

Family & Volunteer Guardian's *Handbook*

— *How to be an Effective Guardian*

— *A Handbook*

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— How to be an Effective Guardian — A Handbook

In large part this manual is the result of two men who have dedicated a large part of their retirement to making sure guardianship works for those in need. One is Raymond W. May, a long time member of the Senior Citizens Lobby Board of Directors from the National Association of Retired Federal Employees. The other is Michael Courtney, Former Chair of the State Legislative Committee of AARP and developer of the Volunteer Guardianship Monitoring Program in Washington State.

This *Handbook* was updated in 2010 by members of the Guardianship and Elder Law Section of the King County Bar Association. Carla Calogero, an attorney practicing in Seattle, was Chief Editor of the updated 2010 *Handbook*.

This *Handbook* was prepared as a public service and is designed to inform readers about legal rights and obligations of persons involved in the Guardianship System. It contains general information and is not intended to apply to any specific situation. This *Handbook* does not serve as legal advice. If you need legal advice or have questions about the application of the law in a particular matter, you should consult a lawyer familiar with guardianship laws.

Forms used or referred to may include model forms from the Office of the Administrator of the Courts, which are subject to change. Please check appropriate sources for the most current and accurate forms.

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How to Use This Handbook

This handbook can help inform a court appointed guardian how to perform the responsibilities of a guardian, and may be a handy reference. In addition to helping a guardian produce court-required documentation and reports, this *Handbook* includes checklists and suggestions for addressing day-to-day issues or concerns that may arise for a guardian.

The needs and circumstances of each person whom a guardian serves are unique, but resources such as this and model forms are meant to serve as guides and assist the guardian in fulfilling his or her responsibilities.

Because guardianship laws, court rules and forms can be complex and are always subject to change, this *Handbook* is intended to provide general information only; it is not a substitute for legal advice. To receive legal advice, you must consult with an attorney who is familiar with guardianship law.

A note about the use of forms

Throughout this handbook, we suggest that you use certain forms (called “model forms”) that are available from Washington State or the King County Superior Court Clerk’s Office at <http://www.courts.wa.gov/forms/> and <http://www.kingcounty.gov/courts/scforms/guardianship.aspx>. The *Handbook* is written to assist you in gathering the information necessary to complete these forms. However, you must be aware of several things.

First, the model forms may change, or the name of a form may change. The use of a particular form may no longer be suggested or required, or a new form may come about. Thus, it is critical that before the guardian begins to complete any form or report, he or she check the Superior Court website.

If the guardian is working with an attorney to file reports with the court and to make court appearances on the guardian’s behalf, it will be much more time and cost efficient for the guardian to have completed a draft of the appropriate form to provide him or her prior to the conference with him or her. At a minimum, the forms may be used as a checklist.

If your local county Superior Court provides model forms, it is preferable that you use those forms. In King County they are found at <http://www.kingcounty.gov/courts/scforms/guardianship.aspx>. If your county does not, then you may use the forms available at the Washington State Courts website <http://www.courts.wa.gov/forms/>. You should double-check with your local county Superior Court to make sure that no local model forms have recently been created.

The King County Superior Court website (<http://www.kingcounty.gov/courts/scforms/guardianship.aspx>) also provides

instructions on how to complete some of the model forms found at the website. Guardians are strongly encouraged to use the instructions provided there in addition to this handbook.

A note about statutes

Statutes are laws that have been enacted by the Washington State Legislature. The statutes governing guardianships are found in Chapters 11.88 and 11.92 of the Revised Code of Washington (“RCW”). These can be found at, respectively: <http://apps.leg.wa.gov/rcw/default.aspx?cite=11.88>
<http://apps.leg.wa.gov/rcw/default.aspx?cite=11.92>

This handbook references certain sections of the guardianship statutes. However, statutes are subject to change by the Legislature. If you have any concerns about the meaning or state of the law, consult with an attorney familiar with guardianship law.

The statutes referenced in this handbook, cited by RCW, are those in effect as of September 8, 2010.

In addition to the RCWs being available online, you may also review them at your local public library or county law library, usually located at the courthouse.

A note about regulations

This handbook references certain sections of the Washington Administrative Code (“WAC”). Regulations, laws that execute and enforce statutes, are written by the administrative agencies of the executive branch of government. Regulations are modified frequently. If you have any concerns about the meaning or state of a regulation, consult with an attorney familiar with guardianship law.

Regulations cited are those in effect as of September 8, 2010. These are available on line at: <http://www.legalwa.org/> or at your local public library, or county law library, usually located at the courthouse.

A note about court rules, the Internet, and privacy

The information contained in guardianship records is often inherently personal and subject to misuse by others. Thus, there are court rules and court forms that seek to protect confidential information as much as is practicable. These are General Rules 22 and 31. The court rules are available at: http://www.courts.wa.gov/court_rules/?fa=court_rules.list&group=ga&set=GR

General Rule 22 requires that confidential medical, financial and other personally identifying information be sealed. Forms to be used as coversheets for materials

filed with the court indicate to the Court that the records are to be sealed. These forms are available at:

<http://www.courts.wa.gov/forms/?fa=forms.contribute&formID=74>

General Rule 31 requires that all personal identifies be omitted or redacted from court records. This means that you should not include or should redact (i.e., black out) any of the following from documents filed with the Court: social security number (include only the last four digits), financial account numbers (include last four digits, if account numbers are relevant for identification), driver's license number.

Where to start

In addition to this handbook, guardians may find the following to be useful resources:

- King County Superior Court website, where model guardianship forms and instructions for completing the forms can be found:
<http://www.kingcounty.gov/courts/scforms/guardianship.aspx>
- Adult Protective Services, <http://www.aasa.dshs.wa.gov/APS/>, 1-866-END-HARM (1-866-363-4276).
- Aging and Disability Services/Area Agency on Aging: In King County, <http://www.agingkingcounty.org/>.
- The Arc of Washington State (Advocates for the Rights of Citizens with Development Disabilities): <http://www.arcwa.org/>.
- CLEAR hotline – find appropriate hotline number at <http://www.nwjustice.org/what-clear>.
- Disability Rights Washington: <http://disabilityrightswa.org/>.
- King County Bar Association/Senior Rights Assistance free Elder Law Legal Clinics: 206-448-5720.
- Northwest Justice Project (statewide): <http://www.nwjustice.org/>.
- Senior Services: <http://www.seniorservices.org/>.
- Senior Services Information and Assistance: 1-888-435-3377
- Washington Law Help, www.WashingtonLawhelp.org.
- Senior Rights Assistance (legal and consumer rights information and assistance),
http://www.seniorservices.org/getting_assistance/all_programs/senior_rights_assistance.aspx, 1-800-972-9990
- Solid Ground:
<http://www.solid-ground.org/Programs/Disabilities/Pages/default.aspx>.

General Information

Additional Important terminology:

Alleged Incapacitated Person (AIP), or Protected Person

The person for whom a guardian is appointed by the Court has traditionally been called a “ward.” More recently, the term “Protected Person” has come into use throughout the United States.

In Washington State, before the establishment of a guardian, the proposed Protected Person is called the “***Alleged Incapacitated Person***” or “***AIP***.” If the Court makes a determination that the AIP is incapacitated and in need of a guardianship, the AIP may then be referred to as an adjudicated Incapacitated Person”, or “IP.” However, because the department (DSHS) uses the term “IP” for “Individual Provider” when referring to a personal aide or caregiver who does not work for an agency, the term Protected Person will be used throughout this handbook to refer to a person for whom a guardianship has been established by the Court.

Aging and Disability Services

Disability and Aging Services (“ADS”) - The local agency charged with doing the planning and service provision under the Older Americans Act. Under contract, the local AAA manages at-home Medicaid cases, planning and service authorization.

Bond

The original court order establishing the guardianship may require a bond be posted by the guardian of the estate as a condition of the court issuing letters of guardianship. Posting a bond may help ensure reimbursement of the estate for losses that might be suffered through the guardian’s theft or mishandling of the Protected Person’s assets.

The court may also waive the posting of a bond by the guardian if the assets of the guardianship estate is less than \$3000.00 or if blocked accounts are used. If the court does require the posting of a bond the bond may later be reduced or exonerated if circumstances change and a bond is no longer necessary. In both situations court approval is a prerequisite.

Case

Each guardianship has a unique cause number, provided by the Superior Court where the guardianship is filed. All of the proceedings, forms and documents filed in the guardianship or ordered by the Court make up the case file.

Case Manager

Protected persons who are a client of DSHS will have a case manager, usually a social worker or registered nurse. The case manager sets up a plan of care, does the comprehensive assessment provides ongoing monitoring of care.

Court

The Superior Court of the county where the case is filed. Also, the Judge or Commissioner of that Court who is hearing the case may be referred to as “the Court.”

Department of Social and Health Services

DSHS, or the “department” is the umbrella social services agency in Washington State. There are five administrations and many divisions within the department.

Aging and Disability Services Administration (ADSA) — The administration of the department that deals with long-term care for adults, and developmentally disabled children. It contains among other parts—

Home and Community Services Division (HCS) — This division has local offices. It provides comprehensive assessments and service plans. It contains among other parts—

Adult Protective Services (APS) —these social workers investigate reports of neglect, abuse, abandonment, and financial exploitation of vulnerable adults who live at home. If the APS social workers find a problem, they may offer services for the vulnerable adult and may have to report the suspected neglect, abuse, abandonment or financial exploitation to law enforcement.

If you need to report suspected abuse call:

1-866-ENDHARM (1-866-363-4276)

State Council on Aging —this group carries out the Older Americans Act, and monitors the contracts with the Area Agencies on Aging.

Division of Developmental Disabilities (DDD) — flexible, responsive services and support to individuals with developmental disabilities, enhancing opportunities for personal choice and control of their daily lives. There are, however, waiting lists for many of the services.

Guardian

A guardian is a person or agency appointed by the Court and given the authority to make some or all decisions for another person whom the Court has been determined to be incapacitated and in need of a guardianship.

Guardian Ad Litem (GAL)

In all guardianship proceedings, a person called a guardian ad litem is appointed by the Court to investigate the circumstances of the alleged incapacitated person. The GAL is required to interview the AIP and others, and must obtain a medical or psychological evaluation of the AIP to submit to the Court. The GAL produces a Report for the Court in which he or she makes a recommendation to the Court as to the need for a guardianship, and, if needed, the scope of the guardianship, and whether appointment of the guardian proposed by the Petitioner is appropriate.

GALs must be trained and admitted to the county registry of GALs for each county in which he or she wishes to serve.

Guardianship

A guardianship is a legal, fiduciary relationship in which the Court:

- Determines that an individual lacks the capacity to make some or all of the decisions for himself or herself in his or her own best interest;
- Appoints a guardian as substitute decision maker for the individual;
- Gives the guardian the authority to make some or all of the decisions related to the individual's personal affairs and/or finances and property.

Hearing

At a hearing, the parties involved in the guardianship appear before a judge or court commissioner to have the judge or commissioner make a decision on the matter at issue. A hearing is a proceeding of relative formality. Each party may present his or her position on the matter to be decided. The right to a hearing, along with notice requirements, is a fundamental part of due process under the law.

Anytime a guardian seeks approval or instruction from the Court, a hearing must be noted or scheduled before the Court. When a hearing is noted, a Notice of Hearing and Declaration of Mailing must be provided to all persons entitled to receive notice of the hearing.

