

ESTABLISHING A GUARDIANSHIP

RCW Title 11, Chapters 88 and 92

Please note that these are general instructions for filing a petition for guardianship. Some counties have additional requirements. Please check with each county to determine specific local requirements.

It is the intent of the legislature to protect the liberty and autonomy of all people of this state and to enable them to exercise their rights under the law to the maximum extent, consistent with the capacity of each person. The legislature recognizes that people with incapacities have unique abilities and needs and that some people with incapacities cannot exercise their rights or provide for their basic needs without the help of a guardian. However, their liberty and autonomy should be restricted through the guardianship process only to the minimum extent necessary to adequately provide for their own health or safety, or to adequately manage their financial affairs.
RCW 11.88.005.

A Guardian of three or more incapacitated persons (who are not family), and who charges fees for his or her guardianship services, is deemed to be a “professional guardian,” and must meet the certification requirements for professional guardians established by the administrator for the courts. RCW 11.88.008 and 11.88.020

Definitions:

Alleged Incapacitated Person	A person believed to be at significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety.
Bond	A fiduciary bond is a judicial bond that guarantees that a court-appointed fiduciary, an executor or guardian, performs all duties. A fiduciary bond is required by the court in order to protect the person for whom the fiduciary is acting, such as the alleged incapacitated person. A fiduciary’s responsibilities could range from managing an estate to giving financial advice. A fiduciary bond is also known as a probate bond and may be one of many types: guardianship bonds, conservator bonds, administrator bonds, receiver bonds, executor bonds, and trustee bonds.
Case Caption	The caption is often used to refer to the more complete statement of the parties, <i>In the Guardianship of Jane Doe</i> .
Guardian ad litem	A person who is appointed to provide an independent report to the court on behalf of the allegedly legally incapacitated person.
Guardian of Estate	A legal status given to a person to be responsible for the assets and finances of a person deemed fully or partially incapable of providing these necessities for him or herself.

Guardian of Person	A legal status given to a person to be responsible for the food, health care, housing, and other necessities of a person deemed fully or partially incapable of providing these necessities for her or himself.
Judicial Officer	Superior court judge or commissioner.
Limited Guardianship	A limited guardianship is appropriate if the court finds the incapacitated person needs assistance only in specific areas of life, <i>i.e.</i> Health care.
Petitioner	The individual presenting the formal, written application to a court. The person seeking appointment of a guardian.
Personal Service	Personal delivery of legal notice to a party in a case.

STEP 1: TALK TO AN ATTORNEY IF POSSIBLE

These instructions are not a substitute for legal advice. The laws and court rules are complex and following these instructions will not guarantee you a favorable result. It is always advisable to talk to a lawyer about your problem before filing your action. If you cannot afford to hire an attorney to represent you, you may be able to pay a lawyer to give you advice and review your paperwork for a lesser cost. Contact the Washington State Bar Association (www.wsba.org or 800-945-9722) for information about limited services representation. If you cannot afford these costs, contact the Coordinated Legal Education, Advice and Referral System (CLEAR). If you live outside King County call CLEAR at 888-201-1014. If you live in King County call CLEAR at 206-461-3200. Even if you do not hire a lawyer to represent you, a lawyer may look over your paperwork; give you advice on how to present your case, and whether this type of action is right for you.

STEP 2: OBTAIN THE FOLLOWING FORMS (See the Public Guardian website)

- Petition for Guardianship of Person and/or Estate
- Order Appointing Guardian ad Litem and Notice of Hearing
- Notice of Guardianship Petition
- Declaration of Service

STEP 3: COMPLETE FORMS

Provide as much information as possible. Do not leave lines blank. Either use “Not applicable”, “Not known”, or “None” when information is not available.

Petition for Guardianship of Person and/or Estate

Much of the form is self-explanatory, but some terms may be unfamiliar. Please see the definitions provided above when terms are unfamiliar. These instructions attempt to address the unfamiliar parts.

Complete the case caption (line 9 of page 1, "In the Guardianship of:") (fill in the name of the alleged incapacitated person).

Section I. Self-explanatory

Section II.

