

WASHINGTON UNIFORM GUARDIANSHIP, CONSERVATORSHIP, AND OTHER PROTECTIVE ARRANGEMENTS ACT
An Overview of Understanding the Procedural Fundamentals and Practical Implications of the UGA
May 16, 2023

1. Introduction:

- a. The UGA was developed by the Uniform Law Commission (“ULC”) and proposed in Washington by Senator Jamie Pedersen. The ULC develops and proposes laws in areas where it believes uniform laws between states is desirable. So far, the UGA has been enacted in Washington and Maine, and was proposed in Hawaii in 2023.
- b. Washington law
 - i. 2019 UGA bill - SB 5604 in Washington
 - ii. 2020 trailer bill - SB 6287
 - iii. Codified at RCW 11.130, replacing RCW 11.88 and 11.92
 - iv. 1/1/2021 effective in Washington mostly related to minor Guardianships.
 - v. 1/1/2022 majority of the UGA effective for Adult Guardianship and Conservatorship. It effectively repealed and replaced our entire Guardianship statute. (RCW 11.88 and RCW 11.92)
- c. This area of law impacts our most vulnerable groups: minor children, disabled, and the elderly. Positive changes in expanded due process, providing individualized options, preservation of dignity, and consequences for bad actors. Mixed reviews in the community and has been challenging for practitioners to navigate. Our local bar is handling this collegially and thoughtfully. Many local bars and the WA state bar have developed pattern forms which have been helpful to practitioners and lay Guardians.
- d. Legislative Intent: It is the 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, and that some people with incapacities cannot exercise their rights or provide for their basic needs without the help of a Guardian. However, their liberty and autonomy should be restricted through Guardianship, Conservatorship, emergency Guardianship, emergency Conservatorship, and other protective arrangements only to the minimum extent necessary to adequately provide for their own health or safety, or to adequately manage their financial affairs. (RCW 11.130.001)

2. General overview of Articles (*not an exhaustive list*)

- a. Article 1 – General Provisions – jurisdiction, venue, presumption of legal capacity, letters of office, compensation, registry, report summary
- b. Article 2 – Guardianship of a Minor (includes emergency)
- c. Article 3 – Guardianship of an Adult (includes emergency)
 - i. Basis for appointment of Guardian (RCW 11.130.265)
 - 1. Legal standard = clear and convincing evidence
 - 2. Respondent lacks the ability to meet essential requirements for physical health, safety, or self-care because Respondent is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance, or supported decision making;
 - 3. Appointment is necessary to prevent significant risk of harm to Respondent's physical health, safety, or self-care; and
 - 4. Respondent's identified needs cannot be met by a protective arrangement instead of Guardianship or other less restrictive alternative.
 - ii. Duties of Guardian (RCW 11.130.325)
 - 1. A Guardian for an Adult is a fiduciary and owes the highest duty of good faith and care to the person under a Guardianship.

2. A Guardian shall not substitute his or her moral or religious values, opinions, or philosophical beliefs for those of the person under a Guardianship.
3. Except as otherwise limited by the court, a Guardian for an Adult shall make decisions regarding the support, care, education, health, and welfare of the Adult subject to Guardianship to the extent necessitated by the Adult's limitations.
4. A Guardian for an Adult shall promote the self-determination of the Adult and, to the extent reasonably feasible, encourage the Adult to participate in decisions, act on the Adult's own behalf, and develop or regain the capacity to manage the Adult's personal affairs.
5. A Guardian shall become or remain personally acquainted with the Adult and maintain sufficient contact with the Adult, including through regular visitation, to know the Adult's abilities, limitations, needs, opportunities, and physical and mental health.
6. A Guardian shall identify the values and preferences of the Adult and involve the Adult in decisions affecting the Adult, including decisions about the Adult's care, dwelling, activities, or social interactions.
7. A Guardian shall make reasonable efforts to identify and facilitate supportive relationships and services for the Adult.
8. 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.
9. A Guardian shall take reasonable care of the personal effects, pets, and service or support animals of the Adult and bring a proceeding for a Conservatorship or protective arrangement instead of Conservatorship if necessary to protect the Adult's property.
10. A Guardian shall 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.
11. A Guardian shall conserve any funds and other property of the Adult not expended for the Adult's current needs for support care education, health, and welfare.
12. A Guardian shall monitor the quality of services, including long-term care services provided to the Adult.
13. In making a decision for an Adult subject to Guardianship, the Guardian shall make the decision the Guardian reasonably believes the Adult would make if the Adult were able unless doing so would unreasonably harm or endanger the welfare or personal or financial interests of the Adult. To determine the decision the Adult subject to Guardianship would make if able, the Guardian shall consider the Adult's previous or current directions, preferences, opinions, values, and actions, to the extent actually known or reasonably ascertainable by the Guardian.
14. If a Guardian for an Adult cannot make a decision because the Guardian does not know and cannot reasonably determine the decision the Adult probably would make if able, or the Guardian reasonably believes the decision the Adult would make would unreasonably harm or endanger the welfare or personal or financial interests of the Adult, the Guardian shall act in accordance with the best interests of the Adult. In determining the best interests of the Adult, the Guardian shall consider:
 - a. Information received from professionals and persons that demonstrate sufficient interest in the welfare of the Adult;
 - b. Other information the Guardian believes the Adult would have considered if the Adult were able to act; and
 - c. Other factors a reasonable person in the circumstances of the Adult would consider, including consequences for others.

