

SUBJECT: Guardianship

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INTRODUCTION

This release applies to all credit unions, state and federal. It describes Wisconsin law on guardianships, the proper opening and handling of accounts where a guardianship is in place, and related issues.

EXECUTIVE SUMMARY

People who are not competent to handle their own affairs may need a court to appoint someone to act on their behalf – a *guardian*. The person who needs help is called a *ward*. A guardian can only be appointed by a court, which issues *Letters of Guardianship*.

A court appoints a *guardian of the estate* to help a ward who is incompetent to handle his/her own finances. This release focuses on guardians of the estate.

A court appoints a *guardian of the person* to help a ward who is incompetent to provide or arrange for personal needs, such as medical care. A credit union should never open an account or transact business with someone based on a guardianship of the person. Only a guardian of the estate has authority to open an account or transact business for a ward at the credit union.

Two or more guardians can be appointed to serve at the same time as *co-guardians*.

The court can also designate one or more *standby guardians*, usually at the same time it appoints the initial guardian. A standby guardian takes over immediately if the named guardian dies, is unwilling or unable to act, resigns, or is removed by the court. The standby guardian may also fill in when the initially appointed guardian is temporarily unable to fulfill his/her duties, including during an extended vacation or illness.

A *successor guardian* is a person appointed by the court to become guardian after the named guardian dies, resigns or is removed by the court.

The court can appoint a *temporary guardian* to serve for up to 60 days, though this can be extended an additional 60 days. The Letters of Guardianship will specify what authority the temporary guardian has and the dates his/her authority starts and ends.

A person who is competent to understand his/her actions can ask a court to appoint a *conservator*, who has the same powers and responsibilities as a guardian of the estate. Conservatorship is different from guardianship in that there is no finding of incompetence and the person can ask the court to end the conservatorship at any time. The issues discussed in this release generally apply to conservatorships just as they do to guardianships.

The guardian only has the powers that are provided by state law and the Letters of Guardianship.

State law divides a guardian's authority into four categories, all of which are detailed in this release:

- Things a guardian must do;
- Things a guardian may do at their discretion, without court approval;
- Things a guardian may only do with court approval; and
- Things a guardian may never do.

A court can create a *limited guardianship*. For example, the court may find that a ward can handle his or her salary or a small personal allowance but not a large financial account. The Letters of Guardianship will explain any limits on a guardian's authority. The credit union may be liable if it lets a guardian do more than he/she should. *The key is that you must read the Letters of Guardianship!*

Unless the court terminates a guardianship, it continues indefinitely (with some exceptions, such as when a ward who was a minor turns 18). However, a temporary guardian is appointed only for a limited period of time.

To help credit unions deal with guardianships properly, this release includes two checklists.

When First Presented with Guardianship

- ☐ Examine/copy letters of guardianship.
- ☐ Makes sure it's a guardianship *of the estate*.
- ☐ Retitle existing and joint accounts.
- ☐ For new accounts, complete a Membership Application Card (if the ward is not already a credit union member); provide account disclosures; complete an Account Ownership Agreement (and title the account properly); and provide the account agreement brochure.
- ☐ Go through Customer Identification Procedures on the guardian(s) and do OFAC checks.
- ☐ Take special care if the guardian is an organization.
- ☐ "Flag" the account to limit the ward's access.

Checklist To Be Used Every Time A Guardian Asks To Make Transactions

- ☐ Is the guardian asking to transact business on one of these "special" accounts?

See Exhibit A if the guardian asks to transact business on one of these accounts – where the guardian's ability to act for a ward may be limited or even prohibited:

- Individual Retirement Accounts;
- Representative payee accounts;
- Organization accounts;
- Trust accounts;
- Custodial accounts;
- Joint accounts;
- Accounts with existing powers of attorney;

- Safe deposit boxes; and
- Deceased member's accounts.

- ☐ Check whether the Letters of Guardianship authorize what the guardian wants to do.
- ☐ Check whether a co-guardian needs to consent.
- ☐ Check the guardian's identification per the credit union's policies.
- ☐ Require the guardian to sign documents and endorse checks properly.
- ☐ Watch for violations of the guardian's fiduciary duties.
- ☐ Report suspected abuse of the ward, including financial exploitation.

This release also discusses issues that may arise when a guardian wants to take out a loan for a ward's benefit and in the ward's name.

Finally, the release provides links to resources that credit unions may find helpful, such as the Coalition of Wisconsin Aging Group's Guardianship Support Center.

INTRODUCTION TO GUARDIANSHIPS

To open and maintain accounts for members under a guardianship, the credit union needs to know what a guardianship is and how it works.

What Is A Guardian?

People who are not competent to handle their own affairs may need a court to appoint someone to act on their behalf – a *guardian*. The person who needs help is called a *ward*.

There are two kinds of guardians under Wis. Stats. Chap. 54:

- A court appoints a *guardian of the estate* to help a ward who is incompetent to handle his/her own finances. This release focuses on guardians of the estate.
- A court appoints a *guardian of the person* to help a ward who is incompetent to provide or arrange for personal needs, like medical care. A credit union should never open an account or transact business with someone based on a guardianship of the person. Only a guardian of the estate has authority to open an account or transact business for a ward at the credit union.

A court may appoint the same person as guardian both of the estate and of the person, or the responsibilities may be divided. While Chapter 54 focuses mostly on guardianships for incompetent and "spendthrift" adults, it also applies to guardianships of the estate for children.

There is another guardianship law specifically for minors that went into effect in August 2020, *Wis. Stat. section 48.9795*, "Appointment of guardian of the person for a child." Wis. Stat. chapter 48 (the Children's Code) better meets the needs of children and families, but it is only for minor guardianships of the person. Again, a credit union should not open an account for someone based on a guardianship of the person.

How Is A Guardian Appointed?

A guardian can only be appointed by court order.

A relative, public official or other interested person files a petition with a court stating why a guardian is needed and nominating someone to be the guardian. Attorneys may be appointed, and a physician or psychologist will examine the person and furnish a written statement concerning the person's mental condition.

The ability of a person to manage his or her own affairs is called "*competence*." Before a judge can appoint a guardian for a person, the judge must find that the person is "*incompetent*." Under Wisconsin law, this means an impairment (i.e., a developmental disability, serious mental illness, degenerative brain disorder or other incapacity) that makes it difficult for the person to manage his/her property or finances.

The court holds a hearing and decides if there is clear and convincing evidence that the person is incompetent. If so, the court appoints a guardian for a ward by issuing *Letters of Guardianship of the Estate*.

A guardian can also be appointed if the court determines that someone is a *spendthrift*, which is defined as:

a person who, because of the use of alcohol or other drugs or because of gambling or other wasteful course of conduct, is unable to manage effectively his or her financial affairs or is likely to affect the health, life, or property of himself, herself, or others so as to endanger his or her support and the support of his or her dependents, if any, or expose the public to responsibility for his or her support.