The model form you need is:

- **Notice of Hearing and Declaration of Mailing**

Types of Hearings

- Contested Hearing – Two or more parties appear and present evidence to the court for a decision (The court’s decision may be called a ruling or a holding and may include findings of fact and conclusions of law). At a contested hearing, live testimony or written affidavits may be presented.
- Uncontested Hearing – Some or all the parties may be in court, but there is no disagreement as to the ruling needed (relief requested).
- Ex Parte Hearing – A court appearance where the party making the request of the Court is required to appear before the Court. Many routine or uncontested matters are heard ex parte (e.g., the hearing on a guardian’s report or accounting).

Interested Party

An Interested Party is a person who has filed a request (called a “Request for Special Notice of Proceedings”) with the Court which requires the guardian to provide to such parties notice of all filings or actions before the Court in the guardianship.

Petitioner

A petitioner is one who files a pleading for legal action, or petition. The petitioner in a guardianship proceeding is the person who signs and files with the Court the petition for a guardianship. The petition is the written request to the Court, asking the court to appoint a guardian for the vulnerable person.

Trustee

A trustee is the person who manages a trust for the benefit of the beneficiary or beneficiaries of the trust. Like a guardian, a trustee is a fiduciary and has heightened responsibilities under the law.

We

Generally, when used in this handbook, “we” refers to the authors of this handbook as your guide in your work as a guardian.

What is “incapacity”?

In order to appoint a guardian for an alleged incapacitated person (“AIP”), the Court must make a determination that the AIP is incapacitated under the law and is in need of a guardian.

In a guardianship proceeding, the AIP is presumed to possess capacity. The petitioner in a guardianship proceeding bears the burden of proving by clear,

cogent and convincing evidence that the AIP is incapacitated under the law.¹ The guardianship statute defining incapacity provides that “Age, eccentricity, poverty, or medical diagnosis alone shall not be sufficient to justify a finding of incapacity.”²

The statutory definition of incapacity in guardianship law requires a “demonstration of management insufficiencies over time in the area of person or estate”³ that puts the individual at significant risk of personal or financial harm.

A guardianship may be proposed to assist the AIP with both personal care (Guardian of the Person) or financial management (Guardian of the Estate), or both. The court must make a separate determination of incapacity in each of the two areas.

To determine whether the AIP is incapacitated as to person, the court will assess whether there is “a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety.”⁴ To determine whether the AIP is incapacitated as to estate, the court will assess “whether the individual is at significant risk of financial harm based upon a demonstrated inability to adequately manage property or financial affairs.”⁵

What types of guardianship may be granted?

Full or Limited Guardianship

A guardianship is either a “full” or “limited” guardianship.⁶ If the protected person is totally incapacitated, the guardianship will be a full guardianship and the authority of the guardian will extend to all areas permitted by law.

Any guardianship that is less than a full guardianship is considered a limited guardianship.

A guardianship may be limited to the extent that the protected person possesses some capacities, so that the guardian will have authority to make some but not all decisions on behalf of the protected person. Any decision-making powers that are not specifically delegated to the guardian in the order of appointment are retained by the protected person. A guardian should encourage the protected

¹ RCW 11.88.045(3).

² RCW 11.88.010(1)(c).

³ RCW 11.88.010(1)(c).

⁴ RCW 11.88.010(1)(a).

⁵ RCW 11.88.010(1)(b).

⁶ RCW 11.88.095(2).

person's independence in exercising these rights and in developing his or her abilities.

Guardian of the Person and Guardian of the Estate

A guardian of the person is responsible for assisting or managing the day-to-day decisions and personal care of the Protected Person, including medical decisions to the extent authorized in the order of appointment. The guardian should be familiar with RCW 11.92.043. However, the guardian cannot consent to some kinds of treatment without a court order.⁷

Once appointed, the guardian of the person must assess the physical, mental and social needs of the protected person and the protected person's ability to perform activities of daily living. Then, within 90 days after appointment the guardian must create and file with the court a Personal Care Plan that outlines how the needs of the protected person will be met under the guardianship. The Personal Care Plan must be updated regularly, and upon any changes in the protected person's circumstances or condition. The Personal Care Plan and responsibility of the guardian of the person are described more fully at pages 29 to 37 and at 54 to 65.

A guardian of the estate assists or manages the financial affairs of the protected person to the extent authorized in the order appointing the guardian. See, generally, RCW 11.92.040. For example, a guardian of the estate may be granted the authority to: manage the protected person's bank accounts; enter into contracts on behalf of the protected person; pay bills and spend money on the protected person's behalf; make investments, and; to sell the protected Person's personal property.⁸ **Note:** A guardian of the estate must seek specific court authorization to sell real property of the protected person.⁹

A guardian of the estate must file with the court an inventory of protected person's estate (assets and liabilities) and subsequently provide periodic reports regarding the income and expenses of the estate.¹⁰ The responsibilities of the guardian of the estate are described more fully at pages 38 to 53 and at 54 to 64.

Based on the unique needs and deficits of the protected person, he or she may need only a guardian of the estate, or only a guardian of the person, or he or she may require both. If both, one may be a full guardianship while the other is a limited guardianship, both may be full, or both may be limited. The guardian of the person and the guardian of the estate may be the same person, or it may be appropriate that two different persons serve in each role.

⁷ RCW 11.92.043(5).

⁸ RCW 11.92.040.

⁹ RCW 11.92.090.

¹⁰ RCW 11.92.040(1).

Are there alternatives to guardianship?

Yes. There are services available in most communities, to help persons with disabilities to function better in their homes and communities, and assist them in remaining independent. Examples include special transportation services, chore services, bill paying services, rehabilitation services, or other supportive services. Often these services provide enough support to allow a person with the need for some assistance to get along without a guardian, or allow for a more limited guardianship.

In addition, the use of what may be called collaborative, supportive or mediated decision making can also help avoid a guardianship. These approaches refer to a process of having the entire family, including the person in need of assistance, discuss with a mediator or facilitator in a structured setting what the needs are and create a plan that all are willing to accept – even if they might not all fully agree.

A guardianship should be established only when it is determined that the risks to an AIP’s personal health, safety or estate cannot be satisfactorily addressed through other less restrictive means.

The intent of the Washington statute that provides the court with the authority to order a guardianship, RCW Title 11.88, is “to protect the liberty and autonomy of all people of the state, and to enable them to exercise their rights to the maximum extent possible, consistent with the capacity of each person.”¹¹ Thus, a fundamental principle of guardianship law is, in fact, the avoidance of guardianship by attempting to meet the protection and assistance needs of the AIP through less restrictive alternatives.

Because the specific legislative intent of the guardianship statute is to restrict the liberty and autonomy of an individual to the least extent necessary, the following less restrictive alternatives may be implemented.

Less restrictive alternatives for personal and health care management

- Statutorily authorized substitute decision maker for health care decisions;¹²
- Durable power of attorney for health care decisions;
- Advance directives/living will;
- Submission to the Department of Licensing of a Recommendation for Driver Reexamination for an unsafe driver;
- Community and social services and assistance.

Less restrictive alternatives for financial management

- Representative payee for social security, disability or veterans benefits;
- Joint property arrangements, including joint bank accounts;
- Bill-paying services;

¹¹ RCW 11.88.005.

¹² RCW 7.70.065(1)

- Living trusts;
- Durable power of attorney for financial and property decisions.

When may a guardianship be necessary?

When an individual's decision making abilities are compromised to the point that his or her personal and/or financial health and safety are jeopardized, and there are no suitable lesser restrictive alternatives, a surrogate decision maker who will act in the individual's best interests is needed.

Adult persons who are either fully or partially incapacitated and may require a guardian include the elderly disabled, the developmentally disabled, those with neurological impairment and persons with serious mental illness or disorders. Or, an individual may become incapacitated in an accident or because of a sudden debilitating illness, such as a stroke.

Who can petition the court to appoint a guardian?

Any person or agency interested in the welfare of the alleged incapacitated person can petition the court to appoint a guardian. However, the petition for guardianship must be brought in "good faith" and upon a "reasonable basis" for alleging that the AIP is incapacitated and in need of a guardianship.¹³

What is the process for creating a guardianship?

The procedure for establishing a guardianship involves three basic steps:

1. A petition for guardianship is filed with the court, and hearing date is set and a guardian ad litem ("GAL") is appointed.¹⁴
2. The GAL conducts an investigation as to whether a guardianship is necessary. The GAL visits the alleged incapacitated person, explains the guardianship process, and discusses the AIP's reactions to the proposed guardianship. The GAL obtains a medical or psychological report. After the GAL conducts her investigation for the Court, the GAL files a written report with the court which must include the GAL's recommendation whether a guardianship is in the best interest of the AIP.¹⁵
3. A hearing on the guardianship petition is held. The court reviews all evidence and decides whether to appoint a guardian.¹⁶

¹³ RCW 11.88.030(1).

¹⁴ RCW 11.88.030; RCW 11.88.040; RCW 11.88.090.

¹⁵ RCW 11.88.045; RCW 11.88.090.

¹⁶ RCW 11.88.095.

What are the rights of the Alleged Incapacitated Person during the guardianship proceeding?¹⁷

- To receive copies of all documents filed with the Court in the guardianship proceeding and to notice of all hearings or proposed Court actions;
- To object to a guardianship, to certain authorities to be given to a guardian, and to the appointment of a particular person as guardian;
- To be present at the hearing;
- To be represented by a lawyer of the AIP's choice;
- To have an attorney appointed if unable to afford one;
- To present evidence;
- To cross-examine witnesses; and
- To have a jury trial.

Who may be appointed as guardian?

The Court may appoint as guardian any "suitable" person over the age of eighteen (see exclusions below).¹⁸ In most cases, the Court will appoint the person nominated in the petition for guardianship. In Washington State, anyone may nominate a guardian for him or herself, as long as he or she does so in writing (e.g., in a durable power of attorney document) and while possessing the mental capacity to do so. In this case, the Court must appoint the person(s) or entity nominated as guardian except for good cause or disqualification.¹⁹

The guardian does not have to be a Washington resident, but if he or she is not a resident of Washington the guardian must designate a registered agent, usually an attorney upon whom papers may be served.²⁰

The following persons are prohibited from serving as court-appointed guardians²¹

- Any person of "unsound mind";
- Any person under the age of 18;
- Any person with a felony conviction or a misdemeanor conviction involving crime of moral turpitude (e.g., theft, fraud, dishonesty);
- Any person who is not a Washington state resident and who does not have a resident agent upon whom court papers can be served.

In addition, although such an appointment is not statutorily prohibited, in practice, courts may be reluctant to appoint as guardian of the estate any person who has filed for bankruptcy.

¹⁷ RCW 11.88.030; RCW 11.88.045.

¹⁸ RCW 11.88.020.

¹⁹ RCW 11.88.010(4).

²⁰ RCW 11.88.020(1)(d).

²¹ RCW 11.88.020.

The court may also appoint a Washington State certified professional guardian if there is not an otherwise suitable or willing person to serve as guardian for an incapacitated person. Professional guardians and professional guardian agencies are governed by additional rules and professional standards. All professional guardians must be certified by the Washington State Professional Guardian Certification Board, which is governed by the Washington State Supreme Court. As in any guardianship, professional guardians are subject to the control of the appointing court.

Does a person with a guardian have the right to make a will?

