

Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act



UGA Basics -
Overview of the Statute
RCW 11.130

January 1, 2022

- ▶ RCW 11.88 and RCW 11.92 are repealed effective January 1, 2022
- ▶ RCW 11.130 is the law governing adult guardianships, conservatorships and protective arrangements starting January 1, 2022
- ▶ The UGA also has specific provisions governing Supported Decision Making Agreements that become effective January 1, 2022

Letters of Guardianship - Validity Application of New Law

▶ RCW 11.130.040 Letters of Office - (8) This chapter does not affect the validity of letters of office issued under *chapter 11.88 RCW prior to January 1, 2022.

▶ RCW 11.130.910 Applicability - Chapter RCW 11.130 applies to:

(1) A proceeding for appointment of a guardian or conservator or for a protective arrangement instead of guardianship or conservatorship commenced after January 1, 2022 and

(2) Guardianships (or conservatorships/protective arrangements) existing on January 1, 2022. If court finds the new law would substantially interfere with the effective conduct of the proceeding or prejudice the rights of a party, particular provisions of UGA does not apply

RCW 11.130 - Organization

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| Article 1 - General Provisions | Article 5 - Protective Arrangements |
| Article 2 - Minor Guardianships | Article 6 - Forms |
| Article 3 - Adult Guardianships | Article 7 - Grievances and Supported Decision Making Agreements |
| Article 4 - Conservatorships | Article 8 - Miscellaneous |

UGA Themes


Person-Centered -
meaningful notice of rights,
involvement in decisions, person
centered plans

Rights and Interests of
Individuals - least
restrictive means, guidance to
guardians and conservators



Definitions

RCW 11.130.010

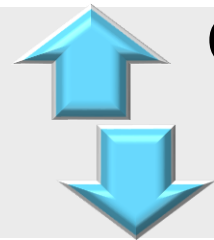
(33) "**Respondent**" means an individual for whom appointment of a guardian or conservator or a protective arrangement instead of guardianship or conservatorship is sought 

(13) "**Individual subject to conservatorship**" means an adult or minor for whom a conservator has been appointed under this chapter.

(14) "**Individual subject to guardianship**" means an adult or minor for whom a guardian has been appointed under this chapter.

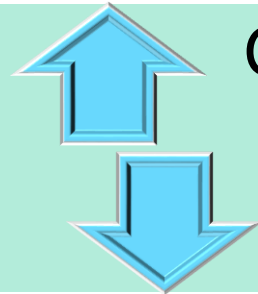
Guardians and Conservators

*Guardians have some limited financial powers and duties under the UGA



Guardian

No more “guardian of the person”



Conservator

No more “guardian of the estate”

Financial Duties and Powers of a Guardian

□ RCW 11.130.330 - Powers of guardian for adult

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

(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

□ RCW 11.130.325 - Duties of guardian for adult

(3) A guardian for an adult at all times shall exercise reasonable care, diligence, and prudence when acting on behalf of or making decisions for the adult. In furtherance of this duty, the guardian shall:.... (b) Expend funds and other property of the adult received by the guardian for the adult's current needs for support, care, education, health, and welfare;

The Individual

Respondent/ Individual

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...



Basis for Appointing a Guardian for an Adult RCW 11.130.265

- ▶ i) The respondent lacks the ability to meet essential requirements for physical health, safety, or self-care because the respondent is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance, or supported decision making;
- ▶ (ii) Appointment is necessary to prevent significant risk of harm to the adult respondent's physical health, safety, or self-care; and
- ▶ (iii) The respondent's identified needs cannot be met by a protective arrangement instead of guardianship or other less restrictive alternative

Basis for Appointing a Conservator for an Adult - RCW 11.130.360

- ▶ a) The adult is unable to manage property or financial affairs because:
 - ▶ (i) Of a limitation in the adult's ability to receive and evaluate information or make or communicate decisions, even with the use of appropriate supportive services, technological assistance, or supported decision making; or
 - ▶ (ii) The adult is missing, detained, or unable to return to the United States

Basis for Appointing a Conservator for an Adult - RCW 11.130.360

- ▶ (b) Appointment is necessary to:
 - ▶ (i) Avoid harm to the adult or significant dissipation of the property of the adult; or
 - ▶ (ii) Obtain or provide funds or other property needed for the support, care, education, health, or welfare of the adult or of an individual entitled to the adult's support; and
- ▶ (c) The adult's identified needs cannot be met by a protective arrangement instead of conservatorship or other less restrictive alternatives