15. To inform persons entitled to notice of the Adult's change in residence, admission to a medical facility, treatment in an emergency room for more than 24 hours, or death.
- iii. Powers of Guardian (RCW 11.130.330) – may be limited by court order
 1. Apply for and receive funds and benefits as a representative payee.
 2. Establish the Adult's place of dwelling, and shall:
 - a. Select a residential setting the Guardian believes the Adult would select if the Adult were able.
 - b. If the Guardian does not know and cannot reasonably determine what setting the Adult probably would choose, if able, or the Guardian reasonably believes the decision the Adult would make would unreasonably harm or endanger the welfare or personal or financial interests of the Adult, the Guardian shall choose a residential setting that is consistent with the Adult's best interest.
 - c. In selecting among residential settings, give priority to a residential setting in a location that will allow the Adult to interact with persons important to the Adult and meet the Adult's needs in the least restrictive manner reasonably feasible.
 - d. Comply with notice requirements to Adult and notice parties.
 3. Consent to health or other care, treatment, or service for the Adult, and shall:
 - a. Involve the Adult in decision making to the extent reasonably feasible, including, when practicable, by encouraging and supporting the Adult in understanding the risks and benefits of health care options.
 - b. Defer to a decision by an agent under a power of attorney for health care executed by the Adult and cooperate to the extent feasible with the agent making the decision.
 - c. Take into account risks and benefits of treatment options, and current and previous wishes and values of the Adult if known or reasonably ascertainable.
 4. Unless a Conservator has been appointed, a Guardian may commence a proceeding or take other appropriate action to compel another person to support the Adult or pay funds for the Adult's benefit.
 5. Delegate to the Adult responsibility for a decision affecting the Adult's well-being.
 6. Receive personally identifiable health care information regarding the Adult.
 7. The court by specific order may authorize a Guardian to consent to the adoption of the Adult.
 8. The court by specific 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.
 - 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.
 9. In determining whether to authorize a Guardian's powers, the court shall consider whether the underlying act would be in accordance with the Adult's preferences, values, and prior directions and whether the underlying act would be in the Adult's best interest.
 - d. Article 4 – Conservatorship of an Adult or Minor (includes emergency)
 - i. Basis for Appointment of Conservator (RCW 11.130.360)
 1. Legal standard = clear and convincing evidence
 2. The Adult is unable to manage property or financial affairs because:

- a. 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
 - b. The Adult is missing, detained, or unable to return to the United States.
 3. Appointment is necessary to:
 - a. Avoid harm to the Adult or significant dissipation of the property of the Adult; or
 - b. 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
 4. The Adult's identified needs cannot be met by a protective arrangement instead of Conservatorship or other less restrictive alternatives.
- ii. Duties of Conservator (RCW 11.130.505)
 1. A Conservator is a fiduciary and has duties of prudence and loyalty to the individual subject to Conservatorship.
 2. A Conservator shall promote the self-determination of the individual subject to Conservatorship and, to the extent feasible, encourage the individual to participate in decisions, act on the individual's own behalf, and develop or regain the capacity to manage the individual's personal affairs.
 3. In making a decision for an individual subject to Conservatorship, the Conservator shall make the decision the Conservator reasonably believes the individual would make if able, unless doing so would fail to preserve the resources needed to maintain the individual's well-being and lifestyle or otherwise unreasonably harm or endanger the welfare or personal or financial interests of the individual. To determine the decision the individual would make if able, the Conservator shall consider the individual's prior or current directions, preferences, opinions, values, and actions, to the extent actually known or reasonably ascertainable by the Conservator.
 4. If a Conservator cannot make a decision under subsection (3) of this section because the Conservator does not know and cannot reasonably determine the decision the individual subject to Conservatorship probably would make if able, or the Conservator reasonably believes the decision the individual would make would fail to preserve resources needed to maintain the individual's well-being and lifestyle or otherwise unreasonably harm or endanger the welfare or personal or financial interests of the individual, the Conservator shall act in accordance with the best interests of the individual. In determining the best interests of the individual, the Conservator shall consider:
 - a. Information received from professionals and persons that demonstrate sufficient interest in the welfare of the individual;
 - b. Other information the Conservator believes the individual would have considered if the individual were able to act; and
 - c. Other factors a reasonable person in the circumstances of the individual would consider, including consequences for others.
 5. A Conservator shall invest and manage the Conservatorship estate as a prudent investor would.
 6. The propriety of a Conservator's investment and management of the Conservatorship estate is determined in light of the facts and circumstances existing when the Conservator decides or acts and not by hindsight.
 7. A Conservator shall make a reasonable effort to verify facts relevant to the investment and management of the Conservatorship estate.