No person, including a guardian may make, revoke or amend the Last Will and Testament of another, but a guardian may, with court authority, create trusts on behalf of the Protected Person.²²

The test for capacity for making a will (called “testamentary capacity”) is different than the test for determining incapacity within a guardianship proceeding. Testamentary capacity means the person making his or her Will knows the nature and extent of his or her estate to be passed on, and understands who would receive the property if there were no Will. It is advisable to consult with an attorney for the protected person to serve as his or her independent counsel regarding the creation of a will, to assess testamentary capacity, and/or to seek instruction from the Court on the issue.

If the Protected Person created a valid Will before the appointment of a guardian, the Will remains valid even after a legal finding of incapacity.

Can a guardian place a Protected Person in an institution or to move to a new residence?

A guardian cannot force a protected person to move to or stay in a residential treatment facility against his or her will without a court order.²³ This includes placement in a nursing home, adult family home or assisted living facility.

The guardian should make all reasonable attempts to respect the protected person’s preferences and to work with the protected person and others whom he or she trusts or respects to address the protected person’s concerns and to reach an agreeable placement decision.

However, it may be necessary to seek instruction from the Court regarding residential placement or admission to a institution. The Court may set a hearing on the issue in which the protected person would be afforded rights similar to

²² RCW 11.92.140.

²³ RCW 11.92.190

those in the guardianship hearing, including the right to a jury trial, the right to be present, the right to present evidence, and the right to be represented by an attorney.

If the protected person refuses to leave a living situation which presents an actual danger to himself or others, a referral to the County Designated Mental Health Professional (CDMHP) may be appropriate. The CDMHP will evaluate the Protected Person to determine if involuntary commitment is required.

Can a guardianship be modified or terminated?

Yes. Guardians and guardianships are subject to the ongoing supervision of the court in the county in which the guardianship was created. Although no Guardianship is “permanent” when ordered or intended to remain unchanged indefinitely, most guardianships will continue in the form as long as the client remains legally incapacitated, the Guardian performs its court-ordered responsibilities, and reporting requirements are fulfilled. However, guardianships frequently may be modified or terminated, based upon the changed needs of the Protected Person or formerly incapacitated person. If the reason for the guardianship disappears, then the guardianship should be dismissed. Modifications and terminations of guardianships are discussed in more detail starting on page 60.

A court order is required to modify or terminate a guardianship. Modifications include replacement of a Guardian. The court may at any time and for good cause modify or terminate a guardianship. Any person, including the Protected Person to a guardianship, may petition the court to modify or terminate a guardianship, or to replace a Guardian.

Ensuring rights and interests are well served

The protected person must have access to the court system as well as to legal counsel. The protected person also has the right to expect early and clear notice of all guardianship proceedings.

The guardian should respect and ensure the protected person’s privacy. The guardian should not reveal information regarding the protected person’s personal affairs **unless**:

- The information concerns an aspect of the protected person’s life that is monitored by the court, and the guardian is reporting the information in a court-related context;
- The guardian has the protected person’s informed consent, provided the person is capable of giving such consent;

- The revelation is definitely in the best interest of the protected person (i.e., is necessary to protect the person from personal or financial harm).

The guardian should appropriately help the protected person maintain or regain maximum potential for independence. The guardian should encourage the protected person to do as much self-care as possible. See, generally, RCW 11.88.045. Whenever possible, the protected person should be encouraged to express a preference about where to live and other choices. If the protected person regains capacity to make decisions necessary for well being, the guardian should apply to the court to limit or terminate the guardianship.

Decision Making Standards

Each time a guardian makes a decision on behalf of a protected person the guardian must follow the two-step process below.

First, try to use substituted judgment

Guardians must first try to use the substituted judgment standard of decision making. The guardian has a duty to consult and abide by the protected person's known and previously expressed preferences – this is called the “substituted judgment” standard of decision making. Using the substituted judgment standard means that the guardian must make a reasonable attempt to make the decision that the **protected person would make if he or she were able**.

To do this, the guardian considers all reliable evidence of the protected person's express preferences, values and previous behavior. The guardian should start by asking the protected person what he or she prefers, if possible. Next the guardian should talk to those family members and friends who are familiar with the protected person's express desires and wishes before incapacity. The guardian may also review the GAL Report or any written evidence of the protected person's preferences, such as powers of attorney, wills, and letters.

When the guardian tries to make a decision on behalf of the protected person using the substituted judgment standard, the guardian must make the decision that he or she would have made, which may not be the “best” decision, the decision that the guardian would make for him or herself, or even the choice that the guardian would like to make for the protected person.

Of course, if the use of substituted judgment in a particular instance would result in substantial harm to the protected person, it should not be used.

If substituted judgment is not possible, the “best interests” standard should be used

If the protected person is unable to understand the decision to be made or is unable to effectively communicate, and there are no past reliable expressions of preference, then guardian should make the decision on the guardian’s judgment of what would be in the protected person’s best interests. The “best interests” standard is what a reasonable man or woman, acting as a guardian, would consider best after making a reasonable study of the situation.

When making any decision for the protected person the guardian should try to recognize and protect as much as possible the needs and feelings of the protected person. Of course, the guardian’s decisions must be realistic as well. The protected person’s financial resources and the guardian’s own ability to provide what the protected person wants or needs are both factors that will influence decisions.

Being a Guardian

Being a court-appointed guardian is an important and honorable position. It is important to always be aware of the fact that a guardianship is a *legal relationship* that involves the protected person, the Washington State Superior Court, and the court-appointed guardian.

The appointment of a guardian marks a profound change in the legal and social status of the protected person. To minimize this loss, it is important that the guardian make decisions that reflect the values and needs of the protected person. The primary responsibility of a court-appointed guardian is to ensure that the protected person's rights are protected and best interests served. Because even a limited guardian has been granted significant control over the protected person's financial and/or personal decisions, it is critical that a guardian take his or her legal responsibilities seriously, to always make decisions on behalf of the protected person he or she would make or that are in his or her best interest, and to seek Court instruction and authority whenever necessary.

Deciding whether to accept an appointment as guardian.

Before accepting appointment as a guardian, one should seriously consider the whether he or she is capable of fulfilling the roles and responsibilities of being a guardian, given the needs and circumstances of the incapacitated person. Before appointment as a guardian, one should meet with the alleged incapacitated person to get a sense of what his or her abilities and needs would be within the guardianship. The potential guardian should speak to the guardian ad litem (GAL) about the abilities and needs of the AIP, as well as read the GAL Report, or draft of the Report. The potential guardian should honestly consider whether he or she can manage – in terms of the time, organization and emotional energy that may be required – the responsibilities of serving as guardian.

Upon accepting appointment by the Court as, the guardian must obtain **the model form:**

- **Declaration of Proposed Guardian (Non-Certified)**

The Declaration of Proposed Guardian (Non-Certified) must be filed **before the final hearing** on the Petition for Guardianship, and, in King County, after viewing a required video, "Instructional Video for Guardians." The video may be viewed online at <http://www.kingcounty.gov/courts/scforms/guardianship.aspx> or at one of the King County Courthouses.

Preparing for and attending the hearing on the petition to establish a guardianship

Proposed Orders

Before the hearing, one or more parties will have given the Court a proposed order to the Court regarding the outcome of the hearing. The proposed guardian should also have received a copy of and reviewed any proposed orders with the attorney or attorneys who prepared the order. The guardian may suggest changes to an order either before the hearing by informing the attorney who drafted it of the suggested changes, or at the hearing by asking permission from the Judge or Court Commissioner to suggest appropriate changes.

Attending the Hearing

The proposed guardian should attend to the hearing on the petition for guardianship at which the Court will decide whether a guardianship should be established. If the Court determines that the AIP is incapacitated and in need of a guardian, then the Court will appoint a guardian at that hearing.

If the Court establishes a guardianship, the Court will enter an order that appoints the guardian and specifies the duties of the guardian. This order may address the personal, health, or financial decision-making needs of the protected person. At the end of the hearing establishing the guardianship, the appointed guardian should have a copy of each of the following:

- Petition for Guardianship**
- GAL Report, which should include:**
 - Addresses of everyone who is entitled to notice of future hearings and identification of persons who should be advised of their right to request special notice of proceedings;
 - A description of the nature and degree of incapacity of the protected person;
 - Some discussion of the preferences of the protected person and his or her response to the possible establishment of a guardianship;
 - Some discussion of the care and medical needs of the protected person;
 - Some discussion of the income, assets and liabilities of the protected person
- Any medical or psychological report filed with the Court in the guardianship proceeding**
- Order appointing guardian, which should state:**
 - The reason(s) for the Order (Findings of Fact);
 - Who was at the hearing and who is entitled to receive notice of future proceedings;
 - What the limits on the guardian are;
 - What the duties of the guardian are;
 - Whether the guardian must post a bond;

- If the guardian is entitled to compensation
- Whether the guardian is for the person or the estate only or both
- Any special authority given to the guardian by the Court
- Any other reports filed in the guardianship proceeding**

First steps after appointment

After the order appointing a guardian is signed by the Judge or Commissioner, the appointed guardian must “qualify” as guardian by:

1. Signing and filing the notarized Oath of Guardian;
2. Posting any bond required, and
3. Obtaining “Letters of Guardianship” from the Clerk of the Court.

The following model forms are needed:

- **Oath of Guardian** – complete model form, notarize and file with Clerk;
- **Clerk’s Letters of Guardianship** – receive from Clerk;
- **Designation of Standby Guardian** – complete model form (signature of Standby Guardian is required) and file with Clerk (a guardian has 90 days to file this form).

Immediately after appointment by the Court, the guardian should go the Superior Court Clerk’s office and:

1. File the previously completed and notarized **Oath of Guardian** form;
2. Request the Clerk’s Letters of Guardianship issued by the Clerk (no action can be taken by the guardian before Letters of Guardianship are issued by the Clerk);
3. Request at least one “certified copy” of the Order Appointing Guardian;
4. If possible, the guardian should file the **Designation of Standby Guardian** at this time. This form tells the court who will act in the guardian’s place if he or she becomes unavailable for any reason.

Guardian’s Bond

The original court order establishing the guardianship may require a bond be posted by the guardian of the estate as a condition of the court issuing letters of guardianship. Posting a bond may help ensure reimbursement of the estate for losses that might be suffered through the guardian’s theft or mishandling of the Protected Person’s assets.

The court may also waive the posting of a bond by the guardian if the assets of the guardianship estate is less than \$3000.00 or if blocked accounts are used. If the court does require the posting of a bond the bond may later be reduced or exonerated if circumstances change and a bond is no longer necessary. In both situations court approval is a prerequisite.

Letters of Guardianship and Order Appointing Guardian

The Clerk's Letters of Guardianship are proof that the guardian has been appointed and are the actual authority the guardian needs to proceed in his or her duties as guardian.

A copy of the Letters of Guardianship will be required by banks, financial institutions, and case managers, medical care providers, and others. If the guardian encounters third parties who do not understand what the significance of the Letters of Guardianship is, the guardian can explain that the Clerk's Letters of Guardianship grant the guardian the authority to act for the Court while carrying out the Court's order appointing the guardian.

These individuals or institutions may also require a duplicate copy (non-certified) of the certified copy of the order.

Meeting the protected person after appointment

After qualifying as guardian, the guardian should meet with the protected person as soon as possible. The guardian is responsible for providing him or her with a copy of the order establishing the guardianship. The guardian should explain the roles, duties and limits on authority as guardian. At this initial meeting, the guardian should review with the protected person to the extent possible the financial circumstances of the protected person and personal care needs (if guardian of the person, at pages 33-35).