Who Serves As Guardian?

The guardian may be an individual (often a family member, but not necessarily) or an organization – a private non-profit corporation or unincorporated association that the court approves.

The court may also appoint co-guardians, standby guardians, successor guardians, temporary guardians or special guardians.

- *Co-Guardians*: Two or more guardians can be appointed to serve at the same time. These are called co-guardians. Often, co-guardians are married, but this is not required. Co-guardians must concur with each other on all decisions unless the court orders otherwise. In other words, unless the Letters of Guardianship say something different, one co-guardian should not be allowed to transact business on the ward's accounts alone; the other guardian also needs to consent. The Letters of Guardianship will show whether the court has allowed the co-guardians to act independently and in what situations.
- *Standby Guardians*: The court can designate one or more standby guardians, usually at the same time it appoints the initial guardian. A standby guardian takes over immediately if the named guardian dies, is unwilling or unable to act, resigns, or is removed by the court. The standby guardian may also fill in when the initially appointed guardian is temporarily unable to fulfill his/her duties, including during an extended vacation or illness. The powers and duties of the standby guardian are the same as those of the initially appointed guardian. Upon taking over as guardian, the standby guardian is supposed to notify the court, which will then issue new letters of guardianship that specify that the standby guardianship is permanent or that specify the time period for a limited standby guardianship.
- *Successor Guardian*: A successor guardian is a person appointed by the court to become guardian after the named guardian dies, resigns or is removed by the court.
- *Temporary Guardian*: The court can appoint a temporary guardian to serve for up to 60 days, though this can be extended an additional 60 days. The Letters of Guardianship will specify what authority the temporary guardian has and the dates his/her authority starts and ends. Unless the court approves it first, the temporary guardian cannot sell real estate or expend more than \$2,000. The authority of the temporary guardian ends when the court issues permanent Letters of Guardianship.
- *Special Guardian*: A special guardian can be appointed under Chap. 786 of the Wisconsin Statutes to sell real estate when the owner is incompetent but does not have a guardian.

What Can A Guardian Do?

The guardian only has the powers that are provided by 1) the Letters of Guardianship and 2) state law.

The Letters of Guardianship can limit a guardian's authority. The court can make specific findings as to the rights and powers that a ward is not competent to exercise, and can limit guardianship to those rights and powers. For example, a person may be competent to handle his or her salary or a small personal allowance but not a large financial account. A limited guardianship may allow the ward to (among other things) retain control over wages and earnings, or it may be tailored to allow control over other specific property. The credit union may be liable if it lets a guardian do more than he/she should.

State law divides a guardian's authority into four categories:

- Things a guardian must do;
- Things a guardian may do at their discretion, without court approval;
- Things a guardian may only do with court approval; and
- Things a guardian may never do.

All these categories of a guardian's authority are detailed in the "Checklist to be Used Every Time a Guardian Asks to Make Transactions" section of this release.

How Does A Guardianship End?

A temporary guardian is appointed only for a limited period, but other guardianships continue indefinitely. Under Wisconsin Statutes §54.64(4), a guardianship of the estate ends if any of the following occurs:

- The court rules that a ward who was found to be incompetent is no longer incompetent or is now capable of handling his/her income and assets;
- The ward changes residence from Wisconsin to another state and a guardian is appointed in that state;
- A ward who was a minor turns 18;
- A minor ward whose guardianship was not ordered on the grounds of incompetency marries and the court approves the termination; or
- A ward dies.

Even after the ward dies, the statutes say that the guardianship can continue if the estate that the ward leaves is small enough for the guardian to handle via a process called "summary settlement." In addition, Wisconsin law allows a guardian to complete a Transfer by Affidavit form upon a ward's death. This can be used to claim personal property or to collect money owed to the deceased ward when the total value of his/her property in Wisconsin is \$50,000 or less. For information on summary settlement and the Transfer by Affidavit, see The League's *ii Release No. 0004*.

Courts can also modify existing guardianships. The ward, the guardian, or any interested person may at any time ask the court to review the case and decide whether the ward is still incompetent. After the hearing, the court can continue or end the guardianship, or it can change the guardianship, for example by creating a limited guardianship.

What Is A Conservator?

A person who is competent to understand his/her actions can ask a court to appoint a *conservator*, who has the same powers and responsibilities as a guardian of the estate. The court will issue Letters of Conservatorship, which may limit the conservator's authority. Conservatorship is different from guardianship in that there is no finding of incompetence and the person can ask the court to end the conservatorship at any time.

The issues discussed in this release generally apply to conservatorships just as they do to guardianships. That is because their powers are the same: "[A] conservator has all the powers and duties of a guardian of the estate. An individual whose income and assets are under conservatorship may make gifts of his or her income and assets, subject to approval of the conservator." Wis. Stats. §54.76(3).

Just as wards should not ordinarily be allowed to transact business on accounts (as explained later in this release), those under a conservatorship should not ordinarily be allowed to, either. But you must check the Letters of Conservatorship carefully to determine what authority the conservator has and what the person under conservatorship may be able to do for him/herself.

How Are Guardian's Accounts Insured?

As explained in the NCUA's brochure "*Your Insured Funds*," accounts held by a person as guardian (or in some other fiduciary capacity, like custodian or personal representative) are insured separately from the guardian's individual accounts:

If the records of the credit union indicate that the person is depositing the funds in a fiduciary capacity, such funds would be separately insured from the fiduciary's individually owned account. Funds in accounts held by guardians, conservators, or custodians (whether court-appointed or not) are also insured separately from other accounts of the ward.

For more information about NCUA share insurance, see The League's *ii Release No. 0113*.

What is a supported decision-making agreement?

The "supported decision-making agreements" law found in Chapter 52 of our Wisconsin Statutes lets an adult with a "functional impairment" sign a special agreement so that another adult (the "supporter") can help him/her make certain decisions. The supporter helps the person with functional impairments gather and understand information, compare options, and communicate their decisions to others.

The agreement is not a guardianship or a power of attorney. The designated supporter is not a surrogate decision-maker for the adult and is not authorized to sign legal documents for the adult or bind the adult to a legal agreement. A person with functional impairments gives up no rights by signing a supported decision-making agreement; it does not stop him/her from acting independently. The agreement cannot be used as evidence of incapacity or incompetency. The supporter has only the authority granted by the adult under the supported decision-making agreement.

For more information, please see The League's *ii Release No. 0189 - Supported Decision-Making Agreements*.

CHECKLIST WHEN FIRST PRESENTED WITH GUARDIANSHIP

Whether someone has been appointed as a guardian for one of the credit union's existing members, or a guardian asks to open a new account for a ward who is not already a member, the credit union should take several important steps.