8. A Conservator that has special skills or expertise, or is named Conservator in reliance on the Conservator's representation of special skills or expertise, has a duty to use the special skills or expertise in carrying out the Conservator's duties.
 9. In investing, selecting specific property for distribution, and invoking a power of revocation or withdrawal for the use or benefit of the individual subject to Conservatorship, a Conservator shall consider any estate plan of the individual known or reasonably ascertainable to the Conservator and may examine the will or other donative, nominative, or appointive instrument of the individual.
 10. A Conservator shall maintain insurance on the insurable real and personal property of the individual subject to Conservatorship without court findings
 11. If a power of attorney for finances is in effect, a Conservator shall cooperate with the agent to the extent feasible.
 12. A Conservator has access to and authority over a digital asset of the individual subject to Conservatorship to the extent provided by the revised uniform fiduciary access to digital assets act (chapter 11.120 RCW) or court order.
 13. A Conservator for an Adult shall notify the court if the condition of the Adult has changed so that the Adult is capable of exercising rights previously removed. The notice must be given immediately on learning of the change.
 14. A Conservator shall notify the court within thirty days of any substantial change in the value of the property of the person subject to Conservatorship and shall provide a copy of the notice to the person subject to Guardianship, a person entitled to notice under RCW 11.130.420(6) or a subsequent court order, and any other person the court has determined is entitled to notice and schedule a hearing for the court to review the adequacy of the bond or other verified receipt under RCW 11.130.445 and 11.130.500.
- iii. Powers of Conservator requiring court approval (RCW 11.130.435)
1. Unless otherwise ordered, notice is required to persons entitled to notice and specific authorization by the court before the Conservator may exercise the power to:
 - a. Make a gift, except a gift of de minimis value;
 - b. Sell, encumber an interest in, or surrender a lease to the primary dwelling of the individual subject to Conservatorship;
 - c. Sell, or encumber an interest in, any other real estate;
 - d. Convey, release, or disclaim a contingent or expectant interest in property, including marital property and any right of survivorship incident to joint tenancy or tenancy by the entirety;
 - e. Exercise or release a power of appointment;
 - f. Create a revocable or irrevocable trust of property of the Conservatorship estate, whether or not the trust extends beyond the duration of the Conservatorship, or revoke or amend a trust revocable by the individual subject to Conservatorship;
 - g. Exercise a right to elect an option or change a beneficiary under an insurance policy or annuity or surrender the policy or annuity for its cash value;
 - h. Exercise a right to a quasi-community property share under RCW 26.16.230 or a right to an elective share under other law in the estate of a deceased spouse or domestic partner of the individual subject to Conservatorship or renounce or disclaim a property interest;
 - i. Grant a creditor priority for payment over creditors of the same or higher class if the creditor is providing property or services used to meet the basic living and care needs of the individual subject to Conservatorship and preferential treatment otherwise would be impermissible under RCW 11.130.555(5);

