

## **Concerned About An Adult?**

*This document provides information about the guardianship process. The intent is to help users generally understand process. But legal information is not the same as legal advice – the application of law to an individual’s specific circumstances. Although we’ve gone to great length to make sure the information provided is accurate and useful, it is not a substitute for legal advice. We encourage you to consult a lawyer if you want professional assurance the information provided here, and your interpretation of it, is appropriate to your particular situation.*

If you are concerned that an adult lacks the ability to make decisions about their health, personal care, education, safety, and/or finances consider the following action:

*(Select the bulleted items below for information)*

- **Concerned about the safety of an adult?**
- **Does the adult need help making decisions?**
- **So you think guardianship is the answer?**

### **Call Adult Protective Services (APS)**

As soon as you have reason to believe that abuse is occurring, call for help. You do not need absolute proof to report suspected abuse nor, do you need to give your name.

To report abuse or neglect of a vulnerable adult in Washington State, call the Department of Social and Health Services (DSHS) toll-free EndHarm hotline anytime day or night at 1-866-363-4276. ENDHARM is TTY accessible. (A TTY is a special device that lets people who are deaf, hard of hearing, or speech-impaired use the telephone to communicate, by allowing them to type messages back and forth to one another instead of talking and listening).

When you call the hotline, you will speak with a real person who will connect you to the direct, local number to make your report. You can also call directly during business hours. Call:

- the Complaint Resolution Unit toll-free hotline at 1-800-562-6078 if the person that you suspect is being abused or neglected is **living in a nursing home, boarding home, or adult family home.**
- the Adult Protective Services (APS) office in your county if the person

that you suspect is being abused is **living in their own home or somewhere other than a residential care facility**. Find the APS office in your county. Learn more about what happens after you call APS.

If it's an emergency and the person is in immediate danger, call the police.

### **When you call**

You will be asked to give the person's name, address, contact information and details about why you are concerned. You will also be asked for your name and phone number or some way of contacting you if the investigator has follow up questions. Unless there is a court action, law enforcement has been called in, or you agree, your identity is confidential. If you report in good faith, you cannot be held liable for any damages resulting from reporting.

### ***Vulnerable Adult Protection Orders***

In July 2007, law changes provided additional options for Vulnerable Adult Protection Orders under RCW 74.34. These orders can protect an adult vulnerable due to mental or physical disability who is victimized by abandonment, abuse or financial exploitation. Now an *interested person* can seek relief in court even when the vulnerable adult is unable or unwilling to seek help. This option may provide quick access to orders protecting the person from further abuse or exploitation. Mandatory forms to use for these cases are on the court website:

<http://www.courts.wa.gov/forms/>

## **Consider Less Restrictive Alternatives**

If the problem involves a family dispute, consider mediation for a personal, confidential setting free of intimidation and an opportunity to explore underlying issues privately.

### **Options Available before a Person Becomes Incapacitated**

A person capable of making decisions can arrange for someone else to manage finances or personal care decisions in the event incapacity occurs in the future. Several methods commonly used to do this are discussed below.

#### **A. Financial Decisions**

All methods allowing someone else to handle a person's finances have potential to allow financial exploitation. Some methods have more safeguards than others. No method is safe unless the person managing the finances is trustworthy, stable, and available.

## 1. Durable Power of Attorney

A power of attorney is a document through which a person (the *principal*) gives someone else (the *agent* or *attorney-in-fact*) legal authority to act for the person (the *principal*). A *durable* power of attorney includes language indicating that the power will continue even if the principal becomes disabled or incapacitated in the future. If the document lacks this kind of language, the power of attorney is not "durable," and it *terminates* if the principal becomes incapacitated.

The language used in the power of attorney document determines the extent of the agent's powers. The document may give powers over financial affairs, health care, or both. Financial powers may be narrow or broad.

A durable power of attorney may be written to take effect immediately or to take effect only when the person becomes incapacitated. The latter type of power of attorney is called a *springing* durable power of attorney. These powers of attorney should include language describing how incapacity will be determined.