Building trust is essential, but may take time. A guardian should be mindful of the fact that the loss of control by the protected person over basic decision-making processes, even to a friend or family member who is serving as guardian, can be frightening and frustrating for the protected person.

What are the Responsibilities of the Guardian of the Person?

A guardian of the person must provide for the general health and wellbeing of the protected person. To the extent authorized in the court order appointing the guardian and by statute, the guardian of the person is responsible for assisting the protected person with or managing care to meet the physical, emotional, mental, and social needs of the protected person.²⁴ The guardian of the person is responsible for decisions concerning the protected person's emotional and physical health, safety, nutrition, housing, transportation, and overall wellbeing. The guardian of the person may make medical decisions on behalf of the protected person to the extent authorized in the court's order of appointment.

Once appointed, the Guardian of the Person must assess the physical, mental and social needs of the protected person and the protected person's ability to perform activities of daily living. Within 90 days after appointment, the guardian of the person must create and file with the court a Personal Care Plan that will outline how the needs of the protected person will be met within the guardianship.²⁵ The Personal Care Plan must be updated regularly, and upon any changes in the IP's circumstances or condition. The Personal Care Plan is explained in more detail beginning at page 29.

The ongoing duties of a guardian of the person include:

- Notifying the Court within 30 days of any substantial change in personal condition or residential status of the protected person.²⁶

<p>The following model forms are needed:</p>

- | |
|---|
| <ul style="list-style-type: none">▪ Notice of Change of Address▪ Notice of Change in Circumstances |
|---|

- Preparing and submitting the Court annual (or biennial, or triennial, depending on the order establishing the guardianship) status reports.

What are the limits on decisions of a guardian of the person?

The guardian of the person's authority is limited by the court order appointing the guardian and by statutory law. Also, a Guardian should always, to the extent possible, determine to the protected person's preferences, engage the protected person in the decision making process and generally maximize the autonomy, independence and functioning of the protected person.

²⁴ RCW 11.92.043

²⁵ RCW 11.92.043(1)

²⁶ RCW 11.92.043(1)

Certain types of decisions by a guardian of the person require specific permission of the Court. These types of decisions include, but are not limited to:

- Therapy or other procedure which induces convulsion;
- Surgery solely for the purpose of psychosurgery
- Other psychiatric or mental health procedures that restrict physical freedom of movement.

In addition, there are some decisions that the guardian of the person **cannot** force upon the protected person:

- Force the protected person to move against his or her physical will;
- Require residence in a nursing home against the physical will of the protected person.²⁷
- Consent to surgery or psychotropic medication against the will of the Protected Person.²⁸

A guardian of the person has a duty to act on behalf of the protected in accordance with the express values and desires of the protected person (substituted judgment standard of decision making) and may impose an alternative or contrary judgment (best interest standard) only when adhering to the express wishes of the protected person place him or her at substantial risk, or the preferences of the protected person cannot be determined.

How much personal freedom does the Protected Person have?

Recall the intent of the Washington Legislature “to protect the liberty and autonomy of all people of the state, and to enable them to exercise their rights to the maximum extent possible, consistent with the capacity of each person.”²⁹

When the Court authorizes a guardian to make certain decisions for the Protected Person, the person no longer has the legal right to make those decisions for her or himself. However, many individuals in need of a guardian may nonetheless be capable of managing some of their personal or financial affairs. All decision-making powers that are not specifically delegated to the guardian in the order of appointment are retained by the Protected Person.

Thus, while it may be a delicate balance or a difficult challenge for the Guardian to maximize the autonomy and liberty of the Protected Person while still being responsible for his or her overall or financial wellbeing, it is important to always try to do so, to the extent that is reasonable and safe.

A Guardian may not unnecessarily or unreasonably restrict the Protected Person’s social or sex life, by, for instance, imposing conditions on movement or

²⁷ RCW 11.92.190

²⁸ RCW 11.92.043(5)

²⁹ RCW 11.88.005

access to friends or relatives of the Protected Person, unless abuse or exploitation may be occurring.

A Guardian may seek an order of protection under the vulnerable adult statute, RCW 74.34 if the Guardian suspects that the Protected Person is being abused or exploited by another.

Personal Care Plan

A guardian of the person must file with the Court a periodic Personal Care Report describing the Protected Person's current status and detailing any changes that have occurred since the last Report. The Report should include a description of the Protected Person's needs, capacity/functioning, living arrangements, and medical or other relevant information about the care of the Protected Person.

The first Personal Care Plan must be filed with the Court within 90 days of appointment.

Initial personal care plan

The Order Establishing the Guardianship will state the due date for filing the Personal Care Plan. If a guardian anticipates that he or she will not be able to meet that deadline, the guardian should file a Petition to Extend Time and a proposed Order to Extend Time.

What does the guardian of the person do next?

1. First, address any emergent, unmet personal care and treatment needs of the Protected Person.
2. Undertake a needs assessment to familiarize oneself with the Protected Person's circumstances and in preparation for filing the first Personal Care Plan.
3. Consider the needs and the capabilities of the Protected Person, as well as his or her preferences and values. Develop goals for meeting the needs and maximizing the capabilities.
4. Consider the options to meet the needs and maximize capabilities, including the expense, risks and benefits of the options – in the short and long term.
5. Anticipate changes that may occur before the next report is due and how best to plan and respond to such changes.
6. Write out a Personal Care Plan to be filed with the Court.

Because many Protected Persons who are subject to a new guardianship may have existing unmet personal or care needs, the Guardian of the Person will often have to begin meeting these needs before the written Personal Care Plan is completed and filed with the Court.

The first step in beginning to meet those needs to do a needs-assessment. A needs assessment involves meeting with the Protected Person, and probably care providers, or other professionals to gain an understanding of the functional capacities of the Protected Person, existing support that he or she has and his or her financial ability to pay for care or services. The needs assessment should address cognitive functioning, medical and other care needs, ability to perform the activities of daily living, and unmet physical, emotional and social needs.

Each need or deficit in capacity of the Protected Person should be addressed in the Personal Care Plan. The Protected Person's abilities, strengths and capacities, as well as his or her preferences and values must also be assessed, addressed in the Personal Care Plan and maximized to the greatest extent possible.

The Model Forms Are:

- **Personal Care Plan**
- **Guardianship Inventory RCW 11.92.040(1) (INV)**

The Petition for Approval of Budget, Disbursements and Initial/Periodic Personal Care Plan has within it the budget and schedule of disbursements. It refers to the Guardianship Inventory and Initial Personal Care Plan that are filed separately.

A worksheet for gathering information to include in the Initial Personal Care Plan can be found at the end of this section. Much of this information may be found in the GAL report or in the medical report filed with the Court. If only a psychological report, it would be good to get a medical evaluation from the family or primary doctor. If the Protected Person receives long term care services from DSHS, the CARE Assessment tool results (called *Assessment Detail*) will become the personal care plan for the services that DSHS provides. More explanation about the CARE tool is on the following page of this handbook.

Gathering Information –

Speak with the Protected Person's doctors, case manager, and any other care professionals involved. Even if one is appointed solely as guardian of the person, the guardian should investigate the assets that the Protected Person owns. This information will be necessary for the guardian to assess the resources available to create a plan of care.

If there has been a Medicaid application completed for the Protected Person, there should be a list of assets included on the form. A guardian can find this information at Home and Community Services Division (HCS) or the Area Agency on Aging (AAA).

If the Protected Person is receiving long-term care, there will be a care plan prepared by a Case Manager from the Area Agency on Aging (AAA), Home and Community Services Division (HCS) or the Division of Developmental Disabilities (DDD). The information in the Case Manager's core plan may be useful in preparing the guardian's plan of care.

The Comprehensive Assessment or CARE Assessment Tool

The CARE tool is a computerized instrument used by DSHS to determine eligibility for services, and has useful data. The Home and Community Services division (HCS) or Division of Developmental Disabilities (DDD), are both divisions of the Aging and Disability Services Administration of the Department of Social and Health Services (DSHS) and use the care tool. A CARE should have been done for the Protected Person to be receiving services. The assessment program produces a report entitled *Assessment Detail*, which becomes the service plan when the client is found to be eligible for services. If a CARE assessment was not completed, HCS may be able to complete one without cost to help determine eligibility for services. Reviewing this assessment will give the guardian some of the information needed need to develop good personal care plan.

Medical Evaluation

To create a plan of care, you need to know if the Protected Person has ongoing treatment needs. If a medical evaluation was done for the court, you may find it helpful. In most cases you will need to be in contact with the primary doctor of the Protected Person. The best way to identify the medical practitioners in the Protected Person's life is to go with the Protected Person to an appointment. Where the Protected Person lives in the community rather than in a residential setting, the guardian needs to be especially clear about treatment needs. Below is a list of questions that will help guide the guardian while gathering this information. Where the circumstances make it difficult or inappropriate to attend an appointment with the Protected Person, the guardian may be able to obtain this information by phone or a separate appointment with a nurse from the Protected Person's doctor's office.

Below are suggested questions for a guardian of the person to ask of the treating physician:

1) Diagnosis

- (a) What is the state of health of the Protected Person?
- (b) Are there chronic conditions for which treatment is being received?

2) Symptoms

- (a) What symptoms of the incapacitating condition does the Protected Person display?
- (b) Are the symptoms constant or sporadic?
- (c) To what extent are symptoms limiting or interfering with interacting with other people?
- (d) If there are symptoms of cognitive decline caused by *reversible* factors (such as: medication; inadequate nutrition; temporary/intermittent mental illness; or socio/economic/cultural factors), are they being treated?

3) Prognosis

- (a) What is the projected/anticipated duration of the disability/disorder?
- (b) Is the disability/disorder likely to worsen or degenerate? If yes, what is the anticipated rate and the projected long term impact on the individual's functional capacity?

- (c) Is the disability/disorder likely to improve over time? If yes, what is the anticipated rate and projected long term effect on the individual's functional capacity?
- (d) What has been tried in the past and the documented results? Is the present treatment going to continue and what are the projected effects on the person's future functional capacity?