Here is a preliminary listing of the checklist contents, followed by discussion of each of the points:

- Examine/Copy Letters Of Guardianship.
- Makes Sure It's A Guardianship Of The Estate.
- Go Through Customer Identification Procedures On The Guardian(s) And Do OFAC Checks.
- Take Special Care If The Guardian Is An Organization.
- Retitle existing and joint accounts.
- For new accounts:
- "Flag" The Account To Limit The Ward's Access.

☐ Examine/Copy Letters Of Guardianship.

Never take someone at their word that they've been appointed guardian. You must make sure that a guardianship is actually in place. Only a court can establish a guardianship. In Wisconsin, a circuit court does this by issuing Letters of Guardianship.

Ask for a file-stamped copy of the Letters of Guardianship to keep at the credit union. (After filing, the clerk of court will mark copies of the pleadings with a "filed" stamp. Those file-stamped copies are called "authenticated copies" in the law.) If necessary, you can copy the document for the credit union and return the original to the guardian.

You can check the authenticity of the Letters of Guardianship – and verify that the guardianship has not been terminated – by contacting the clerk of court that issued the letters. A listing of Wisconsin clerks of court is online at: www.wicourts.gov/contact/docs/clerks.pdf. The Letters of Guardianship will show the guardianship case number and identify the county the court is in.

You will not find guardianship records online through the Wisconsin Circuit Court Access system. Records not open to public inspection are not displayed on the WCCA website. Confidential court records include adoptions, juvenile delinquency, child protection, termination of parental rights, guardianship, and civil commitments.

Examine the Letters of Guardianship for any signs of alteration or forgery. If you suspect that the documents have been changed or forged without a court's approval, contact The League for more information, or contact local law enforcement authorities to investigate further.

Co-Guardianships: Take care in deciding whether you want to open an account where two or more co-guardians have been appointed. The Wisconsin Statutes say that co-guardians must concur with each other on all decisions unless the court orders otherwise. Wis. Stats. §54.46(2)(a).

In other words, unless the Letters of Guardianship say something different, one co-guardian should not be allowed to transact business on the ward's accounts alone; the other guardian also needs to consent. The credit union could be liable if it lets one co-guardian act alone – for example, by paying a check only one co-guardian signed. With highly automated check processing systems, it has become increasingly difficult for a credit union to monitor whether the required numbers of signatures appear on checks. If the credit union does open an account where co-guardians must both act together, it should set its systems so that checks presented on the guardianship account are flagged for review by staff.

Foreign Guardianships: If a ward from another state now resides in Wisconsin, or intends to move to Wisconsin, then the credit union should not allow a guardian appointed by another state's courts to transact business on that ward's accounts in Wisconsin unless a Wisconsin court has issued an order accepting that out-of-state guardianship. An out-of-state guardian can file a "Petition for Receipt and Acceptance of a Foreign Guardianship" in the circuit court for the Wisconsin county where the ward resides or intends to reside. After a hearing, the court will decide whether to grant the petition and issue an "Order on Petition for Receipt and Acceptance of Foreign Guardianship to Transfer

Guardianship to Wisconsin.” The order will explain whether the petition is granted or denied. The credit union should request a file-stamped copy of that order, and verify its authenticity, before allowing the guardian to transact business on the ward’s accounts in Wisconsin (if the ward is a Wisconsin resident or intends to move to Wisconsin).

☐ **Makes Sure It’s A Guardianship Of The Estate.**

The Letters of Guardianship will clearly show whether this is a guardianship *of the estate* or *of the person*.

A *guardian of the person* can provide or arrange for a ward’s personal needs, like medical care. A credit union should never open an account or transact business with someone based only on a guardianship of the person.

A court appoints a *guardian of the estate* for someone who cannot handle his/her own finances. A guardian of the estate has authority to open an account or transact business for a ward at the credit union; a guardian of the person does not.

A court may appoint the same person as guardian of both the estate and the person, or the responsibilities may be divided.

☐ **Go Through Customer Identification Procedures On The Guardian(s) And Do OFAC Checks.**

You must verify the identity of the guardian or co-guardian(s).

Under U.S. Treasury Department and NCUA rules, every credit union must have a Customer Identification Program (CIP). The CIP rules require you to collect certain information and to verify the identity of any “customer.”

The term “customer” is defined in the CIP rules to include an agent who is opening an account for a person who lacks legal capacity – meaning a minor or someone who has been adjudged incompetent. This means that the guardian is the “customer” for CIP purposes, even though the ward technically owns the funds and the ward’s Social Security Number is used for tax reporting.

Under the CIP rules, the terms “account” means a “formal banking relationship.” It includes loans, deposit and transaction accounts, safe deposit box and other safekeeping services, cash management, and custodian and trust services. The term “account” does not cover infrequent transactions such as the occasional purchase of a money order or a wire transfer.

Follow your credit union’s procedures to gather all the necessary information (such as the guardian’s name, street address, date of birth, and identifying number) and to verify the guardian’s identity. If co-guardians have been appointed, conduct CIP on both of them. Standby or successor guardians must undergo CIP before you can allow them to transact any business on the account.

The League’s Customer Identification Card (WCUL form #81080) is designed to simplify the CIP process. It provides fill-in-the-blanks for recording required information and checkboxes to indicate the methods you use to verify identities.

For more information about CIP, see the League’s *ii Release No. 0159*.

Also, Office of Foreign Assets Control (OFAC) checks should be completed on all account holders before a new account is opened or shortly thereafter. OFAC regulations do not seem to address guardianships, but it would be a sound practice to include both the guardian and ward in this check.

For more information on OFAC, see The League’s *ii Release No. 0148*.

☐ **Take Special Care If The Guardian Is An Organization.**

Sometimes an organization, such as a non-profit corporation, is named as guardian. This is acceptable, but the credit union needs to know who, specifically, from that organization should be allowed to access the ward’s accounts.

For example, the court might appoint Lutheran Social Services (LSS) as a corporate guardian. LSS then has to assign a staff member to handle that case. LSS might assign Sally Social Worker the case for a month and then decide she has too much other work and reassign the case to Walter Worker. In either case, LSS is still the court-appointed guardian. The credit union must be careful to let only the individuals that LSS designates access to the ward’s accounts, not anyone else who is (or who claims to be) affiliated with LSS.

The Wisconsin Department of Health Services (DHS) has rules that say:

A person employed by or otherwise associated with the non-profit corporation [that has been appointed as guardian] shall be designated the agent of the corporation to administer the guardianship. Any change in the internal

assignment of responsibility shall be communicated to the department, the local planning agency or interagency mechanism designated under s. 55.02 Stats., the ward and the court within 14 days following its effective date.