- j. Make, modify, amend, or revoke the will of the individual subject to Conservatorship in compliance with chapter 11.12 RCW
 - k. Acquire or dispose of property, including real property in another state, for cash or on credit, at public or private sale, and manage, develop, improve, exchange, partition, change the character of, or abandon property;
 - l. Make ordinary or extraordinary repairs or alterations in a building or other structure, demolish any improvement, or raze an existing or erect a new party wall or building;
 - m. Subdivide or develop land, dedicate land to public use, make or obtain the vacation of a plat and adjust a boundary, adjust a difference in valuation of land, exchange or partition land by giving or receiving consideration, and dedicate an easement to public use without consideration;
 - n. Enter for any purpose into a lease of property as lessor or lessee, with or without an option to purchase or renew, for a term within or extending beyond the term of the Conservatorship
 - o. Structure the finances of the individual subject to Conservatorship to establish eligibility for a public benefit including by making gifts consistent with the individual's preferences, values, and prior directions, if the Conservator's action does not jeopardize the individual's welfare and otherwise is consistent with the Conservator's duties
- 2. In approving a Conservator's exercise of a power listed above, the court shall consider primarily the decision the individual subject to Conservatorship would make if able, to the extent the decision can be ascertained.
- 3. To determine the decision the individual subject to Conservatorship would make if able, the court shall consider the individual's prior or current directions, preferences, opinions, values, and actions, to the extent actually known or reasonably ascertainable by the Conservator.
- 4. The court also shall consider: the financial needs of the Adult and individuals who are dependent on the Adult, and the interests of creditors of the individual; possible reduction of income, estate, inheritance, or other tax liabilities, eligibility for governmental assistance, previous pattern of giving, any existing estate plan or lack of estate plan of the Adult, life expectancy of the Adult and the probability the Conservatorship will terminate before the Adult's death, and any other relevant factor.
- 5. 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*. The court has authority to revoke or amend any power of attorney executed by the Adult.
- iv. Powers not requiring court approval (RCW 11.130.520)
 - 1. Unless limited by statute or by the court, a Conservator has all powers granted in this section and any additional power granted to a trustee by law of this state other than this chapter.
 - 2. A Conservator, acting reasonably and consistent with the fiduciary duties of the Conservator to accomplish the purpose of the Conservatorship, may:
 - a. Collect, hold, and retain property, including property in which the Conservator has a personal interest and real property in another state, until the Conservator determines disposition of the property should be made;
 - b. Receive additions to the Conservatorship estate;
 - c. Continue or participate in the operation of a business or other enterprise;

- d. Acquire an undivided interest in property in which the Conservator, in a fiduciary capacity, holds an undivided interest;
- e. Invest assets;
- f. Deposit funds or other property in a financial institution, including one operated by the Conservator;
- g. Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or a pooling or unitization agreement;
- h. Grant an option involving disposition of property or accept or exercise an option for the acquisition of property;
- i. Vote a security, in person or by general or limited proxy;
- j. Pay a call, assessment, or other sum chargeable or accruing against or on account of a security;
- k. Sell or exercise a stock subscription or conversion right;
- l. Consent, directly or through a committee or agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;
- m. Hold a security in the name of a nominee or in other form without disclosure of the Conservatorship so that title to the security may pass by delivery;
- n. Insure the Conservatorship estate and the Conservator;
- o. Borrow funds, with or without security, to be repaid from the Conservatorship estate or otherwise;
- p. Advance funds for the protection of the Conservatorship estate or the individual subject to Conservatorship and all expenses, losses, and liability sustained in the administration of the Conservatorship estate or because of holding any property for which the Conservator has a lien on the Conservatorship estate;
- q. Pay or contest a claim, settle a claim by or against the Conservatorship estate or the individual subject to Conservatorship by compromise, arbitration, or otherwise, or release, in whole or in part, a claim belonging to the Conservatorship estate to the extent the claim is uncollectible;
- r. Pay a tax, assessment, compensation of the Conservator or any Guardian, and other expense incurred in the collection, care, administration, and protection of the Conservatorship estate;
- s. Pay a sum distributable to the individual subject to Conservatorship or an individual who is in fact dependent on the individual subject to Conservatorship by paying the sum to the distributee or for the use of the distributee;
- t. Bring or defend an action, claim, or proceeding in any jurisdiction for the protection of the Conservatorship estate or the Conservator in the performance of the Conservator's duties; and
- u. Execute and deliver any instrument that will accomplish or facilitate the exercise of a power of the Conservator.

e. Article 5 – Other Protective Arrangements

- i. Authority – upon petition for Guardianship / Conservatorship, the court may order another protective arrangement as a less restrictive alternative
- ii. Basis for protective arrangement instead of Guardianship (RCW 11.130.585)
 - 1. Legal standard: clear and convincing evidence
 - 2. Respondent lacks the ability to meet essential requirements for physical health, safety, or self-care because Respondent is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance, or supported decision-making