Facts for a personal care plan and report – things a guardian needs to know

PRESENT HOUSING COMPOSITION AT (Address):			
Lives Alone		Lives With Spouse	
Lives With Children		Lives With Relative	
Lives With Non-Relative		Other:	
LIVING ARRANGEMENT:			
Home Owner		Renter	
Adult Family Home		Boarding Home/GROUP HOME	
Nursing Home/ICFRM		Senior Housing	
Assisted Living Facility		Other:	
FUNCTIONAL LIMITATIONS:			
Speech		Hearing	
Vision		Walking	
ASSISTIVE DEVICES:			
None		Walker/Cane	
Eyeglasses		Contacts	
Wheelchair		Hearing Aid	
Artificial Limb		Dentures	
NEEDS ASSISTANCE TO LEAVE HOME: Yes		<input type="checkbox"/>	No
PRIMARY MEANS OF TRANSPORTATION:			
Own Car		Public Transportation	
Other:		Friend/Relative	
IF LIVES IN HOME – SERVICES USED:			
None		COPEs	
Medicaid Personal Care		Meals on Wheels	
Chore Services (household chores):			
Other In-Home Services:			
NEEDS ASSISTANCE WITH:			
Eating		Toileting	
Walking/Moving Around		Transfer	
Positioning		Personal Hygiene	
Dressing		Bathing	
Personal Hygiene		Travel to Medical Service	
Self Medication		Housework/Cleaning	
Essential Shopping		Laundry	
Meal Preparation		Other	

Other information and comments

Circle Yes, No, or CD (cannot determine)			
Protected Person's ability to handle safety & emergencies:			
Can act appropriately in the event of a fire. (Calls 911 and exits house)	Y	N	CD
Can act appropriately in case of medical emergency (Calls doctor, or ambulance, uses 911)	Y	N	CD
Can act appropriately in the event of a break-in or robbery	Y	N	CD
Knows how to seek help from others to access goods & services (housekeeper, lawyer, other services)	Y	N	CD
Protected Person's financial abilities			
Able to collect and manage retirement, social security, Medicare, Medicaid, V.A., or other benefits	Y	N	CD
Able to maintain checking accounts with balance greater/less than \$ _____	Y	N	CD
Able to pay monthly bills for rent, utilities, etc.	Y	N	CD
Willing and able to spend money for necessary goods and services, i.e., food, clothing, sundries, etc.	Y	N	CD
Able to seek help in money management when needed	Y	N	CD
Able to manage some personal funds	Y	N	CD
List of income or resources:			
TOTAL			
Estimated monthly costs and care:			
Housing:			
Food:			
Utilities:			
Clothing and Laundry:			
Medical:			
Recreational:			
Insurance:			
Other:			
TOTAL			

Protected Person's psychological/social/cognitive functioning			
Orientation: Able to relate to person, place or time	Y	N	CD
Memory			
Can remember events occurring within the hour	Y	N	CD
Can remember events occurring within the day	Y	N	CD
Can remember events occurring within the week	Y	N	CD
Judgment			
Able to make appropriate decisions, solve problems, and respond to major life changes	Y	N	CD
Communication			
Able to understand what is being said	Y	N	CD
Able to express thoughts and needs	Y	N	CD
Wandering			
Moves about aimlessly, or in pursuit of an unattainable goal	Y	N	CD
Verbal behavior			
Threatens/berates others, yells, uses foul language, etc.	Y	N	CD
Disruptive or inappropriate behavior			
Makes excessive demands for attention, takes another's possessions, disrobes in front of others, inappropriate sexual behavior, etc.	Y	N	CD
Assaultive or combative behavior			
Throws objects, strikes or punches, makes dangerous maneuvers with wheelchair, etc.	Y	N	CD
Danger to self: Indicated by self-neglect or harm, suicidal thoughts or attempts, etc.	Y	N	CD
Other impairments in thoughts, moods, behavior:			
Plan for Residence:			
Describe personal care/assistant services provided in home (if necessary):			
Describe nursing services and other medical or personal care services provided in home, adult family home, or Boarding Home (if necessary):			
Describe other services, including, rehabilitative, educational, social, recreational and employment services:			
Treating Physician			
Name:			
Address:			
Phone Number:			

Living Arrangements

Arrange for the least restrictive environment possible

Deciding where the Protected Person should live is often the first, and perhaps the most difficult, decision a guardian of the person must make. Since a person's living situation has such a major impact on the quality of life, the guardian should try to give the Protected Person a choice about where to live. Look for a situation that offers the Protected Person as much independence as possible. Try to minimize the changes the Protected Person will need to make. Ensure that the Protected Person is able to receive visitors and communicate with friends and family.

The Guardian may find that the need to move is the underlying reason for establishing a guardianship. It is the Guardian's duty to make a decision whether or not a move is necessary. Undertake a discussion of the alternatives with the various professionals who may have already reviewed various options with the Protected Person and with each other.

Understandably, many persons do not want to leave their home or familiar surroundings. However, if the Protected Person is not able to receive the care or services that they need at their current residence or if financial circumstances require a move, then such a move may be unavoidable. As Guardian, one cannot commit the Protected Person to a living arrangement against the Protected Person's will. If the Protected Person is objecting to a change in residence, the guardian can request that the he or she consider and, if possible, visit two or three options. Engage the Protected Person in the decision making process as much as possible, and once a move is accomplished, a guardian should do all that one can to ensure that the new surroundings are comfortable and contain as much in the way of familiar and cherished belongings as possible.

Prior to placement in a nursing facility, always check with the DSHS case management professionals to be sure there are no other less restrictive alternatives that might be appropriate. There may not be a lot of options. And all options may present risks. A guardian should have explored all available less restrictive placement options before making such a recommendation.

Make sure of necessary services and rehabilitation

A guardian should investigate and make use of community resources that are available and appropriate for the Protected Person. Explore possible support services that promote independence. The community may have a visiting nurse service; meals-on-wheels; homemaker services; rehabilitation training for those

who have lost their sight or suffered a stroke; programs which provide volunteers to do shopping and light maintenance work; or volunteers that read for people who need these services. Access to these services is through a case manager or Senior Information and Assistance (“I&A”), which is available through the local Area Agency on Aging (AAA).

If the Protected Person’s financial resources are insufficient to meet basic needs, the guardian should look for ways to obtain needed services at no cost, or to supplement the financial resources. A Guardian is never expected to use their own money to care for the Protected Person, but rather should investigate and utilize community programs that provide the appropriate assistance. This may require making an application to the state for benefits or entitlements.

What are the Responsibilities of a Guardian of the Estate?

A guardian of the estate must manage the estate and spend the Protected Person's funds as needed for the Protected Person's support, education, and care. The guardian must file with the court an initial list of the Protected Person's property and keep accurate records of all money received by the Guardianship Estate and all money spent from the Guardianship Estate. The Guardian must produce, file and present periodic Reports to the Court about the status of the Estate.

What are the limits on decisions of a guardian of the estate?

The guardian of the estate's authority is limited by the court order appointing the guardian and by statutory law. Also, a Guardian should always, to the extent possible, determine to the protected person's preferences, engage the protected person in the decision making process and generally maximize the autonomy, independence and functioning of the protected person.

Certain types of decisions by a guardian of the estate require specific permission of the Court. These types of decisions include, but are not limited to:

- The sale, gifting, donation or other disposal of personal property of the protected person
- The sale of real property (home or land) of the protected person
- Commencement of, responding to, or settling litigation on behalf of the protected person³⁰
- Compromise of a debt or claim³¹
- Accepting service of process on protected person as a defendant³²

Initial Estate Inventory is Due Within 90 Days

The Model Form Is:

- | |
|--|
| <ul style="list-style-type: none">▪ Guardianship Inventory RCW 11.92.040(1) (INV) |
|--|

The Order Establishing the Guardianship will state the date, which will be no later than ninety (90) days after the Order was entered, that the Inventory must be filed with the Court. The Inventory is an initial report of income, assets, expenditures and liabilities of the Guardianship Estate. RCW 11.92.040(2)

³⁰ RCW 11.92.060

³¹ RCW 11.92.060

³² RCW 11.92.060

outlines all that must be included in the Inventory. The Inventory is the starting point upon which all subsequent reports to the Court will be based.

If a guardian does not have all of the information required in the Inventory before the Inventory is due, the guardian should report the information available and known, and note the missing information. The Inventory report should be supplemented as soon as the missing information can be obtained.

A guardian should present any questions one has about how to manage the Estate to the Court at the time the Court reviews the Inventory. These questions might include, for example, whether it is appropriate to sell or buy certain real or personal property belonging to the Protected Person.

Identifying Sources of Information.

The Guardian of the Estate must identify, gather and organize information about the income, assets, expenditures and liabilities of the Estate.

- **Interviews.** Begin by inquiring of the Protected Person about his or her estate. Trusted relatives or friends may also provide valuable input.
- **Court Documents.**
Some of the information required in the Inventory should be in the Petition for Guardianship and the GAL Report.
- **Banking and other financial accounts.**
- **Mail and Personal Papers.**
- **Title Searches.** If the Protected Person owns real property, a full title search should be done. The search will provide information about liens and property tax.
- **Recent tax returns.**
- **Credit Report** to identify debts and liabilities.

In addition to reviewing sources of financial information about the Guardianship Estate, a guardian will need to speak with the doctors, case managers, and others involved in the care of the Protected Person. Even if a guardian is appointed solely as Guardian of the Estate, the guardian will need to understand the extent of the Protected Person's incapacity and care needs. The guardian will need this information in order to assess resources and benefits programs for which the Protected Person may qualify, and to assess to what extent the Protected Person may participate in estate decisions.

If the Protected Person is receiving Medicaid, Supplemental Security Income (SSI), or other assistance there are applications on file listing assets. A guardian can get copies from the office that manages the benefit. A guardian should list all assets on the Inventory report even if the reviewing information indicates they are "exempt".

If a Medicaid application has been completed, it should include a list of assets. This information is available at Home and Community Services Division (HCS).

If the Protected Person is receiving long-term care, there may be a care plan (CARE Assessment Detail) prepared by a Case Manager from the Area Agency on Aging, HCS, or the Division of Developmental Disabilities (DDD). This information will be helpful in determining present and future needs that might impact the Protected Person's financial status or the Guardian's financial planning recommendations.

Assets

Taking Possession of and Protecting Estate Assets

The Guardian of an Estate is responsible for taking control of the assets and protecting the Estate assets from the date of the appointment, forward. Taking control of the assets requires going to banks and other companies or institutions that hold the Protected Person's assets with copies of the Letters of Guardianship. It may mean setting up accounts and changing the form of assets from one type to another. For example, an expired CD may need to be renewed, a stock may need to be sold, or a debt may need to be collected.

Family members or friends of the Protected Person may have had existing informal arrangements about use or possession of certain real or personal property among them. These agreements or arrangements may be interrupted by the formality of a guardianship. Exercise both diplomacy and diligence in attempting to determine whether particular properties are rightly included in the Guardianship Estate. It may be helpful to use a letter, such as the example letter on the following page to request return of property or clarification regarding legal ownership.

Once the guardian has identified personal property assets belonging to the Protected Person, the guardian has a responsibility to place all personal property assets in safekeeping or change title of ownership to name the guardian appropriately. This includes vehicles, but not real estate.

Letter Requesting Return of Property to the Estate

[DATE]

To: [Person who has or may have property of the Protected Person, which was either lent, borrowed, sold or purchased when Protected Person may have lacked capacity to transfer the property.]

Address

Dear [NAME]:

I have been appointed by the Superior Court of _____ County as the Guardian of _____, who was found by the Court to be incapacitated and no longer able to handle [his/her] own affairs . I have attached a copy of my Letters of Guardianship issue by the Court clerk.

I am contacting you because it appears that you have property owned by _____. From the records I have obtained, I am unable to ascertain how you came to have the property in question. You may believe it was a gift, or that you made a bona fide purchase of the property. This may be correct if _____ was competent at the time you acquired the item or if you paid full fair market value for the item or both. There is also the possibility that you are holding the property for _____.

I am required to make a full accounting to the Court. In order to do so, it will be necessary for you to make arrangements to provide me with the property or evidence that you have paid full fair market value for the item. If I have not heard from you within seven days of mailing this letter, I may have no choice but to apply to the court for an order requiring you to appear before the judge or commissioner.

Yours;

Guardian of

Enc: Letters of Guardianship

[List of property that you are holding to the best of our knowledge:]

Delivery of assets from a bank or other financial institution

To obtain delivery of the Protected Person's assets, prepare an Affidavit for the bank to sign as required by RCW 11.92.096. This allows the financial institution to turn over assets.