It does not appear that any standard forms are used to designate who has authority to act for a corporate guardian. A letter from the corporate guardian, even if on company letterhead, may not be enough. (A recent federal court opinion discusses how an Illinois credit union was negligent in letting a member deposit checks that were made payable to the person's employer. The credit union relied on two forged letters from the employer, on company letterhead, that purported to give the authorization.)

A sound practice would be to ask for a corporate resolution, on a form acceptable to the credit union, designating the individual(s) who can transact business on the ward's accounts. Of course, even depository resolutions can be forged. Therefore, the credit union may want to verify their authenticity with a telephone call to an officer of the organization.

In addition, since the DHFS rules require that any "change in internal assignment" must be communicated to the court, the credit union should ask for a file-stamped copy of the notice provided to the court.

☐ **Retitle existing and joint accounts.**

If the ward is already a credit union member, his/her account can simply be re-titled to reflect the guardianship. It is not necessary to have the guardian sign a new Account Ownership Agreement, since the ownership of the account is not changing. The ward still owns the account, but the guardian will now act on the ward's behalf to manage it. (Besides, the new account card might not accurately reflect the terms of the ward's existing account, such as the designation of existing payable on death beneficiaries.)

Most data processing systems will allow the credit union can re-title the ward's accounts to add the guardian's name. The title should reflect that a guardianship is in place. The League suggests titling a guardianship account: "Wanda Ward, by Gary Guardian, Guardian of Wanda Ward." In the credit union's data processing system, only the ward's name should appear on the first line, with the guardian's name below it, to avoid a "TIN mismatch."

The credit union will continue to use the ward's taxpayer identification number (TIN) for tax reporting. This will usually be a Social Security Number.

There is no need to have the guardian sign a new Membership Application Card either – since the ward is already a credit union member. It is not necessary to give the guardian new account disclosures or a copy of any account agreement brochure, but the credit union can do so if it chooses, to help the guardian understand the terms and conditions of the account he/she will be managing.

The credit union would show guardianship accounts on its data processing system in a way that clearly indicates a guardianship is in place, and not that the guardian is a joint owner. The guardian has no ownership interest in the funds; he/she can only use the funds for the benefit of the ward.

The guardian should sign checks in his/her own name and indicate their status as guardian. For example, Gary Guardian would sign his own name and then print afterward, "Wanda Ward, by Gary Guardian, Guardian of Wanda Ward." A guardian should endorse checks payable to the ward the same way.

The guardian may choose to close the ward's accounts and open new accounts with the funds. If so, follow the steps below for new accounts.

Existing joint accounts

If the ward is a holder of an existing joint account with others, the guardian's name can be added below the ward's name to show that the guardian will be acting on the ward's behalf to transact business on the joint account. This does not mean that the names of the ward's joint owners should be removed from the account.

For more information on handling joint accounts where one owner has a guardian, see the attached Exhibit A.

☐ **For new accounts:**

If a guardian wants to open new accounts (not simply retitle the ward's existing accounts) several additional steps may be needed – even if the guardian is opening new "sub-accounts" under a ward's existing membership. A Membership Application Card (WCUL #81056) will be needed if the ward is not already a credit union member. Account disclosures will be needed; an Account Ownership Agreement (WCUL #82024) will have to be signed; and a copy of

the credit union's account agreement brochure will have to be provided. The following material explores each of these steps in more detail.

Complete A Membership Application Card

If the ward is not already a credit union member, use a Membership Application Card (WCUL form #81056) to document that the ward is applying to become a member (which the guardian is doing on the ward's behalf). The card also documents the credit union's decision whether to approve the membership application. Check the appropriate box to show whether the application was approved or denied. The card needs to be completed only once, when the ward initially applies for membership.

Credit union membership is limited to people who qualify under the credit union's bylaws (state-chartered credit unions) or its charter (federal credit unions). Check your credit union's bylaws or charter for details about your field of membership.

A state-chartered credit unions can maintain a guardianship account if the ward is in its field of membership – even if the guardian could not join the credit union. The Wisconsin credit union statutes and regulations do not address whether state-chartered credit unions can establish an account if only the guardian (not the ward) is eligible.

For federal credit unions, the NCUA has said that “FCUs may establish guardianship accounts if either the guardian establishing the account or the ward or minor is a member of the FCU.” NCUA Opinion Letter 03-0747 (Aug. 21, 2003).

The League's Membership Application Card is not an account agreement. An account agreement brochure and a separate account ownership agreement card must also be used.

Provide Account Disclosures

Various regulations require that disclosures be given to consumers who open new credit union accounts, including guardians & wards. The following must be given to the guardian before the Account Ownership Agreement card is signed.

- A Funds Availability Disclosure is generally required for all demand deposit, share draft, checking or NOW accounts. For more information about Funds Availability Disclosures, see The League's *ii Release No. 0100*.
- The League provides a Funds Transfer Agreement and Notice (WCUL form #81043), which covers certain transfers of funds by wire transfers, automated clearinghouse transactions, etc. For more information about the Funds Transfers Agreement & Notice, see The League's *ii Release No. 0127*.
- An Electronic Fund Transfer disclosure is generally required at the time an EFT service is contracted for. For more information about Electronic Fund Transfers disclosures, see The League's *ii Release No. 0120*.
- A Truth in Savings disclosure is generally required before an interest- or dividend-bearing account is opened or a fee is collected. The credit union's schedule of rates and fees should also be provided. For more information about Truth in Savings disclosures, see The League's *ii Release No. 0101*.
- An Initial Privacy Notice is generally required whenever an account is opened that is to be used primarily for personal, family, or household purposes. For more information about the Initial Privacy Notice, see The League's *ii Release No. 0152*.

Complete An Account Ownership Agreement, And Title The Account Properly

To open a new account, the guardian will need to sign an Account Ownership Agreement card (WCUL #82024) on the ward's behalf. An Account Ownership Agreement does several things. It designates the owner of the account, certifies the owner's TIN, and records the various disclosures given when the account is opened. (Note: If someone opens multiple accounts, a separate account ownership agreement card must be used for each separate “sub-account.”)

Under a guardianship, the ward remains the owner of his/her property. A guardian is an agent of the court and has no legal or equitable title to the ward's property. For that reason, the account is to be titled in the ward's name; the guardian should not be named as the account's owner or co-owner.

However, the title should reflect that a guardianship is in place. The League suggests titling a guardianship account: “Wanda Ward, by Gary Guardian, Guardian of Wanda Ward.”

In the credit union's data processing system, only the ward's name should appear on the first line, with the guardian's name below it, to avoid a "TIN mismatch." You will use the ward's taxpayer identification number (TIN) for tax reporting. This will usually be a Social Security Number.