Durable powers of attorney have many advantages. They are relatively simple and inexpensive to arrange compared to trusts or guardianships. The agent under the power of attorney is a *fiduciary*, meaning legally required to manage the principal's assets in the interest of the principal.

Powers of attorney can be abused. A potential disadvantage of powers of attorney compared with guardianships is the lack of a protective oversight system. (Guardians, by contrast, must report periodically to the court). Professional guardians are certified and regulated by a board through the state's court system. Problems with powers of attorney, such as failure to provide an accounting can be addressed in legal proceedings under state law. When a power of attorney is abused or mismanaged, however, losses may be difficult or impossible to recover.

For more information go to the website [www.washingtonlawhelp.org](http://www.washingtonlawhelp.org) select Aging/Elder Law and then Guardianships and Powers of Attorney.

## 2. Trusts

A trust is a legal arrangement through which a person (the *grantor*) transfers money or property to a *trustee* who manages the property for the benefit of the grantor or other named beneficiaries. Trusts are flexible tools that can accommodate a variety of goals. A trust may be drafted to allow a person to retain control of assets until incapacity occurs. Trusts are complex, however, requiring careful consideration, drafting, and management. They may be completely impractical for a person with small assets. Advice of an attorney specializing in this area is essential.

## 3. Joint Property Arrangements

Holding an asset in joint ownership is an informal method some people use to allow a person to manage their finances. Sometimes this works well. For example, happily married husbands and wives may hold funds belonging to both of them in joint

accounts. This allows either spouse to manage the funds without a guardianship if the other spouse becomes incapacitated.

Joint property arrangements also may be inappropriate or hazardous. Sometimes a person changes a solely-owned account to a joint account held with a family member or friend who made no deposits to the account, intending only to get help with writing checks and to leave the balance upon death to the joint holder. This may work well for some situations, but is an arrangement particularly subject to abuse.

The funds held in a joint bank account with right of survivorship continue to belong to the depositors in proportion to the funds each has deposited. A joint account holder has access to the account, however, and too often thinks the money belongs to him or her.

Recovering losses when joint accounts are abused can be very difficult. Difficulties increase with poor record-keeping and lack of clarity about authorized spending. Making someone a joint account owner does not necessarily create a "fiduciary" legal obligation in the way that a power of attorney automatically does.

If the reason for adding a person to a bank account is simply to enable the person to write checks on your behalf, joint ownership of the account is not required. Instead, you can simply add the person to the signatory card. Although this method will not transfer the account automatically on death, a simple will can do so, with less risk.

Transferring an ownership interest in an asset, especially real estate, may have unintended effects. If the new joint owner of the property has creditors, dies or dissolves a marriage, the transferred interest in the property may be affected in ways the original owner did not anticipate.

Joint property arrangements also may have unintended or undesired tax and estate planning consequences. Gift or inheritance taxes are a consideration for some people. Receiving property as a gift instead of as an inheritance may cause different (less favorable) capital gains tax treatment for the recipient. A joint owner may manage assets without knowing and respecting the original owner's estate plan, disrupting intended distributions to heirs.

Eligibility for public benefits based on financial need (such as Medicaid, SSI, and cash assistance for low-income families) also can be affected by making joint property arrangements. Assistance programs such as SSI cash assistance and Medicaid long-term care programs can disqualify people for "transferring" assets. Adding a person as an owner may be treated as a transfer. Eligibility for many assistance programs is affected by the assets a person "owns". Being added to an account or property as an "owner" may cause ineligibility.

For all these reasons, get individualized legal advice before using joint property arrangements to give someone authority to manage assets.

## 4. Utility Company Third Party Notification

Most utility companies permit customers to designate a third party to be notified by the utility company if bills are not paid on time.