Take the affidavit to the bank or stockbroker, or other financial institution. (In some cases they will have to be mailed to them.) Also, the guardian should take the *Clerk's Letters*, and the *Order of Appointment*. It is likely that the financial institution will provide the information without signing the affidavit.

If they do not or will not provide the information to the guardian, an attorney can bring an appropriate action or motion to compel the financial institution to turn over the assets.

Form letter – account

The following memo/checklist may be helpful to include with the Declaration.

TO:	DATE:
RE:	Account #
Social Security #	Date of Birth

I have been appointed Guardian of the above named person. I ask for the assistance checked below, with apologies for the use of a form. Please contact us if there are questions or concerns.

- Please change the address for this account to the above.
- Please close this account. Please make the check payable to the individual and send to the above address.
- Please block this account from access by anyone other than the Court Appointed Guardian. Please inform the Guardian immediately if this cannot be done.
- Please send a current statement of this account to the Guardian.
- Please inform the Guardian if there are any direct deposits.
- If this account has been closed, please indicate when that occurred.
- Enclosed is a copy of Letters of Guardianship. Certified documents are available upon request.
- Please process the name and Social Security number of this individual through your computer system or data base for any active or closed savings, checking, IRA, money market, certificate accounts or safe deposit boxes and report any additional assets found to the Guardian.
- Please verify receipt of this letter with a note or call.

- Please indicate interest earned in the following year(s) for tax purposes _____.

Thank you for your assistance. Please feel free to call for any reason.

/s/ Guardian of Incapacitated Person

Income

Many types of income is periodic, and it often comes from government sources, trusts, or pensions. Almost any regularly recurring income can be directly deposited into an account at a financial institution.

Banking

Bank accounts used by guardians must be insured through the FDIC or the equivalent federal insurance program for credit unions or savings banks. Do not use money market accounts without written court authority because they are not insured.

The title on any account should be in the guardian's name "as guardian of the estate of the _____ [Protected Person's name].

A guardian may wish to establish a burial account generally in an amount of not more than \$1500. This can a savings account identified as a burial account. Burial accounts are considered an exempt resource for Medicaid purposes and will not disturb the Protected Person's eligibility for Medicaid services.

More complex planning may require assistance from a Certified Professional Guardian, an attorney, a certified public accountant (CPA) – or other appropriate legal or financial advisor.

The Court frequently requires guardians to ensure that funds of the protected person held in financial institutions must be blocked if in excess of a certain amount need to operate the guardianship estate. The guardian will be required to file with the Court a Receipt of Funds into Blocked Financial Account. If it becomes necessary to withdraw funds in excess of the amount blocked, the guardian will need to file a Petition and Declaration for Withdrawal from Blocked Financial Account and Order for Withdrawal from Blocked Account.

The Model Forms Are:

- **Receipt of Funds into Blocked Financial Account**
- **Petition and Declaration for Withdrawal from Blocked Financial Account**
- **Order for Withdrawal from Blocked Account**

Trusts

Trusts in general

The Protected Person may be the beneficiary of a trust. Generally speaking a trust is a relationship created at the direction of an individual or court, in which an another individual or entity, identified as a trustee or co-trustee in the event there is more than one, holds the individual's property subject to certain fiduciary duties to use and protect it for the benefit of the trust beneficiary or beneficiaries. A trustee is responsible for the investment management of trust assets and often oversees how trust assets are managed and trust income and/or principal are spent.

There are several types of trusts. A trust may be established in a will, by a parent, grandparent, court or other third party. A trust may also be established by an individual for his or her own benefit in which case he or she may be known as the grantor or trustor.

Special Needs Trusts

A special needs trust is one kind of trust, that generally restricts the trustee from expending money on behalf the trust beneficiary except for certain specified purposes. This type of trust is often established to maintain Medicaid eligibility while allowing the trustee to expend trust funds on behalf of the trust beneficiary without disqualifying the individual from Medicaid benefits. The laws and requirements of special needs trusts are considered by many to be extremely complex and consultation with a knowledgeable professional is often recommended so that eligibility is not inadvertently jeopardized.

Working with a Trustee

A trust is a separate legal entity from the guardianship. A guardian of Protected Person is not automatically named or substituted as that person's trustee simply because of their appointment. An individual or entity named as a guardian of a Protected Person will sometimes also act as trustee of a trust established for the benefit of such person. However, there are sometimes risks associated with such dual representation, including the possibility of a conflict of interest with regard to guardianship and trust expenditures. Family members, even if they are appointed as guardian of the estate of a protected person, may also be prohibited

from acting as a trustee for a family member beneficiary by court rule. Please, see SPR 98.16W. It is therefore recommended that a family member guardian of the estate also wishing to act as a trustee for a court created trust examine the situation carefully and consult with an attorney if necessary.

As a general proposition, a guardian of the estate should be familiar with the general provisions of a trust established for the benefit of an incapacitated person. A guardian of the estate and a trustee often work together to maximize benefits and quality of life for a Protected Person. A guardian should not hesitate to inquire of the trustee with regard to the funds available for the and how the funds may be used to benefit the Protected Person. A guardian of the estate is often furnished with a copy of the trustee's annual report of trust activities. In the event the guardian of the estate does not receive such report it may be necessary to request an accounting of trust activities from the trustee. One of the guardian of the estate's duties with regard to financial matters involving the protected person may include making sure a trust established for the protected person is being managed properly on behalf of the incapacitated person.

The Budget

One of the duties of a guardian of the estate is to establish a budget for the Protected Person. Sources of income will need to be analyzed. Some income, such as Social Security payments and Veteran's benefits, may be recurring. Many expenses such as those for housing, utilities, water, sewer, garbage, etc., will also be recurring.

Completion of a list of recurring sources of income and expenses may help with the creation of a budget for the Protected Person. Other items to be considered in creation of the initial budget include the upcoming health and care needs and expenses and possible sources of funds for such expenses including the use of principal and income derived from investment accounts and possible funds received from the sale of a residence, vehicle, or other asset.

Paying Bills

Absent limitations in the order of appointment of a guardian of the estate for the protected person, such as in the case of a limited guardian of the estate where the protected person retains the right to handle some of his or her own financial matters, is the responsibility of the guardian of the estate to pay or arrange for payment of the protected person's debts and expenses.

Spending Money for Protected Person

Sometimes a Protected Person retains the right to manage and spend small amounts of money on things of their own choosing such as cigarettes or incidentals. In such event the guardian of the estate will need to establish a system for the Protected Person to have access to and to be able to spend such funds. One option might be a prepaid debit card. Another option might be to deliver the Protected Person a certain sum on money on a regular basis such as weekly or bi-monthly.

Insurance

All real estate, vehicles, stored, or high value personal property belonging to the Protected Person should be insured. Depending upon whether the guardianship of the estate is full or limited it may also be a good idea to obtain an umbrella liability policy in order to provide coverage for catastrophic losses.

Driving

The Protected Person may have a valid driver's license at the time a guardian of the estate is appointed. As a general proposition, the imposition of a full guardian of the person and estate and a finding that a person have previously adjudged to be "mentally ill or insane, or to be incompetent due to a mental disability or disease" may make the Protected Person ineligible to hold a driver's license unless the court makes a specific finding that the incapacitated person may continue driving and is not a danger to others on the road.

If the Protected Person had a driver's license at the time of the imposition of a guardianship for a reason specified above and the court did not make a specific finding that the Protected Person is able to operate a motor vehicle with safety upon the highways during such "incompetency" then the State of Washington Department of Licensing should be notified by the guardian. One way to do this is to forward a copy of the order to The Department of Licensing. Please, see, RCW 46.20.031.

In the event the issue of whether or not the Protected Person should remain eligible to drive and there is a concern about the ability the guardian may submit a "Recommendation for Driver Reexamination" for a driver believe to be unsafe to the Washington State Department of Licensing. The form states, in relevant part, "This recommendation must provide specific information regarding the medical/visual conditions and/or driving abilities of the person in question and must be made in the interest of public safety only. Age is not a consideration."

Please see: www.dol.wa.gov/forms/520005.pdf.

Vehicles

There may be times when the Protected Person's car needs to be maintained for a friend or relative to drive. Both the car and driver must be insured. Paying the cost of transport in a friend's properly insured vehicle is often preferable from a liability point of view. The Protected Person should not have keys or access to any vehicle unless the court has found driving to be an appropriate activity, regardless of who owns the vehicle.

Sale or other disposition of a vehicle, such as by gift or donation, is sometimes deemed to be in the best interest of the Protected Person. However, before selling, gifting, or donating the Protected Person's vehicle to a third party court authority is necessary.

Types of Investments

Absent court authority allowing a deviation guardianship funds must be deposited into federally insured accounts. The prohibition will generally preclude deposits into some credit union accounts, stock drawing accounts, money market accounts, and other non-federally insured investments.

Regardless of the type of account assets the Protected Persons assets are held in they should generally be identified as being held by the guardian of the estate for the benefit of the Protected Person.

Unless prior court authority is obtained investments of guardianship funds should not be made in any property other than unconditional interest bearing obligations of the State of Washington or of the United States and in obligations the interest and principal of which are unconditional guaranteed the United States. However, in appropriate situations, a guardian of the estate obtain permission from the court to invest in other types of assets as a trustee.

See, RCW 11.92.040 entitled Duties of a Guardian or Limited Guardian In General or RCW 11.98.070 entitled Power of Trustee.

Prudently Manage the Protected Person's Funds and Assets

A guardian is a *fiduciary*, owing the same fiduciary responsibility to the Protected Person as a trustee owes a trust beneficiary. In other words, the guardian must

use utmost good faith and the highest degree of care in managing the Protected Person's estate.

The guardian, while not an insurer of the Protected Person's estate should use caution and common sense. A guardian of the estate must invest the Protected Person's assets prudently and conservatively and not with regard to speculation.

In addition to managing and possibly investing a Protected Person's assets the guardian of the estate may be required to also collect and deposit the Protected Person's income, pay bills, as well as handle taxes, insurance, and legal claims. It should be noted, however, the court authority is required prior to the institution of any legal action on behalf of a Protected Person. See, RCW 11.92.060(1).

This duty to manage the Protected Person's estate prudently does not mean that a guardian of the estate should allow the Protected Person's needs to go unmet in order to preserve the estate. The guardian's primary duty is to act for and use assets for the benefit of the Protected Person in keeping with what is in the best interest of such person.

No Comingling of Assets

A guardian of the estate must keep his or her assets separate from those of the Protected Person. Neither joint accounts nor joint ownership of assets is tolerated.

Maintaining separate accounts is essential. Accounts maintained for the Protected Person are titled as follows: *John Doe as Guardian of the Estate of Jane Doe, Protected Person.*

Inform the Protected Person How the Property is Being Managed

In making decisions about the management of the Protected Person's estate the Protected Person's wishes should be followed to the greatest extent possible. If the Protected Person is not capable of making wishes known or of making reasoned judgments, the guardian should try to make decisions in the Protected Person's best interests based upon known preferences. What is in the best interest of a Protected Person is judged by a court and tested against what a reasonable guardian would do.

Record Keeping

Guardians may be reimbursed from the guardianship estate for out-of-pocket expenses necessary for the administration of the guardianship and that directly benefit the Protected Person. Guardians should figure expenses, mileage, meals, and supplies at cost or the standard government reimbursement rate.

It is imperative that a guardian keep complete, accurate and up-to-date records and receipts of expenses and reimbursements. Court approval is required before a guardian reimburses him or herself from the guardianship estate expenses, unless the expenses have been previously authorized by the Court.