To certify the correct number for tax reporting, the guardian can sign the W-9 or substitute TIN certification – like the one on the back of The League's Account Ownership Agreement – on the ward's behalf.

For more information on TIN certification, see The League's *ii Release No. 0009*.

The credit union should show guardianship accounts on its data processing system in a way that clearly indicates a guardianship is in place, and not that the guardian is a joint owner. The guardian has no ownership interest in the funds; he/she can only use the funds for the benefit of the ward.

The guardian should sign the agreement in his/her own name and indicate their status as guardian. For example, Gary Guardian would sign his own name and then print afterward, "Wanda Ward, by Gary Guardian, Guardian of Wanda Ward" A guardian should endorse checks payable to the ward the same way.

Provide the Account Agreement Brochure

The League's Account Ownership Agreement does not have room for all of the contract terms that govern an account. Instead, it refers to and incorporates details that are found in either of the brochures that The League offers "Your Account Agreement, with Arbitration Agreement" (#83005) or "Your Account Agreement," (#83006, replacing #82004).

This brochure contains the key contract terms for all types of accounts. For that reason, the Brochure must be provided whenever an Account Ownership Agreement card is signed, even if the card is only for a sub-account. (If the credit union has developed its own supplement to provide for any special terms, that must be provided, as well.)

The account agreement brochures provide important legal protections for a credit union that is dealing with a guardian. Among other things, it says that:

- Any court order (i.e., Letters of Guardianship) must be supplied at account opening;
- The credit union can require documents if needed to show that the guardian is authorized to open, close or withdraw funds from an account;
- The credit union is held harmless for refusing to pay or release funds in the account if the guardian fails to provide the documents requested by the Credit Union;
- The Credit Union is not liable if the guardian misuses funds;
- The credit union is not required to ask about the validity or propriety of any instructions or actions of the guardian;
- The guardian agrees to personally indemnify the credit union for any loss, costs, damages, liability or expenses (including reasonable attorneys' fees) that the credit union incurs because the guardian misuses funds in the account; and
- Statutes and court orders govern the account, and they prevail if they are inconsistent with the account agreement brochure's terms.

☐ **"Flag" The Account To Limit The Ward's Access.**

Ordinarily, only the guardian, not the ward, should be allowed to access the account. By appointing a guardian of the estate, a court has found that the ward lacks the legal capacity to handle their own finances. Knowing this, the credit union should not allow the legally incompetent ward to transact business on the account.

However, the court can establish a limited guardianship, in which it may allow the ward some rights to manage their own funds. If so, that will be shown on the Letters of Guardianship.

That is one reason why it is important to review the Letters of Guardianship carefully to determine what authority the guardian has and what the ward may still be able to do for himself/herself. A guardian's powers are limited to things authorized by statute or court order. A ward retains any rights that are not expressly assigned to the guardian or otherwise limited by statute.

The credit union should “flag” the account, place a supervisor lockout on it, or take other steps (as permitted by your data processing system) to prevent staff from letting the ward inappropriately transact business on the account without management approval (which will require a review of the Letters of Guardianship).

Just as wards should not ordinarily be allowed to transact business on accounts (as explained later in this release), those under a conservatorship should not ordinarily be allowed to, either. See Zobel by Hancox v. Fenendael, 127 Wis. 2d 382 (Wis. App., 1985). But you must check the Letters of Conservatorship carefully to determine what authority the conservator has and what the person under conservatorship may be able to do for himself/herself.

CHECKLIST TO BE USED EVERY TIME A GUARDIAN ASKS TO MAKE TRANSACTIONS

Use the following checklist every time a guardian asks to transact business on a ward’s accounts at the credit union. These steps will help you determine whether the guardian can do what he/she wants to do.

Here is a preliminary listing of the checklist contents, followed by discussion of each of the points:

- Is The Guardian Asking To Transact Business On One Of These “Special” Accounts?
- Check Whether The Letters Of Guardianship Authorize What The Guardian Wants To Do.
- Check Whether A Co-Guardian Needs To Consent.
- Check The Guardian’s Identification Per The Credit Union’s Policies.
- Require The Guardian To Sign Documents And Endorse Checks Properly.
- Watch For Violations Of The Guardian’s Fiduciary Duties.
- Report Suspected Abuse Of The Ward, Including Financial Exploitation.

☐ **Is The Guardian Asking To Transact Business On One Of These “Special” Accounts?**

A guardian’s ability to act for a ward may be limited – or even prohibited – on certain “special” types of accounts. Before you let a guardian transact business on any of these types of accounts, review Exhibit A to this release to see if special rules apply:

- Individual Retirement Accounts;
- Representative payee accounts;
- Organization accounts;
- Trust accounts;
- Custodial accounts;
- Joint accounts;
- Accounts with existing powers of attorney;
- Safe deposit boxes; and
- Deceased member’s accounts.

☐ **Check Whether The Letters Of Guardianship Authorize What The Guardian Wants To Do.**

A guardianship is not an open invitation to the guardian to do whatever he/she likes. Wisconsin law imposes certain duties on guardians and prohibits certain actions. The court can also limit a guardian’s authority in various ways. The credit union may be liable if it lets a guardian do more than he/she should.

The key is that you must read the Letters of Guardianship! And you must check every time the guardian wants to transact business!

The guardian only has the powers that are provided by 1) the Letters of Guardianship and 2) state law.

The Letters of Guardianship may establish either a *full* or a *limited guardianship*. Under Wisconsin law, the court can make specific findings as to the rights and powers a person is not competent to exercise, and can limit guardianship to those rights and powers. For example, a person may be competent to handle his or her salary or a small personal allowance but not a large financial account. A limited guardianship may allow the ward to (among other things) retain control over wages and earnings and could be tailored to allow control over other specific property.

State law imposes certain duties on guardians of the estate – things they must do. In addition, guardians may, but are not required, to do other things at their discretion. Sometimes the court needs to consent before a guardian may do something. Finally, a guardian may never do certain things.

Things A Guardian Must Do (Wis. Stats. §54.18(2)): A guardian is a “fiduciary,” meaning that he/she holds a special position of trust and must always act in good faith and in the ward’s best interests. A guardian must use the ward’s property (including accounts) prudently and only for the ward’s benefit.