Nature of the Alleged Incapacity (select one):

- Mental Illness
- Dementia
- Developmental Disability
- Head Trauma
- Chemical Dependency
- Not Known

Degree of the Incapacity (select one):

- Mild
- Moderate
- Severe
- Permanent
- Temporary
- Not Known

Section III.

Real Property: real estate, land, buildings

Personal Property: machinery, equipment, fixtures, supplies

Section IV.

Washington State Assistance: Assistance from the Department of Social and Health Services (DSHS).

Section V.

A – C Self explanatory

D. Types of Guardianship (select one):

- Full Guardianship of the Estate
- Full Guardianship of the Person
- Full Guardianship of Person and Estate
- Limited Guardianship of the Estate
- Limited Guardianship of the Person
- Limited Guardianship of Person and Estate
- Not Known

Section VI. Who are you asking the court to appoint as guardian? If you don't have anyone in mind leave blank.

Section VII. Self-explanatory

Section VIII. Who is caring for the person now?

Section IX.

- A. What has happened that causes you to believe a guardian is needed?
- B. Why are you concerned?
- C. See definitions for explanation of guardianship types.

Section X.

- A. Same as Section II

Section XI. Self explanatory

Section XII.

- A. Do you want the court to require the guardian if appointed to obtain a bond, or should this be waived (see definition of a bond above)?

In all guardianships or limited guardianships of the person, and in all guardianship or limited guardianships of the estate, in which the petition alleges that the alleged incapacitated person has total assets of a value of less than three thousand dollars, the court may dispense with the requirement of a bond pending filing of an inventory confirming that the estate has total assets of less than three thousand dollars (RCW 11.88.100).

In cases where all or a portion of the estate consisting of cash or securities has been placed in possession of savings and loan associations or banks, trust companies, escrow corporations, or other corporations approved by the court and if a verified receipt signed by the custodian of the funds is filed by the guardian or limited guardian in court stating that such corporations hold the cash or securities subject to order of court, the court may in its discretion dispense with the bond or reduce the amount of the bond by the amount of such deposits. (RCW 11.88.105)

- B. If the alleged incapacitated person's assets total less than \$3,000.00 check the boxes indicating that the Guardian ad Litem fees should be provided by the county.

Section XIII.

What do you want the court to do?

- ✓ Check the box to appoint a Guardian ad litem.
- ✓ Check the box for an Order waiving the requirement for a filing fee if the alleged incapacitated person's assets total less than \$3,000.00.
- ✓ Check the box for an Order directing that the Guardian ad litem fees in this matter are paid by the **county** if the alleged incapacitated person's assets total less than \$3,000.00 or if the alleged incapacitated person's assets total more than \$3,000.00 the Guardian ad litem fees may be paid from the **estate** of the incapacitated person.

If you're following these directions you probably don't have an attorney, so do not check the box for an Order to pay reasonable attorney fees.

- ✓ Check the box for an Order appointing (fill in the name of the proposed guardian or Not Known if you don't have someone in mind) as (before selecting one, please see definitions above).
 - Full Guardianship of the Estate
 - Full Guardianship of the Person
 - Full Guardianship of Person and Estate
 - Limited Guardianship of the Estate
 - Limited Guardianship of the Person
 - Limited Guardianship of Person and Estate
- ✓ Subject to review in 12 months.
- ✓ See instructions above concerning the ability to waive the bond.

On the last page, fill in signed at (city) Washington, Month, Day, Year and sign where it says "Signature", print the Petitioner's name, address, telephone number, fax number, and email address, if any.

Order Appointing Guardian ad Litem and Notice of Hearing

Complete the case caption (line 9 of page 1, "In the Guardianship of:") (fill in the name of the alleged incapacitated person).

- **If the alleged incapacitated person's assets are less than \$3,000.00:**
You may petition the court to waive the filing fee and have the Guardian ad Litem appointed at county expense by doing the following:

- ✓ Checking the boxes in Sections 1.3 and 1.5 of the Findings of Fact section, indicating the county in Section 1.3 and in Section 1.5 indicates that the alleged incapacitated person's assets total less than \$3,000.00.
- ✓ Check the box in Section 2.1 of the Order section, indicating the Clerk's filing fee is waived.