A guardian should consider purchasing a simple record and accounting software program. At the least, record all expenses paid and reimbursements made in a record-keeping book.

Keeping Track of the Protected Person's Income and Assets

Proper accounting and verification of expenditures requires receipt be kept for all expenditures on behalf of a Protected Person. Failure to keep such receipts may result in the guardian having to personally reimburse the guardianship estate for undocumented expenditures. . As a practical matter, regardless of the potential for liability for failure to do so, it is helpful to keep such records so that the annual accounting to the court will be accurate.

The court is responsible for monitoring the guardianship to ensure the Protected Person's estate is handled properly. If the guardianship estate's records are not properly kept to the satisfaction of the court, the court remove the non-compliant guardian, require reimbursement of all undocumented expenses, and may hold the non-compliant guardian personally responsible for losses to the guardianship estate including, but not being limited an assessment of costs and fees associated with the need to take corrective action.

Keeping a Record of Guardianship Actions

Guardianship activities are often scrutinized by the court, guardianship monitoring programs, family and friends, Adult Protective Services, and other interested persons. One of the best ways for a guardian to document his or her faithful performance of a guardian's responsibilities toward the Protected Person in though good record keeping. It is often advisable to keep notes of telephone calls and conversations including the identity of the person involved in the call, as well as the date, time, and substance of the call. If a guardian is expecting to

Date	Activity Including Expenditure of Time and/or Money	Tasks To Do or Completed; Including to whom money is paid	Completion Date

The budget and the plan

One of the duties of the guardian of the estate is the creation of a budget for the Protected Person. If possible create a budget immediately after the assets are marshaled. A framework for an initial budget can be created by identifying sources and regular income and expenses. From there other expenses can be estimated based upon anticipated future needs. Once the initial budget is complete, a guardian of the estate can make informed financial plans necessary to prudently manage the guardianship estate and care for the Protected Person. The budget should be revised regularly as circumstances change.

Budget

Estimated Monthly Income		
Social Security	\$	
Supplemental Security Income	\$	
Veterans Compensation	\$	
Retirement (Specify)	\$	
Other (Specify)	\$	
Disability (Specify)	\$	
Workers Compensation or L & I	\$	
TOTAL INCOME	\$	
Estimated Monthly Expenses		
Personal Expenses	\$	
Court-Approved Guardian Fees	\$	
Other Court Approved Fees	\$	
Court-Approved Guardian Advances	\$	
Medical Insurance Policy	\$	
Other Medical Expenses	\$	
Cost of Protected Person's Participation in State Funded Care	\$	
Other (Specify)	\$	
TOTAL EXPENSES	\$	
NET MONTHLY INCOME OR DEBIT (+ OR -)	\$	
TOTAL CASH ON HAND	\$	

Court Permission Needed to Sell Real Property

Advance court authority is needed to sell real property of the Protected Person. This is a relatively complicated process usually involving three hearings: (1) obtaining permission to sell the property and method, (2) directing sale of property to a named individual or entity, and (3) confirming the sale of real property after publicizing the price and sale date and seeing there are any potential purchasers willing to purchase the property under different conditions and/or at a higher price. Because of the complexities involved in the sale of real property held in a guardianship it is recommended that an attorney be consulted. Often the consulted attorney is paid from the proceeds of the sale of the real property.

Court Permission Needed to Sell, Gift, Donate, or Otherwise Dispose of Personal Property

Disposing of personal property held in the name of a guardianship, whether by gifting, donation, outright disposal, or sale is also very complex. If the asset has sufficient value it is recommended an attorney be consulted to ensure procedural and substantive rules are followed. For personal property of negligible value, it may be possible to submit a Petition for Instruction to the court and request instruction on how to dispose of the guardianship property.

**IMPORTANT INFORMATION FOR ALL GUARDIANS
(GUARDIANS OF THE PERSON AND/OR ESTATE)**

Future Reports

Annual or Triennial Reporting Cycles

The court will set reporting dates for the guardian at the time of the appointment of a guardian. Depending upon the activity envisioned and value of guardianship assets the guardian may be required to report on an annual or triennial basis. An annual (biennial or triennial) accounting must be filed the guardian of the estate within 90 days after the anniversary of appointment.³³ It is important that the guardian have a clear understanding of report due dates and monitor them. As a general rule the courts will not remind a guardian of an upcoming report date. If a guardian misses a deadline, the Court has many remedies including removal and replacement of a repeatedly delinquent guardian.

The Model Forms Are:

- **Guardian's Report and Accounting**
- **Petition for Approval of Budget and Disbursements**
- **Order Approving Guardian's Report, Accounting, Personal Care Plan and Budget**
- **Order Approving Budget and Disbursements**

The inventory may need to be updated at the time of the annual or triennial report, as well as the proposed budget. The new proposed budget may be set forth in the petition to approve the annual or triennial report. Much of the required information may be set forth in an Exhibit form and filed with the court using a cover sheet with the case caption.

³³ RCW 11.92.040(2).

Timely Reporting of Changes in Circumstances

A guardian should report the following to the court **within 30 days of occurrence**:

- Any medical condition which may require a change in the personal care plan and/or budget;
- Any increase in assets resulting in a current balance of more than \$3000 in cash or near cash assets;
- Any other major change in assets, material increase or decrease;
- Address changes;
- Any other material change in circumstances affect the life of the Protected Person which the court and interested parties should be made aware of.

The Model Forms Are:

- **Notice of Change of Address**
- **Notice of Change in Circumstances**

Petitions for Instructions

For the Court to act or assist a guardian, it must enter a court Order. For the court to enter (sign) an order, it must have a formal request to do, along with an explanation of relevant facts and legal authority to support the request. In a guardianship, that request is typically called a Petition for Instruction.

If not set forth in a verified Petition, then facts supporting the Petition may be set out in an affidavit or certified statement of the Guardian. The Guardian, or the attorney of the Guardian, must provide notice to all interested parties and the Protected Person. Interested parties, as well as the Protected Person, have the right to respond to the Petition by filing a formal pleading called a Response with the Court. At the hearing on the Petition, a judge or commissioner will determine the facts, apply the law and enter an Order, which grants or denies the request or sought.

The Model Forms Are:

- **Petition For Instruction**
- **Order on Petition for Instructions**

Working with An Attorney

Attorneys may represent any of the parties in a guardianship. The *Handbook* focuses on the guardian's dealings with an attorney who represents the guardian in his or her capacity as a guardian.

Most volunteer guardians will find it helpful and prudent to obtain an attorney who practices guardianship law to assist and guide them to the extent necessary.

After appointment as a guardian and after having reviewed this handbook, a guardian may wish to consider meeting with an guardianship attorney to discuss any questions or concerns one has about his or her new legal role and to establish a relationship which the guardian can rely on in the future.

Volunteer guardians are permitted to complete and file reports and pleadings that are required by the Court and to appear without an attorney in the *ex parte* department where guardianship matters are heard before court commissioners or judges. However, a guardian may wish to utilize the services of a guardianship attorney to draft or review reports or pleadings. A guardian may find it preferable to have an attorney present guardianship reports or request special instructions or orders from the court on his or her behalf.

An attorney who is familiar with guardianship law will be knowledgeable about the substantive law, rules and procedures of the court. Rather than researching rules, laws and procedures, a guardian may find it more efficient and effective to pay a qualified attorney.

How is an attorney for a guardian paid?

An attorney for the guardian may be paid out of the estate of the protected person, as long as attorney's fees are reasonable and the work is necessary and beneficial to the guardianship. However, before a guardian may use guardianship estate funds to pay the attorney for services provided, the Court must approve attorney's fees. A guardianship attorney should be willing and able to seek court approval for his or her fees on the guardian's behalf.

When to meet with an attorney?

As suggested above, a guardian may want to establish a relationship with a guardianship attorney soon after your appointment. Or, a guardian may seek the advice or services of a guardianship attorney only when the need to do so arises. Throughout the *Handbook* there have been suggestions about when a guardian may find it helpful to seek the advice of an attorney, or have an attorney assist the guardian with court matters, including:

- Producing, filing and presenting a court-required report;
- Recovering property belonging to the Protected Person;
- Seeking court authority for payment of fees to the Guardian, Guardian's attorney or other professionals who perform services for the benefit of the guardianship;
- Seeking court authority to gift, sell, lease, mortgage, or grant an easement, license or similar interest in any of the real property of the Protected Person;
- Seeking court authority to gift, sell, donate or dispose of personal property of the Protected Person;
- Seeking court authority to make any major changes in the form of the protected person's assets;
- Seeking court authority to compromise a claim against or debt of the guardianship estate;
- Seeking court authority to perform other actions that are not listed or described in the original order appointing the guardian;
- Seeking court authority to move the Protected Person to a different county within Washington, or to another state (as long as the Protected Person agrees to the move);
- Seeking court authority to file a petition for dissolution of marriage or registered domestic partnership of the Protected Person;

Preparing for a meeting with an attorney

Before the guardian meets with an attorney, the guardian should spend some time determining what it is that he or she needs to know or want the attorney to do. The guardian should write out the questions he or she has, and be sure to note the reason for the visit when making an appointment with attorney.

A guardian should bring a copy of the court Order appointing you him or her as guardian and any other court pleadings related to the guardianship he or she has. The guardian should gather all paperwork that he or she has about the problem he or she wishes to discuss and organize the paperwork in some manner, for example with oldest documents on the bottom and most recent documents on top.

Compensation as a Guardian; Reimbursement for Costs; Payment of Attorney Fees from the Guardianship Estate

A Guardian may be compensated for his or her services, but the fees must be approved and ordered by a Court prior to payment of any compensation from the guardianship estate.

In order to facilitate budgeting for the guardian, the guardian may request authority from the court to advance itself fees on a monthly or quarterly basis, usually only up to a specific dollar amount without prior court approval, at the time of the hearing in the Initial Report. These fee advances are subject to review and approval at the time of the Annual or Triennial Report. However, it should be noted that the costs and fee advances still need to be justified by expenses, time, and activity records and that if the court determines that the advances are not justified the guardian may need to repay the advance and/or serve for some time in the future without charge. Furthermore, as a general proposition, unless a guardian ad litem is appointed to review a cost and fee request at the time of the Annual or Triennial Report it should be remembered that all of the guardian's actions and inactions are still subject to review and approval, or disapproval, at the time of the guardian's final report.

The Court will consider whether the fees are "just and reasonable" and whether the services performed by the Guardian were both necessary for the administration of the guardianship and directly benefited the Protected Person.

In order for the Court to approve the fees of a guardian, if requested, it is imperative that the guardian:

1. Record all time spent in service or benefit to the guardianship or Protected Person;
2. Describe each activity performed;
3. Charge an hourly rate for activities performed.

If the Protected Person is a client of DSHS and is receiving long term care services, the Department must receive notice of any request for fees and administration costs. The amount of compensation from the guardianship estate for guardian's fees and administrative costs may be limited by the Department (See *Payment of Fees if Protected Person is a Client of DSHS* Section on page 59)

If the Court determines that the Guardian has failed to perform his or her duties, the Court may deny or limit compensation.

A guardian's fees and other administration fees, including attorney's fees, may be allowed by the Court any accounting or report presented by the Guardian subject to review and approval at the time of the final accounting unless a

guardian ad litem has been appointed for the purpose of reviewing the appropriateness of such costs and fees. See, RCW 11.92.050.

