

Uniform Guardianship,
Conservatorship, and Other
Protective Arrangements Act



Responsibilities of Guardians and
Conservators under the UGA – Part 2

Notice Requirements Upon Appointment-Guardian Fourteen (14) Day Notice

- ❖ Within 14 days
- ❖ Copy of the order of appointment, together with notice of the right to request termination or modification
- ❖ To: Individual/Persons receiving notice of hearing and petition/Any other notice party

RCW 11.130.315 (1)

Notice Requirements Upon Appointment - Guardian Thirty (30) Day Notice

- ❖ Within 30 days
- ❖ Notice of Rights – see font and language requirements
- ❖ To: Individual/Persons identified as entitled to notice in the order of appointment or any other court order

RCW 11.130.315 (2)

Giving Notice

- ❖ RCW 11.130.315 requires the guardian to “give notice” to the identified persons for both the 14 day and 30 notices.
- ❖ No statutory definition of what constitutes “give notice”

Notice Requirements Upon Appointment-Conservator Fourteen (14) Day Notice

- ❖ Within 14 days
- ❖ Copy of the order of appointment, together with notice of the right to request termination or modification
- ❖ To: Individual/Persons receiving notice of hearing and petition/Any other notice party

RCW 11.130.425 (1)

Notice Requirements Upon Appointment - Conservator Thirty (30) Day Notice

- ❖ Within 30 days
- ❖ Notice of Rights – see font and language requirements
- ❖ To: Individual/Persons identified as entitled to notice in the order of appointment or any other court order

RCW 11.130.425 (2)

An Adult's Rights in a Guardianship



The adult and other parties entitled to notice must receive a notice of rights of the individual in the guardianship... a look at those rights

Rights of the Individual in a Guardianship

RCW 11.130.315 (2) (a-i)

- Pursue modifying or terminating the guardianship or removing the guardian. Individual may choose an attorney to represent them.
- Be involved in decisions about care, residence, relationships, etc. as feasible
- Be involved in health care decisions as feasible, supported in understanding risks and benefits of options as feasible
- Be notified 14 days before a change in primary dwelling or permanent move to a nursing home, mental health facility, or other facility with restrictions on leaving/visitors (unless in guardian's plan or other court order)
- Object to the permanent dwelling move or to one of the facilities described and receive information on how to object

Rights of the Individual in a Guardianship

RCW 11.130.315 (2) (a-i)

- Associate with others through visitation, social media, mail, phone, etc. unless: 1. specific court order allowing restriction, 2. protective order or protective arrangements or, 3. good cause to believe restriction is necessary because interaction with a specified person poses a risk of significant physical, psychological, or financial harm to the adult – with time limits – not more than 7 business days if relative or preexisting social relationship or 60 days if not
- Individual's rights of association under RCW 11.130.335 (5) (different terms)

Rights of the Individual in a Guardianship

RCW 11.130.315 (2) (a-i)

- Receive a copy of plan and report



- Object to plan or report

Rights of the Individual in a Conservatorship

RCW 11.130.425 (2) (a-d)

- Pursue modifying or terminating the conservatorship or removing the conservator. Individual may choose an attorney to represent them
- Participate in decision making, as feasible
- Receive a copy of plan, inventory and report
- Object to plan, inventory or report

Powers of a Guardian for an Adult

Special Limitations on Guardian's Power

RCW 11.130.330



- Powers

RCW 11.130.335

- Special Limits on Powers

Powers of a Guardian for an Adult

- (1) Except as limited by court order, a guardian for an adult may...

Powers of a Guardian for an Adult RCW 11.130.330 (1) (a)

- (a) Apply for and receive funds and benefits as a representative payee or an authorized representative or protective payee for the support of the adult, unless a conservator is appointed for the adult and the application or receipt is within the powers of the conservator

Powers of a Guardian for an Adult RCW 11.130.330 (1) (d)

- (d) If a conservator for the adult has not been appointed, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel another person to support the adult or pay funds for the adult's benefit

Guardian Powers and Residential Decisions

Residential Decisions



There are a number of provisions in the UGA that govern residential decisions

Powers and Residential Decisions

- ✓ RCW 11.130.330 (1) (b) Unless inconsistent with a court order, establish the adult's place of dwelling; See RCW 11.130.330 (5) re: How
- ✓ Apply Substituted Judgment if able
- ✓ If unable, then Best Interests
- ✓ Priority to: Interactions with People Important to the Individual and Least Restrictive, EXCEPT if inconsistent with Substituted Judgement and Best Interest

