

Uniform Guardianship,
Conservatorship, and Other
Protective Arrangements Act



Responsibilities of Guardians and
Conservators under the UGA – Part 3

Powers of Conservator Requiring Court Approval – RCW 11.130.435

Court
Approval
Needed



Powers of Conservator Requiring Court Approval – RCW 11.130.435

Start at the beginning...


- (1) Except as otherwise ordered by the court, a conservator must give notice to persons entitled to notice under RCW 11.130.370 (4) AND receive specific authorization by the court before the conservator may exercise with respect to the conservatorship the power to:

NOTICE AND COURT AUTHORIZATION

Powers of Conservator Requiring Court Approval – RCW 11.130.435

- Gifts (except de minimis value)
- Sell, encumber, surrender a lease to individual's primary dwelling
- Sell or encumber an interest in any other real estate
- Convey, release, or disclaim an interest in property, including marital property
- Exercise or release a power of appointment

Powers of Conservator Requiring Court Approval – RCW 11.130.435

- Create a revocable or irrevocable trust or revoke or amend a trust created by the individual
- Exercise a right to elect an option or  change a beneficiary under an insurance policy or annuity or surrender for cash value
- Exercise a right to a quasi-community property share or right to an elective share of a deceased spouse or domestic partner or disclaim an interest
- Grant a creditor priority for payment over same or higher class creditor
- Make, modify, amend or revoke the will of the individual

Powers of Conservator Requiring Court Approval – RCW 11.130.435

- Acquire or dispose of property (including real property in another state)
- Make ordinary or extraordinary repairs or alterations in a building
- Subdivide or develop land
- Enter into a lease of property
- Structure the finances to make the individual eligible for public benefits, including by gifts

Court's Consideration of Potential Conservator Actions Requiring Approval

❖ Individual's prior or current directions, preferences, opinions, values, and actions – to extent conservator knows or can ascertain

❖ Court also considers:



Financial needs of individual and dependents, interests of individual's creditors/reduction of tax liabilities/governmental assistance eligibility/previous gifts and support/ estate planning or lack of/ life expectancy and likelihood of conservatorship ending before death/ any other relevant information

Powers of Conservator Requiring Court Approval – RCW 11.130.435 (4)

- A conservator may not revoke or amend a power of attorney for finances executed by the individual subject to conservatorship. If a power of attorney for finances is in effect, a decision of the agent within the scope of the agent's authority takes precedence over that of the conservator, unless the court orders otherwise

RCW 11.130.440 (2) and (3)

- ❖ Requiring an accounting for the administration of the conservatorship estate
- ❖ Directing distribution

RCW 11.130.520

- ❖ Administrative powers of conservator not requiring court approval but, subject to RCW 11.130.435 (actions requiring court approval) and as limited by court's order of appointment

RCW 11.130.520 –
Administrative Powers not Requiring Court Approval

❖ Conservator - acting reasonably and consistent with the fiduciary duties of the conservator to accomplish the purpose of the conservatorship, without specific court authorization or confirmation, may with respect to the conservatorship estate:

RCW 11.130.520 –
Administrative Powers not Requiring Court Approval

Examples – not an exhaustive list

- ✓ collecting and holding property;
- ✓ receiving additions to the conservatorship estate;
- ✓ continuing the operation of a business or other enterprise;
- ✓ Acquiring an undivided interest in property in which the conservator, in a fiduciary capacity, holds an undivided interest

RCW 11.130.520 – Administrative Powers not Requiring Court Approval

Examples – not an exhaustive list

- ✓ Investing assets;
- ✓ Depositing funds or other property in a financial institution,
- ✓ Insuring the conservatorship estate in accordance with statutory standards:
- ✓ Pay a tax;
- ✓ Pay a sum distributable to the individual or dependent in fact

Distributions Not Requiring Court Approval RCW 11.130.525



Distributions Not Requiring Court Approval

RCW 11.130.525

- Subject to Order Appointing the Conservator
- Subject to RCW 11.1130.435 (court approval required)
- Subject to not being contrary to Conservator's Plan

Conservator may expend or distribute income or principal of the conservatorship estate without specific court authorization or confirmation for the support, care, education, health, or welfare of the individual subject to conservatorship or an individual who is in fact dependent.... Subject to rules in 11.130.525 rules in sections (1-4)

Distributions Not Requiring Court Approval

RCW 11.130.525 – Rules in (1-4)

- The conservator shall consider a recommendation relating to the appropriate standard of support, care, education, health, or welfare for the individual or a dependent, made by a guardian for the individual subject to conservatorship

Distributions Not Requiring Court Approval

RCW 11.130.525 – Rules in (1-4)

- No liability for distribution or expenditure based on recommendation of guardian, **IF**

Acting in compliance with conservator's duties under RCW 11.130.505,

UNLESS

Conservator knows it's not in the best interest of the individual

Distributions Not Requiring Court Approval

RCW 11.130.525 – Rules in (1-4)

Considerations in making a distribution or expenditure:

- Size of the conservatorship estate, the estimated duration of the conservatorship, and the likelihood the individual subject to conservatorship, at some future time, may be fully self-sufficient and able to manage the individual's financial affairs and the conservatorship estate;
- (b) The accustomed standard of living of the individual subject to conservatorship and individual who is dependent on the individual subject to conservatorship;
- (c) Other funds or source used for the support of the individual subject to conservatorship; and
- (d) The preferences, values, and prior directions of the individual subject to conservatorship

Distributions Not Requiring Court Approval

RCW 11.130.525 – Rules in (1-4)

- Funds may be paid as Reimbursement or

- Paid in advance , **IF**



it is reasonable to expect the services will be performed and advance payment is customary or reasonably necessary under the circumstances

Additional sections to note

- ✓ Presentation and allowance of claim – RCW 11.130.555



- ✓ Death of Individual Subject to Conservatorship – RCW 11.130.550

Guardians Plan and Report, and Conservators Plan, Inventory and Report