Leave the date and location of the hearing blank. The court will complete this information later. Leave the name and address of the Guardian ad litem blank. If the judicial officer approves your Order, the courtroom Clerk will give you the name, and telephone number and/or address, of the Guardian ad Litem to fill in on the form.

- ✓ Check the box in Section 2.3 indicating that the Guardian ad Litem shall be appointed at public expense (the county pays).

The judicial officer will complete Section O.

- ✓ On the last page, sign where it says "Signature", and print the Petitioner's name, address, telephone number, fax number, and email address, if any.

• **If the alleged incapacitated person's assets are greater than \$3,000.00:**

You must file the Petition at personal expense as follows:

- ✓ Check the box in Section 1.3 of the Findings of Fact section, indicating the county.

Leave the date and location of the hearing blank. Leave the name and address of the Guardian ad litem blank. The court will write in the name, and telephone number and/or address, of the Guardian ad Litem on the form.

- ✓ Check the box in Section 2.3 indicating that the Guardian ad Litem shall be appointed at private expense (will be paid from the estate of the alleged incapacitated person or by the Petitioner).

The judicial officer will complete Section O.

- ✓ On the last page, sign where it says "Signature", and print the Petitioner's name, address, telephone number, fax number, and email address, if any.

Notice of Guardianship Petition

Complete the case caption (line 9 of page 1, "In the Guardianship of:" (fill in the name of the alleged incapacitated person).

Fill in the name of the alleged incapacitated person in the first "To" box.

Leave the second "To" box blank. If the judicial officer approves your Order, the courtroom Clerk will give you the name, and telephone number and/or address, of the Guardian ad Litem.

Fill in the county and the Petitioner's name.

On the last page, fill in signed at (city) Washington, Month, Day, Year and sign where it says "Signature", print the Petitioner's name, address, telephone number, fax number, and email address, if any.

STEP 4: FILE ORIGINALS OF SOME FORMS WITH CLERK, AND HAVE A GUARDIAN AD LITEM APPOINTED

Present the completed **Petition for Guardianship of Person and/or Estate** form, and the **Order Appointing Guardian ad Litem and Notice of Hearing** form, to the Ex Parte Courtroom Clerk indicating that you are seeking to have the filing fee waived and/or the Guardian ad Litem appointed at public expense. Ask if you should wait for a decision or return at a later time.

If the judicial officer approves your Order, the courtroom Clerk will give you the name, telephone number and or address, of the Guardian ad litem to fill in on the form.

If the judicial officer does not waive the filing fee, you must pay the filing fee in order to file your case in the County Clerk's Office.

Proceed to the County Clerk's Office and present the originals of the **Petition for Guardianship of Person and/or Estate, Order Appointing Guardian ad Litem and Notice of Hearing**, and **Notice of Guardianship Petition** to the cashier. The County Clerk will issue you a case number, and stamp the case number on the first page of your copies and remaining originals. You should also use the available date stamp machine to date stamp copies of the documents you have filed with the filing date (do not date stamp originals, or copies of documents which have not yet been filed).

Make four copies of the Order Appointing Guardian ad Litem. Present a copy of the Petition for Guardianship, the original Order Appointing Guardian ad Litem and the copies to the Clerk. Pay the Clerk's processing fee. Complete the ex-parte cover sheet and select the method for picking up your copies of the signed Order Appointing Guardian ad Litem. The Clerk will present the order to the judicial officer on your behalf. After the order has been signed the Clerk will automatically file the original and return the copies of the Order Appointing Guardian ad Litem to you via the method you requested.

The hearing on your Petition for Guardianship must be held not later than 60 days after the date the Petition is filed with the County Clerk. The courtroom clerk will insert the date of the hearing in the **Order Appointing Guardian ad Litem and Notice of Hearing** form. Please leave the time/hour of the hearing blank.