### B. Health Care Decisions

#### 1. Durable Power of Attorney for Health Care Decisions

**A durable power of attorney can give the agent authority to make health care decisions** for the principal when the principal becomes unable to make such decisions. Many durable power of attorney forms DO NOT include authority for health care decisions. To determine whether a particular power of attorney document includes these powers, read it carefully. Some people choose to have one durable power of attorney for health decisions and a separate durable power of attorney for financial decisions.

Unless the person is the spouse, state registered domestic partner, adult child or sibling of the principal, none of the following people may serve as an agent for health care decisions: the principal's physicians; the physicians' employees; the owners, administrators, or employers of the health care facility where the principal resides or receives care. An agent under a power of attorney, like a guardian, does not have authority to consent to certain electro-convulsive therapy or certain other psychiatric/mental health procedures. An exception occurs when the incapacitated person provided advance consent for electro-convulsive therapy or mental health hospitalization in a special mental health advance directive.

#### 2. Living Will (*Health Care Directive*)

The Washington Natural Death Act allows an adult to make a written directive (commonly called *a living will*) instructing the person's doctor to withhold or withdraw life-sustaining procedures in the event of a terminal condition or permanent unconscious condition. Many people include a special durable power of attorney for health care decisions in the document, directing the agent to enforce the living will provisions. An information pamphlet with forms is available on the legal services website at [www.washingtonlawhelp.org](http://www.washingtonlawhelp.org) (select category *Aging/Elder law*, subcategory *Medical and Mental health*).

The forms used for this may be called *Directive to Physicians* or *Health Care Directives* or *Living Wills*. Hospitals, home health providers, stationery stores, private attorneys, and the legal services website are sources for these forms. The state law describes the effects of making a Living Will and the procedures to do so. Because the law changed in 1992, forms produced before early 1992 may not include all options available under the current law.

#### 3. Mental Health Advance Directives

*Mental health advance directives* were created by the legislature in 2003 to allow a person to express preferences and instructions about mental health treatment. A person

with mental capacity to do so can use the directive to consent in advance to mental health treatment that may be needed later, when the person may not have capacity to consent. Advance consent can be given for mental health treatment such as inpatient hospitalization that otherwise would require a court order. The law contains many specific requirements, options and protections. The form used is in the law.

## **C. Living Arrangements**

### **1. Senior Shared Housing Programs**

In shared housing programs, several people live together in a group home or apartment *with shared common areas*. *Congregate housing* refers to complexes with separate apartments (including kitchen), some housekeeping services, and some shared meals. Many congregate care facilities are subsidized under federal housing programs. Personal care and health oversight are usually not part of the facility's services, but they may be provided through other community social services.

### **2. Community Residential Care**

These are small supportive housing facilities that provide a room, meals, help with activities of daily living, and protective supervision to individuals who cannot live independently, but who do not need institutional care.

### **3. Assisted Living**

Assisted living facilities provide an apartment, meals, help with activities of daily living, and supervision to individuals who cannot live independently, but who do not need institutional care.

### **4. Nursing Home**

Nursing homes provide skilled nursing care and services for residents who require medical or nursing care; or rehabilitation services for injured, disabled or sick persons.

### **5. Continuing Care Retirement Communities (CCRCs)**

CCRCs, also called life care communities, usually require the payment of a large entry fee, plus monthly fees thereafter. The facility may be a single building or a campus with separate independent living, assisted living, and nursing care. Residents move from one housing choice to another as their needs change. While usually very expensive, many guarantee lifetime care with long-term contracts that detail the housing and care obligations, as well as its costs.

## **Options Available *after* an Adult Becomes Incapacitated**

When a person has difficulty managing finances or personal care, and advance planning directives (such as a durable power of attorney or other device discussed above) are absent or inadequate, consider the following options. A guardianship may

not be the only option.

## Health Care Decisions

### A. Consent to Health Care Statute

Washington law has a method for someone else to make health care decisions for an adult who cannot make health care decisions by *reason of mental incapacity*. (Note: Health care consent for minor children is different. Having a physical ailment does not necessarily mean the adult is not capable of consenting to health care).

