



New Washington Adult Guardianship Law Effective January 1, 2022 **General Information Sheet**

The Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act - RCW 11.130

- To learn general information about this law, read this **General Information Sheet**.
- This **General Information Sheet** provides an overview of the law. It doesn't cover all of the law. To read the entire law, follow this link:

[RCW 11.130](#)

- To learn information about how the new law affects an existing guardianship case, read the **Information Sheet for Current Guardians of Adults**

*****The Administrative Office of the Courts is not permitted to give legal advice. The information provided below is for general informational purposes only. You may wish to consult with an attorney to assist you. This general information is subject to the terms of RCW 11.130 in its entirety. Local superior court rules and procedures may supplement this information. This general information sheet does not instruct you on how to petition for a guardianship, conservatorship or other protective arrangement.*

GUARDIANSHIP LAW CHANGES EFFECTIVE JANUARY 1, 2022

- Date of law change.

The new adult guardianship, conservatorship and other protective arrangements law becomes effective on January 1, 2022.

- What happens to the prior laws?

The laws that apply to adult guardianships prior to 2022, RCW 11.88 and RCW 11.92, will be repealed (no longer in effect) on January 1, 2022. There may be limited circumstances when a court may find that following the new law would substantially interfere with a guardianship proceeding or prejudice (influence in a negative way) the rights of a party. The court may consider the prior law in that event.

- Are all existing guardianships under the new law?

Yes. The new law applies to all guardianships starting on January 1, 2022, no matter when the guardianship case was started.

ADULT GUARDIANSHIP WHEN MAY A GUARDIAN BE APPOINTED FOR AN ADULT

➤ When may a court appoint a guardian for an adult?

A court may appoint a guardian for an adult when the adult is unable to meet their basic needs for physical health, safety, or self-care. The court would have to determine that the adult is unable to receive and evaluate information or make or communicate decisions, even with support or assistance. There must be a significant risk of harm to the adult unless a guardian is appointed. If the adult's needs can be met in other ways, the court may not appoint a guardian.

➤ What other options must be considered before a court may appoint a guardian for an adult?

The court must consider whether less restrictive alternatives, including a protective arrangement, would be sufficient to meet the adult's needs.

➤ What are less restrictive alternatives and protective arrangements?

Less restrictive alternatives are ways of meeting the adult's needs without having to appoint a guardian. Options might include: a power of attorney, technological assistance, or supported decision making, including a supported decision making agreement, for example. A protective arrangement is a court ordered arrangement that may meet the adult's needs instead of a guardianship. Read more below.

➤ What should be considered regarding whether a less restrictive alternative or protective arrangement would meet an adult's needs?

It depends on the individual circumstances of the adult. Considerations include the adult's abilities, prior arrangements, availability of other options, and available supports in the adult's life.

SUPPORTED DECISION MAKING AGREEMENTS

➤ What's a supported decision making agreement?

A supported decision making agreement is an agreement that does not require court proceedings. An individual with a disability makes an agreement with a “supporter” to assist them in gathering information, considering the consequences of their decisions, and/or communicating their decisions. The agreement has to be in writing and meet other criteria. The parts of the law about these agreements are located at RCW 11.130.700-755. Link:

[RCW 11.130.700-755](#)

➤ Who may be a supporter for an individual?

A supporter may be a family member or friend or other individual interested in assisting an adult with disabilities. Certain people may not be supporters, including the adult's employer or employee, or a person providing paid support service to the adult. Immediate family members of the adult in those roles may be supporters, however. If the adult has a protective order or other order prohibiting contact with the adult against someone, that person is disqualified.

➤ Will all supported decision making agreements be the same?

No. The individual and the supporter will make an agreement about what kinds of decisions the individual would like to have assistance with. For example, an individual may only wish to have assistance with medical decision making, or finances. The agreements must be in writing and either be notarized or witnessed by two qualified witnesses. A general form of the agreement is in the statute. See RCW 11.130.745

PROTECTIVE ARRANGEMENTS INSTEAD OF ADULT GUARDIANSHIP

➤ What's a protective arrangement?

A protective arrangement is a type of court order under the new guardianship law. The court proceedings are very similar to guardianship and conservatorship proceedings. The court may change a proceeding for a guardianship or conservatorship to a protective arrangement proceeding if appropriate. Instead of establishing a guardianship or conservatorship, the court may order that one or more specific tasks are authorized, or other protective arrangement is authorized.

➤ When may a court order a protective arrangement instead of a guardianship?