Powers and Residential Decisions

RCW 11.130.330 (5) (d) (e) and (f)

- ✓ (d) Establish or move the permanent place of dwelling of the adult to a care setting that places restrictions on the adult's ability to leave or have visitors
- ✓ (e) Out of state
- ✓ (f) Take action that would result in the sale of or surrender of the lease to the primary dwelling of the adult

Special Limits on Powers

RCW 11.130.335 (2)

(2) A guardian for an adult shall not initiate the commitment of the adult to an evaluation and treatment facility except in accordance with the provisions of chapter **10.77**, **71.05**, or **72.23** RCW.

Guardian Powers and Medical Decisions

RCW 11.130.330 (1) (c) Consent to health or other care, treatment, or service for the adult; See 11.130.330 (6) re: HOW

- Involve the individual as feasible – support and encourage understanding risks and benefits
- Defer to a health care POA and cooperate
- Take into account risks and benefits and current and previous wishes of the individual if known/reasonably ascertainable


Special Limitations on Guardians Power

RCW 11.130.335 (3)

- ✓ Therapy or other procedure to induce convulsion;
- ✓ (b) Surgery solely for the purpose of psychosurgery; or
- ✓ (c) Other psychiatric or mental health procedures that restrict physical freedom of movement or the rights set forth in RCW 71.05.217.

Specific court authorization within past 30 days – see required procedure

Guardian Powers Continued

- The guardian has the power to receive personally identifiable health care information 
- To the extent reasonable, guardian may delegate to the adult responsibility for a decision affecting the adult's well-being
- Adoption - requires specific court order

Guardian Powers Continued

- Specific court order may authorize a guardian for an adult to:
 - (a) Consent or withhold consent to the marriage of the adult **IF** the adult's right to marry has been removed under RCW 11.130.310;
 - (b) Petition for divorce, dissolution, or annulment of marriage of the adult or a declaration of invalidity of the adult's marriage; or
 - (c) Support or oppose a petition for divorce, dissolution, or annulment of marriage of the adult or a declaration of invalidity of the adult's marriage.

Special Limitations on Guardians Power, Continued

RCW 11.130.335(1)

- ✓ Guardian does not have the power to revoke or amend a POA for health care or finances
- ✓ Decision by a health care agent under a POA takes precedence over guardian absent court order
- ✓ Decision by a finances agent under a POA takes precedence over guardian absent court order
- ✓ Court may revoke or amend a POA

Special Limitations on Guardians Power, Continued Rights of Association

RCW 11.130.335(5)

Except as otherwise provided in this section, an adult subject to a guardianship, conservatorship, or other protective arrangement retains the right to associate with other persons of the adult's choosing. This right includes, but is not limited to, the right to freely communicate and interact with other persons, whether through in-person visits, telephone calls, electronic communication, personal mail, or other means.

Special Limitations on Guardians Power, Continued

Rights of Association - RCW 11.130.335(5)

If individual is unable to express consent or unable to make a decision, then the guardian (or conservator or person acting under a protective arrangement) shall:



- ❖ Personally inform individual of decision being considered in plain language to maximize understanding
- ❖ Maximize the individual's participation in the decision as much as possible
- ❖ Give substantial weight to individual's preferences – current and historical

Special Limitations on Guardians Power, Continued Rights of Association

Guardian (or conservator or person acting under a protective arrangement) **may not restrict** an individual's right to communicate, visit, interact, or otherwise associate with persons of their choosing **UNLESS**

- ✓ **Specifically authorized by court order** in guardianship (or conservatorship or protective arrangement)
- ✓ **Restriction pursuant to a protection order** issued under chapter 74.34 or 26.50 RCW or other law that limits contact

or

Special Limitations on Guardians Power, Continued Rights of Association

- ✓ Good cause to believe an **immediate need to restrict to protect** the adult from abuse, neglect, abandonment, or financial exploitation under 74.34.020 or protect the adult from activities that unnecessarily impose significant distress on the adult **AND**
- ✓ **Within fourteen calendar days** of imposing the restriction under (b)(iii)(A) of this subsection, the guardian or limited guardian, the conservator or limited conservator, or [the] person acting under the protective arrangement **files a petition for a protection order** under chapter 74.34 RCW can