An adult generally has the right to make decisions about what care or treatment is to be done to his or her body. *Informed Consent* means a person makes a decision about medical care (including the refusal of care) after being informed about the possible risks and benefits of the proposed care and of other options. To give informed consent, a person must have the mental capacity to understand the choices and make the decision.

Whether a person still has the mental capacity to make his or her own health care decisions sometimes is unclear. If the person believes he or she is able to make such decisions and the medical provider disagrees, a court may need to resolve the dispute in a guardianship proceeding.

The consent to health care statute provides authority for a substitute decision-maker when an adult in Washington does not have capacity to consent to health care. The order of priority for the substitute decision-maker *for an adult is*:

- a. The appointed guardian, if any;
- b. A person to whom the patient has given a durable power of attorney that specifically grants authority to make health care decisions;
- c. The patient's spouse or state registered domestic partner;
- d. Children of the patient who are at least age eighteen;
- e. Parents of the patient;
- f. Adult brothers and sisters of the patient.

The standard the substitute uses in making health care decisions is:

- Choose what the person, with his or her values and preferences, would want if he or she were competent to decide.
- If, and only if, this determination cannot be made, decide based on what you believe is in the person's "best interests."

The process used is this: A physician seeking informed consent for proposed health care of an incapacitated person must make reasonable efforts to locate and get consent from a person in the highest priority class that applies to the patient (see list above). Thus if

the patient has a guardian with health care authority, the physician must first attempt to reach the guardian for consent. If no person is available in the highest priority class, the physician can seek authorization from the available people in the next lower priority class in which people are available. Consent cannot be given if a person in a higher priority class has refused to give authorization. When the priority class has multiple members (e.g. parents), the decision to consent must be unanimous among all available members of the priority class.

If the person has no available person in the classes listed in the law, establish a guardianship. In an emergency, however, consent to needed care may be implied. Some decisions require a court order rather than a guardian or agent's consent.

Electroconvulsive therapy, psychosurgery, and certain other intensive psychiatric/mental health treatment require court order.

Placement in a residential treatment facility, such as a nursing home, against the person's will, requires a court order in an Involuntary Treatment Act proceeding.

A court order may not be needed for some such mental health treatment, including hospitalization, when the patient has provided advance consent through a *mental health advance directive*.

## **B. Financial Decisions**

### **1. Representative Payeeships**

A representative payee is someone appointed by a government agency to act as a substitute to receive and manage the benefits owed to a recipient. Agencies using representative payeeships for benefits include:

- Social Security Administration,
- Veterans Administration,
- Department of Defense,
- Railroad Retirement Board, and
- Office of Personnel Management (federal employee retirement)

The representative payee must use the government benefits on behalf of the beneficiary for the beneficiary's personal care or well-being. A guardianship is not needed to manage these funds. Agencies may refuse to allow a guardian to access the funds without first being appointed as representative payee. Some Washington state programs have similar provisions for *protective payees*.

Requests for a representative/protective payee are made to the government agency issuing the benefits. Sometimes, the person receiving benefits does not want a payee or wants a different person to serve as payee. The agency can explain any rights the person has to object and to appeal the decision.



## **2. Supervised Individual Indian Money Accounts**

Some Native Americans receive one-time or recurring income from Indian trust land managed by the federal government or as compensation for the loss of Indian lands. If the person already has a guardian or has given someone a power of attorney, the Bureau of Indian Affairs (BIA) or the tribal provider of BIA services will work with the appointed person to manage the person's "Individual Indian Money" (IIM) funds. The BIA has a trust responsibility to ensure that withdrawals of IIM funds by an agent or guardian are used only for the benefit of the IIM account holder. If there is no appropriate, available person to serve as guardian or agent, the BIA should supervise the account in its capacity as trustee of Indian funds.

Before the BIA will supervise the account, the BIA may require a court, a BIA or tribal social worker, or another federal agency to determine that the individual needs help managing financial affairs. The BIA can be appointed as representative payee for the Social Security Administration (for SSI or Social Security benefits) or for the Veterans Administration. This appointment will trigger BIA supervision of individual Indian trust income as well.

