



Guardianship and the Right to Vote

This issue of The Voice® is written by SNA member Carol Wessels of [Wessels & Liebau, LLC](#) in Mequon, Wisconsin. The firm specializes in long-term care planning, estate planning for parents of special needs children, special needs trusts, guardianship and more.

December 2023 - Vol. 17, Issue 11

Voting is a fundamental right for any citizen over the age of 18 in the United States. People with disabilities have the right to vote like anyone else. In fact, federal law makes it clear that no qualified person can be denied the right to vote due to a disability.

Accommodations must be made to allow people with disabilities to exercise their rights.

Federal voting laws give each state the right to set policies regarding how people vote, where people vote, and who may vote. States have authority to make laws allowing a person to be excluded from voter registration because of “mental incapacity.”

The concept of “mental incapacity” to vote is not clearly defined, and state laws vary widely in applying that term. Some states have no prohibition against voting. Other states have laws ensuring that a person under guardianship retains the right to vote unless it is specifically removed. On the most restrictive end, some states remove the right to vote automatically upon the court appointing a guardian – with no specific inquiry into the person’s capacity to vote.

It can be a disturbing and demoralizing experience for an individual with disabilities who expresses an interest in voting to be denied that right.

If you are considering petitioning for guardianship of a person with disabilities, take steps to maximize the likelihood that the person can retain the right to vote if he or she expresses an interest in doing so.

- If your state offers limited guardianship, make it clear that you are **not** requesting the right to vote be removed. This may need to be brought up several times during the case, to avoid an assumption that the right is being removed.
- In states where examining physicians are required to address various specific issues, consider whether the physician should provide an opinion on the person’s capacity to vote. (I recommend you speak with a lawyer about this since it involves an understanding of the laws and procedures of your state.)

- The person who is the subject of the petition should think carefully about how to explain to a judge why he or she wants to vote and should be represented by counsel if the person wants an advocate to pursue their right to vote.
- Following the hearing, any court order should specifically state that the right to vote is retained (or specifically state that it is not removed) unless your state law prohibits this. (If your state law prohibits a person under guardianship from retaining the right to vote, consider a legal challenge.)
- Keep a copy of the order stating the right is retained and bring it along when the person registers to vote and votes.
- Remember that when a person under guardianship retains the right to vote, the guardian does not exercise this right for the person. The person exercises that right themselves, with any accommodation needed to cast their vote.

If you are a person whose right to vote has been removed through the guardianship process, there may be things you can do to have that right restored:

- Check your state's disability advocacy network for resources on restoring the right to vote, such as [this resource in Wisconsin](#).
- Ask for legal representation to help you with your petition to get your right to vote restored.
- Ask your guardian to ensure that you have whatever identification is needed, if any, to enable you to register to vote when your right is restored.

Other important things to know:

- If you are under guardianship and your right to vote has **not** been removed, your guardian cannot prevent you from registering and voting. Your guardian has a duty to make it possible for you to vote, including helping you apply for an absentee ballot, arranging transportation, securing proper identification for you if needed, and ensuring that any assistance necessary due to your disability is provided. You can have someone help you vote (but that person cannot make your choice for you).
- If you are under guardianship and your right to vote has **not** been removed, a poll worker cannot stop you from registering or voting.
- The polling process must be accessible for persons with disabilities, see details at this [link](#).

The freedom and civic duty to vote should not be lost simply because of guardianship. Understanding that this issue requires careful attention is the first step. Knowing your state's laws and procedures – or finding a lawyer to help you – is the second step. Ensuring that a person who wishes to vote can exercise that right, regardless of guardianship, keeps our democracy accessible to all.

About this Article: *We hope you find this article informative, but it is not legal advice. You should consult your own attorney, who can review your specific situation and account for variations in state law and local practices. Laws and regulations are constantly changing, so the longer it has been since an article was written, the greater the likelihood that the article might be out of date. SNA members focus on this complex, evolving area of law. To locate a member in your state, visit [Find an Attorney](#).*

Requirements for Reproducing this Article: *The above article may be reprinted only if it appears unmodified, including both the author description above the title and the “About this Article” paragraph immediately following the article, accompanied by the following statement: “Reprinted with permission of the Special Needs Alliance – www.specialneedsalliance.org.” The article may not be reproduced online. Instead, references to it should link to it on the SNA website.*