STEP 5: SERVE COPIES ON GUARDIAN AD LITEM

Immediately after you receive the copies of the signed **Order Appointing Guardian ad Litem and Notice of Hearing**, mail copies of the **Petition for Guardianship of Person and/or Estate, Order Appointing Guardian ad Litem and Notice of Hearing**, and **Notice of Guardianship Petition**, to the Guardian ad Litem by personal service. Arrange for personal service, without delay, on the Guardian ad litem by having someone other than a party to the case, who is at least 18 years old, hand copies of the **Petition for Guardianship of Person and/or Estate, Order Appointing Guardian ad Litem and Notice of Hearing**, and **Notice of Guardianship Petition** to the Guardian ad litem, or to a person of suitable age and discretion who also resides at the house or usual place of abode of the alleged incapacitated person. The person who serves the papers must finish completing and sign the **Declaration of Service** form and return the completed signed form to you. Make at least one copy of the original completed and signed **Declaration of Service** form, and file the original in the Clerk's Office. Bring your copy with you to the scheduled hearing, in case the original has not yet made its way into the court records by the time of your hearing.

STEP 6: HAVE THE ALLEGED INCAPACITATED PERSON SERVED, AND OBTAIN SERVICE ON OTHERS AS REQUIRED BY STATUTE (LAW)

Arrange for personal service, without delay, on the alleged incapacitated person by having someone other than a party to the case, who is at least 18 years old, hand copies of the **Petition for Guardianship of Person and/or Estate, Order Appointing Guardian ad Litem and Notice of Hearing, Notice of Guardianship Petition**, and **Declaration of Proposed Guardian** to the alleged incapacitated person, or to a person of suitable age and discretion who also resides at the house or usual place of abode of the alleged incapacitated person. The person who serves the papers must finish completing and sign, the **Declaration of Service** form and return the completed signed form to you. Make at least one copy of the original completed and signed **Declaration of Service** form, and file the original in the Clerk's Office. Bring your copy with you to the scheduled hearing, in case the original has not yet made its way into the court records by the time of your hearing.

Copies of the completed documents must also be served by personal service, or sent by certified mail, return receipt requested (requesting the return receipt to be signed by the addressee or an agent appointed by the addressee), to the following persons:

- The spouse of the alleged incapacitated person, if any
- Any other person who has been appointed as guardian or limited guardian
- The person with whom the alleged incapacitated person resides
- Service need not be made on persons (other than the alleged incapacitated person – service on the alleged incapacitated person cannot be waived) who have either signed the Petition or have waived notice of the hearing

A **Declaration of Service** should also be completed and signed by the server for each such service, a copy retained for your records, and the original filed in the Clerk's Office.

STEP 7: PROVIDE “WORKING COPIES” TO THE EX PARTE DEPARTMENT

Provide “working copies” (copies of the **Petition for Guardianship of Person and/or Estate, Order Appointing Guardian ad Litem and Notice of Hearing**, and **Notice of Guardianship Petition**, together with copies of your proposed **Order Appointing Guardian of the Person/Estate** to the Ex Parte department at least seven calendar days prior to the scheduled hearing date. In the upper right hand corner of the first page of this set of copies, write: “Working Copies, Ex Parte Dept.”, and the date and time of the hearing. The Working Copies should be delivered to either the Ex Parte courtroom or Judges’ mailroom.

STEP 8: ATTEND HEARING, COPY AND FILE SIGNED ORIGINAL

Attend the hearing in the Ex Parte courtroom on the date set in the **Order Appointing Guardian ad Litem and Notice of Hearing**. Hand your original **Order Appointing Guardian of Person and/or Estate** to the courtroom Clerk, along with copies of any other documents requested of you.

WARNING: These instructions are not a substitute for legal advice. The laws and court rules are complex and following these instructions will not guarantee you a favorable result. It is always advisable to talk to a lawyer about your problem before filing your action. (You may be able to hire a lawyer for a small fee to review your completed forms and talk about your problem but not represent you in court). If you need an attorney, contact the Washington State Bar Association (www.wsba.org or 800-945-9722) for information about limited services representation. If you cannot afford these costs, contact the Coordinated Legal Education, Advice and Referral System (CLEAR). If you live outside King County call CLEAR at 888-201-1014. If you live in King County call CLEAR at 206-461-3200. Even if you do not hire a lawyer to represent you, a lawyer may look over your paperwork; give you advice on how to present your case, and whether this type of action is right for you.