Requests to have an Individual Indian Money account or other funds of an incapacitated Native American managed by the BIA are made to the U.S. Department of Interior, Bureau of Indian Affairs Superintendent at the particular BIA agency that manages the Indian trust land for that individual and tribe.

### **Community-Based Supportive Services**

Finding appropriate supportive services can solve problems that otherwise could lead to an unnecessary guardianship. Some supportive services available in many communities are described below.

#### **A. Money Management Services**

Money management alternatives include automatic banking, direct deposit and personal money management services. Automatic banking allows the bank to pay regular bills. Direct deposit allows electronic deposit of regular sources of income into the recipient's bank account. Personal money management or bill paying services can be helpful but may be expensive. Choosing such a service requires careful consideration of the staff qualifications, management practices, and protections such as bonding and insurance to reduce chance of loss by negligence or theft.

#### **B. Case Management**

Case management can help functionally disabled adults get necessary support services. Case managers can assess a person's ability and needs, develop a detailed plan of care, and follow-up to ensure services are provided and changed as needed. Free case management may be available under state programs administered by the Division of Developmental Disabilities, Division of Mental Health, Division of Vocational Rehabilitation, or DSHS Home and Community Services. Local Senior Information and

Assistance programs can suggest options for seniors.

### **C. Respite Care and Other Services**

Case managers can help identify other available social and health services. These may include respite care, information and referral, adult day care, home health care, homemaker and personal care, home delivered meals, mental health services, adult day program/day care, vocational services, tenant support, legal services (for help with eligibility for funding of services), and transportation. Eligibility for publicly funded services may depend on income, assets, age and type of disability. Respite care may be available to help non-paid caregivers avoid burnout. Respite services range from brief day care or home care to temporary stays in hospitals or nursing homes.

*This general information was prepared by Northwest Justice Project, based on materials previously produced by Columbia Legal Services, with funding from the Snohomish County Department of Human Services. Right to reproduce in entirety granted for noncommercial purposes. Revised 10-07*

## **Issues to Consider before Pursuing Guardianship**

*Excerpts from document prepared by Ann Vining, Northwest Justice Project*

Guardianship is one option when a person has significant problems managing financial affairs or personal care. Sometimes it is the only reasonable choice, but it should be the last resort. Guardianship requires going to court and can be costly. It also deprives an adult of very significant personal rights. Our state's guardianship law requires considering alternatives first.

Some problems, such as excessive drinking or unsafe sexual practices, cannot be "fixed" through a guardianship or an alternative. Guardianship is not a way to force someone who is competent to do what someone else thinks he or she should do. An adult who has the legal capacity to manage his or her own affairs has the right to make decisions other people may view as unwise.

Guardianships are granted only when a person is legally "incapacitated." This generally means the person has a mental incapacity causing a significant risk of harm. This incapacity must be evidenced by a demonstrated inability to manage property or financial affairs, or a demonstrated inability to adequately provide or arrange for one's nutrition, health, housing or physical safety. Advanced age, medical diagnosis, eccentricity and poverty are not sufficient to justify guardianship.

A guardian ordinarily cannot place a person in a nursing home, institution, or other such facility against the person's will or commit a person involuntarily for mental health treatment. These involuntary placements require a court order under the Involuntary Treatment Act. An exception for certain treatments occurs when the person consented.

## Petitioning for Guardianship

### Who Can Petition?

Anyone can file a petition for guardianship of anyone in Washington. The individual filing the petition is accepting no responsibility for the care of the person believed to need assistance. The petitioner is notifying the court that he or she believes a friend, family member, neighbor etc. needs assistance.

### Potential Petitioners

*Adult Protective Services (APS)*—In instances of abuse, neglect and exploitation of vulnerable adults, APS may file a petition for guardianship. Generally, the Attorney General will provide legal representation for APS.