Full vs. Limited Guardianship or Conservatorship

- ❖ Adult Guardianships and Conservatorships
- concept congruent with current law

Supported Decision Making Agreements

RCW 11.130.700-755



- ✓ Agreement between individual (with disabilities who needs assistance with decisions regarding daily living) and one or more “supporters” (person who assists the individual)
- ✓ Supporter assists with understanding, obtaining, communicating information for identified aspects of the individual’s life
- ✓ Non-judicial process

Supported Decision Making Agreements

- ❑ SDMA under the chapter must be in writing
- ❑ Requires two qualified witnesses or notary (see disqualified witnesses)
- ❑ General form in statute; agreement will be unique to the individual
- ❑ Either party may terminate (individual in writing, orally or by other means)
- ❑ Supporters may not be either: employer/employee or direct provider of paid support services to individual (unless immediate family member) or object of a protective order or civil or criminal order prohibiting contact
- ❑ Recipients of the agreement shall rely on the agreement, no liability if rely in good faith; must report RCW 74.34.020 vulnerable adult abuse, etc. to DSHS

Protective Arrangements under Article 5



Court Ordered
Arrangement to Meet
an Individual's Needs -
limited to time/task

Examples of Protective Arrangements Instead of Guardianship

- A particular medical treatment or refusal of a particular medical treatment;
- Visits (including supervised visits) between the adult and another person;
- Restricting access to the adult by a specific person if that person puts the adult at serious risk of physical, psychological, or financial harm;
- Other arrangements that are appropriate for the adult

Examples of Protective Arrangements Instead of Conservatorship

- An action to establish eligibility for benefits
- Paying, delivering, depositing, or retaining funds or other property
- Sale, mortgage, lease, or other transfer of property
- Purchase of an annuity
- A contract such as one to provide for personal care, supportive services, education, training, or employment
- Adding to or setting up a trust



Examples of Protective Arrangements Instead of Conservatorship

- Ratifying (confirming) or invalidating (canceling) a contract, trust, will, or other transaction, including a transaction related to the property or business affairs of the respondent
- Settlement of a claim
- Restricting access to the adult's property by a specific person if that person's access puts the adult at serious risk of financial harm.

Changes, modifications and terminations


- What are the individual circumstances of clients?
- Are there areas of the individual's life - a guardian or conservator no longer required?
- Is a supported decision making agreement or protective arrangement a potential option?

Timelines for notification - adult capable of exercise of rights previously removed
RCW 11.130.325 (6) and RCW 11.130.505 (13)

Immediately shall notify the **court** if the ***condition of the adult has changed*** so that the adult is capable of exercising rights previously removed.



What if an individual needs protection for their property?

RCW 11.130.325 (3) (a) - Guardian shall bring a proceeding for a conservatorship  of protective arrangement instead of conservatorship if necessary to protect the adult's property

Qualifications RCW 11.130.090



- Suitable person over the age of twenty-one years *18 if parent
- 🔊 Disqualified if convicted of a crime involving dishonesty, neglect, or use of physical force or other crime relevant to the functions the individual would assume as guardian

Disclosures

RCW 11.130.085



- (a) Is or has been a debtor in a bankruptcy, insolvency, or receivership proceeding;
- (b) Has been convicted of:
 - (i) A felony;
 - (ii) A crime involving dishonesty, neglect, violence, or use of physical force; or
 - (iii) Other crimes relevant to the functions the individual would assume as guardian or conservator; or
- (c) Has any court finding of a breach of fiduciary duty or a violation of any state's consumer protection act, or violation of any other statute proscribing unfair or deceptive acts or practices in the conduct of any business.

Disclosures Regarding Agents

RCW 11.130.085



- ❖ Guardian or conservator that engages/will engage an agent they know has been convicted of a felony, a crime involving dishonesty, neglect, violence, or use of physical force, or other crimes relevant to the functions the agent is being engaged to perform promptly shall disclose that knowledge to the court.
- ❖ Conservator - disclose agent bankruptcies, etc.
- ❖ Guardian or conservator - consumer protection, etc.