Because of these fiduciary responsibilities, the Wisconsin statutes impose certain duties on a guardian. (Wis. Stats. §54.19). Of particular interest to credit unions, a guardian of the estate is required to (among other things):

- Take possession of the ward’s real and personal property. (Ownership or title remains with the ward.)
- Apply to be appointed as representative payee for any governmental benefits if a personal representative is not already appointed, or ensure that one is appointed.
- File an inventory of the ward’s property within 60 days after appointment or by the date specified by the court, and account for all funds received and spent by filing an annual account by April 15, or the date specified by the court, for the preceding year. The court may waive the accounting requirement in some circumstances. Additionally, if the ward’s income and assets are less than \$50,000, the court may not require an account.
- Upon the ward’s death, deliver the ward’s assets to the entitled persons. Wisconsin law allows a guardian to complete a Transfer by Affidavit form upon a ward’s death. This can be used to claim personal property or to collect money owed to the decedent when the total value of decedent’s property is \$50,000 or less. For details on handling decedent’s accounts, see *ii Release No. 0004*.
- File with the register of deeds of any county in which the ward possessed real property a sworn statement that describes the property, the date the ward was determined to be incompetent, and the contact information of the guardian.

Things A Guardian May Never Do (Wis. Stats. §54.18(3)): Under Wisconsin law, a guardian of the estate may not:

- Loan any of the ward’s money or property to himself or herself.
- Use any of the ward’s money or property for the guardian’s own benefit.

You do not need to police every transaction to be sure the guardian is acting properly. But you should not ignore obvious abuses, either. For example, when a guardian requests a withdrawal from the ward’s account, you do not need to ask what the money will be used for. But if the guardian asks to transfer money from the ward’s account to pay the guardian’s own boat loan at the credit union, this should not be allowed.

Things A Guardian May Do Without Court Approval (Wis. Stats. §54.20(3)): The Wisconsin Statutes allow (but do not require) a guardian to do certain things. However, the court can limit this authority. Limits would be spelled out in the Letters of Guardianship.

Assuming the guardian’s authority has not been limited by the court, a guardian of the estate does not need a court’s approval to do the following (among other things):

- Enter into a contract. For example, the guardian can agree to the credit union’s account terms by signing an Account Ownership Agreement on the ward’s behalf.
- Authorize access to or release of confidential financial records. This allows the guardian to consent to the credit union’s disclosure of non-public personal information under the NCUA privacy rules. For details on those rules, see *ii Release No. 0152*.
- Pay the ward’s legally enforceable debts, including any taxes owed, from the ward’s assets and income. The guardian can use the ward’s fund to pay the ward’s debts, including credit union loans. This does not mean, however, that the guardian is personally liable for the ward’s debts. The credit union could not setoff on the guardian’s own accounts, or otherwise collect from the guardian, for a debt the ward owes to the credit union.
- Sell, pledge, lease or exchange the ward’s *personal* property at fair market value. The guardian can pledge personal property, like a car or a credit union account, as collateral. The court must approve if the guardian wants to mortgage the ward’s real estate.
- Retain real or personal property that ward already possesses or acquires by gift or inheritance during the guardian’s appointment.

- Manage investments in accordance with Ch. 881, including the Prudent Investor Act.
- Settle all claims and accounts of the ward, and appear for and represent the ward in actions.
- Exercise options to purchase securities or other property.

Things A Guardian May Do Only With Court Approval (Wis. Stats. §54.20(2)): The guardian of the estate needs court approval before he/she can do certain things. Among these (and of most interest to credit unions) are the following:

- Make gifts of the ward's property. The guardian should not be permitted to add joint owners or payable-on-death beneficiaries to the ward's accounts without a court's approval. By adding joint owners or POD beneficiaries, the guardian would essentially be giving a gift – an interest in the ward's account – to someone else. Gift giving by a guardian requires court approval.
- Sell, mortgage or lease the ward's *real estate* in accordance with Ch. 786. The guardian will need the court's prior written consent to mortgage the ward's real estate.
- Transfer ward's funds to an existing revocable living trust. If an account is held in the name of a trust (usually called a revocable living trust) only the trustee(s) can be allowed to transact business on that account. If a guardian has been appointed for the trustee, because the trustee has become incompetent, that does not mean the guardian can step in to manage the trust. The trust should designate a successor trustee who will take over and control the trust. The guardian can, however, transfer assets of the ward to the trustee of any existing revocable living trust the ward has created, if the guardian has the court's prior written approval. For more information on trust accounts, see The League's *ii Release No.0116 and No. 0161*.
- Exercise rights under a retirement plan or account. The guardian may transact business on the ward's Individual Retirement Account, for example, only with court approval.
- Continue the business of the ward. For example, if the ward ran a sole proprietorship and maintained an account for that business at the credit union, the guardian should have the court's prior written approval before he may conduct transactions on that business account.
- Purchase an annuity or insurance contract and exercise ownership rights, such as changing beneficiaries or surrendering policies for cash value. The guardian should not be permitted to add or change life savings insurance beneficiaries to the ward's accounts without a court's approval.
- Establish special needs trusts.
- Exercise marital property management and control rights, including estate and Medical Assistance planning.
- Purchase property of the ward.
- Convey or release a contingent or expectation interest in property. For example, the court would need to approve a guardian's transfer or release a "life estate" that the ward has in real estate.
- Exercise any elective inheritance rights (for example, disclaiming an inheritance to which the ward is entitled.)
- Support an individual whom the ward is not legally obligated to support.
- Loan funds of the ward to another individual or entity. The court must approve the terms, rate of interest, and any security requirements of the loan.
- Be paid for the guardian's own time or services or be reimbursed for out-of-pocket expenses incurred on behalf of the ward.

Also, a temporary guardian cannot sell real estate or expend more than \$2,000 without court approval.

☐ **Check Whether A Co-Guardian Needs To Consent.**

Two or more guardians can be appointed to serve at the same time. These are called co-guardians. The Wisconsin Statutes say that co-guardians must concur with each other on all decisions unless the court orders otherwise. In other words, unless the Letters of Guardianship say something different, one co-guardian should not be allowed to transact business on the ward's accounts alone; the other guardian also needs to consent. The Letters of Guardianship will show whether the court has allowed the co-guardians to act independently and in what situations.

☐ **Check The Guardian's Identification Per The Credit Union's Policies.**

Take reasonable precautions – such as asking to see a driver's license or other photo ID – to be sure the person claiming to be the guardian is, in fact, the guardian named in the Letters of Guardianship. Your credit union's policies and procedures should spell out what forms of identification are acceptable.

☐ **Require The Guardian To Sign Documents And Endorse Checks Properly.**

When signing documents or endorsing checks on the ward's behalf, the guardian should sign in a way that indicates his/her authority. For example, Gary Guardian depositing a check for Wanda Ward (your member), should endorse the check this way:

Wanda Ward
By Gary Guardian, Guardian for Wanda Ward

(Some guardians may prefer to omit the second reference to the ward's name at the end of the endorsement. We include it here because U.S. Treasury regulations suggest that this format be used on endorsement for certain government checks, such as tax refund checks, where a guardian is in place for the payee. 31 C.F.R. §240.14.)