3. Respondent's identified needs cannot be met by a less restrictive alternative
- iii. Basis for protective arrangement instead of Conservatorship (RCW 11.130. 590)
 1. Legal standard = clear and convincing evidence
 2. The Adult is unable to manage property or financial affairs because of a limitation in the ability to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance, or supported decision making **OR** the Adult is missing, detained, or unable to return to the United States;
 3. An order is necessary to avoid harm to the Adult or significant dissipation of the property of the Adult, **OR** to obtain or provide funds or other property needed for the support, care, education, health, or welfare of the Adult or an individual entitled to the Adult's support.
 4. The Respondent's identified needs cannot be met by a less restrictive alternative.
- iv. The court may:
 1. Authorize or direct a transaction necessary to meet the Respondent's need for health, safety, or care, including:
 - a. A particular medical treatment or refusal of a particular medical treatment; or
 - b. Visitation or supervised visitation between the Respondent and another person.
 2. Restrict access to the Respondent by a specified person whose access places the Respondent at serious risk of physical, psychological, or financial harm; and
 3. Reorder other arrangements on a limited basis that are appropriate.
 4. May appoint a special agent to assist in implementation of protective arrangement
 5. Authorize or direct a transaction necessary to protect the financial interest or property of the Respondent, including: An action to establish eligibility for benefits; Payment, delivery, deposit, or retention of funds or property; Sale, mortgage, lease, or other transfer of property; Purchase of an annuity; Entry into a contractual relationship, including a contract to provide for personal care, supportive services, education, training, or employment; Addition to or establishment of a trust; Ratification or invalidation of a contract, trust, will, or other transaction, including a transaction related to the property or business affairs of the Respondent; Settlement of a claim.
 6. Restrict access to the Respondent's property by a specified person whose access to the property places the Respondent at serious risk of financial harm.
- v. No ongoing reporting unless court specifically orders it.
- f. Article 6 – Forms
 - i. Optional, unless mandated by superior court (King County)
 - ii. Summary section on all court orders is required
- g. Article 7 – CPG Board and Resolution of Grievances and Supported Decision-Making Agreements
 - i. Purpose is to provide a less restrictive alternative
 - ii. Presumption of capacity regardless of manner of decision-making. Execution of SDM may not be used as evidence of incapacity.
 - iii. Scope
 1. An ADULT with a disability may enter into a SDM with a supporter.
 2. Provide supported decision making, including assistance in understanding the options, responsibilities, and consequences of the Adult's life decisions, without making those decisions on behalf of the Adult with a disability.
 3. Assist the Adult in accessing, collecting, and obtaining information that is relevant to a given life decision, including medical, psychological, financial, educational, or treatment records, from any person.
 4. Assist the Adult with a disability in understanding the information described in this section.

- 5. Assist the Adult in communicating the Adult's decisions to appropriate persons.
- iv. Authority of Supporter:
 - 1. In writing
 - 2. List specific area(s) in which decision-making needs support
 - 3. List name(s) of supporter(s) and their relationship
 - 4. Authority of support(s) as granted in the SDM
- v. Termination: by either party or by terms of the SDM
- h. Article 8 – Miscellaneous

3. Brief Overview of Guardianship / Conservatorship

- a. Appointment of a Guardian or Conservator
 - i. Petition, cite a hearing, notice of the hearing to the necessary parties, service of process on notice parties
 - ii. Court will appoint a Court Visitor
 - iii. Court may appoint an attorney for the Respondent
 - iv. Court Visitor role: investigate, interview Respondent and others, obtain professional evaluation of Respondent, prepare and file report
 - v. Lay Guardian/Conservator training
 - vi. Hearing within 60 days of Petition
- b. Post-Appointment
 - i. Notice of Order appointing Guardian/Conservator
 - ii. Prepare a Plan, Inventory, Budget
 - iii. Obtain court approval
- c. Periodic Reporting
 - i. Interval is set by the court at appointment (1, 2, 3 year)
 - ii. Notice to parties (as determined in the order appointing)
 - iii. Obtain court approval
- d. Emergency proceedings
 - i. Similar to regular appointment – must substantiate the “emergency”
 - ii. Duration of term is 60 days (may be extended once)
 - iii. Mandatory appointment of attorney for Respondent
 - iv. Appointment of Court Visitor and CV Report
 - v. Guardian or Conservator is appointed within 14 days
 - vi. Court may appoint Guardian without notice but notice required within 48 hours after appointment and must hold a hearing within 5 days after appointment.
- e. Termination or modification of a Guardianship or Conservatorship (RCW 11.130.355 and 11.130.570)
 - i. Petition
 - ii. Notice and Hearing
 - iii. If the Adult is petitioning, there is a right to an attorney
- f. Removal of Guardian/Conservator (RCW 11.130.350 and 11.130.565)
 - i. Court may remove by Petition, communication to the court, or court determination
 - ii. Notice and Hearing
 - iii. Court shall appoint a successor, following statutory priority of parties
 - iv. Adult has a right to an attorney

4. Statutory Update – Major changes to WA Guardianship laws (focus on adult guardianship)

- a. Terminology changes
 - i. Guardian of the Person = Guardian
 - ii. Guardian of the Estate = Conservator
 - iii. Guardian ad Litem = Court Visitor
 - iv. Alleged Incapacitated Person = Respondent