Confidentiality of Records

RCW 11.130.300, 11.130.410 and 11.130.630

RCW 11.130.300 Confidentiality of records (Guardianship)

(2) An adult subject to a proceeding for a guardianship, whether or not a guardian is appointed, an attorney designated by the adult, and a person entitled to notice under RCW 11.130.310(5) or a subsequent order are entitled to access court records of the proceeding and resulting guardianship, including the guardian's plan under RCW 11.130.340 and report under RCW 11.130.345. A person not otherwise entitled to access court records under this subsection for good cause may petition the court for access to court records of the guardianship, including the guardian's report and plan. The court shall grant access if access is in the best interest of the respondent or adult subject to guardianship or furthers the public interest and does not endanger the welfare or financial interests of the adult.

Use of Agent by Guardian or Conservator

(1) Except as otherwise provided in subsection (3) of this section, a guardian or conservator **may delegate a power to an agent** which a **prudent guardian or conservator** of comparable **skills could delegate prudently** under the circumstances **if the delegation is consistent with the guardian's or conservator's fiduciary duties and the guardian's plan** under RCW 11.130.340 **or the conservator's plan** under RCW 11.130.510

Use of Agent by Guardian or Conservator

Guardian or conservator shall exercise reasonable care, skill, and caution in:

- Selecting agent
- Establishing the scope and terms of the agent's work in accordance with the guardian's plan or the conservator's plan
- Monitoring the agent's performance and compliance
- Redressing an act or omission of the agent which would be a breach of the guardian's or conservator's duties if done by them
- Ensuring a background check is conducted on the agent, or conducted on persons employed by the agent when those persons are providing services to the individual subject to a guardianship or conservatorship.

RCW 11.130.120

- ❖ Third parties must not recognize a guardian or conservator's authority under certain circumstances
- ❖ Third parties may refuse to recognize the authority of a guardian or conservator to act on behalf of an individual



Notice of Rights - Pattern Form Language 30 Day Notice Form

You have the right to:

- exercise any right the court has not given to your guardian or conservator;
- ask the court to end your guardianship, conservatorship, or both;
- ask the court to increase or decrease the powers granted to your guardian, conservator, or both;
- ask the court to make other changes that affect what your guardian and/or conservator can do or how they do it;
- ask the court to replace the person that was appointed with someone else; and
- hire an attorney to help you do any of these things.

Notice of Rights - Pattern Form Language 30 Day Notice Form

As an individual subject to guardianship, you have a right to:

- Be involved in decisions affecting you, including decisions about your care, where you live, your activities, and your social interactions, to the extent reasonably feasible;
- Be involved in decisions about your health care to the extent reasonably feasible, and to have other people help you understand the risks and benefits of health care options;
- Be notified at least fourteen days in advance of a change in where you live or a permanent move to a nursing home, mental health facility, or other facility that places restrictions on your ability to leave or have visitors, unless the guardian has proposed this change in the guardian's plan or the court has expressly authorized it;



Notice of Rights - Pattern Form Language 30 Day Notice Form

- Ask the court to prevent your guardian from changing where you live, selling, or surrendering your primary dwelling by following the appropriate process for objecting to such a move in compliance with RCW 11.130.330 (5);
- Vote and get married unless the court order appointing your guardian states that you cannot do so;
- Receive a copy of your guardian's report and your guardian's plan; and
- Communicate, visit, or interact with other people (this includes the right to have visitors, to make and receive telephone calls, personal mail, or electronic communications) unless:

Notice of Rights - Pattern Form Language 30 Day Notice Form

- o Your guardian has been authorized by the court by specific order to restrict these communications, visits, or interactions;
- o A protective order is in effect that limits contact between you and other people; or
- o Your guardian has good cause to believe the restriction is needed to protect you from significant physical, psychological, or financial harm and the restriction is for not more than seven business days if the person has a relative or preexisting social relationship with you or not more than sixty days if the person does not have that kind of relationship with you.



Notice of Rights - Pattern Form Language 30 Day Notice Form

As an individual subject to conservatorship, you have a right to:

- Participate in decisions about how your property is managed to the extent feasible; and
- Receive a copy of your conservator's inventory, report, and plan.

Violation of Rights

RCW 11.130.140



If your guardian/conservator is violating an individual's rights, the individual or others interested in their welfare may file a complaint or grievance. There are complaint and grievance court review processes in the statute.

Duties and Responsibilities of Guardians and Conservators



Webinars regarding the duties and responsibilities of a guardian and conservator under the statute and the Standards of Practice adopted by the Board will be available shortly