☐ **Watch For Violations Of The Guardian's Fiduciary Duties.**

A guardian is a fiduciary. This means that he/she must act only for the ward's benefit. You do not need to police every transaction to be sure the guardian is not acting improperly. The Wisconsin Statutes say that a financial institution can pay sums on deposit in an account to any party (a term that, by definition, includes a guardian) or agent. And the financial institution does not have to look into the source of the funds or the proposed use of the funds being withdrawn. Wis. Stats. §705.06.

But you should not ignore obvious abuses, either. For example, when a guardian requests a withdrawal from the ward's account, you do not need to ask what the money will be used for. But if the guardian asks to transfer money from the ward's account to pay the guardian's own boat loan at the credit union, this should not be allowed.

Handling Check Deposits: When a guardian presents a check made payable to the ward, the credit union should treat the check like it would treat a check payable to a business. Require that it be deposited, in full, into the ward's account. The guardian may then withdraw the funds separately. These transactions will appear on the ward's monthly statement, creating a "paper trail" to monitor the guardian's activities.

The credit union should not let a guardian cash checks payable to a ward or allow a split deposit, with cash given back to the guardian. Nor should the credit union let the guardian deposit the check into the guardian's own account.

Guardian Cannot Appoint A POA Agent: A fiduciary (e.g., a guardian) generally cannot delegate his fiduciary responsibilities to others. In other words, a guardian cannot appoint an agent to do his work for him. The Wisconsin Supreme Court has said that trustees who manage property for benefit of others have no right to shift their duty onto others, and if they do so they remain subject to the responsibility they have undertaken; this is especially true for guardians of estate. In re Guardianship of Bose, 39 Wis.2d 80 (1968).

For that reason, the credit union should not allow a guardian to designate someone else as a POA agent on an account. If the guardian is unable or unwilling to continue handling the ward's affairs, the court can appoint a successor to take over.

Exhibit A to this release includes information on what to do if the ward had previously (before the court appointed the guardian) authorized a POA agent to handle the ward's credit union's accounts.

☐ **Report Suspected Abuse Of The Ward, Including Financial Exploitation.**

If you suspect that a member is the victim of financial abuse, Wisconsin and federal law allow you to alert appropriate authorities.

For more information on reporting financial abuse, see The League's *ii Release No. 0174*.

LENDING

In some situations, a guardian may want to take out a loan for the ward's benefit and in the ward's name. For example, a loan may be needed for the support of the ward's dependents, to pay for education, or to pay claims against the ward. It appears

that a guardian can borrow on a ward's behalf, assuming the Letters of Guardianship do not limit the guardian's powers in a relevant way.

Wisconsin law does not specifically address whether a guardian can borrow money on a ward's behalf, but it does say that a guardian can enter into a contract (which seems to include a loan agreement) without court approval. §54.20(3). A guardian can also pledge a ward's personal property or other assets, though they need court approval to mortgage real estate. Guardians cannot borrow the ward's money or property themselves. §54.18(3).

In many cases, the ward may be elderly or may have limited sources of income due to a disability. The credit union may violate the federal Equal Credit Opportunity Act and the Federal Reserve's Reg. B if it improperly takes into consideration a credit applicant's age, sources of income, or other prohibited factors. For more information on discrimination in lending, see The League's *ii Release No. B041*.

The guardian can use the ward's fund to pay the ward's debts, including credit union loans. This does not mean, however, that the guardian is personally liable for the ward's debts. The credit union could not setoff on the guardian's own accounts, or otherwise collect from the guardian, for a debt the ward owes to the credit union. Even though the guardian may execute loan documents, if he/she is doing so on the ward's behalf, only the ward will be personally liable on the debt.

RESOURCES

The Coalition of Wisconsin Aging Groups operates the Wisconsin Guardianship Support Center, a statewide resource for information about guardianship-related issues. The Support Center publishes a free quarterly newsletter, *The Guardian*, on legal issues pertaining to guardianship. It also operates a "Guardianship Hotline" to provide information about Wisconsin law relating to guardianships, protective placements, conservatorships, Powers of Attorney for Finances and other issues. To visit the Guardianship Support Center, [click here](#).

Wisconsin's guardianship laws are found in subchapters I through IV of Wisconsin Statutes Chap. 54, available online [by clicking here](#).

The Wisconsin Department of Health Services rules on organizations serving as guardian are found in the Wisconsin Administrative Code in DHS-85, available online [by clicking here](#).

EXHIBIT

Exhibit A - Special Accounts and Guardianships

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League publications are designed to provide accurate information with regard to the subject matter covered, with the understanding that The League does not render legal services. If you have general questions regarding this release, please call The League at (608) 640-4050 if local or (800) 242-0833. For specific legal advice, please consult your credit union's attorney.

Legal Affairs Department

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EXHIBIT A: SPECIAL ACCOUNTS AND GUARDIANSHIPS

A guardian's ability to act for a ward may be limited – or even prohibited – on certain “special” types of accounts. These include IRAs, representative payee accounts, organization accounts, trust accounts, custodial accounts, joint accounts, accounts with existing powers of attorney, safe deposit boxes and deceased member's accounts.

Before allowing an agent to transact business on any of these types of accounts, review the material below to see if any special limitations apply.

Individual Retirement Accounts

The court's prior written approval is required before a guardian can “ascertain, establish and exercise any rights ... under a retirement plan or account.” Wis. Stats. §54.20(2). Check the Letters of Guardianship to be sure the guardian has the court's authorization before allowing the guardian access to the ward's IRA.

Representative Payee Accounts

If it is determined that a person cannot manage his or her Social Security, Supplemental Security Income (SSI), or Railroad Retirement of Veterans Administration benefits, the appropriate government agency can appoint a "representative payee" to receive the checks and use them for the benefit of the person.

The payee must hold the funds in a separate account, make sure that benefits are used first for the support and maintenance of the person, and must meet the agency's reporting requirements.

Representative payee accounts are to be titled as solely-owned accounts, titled as “(Beneficiary's name) by (payee's name), Representative Payee.” The beneficiary's Social Security number should be used on the account.

Do not allow someone to access a representative payee account based only on their appointment as guardian. Only the representative payee appointed by the Social Security Administration may transact business on these accounts for the beneficiary. Often, the representative payee will also serve as the state-court-appointed guardian, but different people may have these roles

For more information, see The League's *ii Release No. 0129*.

Organization Accounts

If the ward was an authorized signer on accounts owned by an organization, the guardian will not automatically be allowed to transact business on that account. The account's owner – the organization – will need to designate who it authorizes to transact business on the organization's behalf. Corporations, limited liability companies, partnerships and other organization need to use resolutions – like the League's Depository Declaration and Agreement form (#81075) – to specify who can handle the organization's accounts.