- v. Incapacitated Person = Individual s/t Guardianship or Conservatorship (“Adult”)
- vi. Letters of Guardianship = Letters of Office
- b. Expanded due process and notice requirements
 - i. Expanded notification requirements for appointment, reporting, and other activities
 - ii. Expanded notice parties (persons who must receive notice of events or conditions re Adult)
 - iii. Notice parties may be limited by court order at appointment
 - iv. Presence of Adult is required at hearing to appoint unless waived by court for good cause
 - v. Notice Parties:
 - 1. Spouse or domestic partner or, if the Respondent has none, an Adult with whom the Respondent has shared household responsibilities for more than six months in the twelve-month period immediately before the filing of the petition;
 - 2. Adult children or, if none, each parent and Adult sibling of the Respondent, or, if none, at least one Adult nearest in kinship to the Respondent who can be found with reasonable diligence; and
 - 3. Adult stepchildren whom the Respondent actively parented during the stepchildren's minor years and with whom the Respondent had an ongoing relationship in the two-year period immediately before the filing of the petition;
 - 4. A person responsible for care of the Respondent;
 - 5. Any attorney currently representing the Respondent;
 - 6. Any representative payee appointed by the social security administration for the Respondent;
 - 7. A Guardian or Conservator acting for the Respondent in this state or in another jurisdiction;
 - 8. A trustee or custodian of a trust or custodianship of which the Respondent is a beneficiary;
 - 9. Any fiduciary for the Respondent appointed by the department of veterans affairs;
 - 10. An agent designated under a power of attorney for health care in which the Respondent is identified as the principal;
 - 11. An agent designated under a power of attorney for finances in which the Respondent is identified as the principal;
 - 12. A person nominated as Guardian by the Respondent;
 - 13. A person nominated as Guardian by the Respondent's parent or spouse or domestic partner in a will or other signed record;
 - 14. A proposed Guardian and the reason the proposed Guardian should be selected;
 - 15. A person known to have routinely assisted the Respondent with decision making during the six months immediately before the filing of the petition;
- c. Professional Evaluation
 - i. No longer called a “medical report”
 - ii. Respondent must be examined by a physician, psychologist, Advanced Registered Nurse Practitioner, or Physician’s Assistant selected by the Court Visitor
 - iii. If Respondent opposes the CV’s choice, Respondent may select the professional
 - iv. If Respondent declines to participate in a professional evaluation, the court may proceed with the hearing if it finds sufficient information to determine Respondent’s needs/abilities without professional evaluation
- d. Qualification of a Guardian or Conservator
 - i. No longer disqualified based on a felony conviction or misdemeanor involving moral turpitude
 - 1. Moral turpitude = A phrase that describes wicked, deviant behavior constituting an immoral, unethical, or unjust departure from ordinary social standards such that it would shock a community. (Cornell Law School, Legal Information Institute)

- ii. Disqualification based on a conviction of a crime involving dishonesty, neglect, or use of physical force or other crime relevant to the functions of a Guardian
 - iii. Exception: after consideration of the facts, court may find a relative (convicted of a crime) is qualified to serve as Guardian
 - iv. 21 years or older
 - v. Mandatory training, but court may defer if circumstances necessitate it
- e. Legal Standard for Appointment of a Guardian / Conservator
 - i. Clear and convincing evidence – removed “cogent” but no change in burden of proof
 - ii. Needs cannot be met by a less restrictive alternative or other protective arrangement
 - iii. In general:
 - 1. Adult is unable to meet his/her basic needs
 - 2. Adult is unable to receive and evaluate information or make or communicate decisions, even with support or assistance
 - 3. There is a significant risk of harm to the Adult unless a Guardian/Conservator is appointed
- f. Priority of Appointment for Guardian/Conservator
 - i. Generally emphasizes family over professionals
 - ii. Must nominate a Guardian/Conservator in Petition
 - iii. Order of priority, and Petitioner must explain her choice:
 - 1. Guardian currently acting in another jurisdiction
 - 2. Person nominated in Adult’s Durable Power of Attorney
 - 3. Spouse of domestic partner
 - 4. Relative or other individual who has shown special care
 - 5. CPG
 - 6. Person in the best interests of the Adult
 - iv. An owner/operator/employee of a long-term care facility at which Respondent resides is disqualified unless related by blood, marriage, or adoption
- g. Duties of a Guardian/Conservator
 - i. Powers and authority only to the extent necessary based on limitations set by the court
 - ii. Promote Adult’s self-determination = involve the Adult in decision making to the extent reasonably feasible, including supporting and encouraging the Adult to understand the risks and benefits of health care options or financial decisions
 - iii. Defer to and cooperate with an agent appointed under a Durable Power of Attorney
 - iv. Expanded reporting – including a summary of visits and actions taken on behalf of the Adult
- h. Powers of a Conservator
 - i. Limited by:
 - 1. Prudence and Loyalty
 - 2. Promote self-determination, encourage participation in decisions
 - 3. In making decisions = reasonably believes the Adult would make, unless doing so would fail to preserve the resources needed to manage Individual’s well-being unless doing so would fail to preserve resources or cause harm or endanger welfare
 - 4. Shall consider prior or current directions, preferences, opinions, values, and actions
 - 5. Best interests w/statutory direction
 - 6. Prudent Investor
 - ii. Actions requiring court approval:
 - 1. Make a gift
 - 2. Sell, encumber, or surrender lease the primary dwelling of Adult
 - 3. Sell or encumber any other real estate
 - 4. Convey, release, disclaim interest in property

