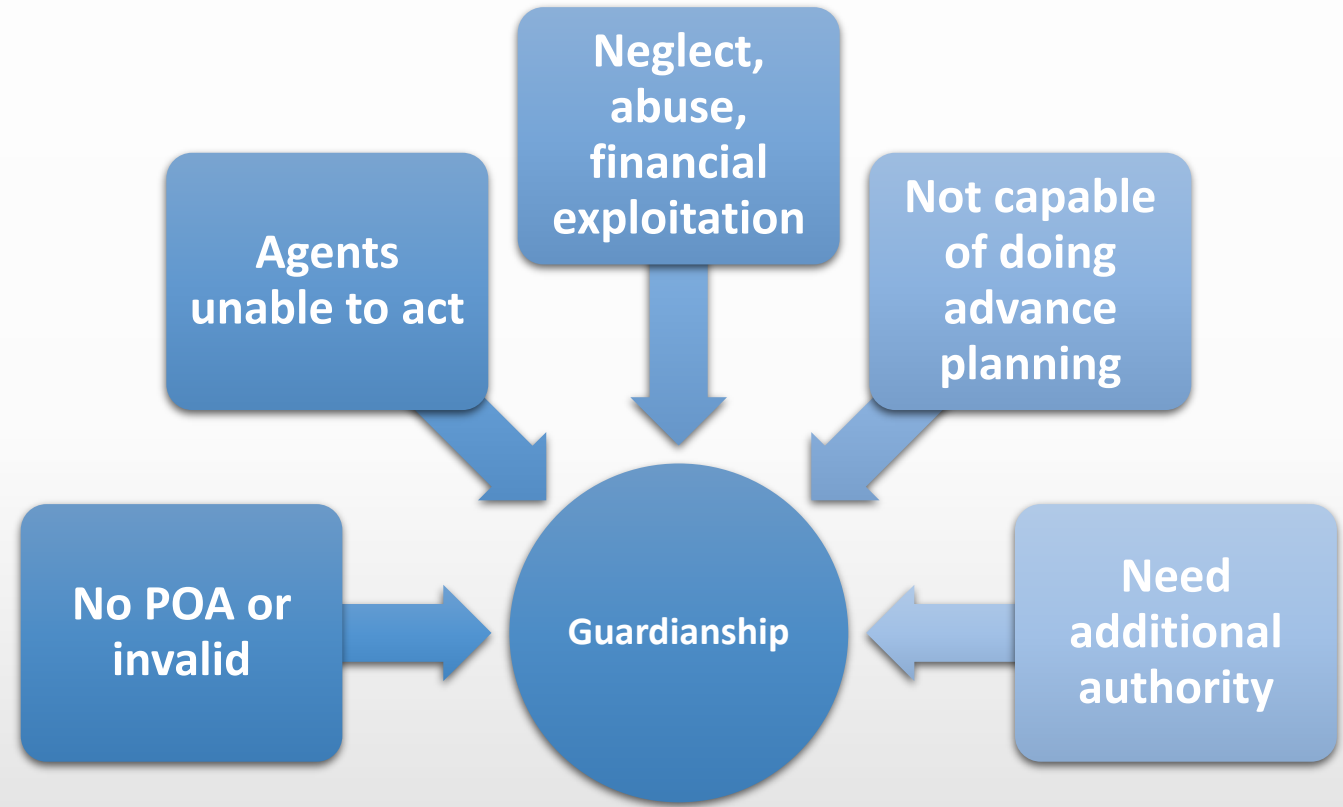
Other Types of Advance Directives

- Directive to Health Care Professionals/Living Will
 - Allows you to tell your providers what you want in specific situations – e.g., terminal condition or persistent vegetative state
 - Doesn't grant any other authority – takes effect if you don't have anyone to make health care decisions
- Authorization for Final Disposition
 - Allows you to specify someone to handle funeral/burial, plus any particular wishes you may have

How Do I Create Advance Directives?

- State has standard forms for all!
- You can also work with an attorney – answer specific questions, address specific needs

What if...



Guardianship: Standard

- Standard: “incompetency”
 - Because of an impairment, individual is unable to receive/evaluate and/or communicate information such that their health/safety and/or financial stability are at risk and there are no less restrictive alternatives

Guardianship

- For adults, WI splits into Guardianship of the Person and Guardianship of the Estate
 - An individual can have one or both; a guardian can be one or both
- Can be temporary (if only needed for a short period, or while full proceeding is pending) or permanent
 - Temporary: 60 days w/ option to extend another 60, for a max of 120 days.

Common issues we hear about

- Visitation
- Communication
- Dating
- Restricting personal choices like time they go to bed, hair cuts, food
- Restricting what they purchase with their spending allowance
- Not involved in meetings
- Difficulty getting back to court
- Guardianship as a means to try to force mental health, substance abuse treatment or restrict choices/bad decisions
 - Poor judgment is not enough! *Wis. Stat. § 54.10(3)(b)*

Power of Attorney

- Voluntary
- Person chooses agent and authority of agent
- Decisions based on person's wishes
- No rights removed
- Generally no supervision of agent

Guardianship

- Involuntary, court ordered
- Court appoints guardian
- Decisions based on person's best interest
- Many rights possibly removed
- Court oversight

WI Guardianship Support Center

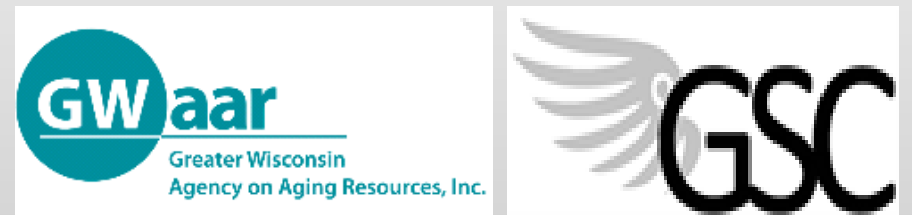
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Resources

- Senior Medicare Patrol, 888- 818-2611
- Disability, Elder Benefits (60+) or Dementia Care Specialist, ADRCs
- American Bar Association Free Legal Answers, <https://wi.freelegalanswers.org/>
- Lawyer Referral Information Service (LRIS), (800) 362-9082
 - Modest means program
- Disability Rights Wisconsin, 800-928-8778
- Board on Aging Long-term Care Ombudsman, 1-800-815-0015
 - 60+, Family Care, IRIS or in long-term care facility
 - Investigate complaints, assistance with grievances, individual case advocacy, resident rights, guardian issues
- Elder Rights Project, Legal Action or Judicare, 844-614-5468
 - WI Resident, 60+, Victim of crime or abuse