In addition, the fees may be approved at any time the Guardian or Guardian's attorney petitions the Court for an allowance of compensation, expense or fees for services.

Attorney fees are considered an administrative cost of the guardianship, as are other cost and fees for services not provided by the guardian or limited guardian. See, RCW 11.92.180. See, Chapter 388-79 WAC, *infra*.

Never more than two

In Washington State, a volunteer guardian may not serve as a guardian in more than two guardianships *for which he or she is being paid* unless the guardian is a certified professional guardian. Information about the mandatory six-month certification training, the UWEO Guardianship Certificate Program can be found through the Washington courts website.

Payments of Fees if the Protected Person is a Client of DSHS

WAC Chapter 388-79 sets payment rates for guardians of DSHS clients. The Guardian or the Guardian's Attorney must provide notice to the Regional Administrator (RA) of the appropriate DSHS Administration (HCS or DDD) of any court hearing at which the Guardian will be requesting approval or payment of Guardian's fees or administration fees, including those of the Guardian's attorney. If the payment amount requested exceeds the rates set forth in WAC 388-79, DSHS may oppose the payment requested and request that the Court order a lower payment rate.

Refer to WAC 388-79, Guardianship Fees for Client of the Department, for the current rates amounts.

Cases with fees under \$175/month

If the guardian's fees and attorney's fees are less than the current fee set forth in WAC 388-79, then the proposed Order setting or approving fees should be sent to the RA, as described above. A financial worker will review the Order and issue the Protected Person a new award letter.

Reimbursement for Expenses: Recordkeeping

Guardians may be reimbursed from the guardianship estate for out-of-pocket expenses necessary for the administration of the guardianship and that directly benefit the Protected Person. Guardians should figure expenses, mileage, meals, and supplies at cost or the standard government reimbursement rate.

It is imperative that a guardian keep complete, accurate and up-to-date records and receipts of expenses and reimbursements.

A guardian should consider purchasing a simple record and accounting software program. At the least, record all expenses paid and reimbursements made in a record-keeping book.

How or When Is a Guardianship Modified or Terminated?

Because of reporting requirements of the guardian and the law's interest in maximizing the autonomy of incapacitated persons, no guardianship is "permanent" or intended to remain in the same form indefinitely. However, most guardianships are perpetual as long as the client remains legally incapacitated, the guardian performs its statutory and court-ordered responsibilities, and reporting requirements are fulfilled. Nonetheless, guardianships are frequently are modified or terminated, based upon the changed needs of the IP or formerly incapacitated person.

A court order is required to modify or terminate a guardianship. Any person, including the protected person, may petition the court to modify or terminate a guardianship, or to replace a guardian. The court may order the modification or termination of a guardianship for good cause only.

Guardianship May be Modified Because:

- The protected person has gained capacity to adequately manage some or more (but not all) of his or her personal and/or financial affairs;
- The protected person has gained capacity sufficient to execute an appropriate less restrictive alternative, but still requires the support and assistance that a guardian provides;
- Other good cause, as determined by the Court.

Modifications to a Guardianship May Include:

- Modification from a full to limited guardianship;
- Modification from a limited to full guardianship;
- Modification of a less limited guardianship to a broader (but not full) guardianship;
- Modification of a broader guardianship to a more limited guardianship;
- Removal of a guardian and appointment of a successor guardian;
- Resignation of a guardian and appointment of a successor guardian;
- Appointment of a co-guardian.

Upon the termination of any guardianship for any reason, the Guardian must file a final report and/or account with the information required by RCW 11.92.040(2) and petition the Court for approval of the report, per RCW 11.92.053.

Gaining or Recovery of Capacities

If the Protected person gains capacity to adequately manage some or all of his or her personal and/or financial affairs, or has gained capacity sufficient to execute an appropriate less restrictive alternative, the guardianship should be modified or terminated to maximize the autonomy of the Protected Person or formerly incapacitated person.

Whenever a guardianship is terminated, the former Guardian must submit a final report and/or accounting to the Court and transfer property and records to the formerly incapacitated person, or his or her estate.

Removal or resignation of the Guardian

Guardians are subject to the ongoing supervision of the court in the county in which the guardianship was created. One purpose of the requirement that guardians regularly report to the Court is to ensure that the guardianship continues to meet the needs of and maximize the autonomy of the Protected Person. If the Guardian fails to file reports as required and the previous Letters of Guardianship expire, the Guardian no longer has legal authority to act on behalf of the Protected Person, but the Guardian remains legally liable for actions unlawfully taken on behalf of the Protected Person.

A Guardian may wish to resign even though the guardianship should continue in effect. A Guardian must petition the Court for permission to resign and have a successor Guardian appointed by the Court. A Guardian who receives the Court's permission to resign or who is removed by the Court must provide all records and property of the guardianship to the Court and/or the successor Guardian, as ordered by the Court and file an accounting per RCW 11.92.040(2) **within 30 days** of the court Order terminating the appointment.

See Helpful Model Forms listed on page 61
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The statutes involved are

RCW 11.88.140 Termination of guardianship or limited guardianship
RCW 11.92.053 Settlement of estate upon termination
RCW 11.92.040 Duties of guardian or limited guardian in general

Death of the Protected Person

The Guardian should notify the Court immediately of the date and place of death of the Protected Person. The legal authority of the Guardian to manage the personal and/or financial affairs automatically terminates, except that the Guardian of the Estate may pay the costs of disposition of the deceased person's remains in some circumstances (See a guardianship attorney for further instruction, and RCW 11.88.150). However, the Guardian is required to file a final report and/or accounting with the Court.

If the Protected Person dies intestate (without a Will), a Guardian of the Estate may administer the estate of the deceased Protected Person. (See a guardianship attorney for further instruction, and RCW 11.88.150).

Disposition of Remains

If the Protected Person did not designate someone to make decisions for his or her remains upon death or if the Protected Person has no family members to consent to such decisions, the Guardian may finalize burial or funeral arrangements (See RCW 11.88.150(1) and RCW 68.50.160). The Guardian should attempt to fulfill the Protected Person's wishes, if those wishes are known. If the Protected Person's wishes are not known and there are no religious or philosophical objections, cremation may be considered as a more cost effective alternative.

Pre-death planning can help to minimize costs. A Guardian should consider purchasing a pre-death burial, cremation plan or funeral plan, or maintaining a savings account for such purposes. *Peoples Memorial Association* and others provide pre-death planning services at reasonable cost.

Veteran's burial

If the Protected Person is a veteran, see: <http://www.cem.va.gov/faq.htm> or call **1-800-827-1000**. A guardian will need the DD Form 214. The guardian should explain that he or she is the guardian of a deceased veteran, and the Veteran's Association (VA) should arrange to pick up the body at the appropriate address. The VA should arrange for the funeral and disposition of remains.

If there is money to pay for the appropriate arrangements, the VA will make a cash payment to a cemetery or funeral home that will designate a plot, handle the gravesite, the funeral, the burial and headstone. The federal military cemetery in Auburn is available for veterans without funds to pay for a burial plot.

Closing the Guardianship and Final Reports

Within 90 days of the death of the Protected Person, the Guardian must file a final report and/or accounting with the Court. Notice of the Petition to Approve the Final Report and Disbursements should be sent to those entitled to notice. After the report is approved by the Court, the Guardian is discharged obligation and any bond is released.

The Guardian is required to deliver the Protected Person's property to the persons entitled to receive it. If a guardian is uncertain as to who the appropriate person or persons may be, a guardianship attorney should be consulted.

The Model Forms Are:

- **Notice of Guardian's Intent to Resign and Petition to Appoint Successor Guardian**
- **Notice Of Death Of Incapacitated Person**
- **Petition For Order Approving Guardian's Activities And Final Report**
- **Order Approving Guardian's Final Report**
- **Petition for Order Closing Guardianship and Discharging Guardian**
- **Order Closing Guardianship, Discharging Guardian and Exonerating Bond**
- **Declaration of Service**

The statutes involved are

RCW 11.88.140 Termination of guardianship or limited guardianship

RCW 11.88.150 Administration of a deceased incapacitated person's estate

RCW 11.92.053 Settlement of estate upon termination

RCW 11.92.040 Duties of guardian or limited guardian in general

Other Places That May Help

SHIBA

The Insurance Commissioner at <http://www.insurance.wa.gov/> has a tab for consumers and then for the SHIBA HelpLine.

SHIBA HelpLine is a statewide network of trained volunteers who help consumers and their families with questions about insurance. The free service – sponsored by Washington State Insurance Commissioner’s Office – involves about 350 volunteers in communities around the state who meet with consumers to educate and advocate for consumers regarding health insurance and related topics.

Counseling and assistance topics include, but are not limited to, Medicare, Medigap, (Medicare Supplement) insurance, managed care, long-term care insurance, employment-related benefits, individual/commercial plans, medical billings, retirement and pre-retirement decisions, Medicaid, disability, fraud and abuse, and consumer protection issues.

For more information about SHIBA HelpLine, call the toll-free SHEBA referral line at 1-800-397-4422 to set up an interview with a SHEBA HelpLine volunteer.

Religion

A guardian should make every effort to keep the Protected Person connected with any religious community or affiliation that pre-dated the guardianship. Maintaining this connection often results in additional community support and help, and frequently provides a measure of comfort for the Protected Person.

Pets

There are two common circumstances when a pet becomes a real problem. The first circumstance is when the Protected Person’s residential placement or residence changes. While many facilities will take pets – some will not. Getting the Protected Person into a place that allows a pet is the best solution. Finding a new home for the animal is less attractive.

The second circumstance is death of the Protected Person. Hopefully, there are family or friends who will take the pet. If not, it may be difficult to find a new home for the pet.

The following agencies or animal welfare organizations may be able to offer assistance or guidance:

- The Human Society of Seattle/King County: <http://www.seattlehumane.org/>; (425) 641-0080.
 - Progressive Animal Welfare Society (PAWS): <http://www.paws.org/>; (425) 787-2500.
 - Homeward Pet: <http://www.homewardpet.org/index.html>; (425)488-4444.
 - Animal Talk Rescue: <http://www.animaltalkrescue.org/>; (206) 526-1558.
 - Purrfect Pals: • <http://www.purrfectpals.org/>; (360) 652-9611
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How can a guardian reduce the stress of being a guardian?

Agreeing to act as guardian can cause considerable stress because of the many responsibilities it entails. Traditional family relationships are altered with the onset of disability. Often it is difficult for family and friends of the disabled person to accept the transitions that guardianship necessitates. For example, an adult child may be in the unaccustomed position of making decisions for a parent when acting as a family member guardian. This can be awkward and stressful for the parent, the family member guardian, and other family members.

A guardian may become the focal point of whatever dissatisfaction people feel about the guardianship. The best thing a guardian can do to minimize the difficulties is to keep family members and friends informed of the decisions you are making concerning the Protected Person and include them in the decision-making whenever possible. Gradually building a foundation of trust and clear communication will make things easier for the guardian and for the Protected Person.

In addition, guardians must recognize that the job of caring for an elderly or disabled person, even a close family member, can be extremely demanding. Many guardians feel overwhelmed at first by the responsibility of providing for the Protected Person's needs and making important decisions. If a guardian become exhausted and overwhelmed, he or she will soon find it difficult to provide the level of care and understanding you would like to provide. To avoid exhaustion and emotional distress, a guardian should explore the available services in the community for caregivers and guardians.

Thank you!

The service of volunteer guardians is of tremendous value to the community and the Protected Person.