A court may order a protective arrangement instead of establishing a guardianship for an adult when the adult is unable to meet their basic needs for physical health, safety, or self-care. Similar to guardianship, the court would have to determine that the adult is unable to receive and evaluate information or make or communicate decisions, even with support or assistance. If the adult's needs can be met by other less restrictive means, the court won't order a protective arrangement either.

➤ How is a protective arrangement different than guardianship?

The court authorizes the specific task or other arrangement only. The court does not set up an on-going guardianship that requires regular reporting to the court. If there are any reporting requirements, the court order will state that information.

- What are some examples of a protective arrangement instead of guardianship?

Examples of protective arrangements instead of a guardianship may include:

- 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

CONSERVATORSHIP

- What is a conservator?

A conservator is someone who is appointed by the court to make decisions about finances and property on behalf of an individual.

- When may a court appoint a conservator for an adult?

A court may appoint a conservator for an adult when the adult is unable to manage their property or financial affairs. One circumstance is if the adult is unable to receive and evaluate information or make or communicate decisions, even with support or assistance. Another reason may be if the adult is missing, detained, or unable to return to the United States

There must be a significant risk of harm to the adult or their property unless a conservator is appointed. Another possibility is if a conservator is needed to obtain or provide funds or other property for the adult's support, care, education, health, or welfare. A conservator may also be needed to obtain or provide funds for the adult's legal dependents (such as minor children).

Just as in guardianship, if the adult's needs can be met by a less restrictive alternative or protective arrangement, the court may not appoint a conservator.

➤ What may be a less restrictive alternative to a conservatorship?

Examples may include a power of attorney for finances, a representative payee-ship, or a trust. Depending on the circumstances of the individual, supported decision making, including a supported decision making agreement that covers assistance with financial decisions, might be appropriate.

➤ What are examples of protective arrangements instead of a conservatorship?

If appropriate, the court may order a protective arrangement that may include:

- 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
- 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.

MINOR CONSERVATORSHIP

- May a conservator be appointed for a minor?

Yes. A conservator may be appointed for a minor.

- When may a conservator be appointed for a minor?

Appointment of a conservator would have to be in the minor's best interest. The court will consider whether a minor's parent thinks such an appointment is in the minor's best interest. The appointment must be necessary to provide management or other protection for the minor's property or manage risk to the property due to the minor's age. Another reason would be if appointment of a conservator is needed to obtain or provide funds for the minor's support, care, education, health, or welfare.

- May a protective arrangement be ordered for a minor instead of establishing a conservatorship?

Yes. A protective arrangement may be ordered if that provides the necessary protection of the minor's interest in property and finances.

- May a protective arrangement be ordered for a minor instead of establishing a guardianship?

No. A minor's guardian appointed under RCW 11.130 has the duties and responsibilities of a parent, unless the court orders otherwise. There is no provision in the law for a protective arrangement instead of a guardianship for a minor.

GENERAL QUESTIONS ABOUT GUARDIANSHIP AND CONSERVATORSHIP UNDER RCW 11.130

- May someone be appointed as both the guardian and the conservator for an individual?

Yes. The same person can be appointed as both guardian and conservator for an individual.

- What if the guardian and the conservator are different people?

Guardians and conservators both have a fiduciary duty to the individual subject to guardianship/conservatorship. That means that they must act in the individual's best interest. Guardians and conservators have a duty to consult and cooperate with each other, and other fiduciaries if applicable (such as someone appointed under a power of attorney).

- How does a guardian or conservator show their authority to act on behalf of the individual?

The guardian or conservator may be issued Letters of Guardianship/Conservatorship once appointed by the court and upon satisfying the requirements of the law. This includes filing an Acceptance of Appointment. There may be a requirement to file a bond or comply with a verified receipt of funds by a financial institution requirement, for example. Out of state guardians and conservators must appoint a resident agent in Washington

- What's the difference between full and limited guardianships and conservatorships?

A guardianship or a conservatorship may be either full or limited. A full guardianship or conservatorship authorizes the guardian or conservator to exercise all authority available under the law. A limited guardianship or conservatorship authorizes the guardian or conservator to exercise only the authority that is granted in the order appointing them.

- Does a guardian or conservator have to meet any requirements?

Yes. There are age requirements. Generally, the minimum is age 21 in most cases (18 if a parent). Certain criminal convictions are disqualifying. Generally, if a person is 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, they are disqualified. The court may make an exception for a relative based on the facts of the case. There may be other reasons why the court may find that a person is not be suitable for appointment.