For more information about organization accounts, see The League's *ii Release No. 0161*.

If the ward ran a business (e.g., a sole proprietorship) and maintained an account for that business at the credit union, the guardian needs the court's prior written approval before he may conduct transactions on that business account. Wis. Stats. §54.20(2).

Trust Accounts

Under a trust, assets are transferred by a *grantor* to a trust, with a *trustee* appointed, to use the funds for the benefit of the *beneficiary*.

If an account is held in the name of a trust, only the trustee(s) can be allowed to transact business on that account. If a guardian has been appointed for the trustee, because the trustee has become incompetent, then the guardian does not automatically fill in as the trustee. The trust should designate a successor trustee who will take over and control the trust.

The guardian can, however, transfer assets of the ward to the trustee of any existing revocable living trust the ward has created, if the guardian has the court's prior written approval. For more information on trust accounts, see The League's *ii Release No. 0116 and No. 0161*.

Custodial Accounts

Only the custodian can transact business on a custodial account established under the Uniform Transfers to Minors Act (UTMA). If a guardian has been appointed for the custodian, the guardian will not automatically step in and take over the

custodial account. If the custodian named a successor custodian, that person assumes control over the account if the custodian becomes incapacitated. Wis. Stats. §54.888(2). If no successor was named, the courts may need to appoint a successor, or the beneficiary of the account, if older than 14, can do so.

For more information on custodial accounts, see The League's *ii Release No. 0012*.

Joint Accounts

Some special considerations must be kept in mind when dealing with guardianships and joint accounts.

Existing joint accounts: The Wisconsin Statutes say that a financial institution may on request pay any sums on deposit in a joint account to any "party" (and that term includes an owner's guardian). Wis. Stats. §705.06(1).

This statute has two important consequences:

- First, the guardian can withdraw funds from the account on the ward's behalf, even though it has joint owners. The guardian can even withdraw *all* of the funds and open a new account for the ward solely. (In fact, the guardian may want to do so in order to protect and preserve the ward's funds.)
- Second, any other joint account holder can still withdraw some or all of the funds from the existing joint account. The Court of Appeals of Wisconsin has held that joint owners on an account are not prevented from withdrawing funds just because a guardian has been appointed for one of the other owners. *In re Guardian of Emma W.*, 2003 WI App. 132.

Adding Joint Owners or POD Beneficiaries: The guardian should not be permitted to add joint owners or payable-on-death beneficiaries (or to add or change life savings insurance beneficiaries) on the ward's accounts without a court's approval. By adding joint owners or POD beneficiaries, the guardian would essentially be giving a gift – an interest in the ward's account – to someone else. Gift giving by a guardian requires court approval.

For more information on joint accounts, see *ii Release No. 0004*.

Accounts With Existing Powers Of Attorney

A power of attorney (POA) is a written document that authorizes someone to manage another person's property, finances and other matters. The person giving the authority is called the *principal*. By signing a POA, the principal is authorizing someone else (an individual or perhaps an institution like a nursing home) to act on the principal's behalf. The person who has been given authority to act for the principal is called the *attorney-in-fact* or *agent*. If a POA is *durable*, then it becomes effective as soon as the principal signs it, and it continues to be valid even if the principal later becomes incapacitated. Some POAs are *springing*, meaning they only become effective when the principal becomes incapacitated. In Wisconsin, POAs are presumed to be durable, unless they provide differently.

If the ward has already signed a durable or springing POA for his/her finances, a guardian often is not needed, since the POA agent can often do the things a guardian would be authorized to do. If a guardian is needed anyway, the court will usually appoint the POA agent to serve as the guardian, as well.

But what if the guardian and the POA agent are different people? In that case, the agent is still authorized to act under the powers granted in the POA, unless the court revokes or limits the POA. The Wisconsin Statutes say that if the ward executed a durable POA before the court found him/her to be incompetent, the durable POA remains in effect even after a guardian is appointed. The court can revoke the durable POA or limit the authority of the agent. But if the court does not order such a revocation or limitation, the guardian may not make decisions for the ward that may be made by the agent. Wis. Stats. §54.46(2)(c).

The Wisconsin POA statutes say that if a court appoints a conservator or guardian after a principal executes a POA, the agent is accountable to the conservator or guardian – as well as to the principal. The POA is not automatically terminated, and the agent's authority continues unless limited, suspended, or terminated by the court. (Wis. Stats. §244.08.)

Sometimes, a member's family or guardian may not be aware of an existing POA. You may want to alert the guardian to the presence of a POA on the account, to avoid future disputes and so the guardian can ask the court to revoke or limit the POA designation if necessary.

For more information, see *The League's ii Release No. 0168*. Just like this release, it also includes two checklists: one to be used when the credit union is first presented with a POA, and another to be used every time a POA agent asks to make transactions.

Safe Deposit Boxes

If a guardian wants to lease a safe deposit box on the ward's behalf or if a guardian is appointed for an existing member who already has a safe deposit box, it would be best for the credit union to have the guardian complete a new lease. Credit unions are advised to use a "fiduciary safe deposit box lease" or similar form designed that purpose.

A safe-deposit box is considered an "account" for purposes of the Customer Identification Program regulation. Therefore, you will need to collect identification information on the guardian who leases a box on behalf of a ward.

Deceased Member's Accounts

Once the ward passes away, the guardian's authority ends, and he/she can no longer transact business on the ward's accounts. Ordinarily, a personal representative will take on the duties of overseeing the ward's financial matters and distributing the ward's assets. However, Wisconsin law allows a guardian to complete a Transfer by Affidavit form upon a ward's death. This can be used to claim personal property or to collect money owed to the decedent when the total value of decedent's property is \$50,000 or less.

For more information on handling decedents' accounts, see The League's *ii Release No. 0004*.

Saver's Sweepstakes Accounts

Saver's Sweepstakes is The League's prize-linked savings program. A guardian or conservator generally can open a Saver's Sweepstakes account for a ward, or make transactions on the ward's existing Saver's Sweepstakes account, unless the Letters of Guardianship (or Conservatorship) do not allow it (as with any other depository account).

The Saver's Sweepstakes Account Agreement allows the guardian/conservator to sign for the ward by saying:

If I am a fiduciary – such as a power of attorney agent, custodian, guardian or conservator – I sign in a representative capacity on behalf of the principal/ward I represent, whose name is _____ . I understand that only he/she will be eligible to win Saver's Sweepstakes prize drawings and that any prizes won will belong solely to him/her, not to me.

Even if the guardian/conservator signs the Saver's Account Agreement on the ward's behalf, the guardian/conservator is not the account holder. The account holder (and potential prize winner) is the ward.

For details, see The League's *ii Release No. 0184 – "Saver's Sweepstakes™ Compliance FAQs."*