*Division of Developmental Disabilities (DDD)*—When individuals with developmental disabilities are receiving services through the Department of Social and Health Services and a guardian is required, DDD may file a petition for guardianship. Generally, the Attorney General will provide legal representation for DDD.

*Facilities (hospital, nursing home, etc)*—When a facility believes a guardian is needed for an individual receiving services, the facility may file a petition for guardianship, with the intent that someone else will be appointed guardian. The staff or corporate attorney for the facility may provide legal representation for the facility or a private attorney may provide representation.

*Private Individuals (family member, friend, neighbor, etc)*—When a private individual believes a guardian is needed for a family member, friend, or neighbor, the individual may file a petition for guardianship. The individual can represent his or herself. Forms and instructions are available at [http://www.courts.wa.gov/committee/?fa=committee.display&item\\_id=965&committee\\_id=136](http://www.courts.wa.gov/committee/?fa=committee.display&item_id=965&committee_id=136)

Using forms and instructions will not guarantee a favorable result. Petitioning for guardianship can be a complex procedure, thus obtaining legal representation is likely advisable. In some instances free legal representation may be available by calling the Coordinated Legal Education, Advice and Referral System (CLEAR). If you live outside King County, call CLEAR at 1-888-201-1014. If you live in King County, call CLEAR at 206-461-3200.

If an individual doesn't qualify for free legal services, information about private attorneys can be obtained through the Washington State Bar Association at [www.wsba.org](http://www.wsba.org)

### Who Cannot Petition?

The Office of Public Guardianship (OPG) is prohibited from petitioning for

guardianship, as petitioning could present *an* apparent conflict of interest. The study entitled *Wards of the State: A National Study of Public Guardianship* describes the following potential conflicts:

" ... if the program relies on fees for its operation, or if its budget is dependent on the number of individuals served, it might be inclined to petition more frequently, regardless of individual needs. On the other hand, it might . . . only petition for as many guardianships as it desires, perhaps omitting some persons in need of such services . . . Or it could "cherry pick" - petitioning only for those individuals easiest or least costly and time-consuming to serve."

## **How Do You Petition?**

### **The Petition Needs to Contain Certain Things**

A petitioner needs to specify, among other things, whether he/she wants limited guardianship or full guardianship, and over financial or broader decisions, as well as alleging that the person is incapacitated. "Incapacitated as to person [means] a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety. Incapacitated as to the person's estate [means] the individual is at significant risk of financial harm based upon a demonstrated inability to adequately manage property or financial affairs. Incapacity is a legal not a medical decision, based upon a demonstration of management insufficiencies over time in the area of person or estate." RCW 11.88.010(1) (a)-(c). See also RCW 11.88.030 for a full list of what to include in the petition.

### **What to Expect On Date of Petition**

On the first day, the court will appoint a Guardian ad litem (GAL) to evaluate the circumstances and make a recommendation (1) whether or not a guardianship is warranted, and (2) if yes, who should be guardian. A GAL makes his/her determination based on what is in the best interests of the alleged incapacitated person (AIP). If the AIP requests representation and can't afford it, the court will appoint representation (an attorney) for the AIP. The appointed attorney will argue for the wishes of the AIP. An AIP has the right to a jury trial, to present evidence on his/her behalf, and to be present during the proceedings. He/she may also choose to go to mediation or arbitration. Last, the court will also set a date for the hearing sixty (60) days from the date of petition.

### **Serving Notice of Petition**

Notice must be personally served to the alleged incapacitated person and the GAL within five (5) court days of the date petition was filed. It must include a clear and easily readable statement of the legal rights of the alleged incapacitated person that could be restricted or transferred to a guardian by a guardianship order as well as the right to counsel of choice and to a jury trial on the issue of incapacity.

## Medical Examination

The GAL will choose a qualified professional (a physician, psychologist, or advanced registered nurse practitioner) to conduct an examination. The AIP must meet with the chosen professional within thirty (30) days. If there is objection to the qualified professional, another may be chosen, but must be approved by the court. The professional will write a medical report based on the examination within thirty (30) days.