5. Exercise or release a power of appointment
 6. Create a trust
 7. Exercise right to elect an option or change a beneficiary on insurance policy or annuity
- i. Emergency Guardianship
 - i. Shortened option for appointment of Guardian
 - ii. Only has the limited authority stated in the court order
 - iii. May be less restrictive alternative
 - iv. Appointed without notice, but with other hearing and notice requirements
 - v. Max appointment = 60 days, may be renewed once
 - vi. Mandatory appointment of an attorney for Respondent
 - j. Appointment of Counsel
 - i. Court discretion
 - ii. Respondent has a right to counsel at any point during the proceeding
 - iii. Court Visitor may recommend
 - iv. Public expense if indigent
 - k. Rights of Adult subject to Guardianship / Conservatorship
 - i. Right to association, unless specifically limited by court
 - ii. Right to counsel, chosen by Adult
 - iii. Right to a jury trial re: capacity
 - l. Appointment of Successor or Co upon a specific event (death or incapacity) – current Guardian/Conservator can petition court
 - m. Placement:
 - i. Residential – Guardian may not force Adult to live somewhere against their will
 - ii. Mental Health Treatment
 1. If necessary, Guardian must follow civil commitment laws
 2. Guardian may move an Adult to a facility where there are restrictions if:
 - a. Established in Guardian's plan
 - b. Court authorizes the move or Guardian gives notice before the move and no objections were filed
 - n. Delegation – Use of Agent by Guardian or Conservator (RCW 11.130.125)
 - i. Skills of Agent
 - ii. Agent selection – skills of agent, cost
 - iii. Scope of Work
 - iv. Monitoring
 - v. Redressing an act or omission of agent
 - vi. Background check of the agent
 - vii. Consistent with Plan
 - viii. Guardian / Conservator may **not** delegate **all** powers
 - o. Protective Arrangements
 - i. Less restrictive alternative – does not involve removal of rights
 - ii. Must petition the court with the same requirements as Guardian/Conservator
 - iii. Court may order protective arrangement instead of Guardianship/Conservatorship
 - iv. Limited in scope and duration
 - v. No ongoing court monitoring
 - vi. Specific transaction – limit access to Adult by another person, eligibility for benefits, management of property, purchase an annuity, enter into a contractual relationship, establish or add to a trust, settle a claim, and other matters
 - vii. Court may appoint a “special agent” to assist in implementation
 - viii. Not a viable option with long-term assistance that may evolve over time

- p. Supported Decision-Making
 - i. An agreement between an Adult with disabilities and a trusted person.
 - ii. Adult receives assistance from one or more trusted persons, chosen by the Adult, in understanding the nature and consequences of personal and financial decisions.
 - iii. Enables the individual to make decisions consistent with his/her wishes with needed support.
 - iv. Process: may be a less restrictive alternative after filing a Guardianship/Conservatorship petition, **OR** may be entered into independently.
 - v. Benefits: promotes autonomy, assistance while retaining decision-making, does not take away rights, provides support for the person to make their own decisions, does not require continuing involvement with court, formal document evidencing agreement.
 - vi. Form requirements (RCW 11.130.740 and .745)
 - 1. Identify supporter, duties
 - 2. Signed by supporter and Adult
 - 3. Two witnesses
 - 4. Notarized
 - vii. Third-party reliance (RCW 11.130.750)
 - 1. Review original or copy of the agreement
 - 2. No third-party liability if good faith reliance on document
 - viii. May be used in combination with other alternatives:
 - 1. Durable Power of Attorney or Health Care Directive
 - 2. Representative Payee
 - 3. Consent to Health Care (RCW 7.70.065)
 - 4. Person-Centered Plan
- q. Guardianship Monitoring
 - i. Court must monitor Guardian/Conservator reporting
 - ii. Local bench is taking this seriously and we are seeing lay Guardians and attorneys cited onto the docket to report to the court
 - iii. Expanded notice requirements and notice parties
- r. Development of Model Training Program – lay Guardians, Court Visitors
- s. Miscellaneous changes and/or refinement of provisions
 - i. Adult's right to associate with persons of their choosing, unless otherwise limited by the court.
 - ii. Court approval of Guardian/Conservator's compensation, expenses, and reports.
 - iii. Court may assess costs of proceeding if petition was filed in bad faith.
 - iv. Prompt review of grievances against Guardian/Conservator. Court may also dismiss a grievance.
 - v. Guardian owes a duty of good faith and care, and must not substitute their own values, opinions or beliefs.
 - vi. Right to a jury trial
 - vii. Mediation options