- Does a guardian or conservator have to disclose information to the court before being appointed?

Yes. Someone who wants to be appointed must disclose their criminal history, bankruptcies and other required information.

- Does a guardian have any financial authority or duties?

Depending on the case, a guardian may have authority over certain property and finances of the individual. If the guardian has been given that authority by the court, the guardian will have a duty to spend funds for the individual's care and support. Whether or not a guardian has authority over any finances may depend on whether a conservator has been appointed or whether there is a power of attorney for finances in effect, for example.

- May a guardian or conservator charge fees for their services?

Yes, but all fees must be approved by the court before being paid. Any fees charged must also be reasonable and cost-efficient. A guardian or conservator may not charge above market rates for the service performed.

- Does a guardian or conservator have to name someone to take over their role as guardian or conservator if they are unable to serve?

A guardian or conservator does not have to nominate someone to take over if they are unable to continue. Identifying a successor guardian or conservator may be a good idea to best provide for the individual's needs if the guardian or conservator is not able to serve for some reason. Another option is appointing a co-guardian or co-conservator who may have authority to act jointly, or only upon an event happening.

- How long does the guardian or conservator appointment last?

A guardian or conservator appointment lasts until the guardianship or conservatorship is ended, the court approves the resignation of the guardian or conservator, the guardian or conservator is removed, or the guardian or conservator dies. The guardian or conservator must ask the court to approve a resignation.

- Can a person subject to guardianship/conservatorship have the guardianship/conservatorship modified (changed) or terminated (ended)?

The individual has the right to ask the court to limit or end a guardianship or conservatorship at any time. A guardian or conservator has a specific duty to promote the individual's self-determination and decision making, and assist the individual in regaining the right to make their own decisions if able.

EMERGENCY GUARDIANSHIP

➤ What's an emergency guardian?

Emergency guardians are appointed for a limited amount of time. An emergency guardian must be likely to prevent substantial harm that can't be undone later. Other less restrictive options must not be available. If anyone else has the authority and is willing to assist with the emergency needs of the adult, no emergency guardianship will be ordered.

The emergency guardian only has authority for a short time (60 days, or 120 days if an extension is granted.) The emergency guardian has only the limited authority stated in the court order.

➤ Can someone ask for an immediate order for an emergency guardian?

A petitioner in an emergency guardianship case can ask for an immediate order without notice to the adult. An immediate order is only available if the physical health, safety, or welfare of the adult will be substantially harmed before a hearing with notice can be held. Notice and a hearing must occur very soon after.

EMERGENCY CONSERVATORSHIP

➤ What's an emergency conservator?

An emergency conservator may be appointed for a limited amount of time to prevent substantial harm that can't be undone later to the individual's property or financial interests. The emergency conservator will only have authority for a short time (60 days, or 120 days if an extension is granted.) The emergency conservator will only have the limited authority stated in the court order.

RIGHTS OF THE INDIVIDUAL, DECISION MAKING, AND DUTIES AND RESPONSIBILITIES OF A GUARDIAN OR CONSERVATOR

- Does the individual in a guardianship or conservatorship have specific rights under the law?

Yes. The individual subject to a guardianship and/or conservatorship has a number of specific rights. The individual's rights include: the right to make decisions to the extent feasible, the right to express preferences and have preferences respected to the extent feasible, rights to notice about their rights, rights to notice about, and the right to object, before certain events such as residential changes and court review of plans and reports, rights to associate with others of their choosing subject to certain limitations, etc.

- Does the law say how a guardian or conservator is supposed to make decisions?

Yes. The law has instructions about how guardians and conservators should make decisions in guardianship and conservatorship.

- Does the law set forth the duties and responsibilities of a guardian and conservator?

Yes. The law has specific provisions about the duties and responsibilities of guardians and conservators. There are also limits on a guardian/conservator authority, and circumstances when the court's approval must be obtained prior to certain actions.

- Do guardians and conservators have on-going responsibilities to the court?

Yes. Guardians and conservators once appointed must prepare and file plans regarding how they intend to carry out their responsibilities. Guardians and conservators will need to file reports on a regular basis to keep the court informed about the individual and/or their property. The plans and reports must be approved by the court.

- How can a guardian or conservator learn about all these important responsibilities?

A new lay guardian training for guardians for adults and conservators for adults and minors will be available on the Administrative Office of the Courts website at the guardianship portal by January 1, 2022. The training will be on a web based program, has no cost, and will be available without advance registration.