## The Guardianship Hearing

At the hearing sixty (60) days later, the court will hear evidence and witnesses, then make a determination of capacities and appoint a guardian or not, based on its findings. If a guardian is appointed, he/she must subscribe an oath and, unless dispensed with by order of the court.

## After the Guardianship Hearing

At the end of the hearing, the court will usually tell you what decision it has made. The court can make an order for:

- a full guardianship of the person only
- a limited guardianship of the person
- a full guardianship of the estate only
- a limited guardianship of the estate
- a guardianship of the person and estate

Sometimes the court will not make any orders. This may be because the problems that led to the application have been resolved, or the court decides that the person does not need a guardian.

Copies of the court's Guardianship Order and reasons for decision will be available after the hearing. These may be sent to:

- the person who the order is about - the alleged incapacitated person
- the guardian, if one is appointed
- the petitioner
- any other interested parties

## The Guardianship Order

If the court makes a Guardianship Order, it will state:

- the name of the guardian
- the decision making functions/duties of the guardian - these may include decisions about matters such as where the person will live, what services they

will receive or decisions about their health care and medical and dental treatment

- any conditions that the guardian must observe
- any recommendations the court makes
- the duration of the guardianship

## Responsibilities of a Guardian

The court makes Guardianship Orders to meet the needs of the person whose capacity is diminished. Some guardians only need authority for certain kinds of decisions. If this is the case, a limited Guardianship Order will be made and the guardian's functions listed. Sometimes a guardian may be given full power to make decisions for the person. This is called a plenary order. The order should restrict the rights and freedom of the person with diminished capacity as little as possible. The guardian is usually required under the order to consult with the person with the disability if they have some capacity to understand and communicate, and to consider their views. If the guardian has any questions he/she can contact the court.

## Reporting Requirements

Within ninety (90) days of appointment, a guardian may be required to file an inventory, a list of the incapacitated person's assets and a personal care plan; to post a bond and designate a standby guardian to serve when the guardian is temporarily unavailable. Guardians are required to report periodically (annually or tri-annually) to the court on the status of the incapacitated person and his or her finances.

## Guidance from the Court

The person who has been appointed guardian can apply to the court at any time for instructions about how to do what the order says. This normally involves a hearing, and the court may then give directions to help the guardian.

# Types of Guardians

**Lay guardians** are non-professionals, generally family members of the incapacitated person, appointed by the court to provide guardianship services at no cost.

A **certified professional guardian** is an individual appointed by the superior courts of Washington who is not a member of the incapacitated person's family and who charges fees for carrying out the duties of a court-appointed guardian of three or more incapacitated persons. For more information go to:

[http://www.courts.wa.gov/programs\\_orgs/guardian/](http://www.courts.wa.gov/programs_orgs/guardian/)

**Public guardians** are compensated under a contract with the Office of Public Guardianship to provide guardianship services in Clallam, Grays Harbor, King, Okanogan, Pierce and Spokane Counties. Public guardians may serve as guardian of

the person and the estate for individuals satisfying the following eligibility criteria, who have been determined by the superior court to be incapacitated:

- Must be age 18 years or older, and
- Income does not exceed 200 percent of the federal poverty level. *For 2014, income cannot exceed \$23,340.00 annually or \$1,945.00 monthly; this number may change from calendar year to calendar year and eligibility would change accordingly, or*
- Is receiving long-term care services through the Washington State DSHS, and
- There is no one else qualified, willing and able to serve.

Incapacitated individuals from the following vulnerable populations are priorities for service delivery:

- Indigent/Homeless.
- At significant risk of harm from abuse, exploitation, abandonment, neglect, or self-neglect.
- In imminent danger of loss or significant reduction in public services that are necessary to live successfully in the most integrated and least restrictive environment that is appropriate for a specific individual.

Due to budget cuts the Office of Public Guardianship stopped accepting new cases May 2009.

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