5. Takeaways and Issue spotting for professional advisors

- a. Estate Planning:
 - i. A great estate plan, if executed properly, will help in avoiding a Guardianship or Conservatorship.
 - ii. Sometimes despite a great estate plan, a Guardianship or Conservatorship may still be necessary.
- b. There are lots of alternatives to Guardianship and Conservatorship
 - i. Estate planning documents
 - ii. Account titles/ownership
 - iii. Joint property arrangements
 - iv. Consent to health care law
 - v. Protection Orders (including vulnerable Adult)
 - vi. Supported decision-making

- vii. Protective arrangements
- viii. Emergency Guardianship
- ix. Representative Payee
- x. Conservatorship OR Guardianship, but not both
- xi. Limited or Full Guardianship or Conservatorship
- xii. Informed consent statute
- c. Confirm the identity of the fiduciary and scope of authority by reviewing the document (DPA, letters, court order, protection order)
 - i. Letters of Office should include any limitations in scope
 - ii. Insist on current Letters – should be an expiration date
 - iii. Court Order will indicate delegated agents, limitations, restricted persons
 - iv. A Successor or Co-Guardian may be appointed to serve upon the occurrence of an event
- d. Request copies of all relevant documents (estate plan, court orders etc.)
- e. Coordination with other fiduciaries may be required (attorney-in-fact, trustee, SDM supporter)
- f. Clients with diminished capacity client
 - i. Preserve autonomy
 - ii. Identifying reduced capacity
 - iii. Identifying exploitation of a vulnerable Adult
- g. Working in coordination with legal, financial, tax professionals
- h. Third-party acceptance of authority of Guardian or Conservator (RCW 11.130.120)
 - i. **Must not** recognize authority: invalid letters of office, knowledge of exploitation by Guardian
 - ii. **May** refuse to recognize authority: proposed action is inconsistent with RCW 11.130, good faith belief of exploitation, neglect, abuse abandonment by Guardian
 - iii. **Use caution** in refusing to recognize authority: court may order attorney fees if it finds a third party has failed to recognize the legitimate authority of the Guardian/Conservator

6. Resources

- a. Washington state court forms: <https://www.courts.wa.gov/forms/?fa=forms.contribute&formID=133>
- b. Washington Law Help: <https://www.washingtonlawhelp.org/resource/Adult-Guardianship-Conservatorship-and-other-protective-arrangements#:~:text=What%20is%20a%20protective%20arrangement,someone%20who%20might%20harm%20you>
- c. Adult Protective Services: <https://www.dshs.wa.gov/altsa/home-and-community-services/report-concerns-involving-vulnerable-Adults>
- d. Supported Decision-making: <http://www.supporteddecisionmaking.org>
- e. Washington State Department of Social and Health Services (DSHS): <https://www.dshs.wa.gov/>
- f. Washington State DSHS Aging and Disability Resources: <https://www.dshs.wa.gov/altsa/stakeholders/aging-disability-resource-centers-adrcs>
- g. Washington State Department of Health (DOH): <https://doh.wa.gov/>
- h. Washington Certified Professional Guardian Program: <https://www.pce.uw.edu/certificates/guardianship>
- i. National Alliance on Mental Illness (NAMI): <https://www.nami.org/Home>
- j. FBI: Common Fraud Schemes: Avoid Being a Victim: <https://www.fbi.gov/how-we-can-help-you/safety-resources/scams-and-safety>
- k. National Center on Elder Abuse: <https://ncea.acl.gov/>

7. Statutory References

- a. Uniform Guardianship Act RCW 11.130
- b. Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act RCW 11.90
- c. Civil Protection Orders RCW 7.105
- d. Uniform Durable Power of Attorney RCW 11.125