Washington State

Certified Professional Guardian Manual
2007

Based on revisions to the 2004 Edition. Approved by the Washington State Supreme Court Professional Guardian Certification Board as the Official Training Manual for Certification of Professional Guardians

Michael J. Longyear, Esq., CPG
2004 Editor-in-Chief

Version 2007
Course pack for University of Washington Guardianship Certificate Program
UW Program # 2897, September 12, 2008
http://courses.washington.edu/cpguard

© Washington State Certified Professional Guardian Board
Important Notice

This Washington State Certified Professional Guardianship Manual has been prepared by a committee comprised of volunteer lawyers, professional guardians, court personnel, and social service workers. The Manual is intended to assist Professional Guardians, but it is not all-inclusive. This manual addresses requirements for Certified Professional Guardians in the State of Washington only.

Statutes, court rules, and court procedures in the area of guardianship change constantly. In addition, each court applies differing local rules. Resources may vary greatly from community to community. Therefore, information contained in this manual may quickly become outdated. For these reasons, it is the responsibility of Professional Guardians to confirm the current status of applicable laws, rules and procedures in a particular county.

Neither the Washington State Supreme Court Certified Professional Guardian Board nor any contributor make express or implied warranties regarding the accuracy, timeliness or reliability of statements, forms, articles or other materials contained herein. Attorneys, Professional Guardians and lay people must depend on their own independent legal knowledge, research and expertise when referring to or utilizing any information contained herein. Nothing in this manual or the Certification Training confers any authority to practice law without a license. Furthermore, this manual and the Certification training do not serve as legal advice or legal authority in any legal proceeding. If you need legal advice, please seek a qualified attorney with experience in Washington State guardianship practice.

COPYRIGHT © 2007

© 2004 by the Washington State Certified Professional Guardian Board. These materials have been prepared for the training of Washington State Certified Professional Guardians, and neither the editors or authors make either express or implied warranties in regard to these materials. Each user must depend upon his or her own knowledge and legal expertise or that of an attorney in the use or modification of these materials. The purchaser may make copies for personal use; however, no person or entity shall copy or distribute them for profit except by license of the Board.
Acknowledgements and Thanks – 2007 Edition

The original 2000 Washington State Guardian Manual was developed under the leadership and sponsorship of the Washington State Supreme Court Certified Professional Guardian Board in association with the Continuing Legal Education Department of the King County Bar Association. Many persons contributed to this work and the subsequent editions, but special acknowledgment is due to the members of the Spokane County Bar Association, who collaborated in the original written and oral presentation of it; the dedicated past and present members of the Certified Professional Guardian Board; past and present officers and members of the Guardianship and Elder Law Section of the King County Bar Association; the Pierce County Guardianship Committee; and the past officers and members of the Washington Association of Professional Guardians.

Contributing Authors and Editors

A very special thanks to the following individuals who gave so generously of their time and talent to author and edit the various Units of this Manual since its first Edition in 2000 through this current Edition and to offer their expertise and advice to the Editor:

Louise Anderson  
Comm. W. Fred Aronow  
Ree Ah Bloedow  
Roslyn G. Burroughs  
Craig A. Coombs  
Barbara J. Coster  
James A. Degel  
Lynne M. Fulp  
Richard L. Furman  
Comm. Stephen M. Gaddis  
Edward D. Gardner  
Jennifer J. Gilliam  
Constance A. Gould  
Michelle L. Graunke  
John H. Hertog  
Suzanne C. Howle  
E. A. (Hank) Hibbard  
Carol J. Hunter  
Barbara A. Isenhour  
John E. Jardine  
Thomas M. Keller  
Roger A. Kohn  
David G. Laidman  
Michael J. Longyear  
Roxanne R. Mennes  
Sylvia Nelson  
Robert B. Nettleton  
Tom O'Brien  
Paulette E. Peterson  
Richard L. Sayre  
Julie M. Schisel  
Mark D. Sideman  
Mary K. Severns  
Janet H. Somers  
Caroline R. Suissa  
Eden R. Toner  
Kathleen A. Wareham  
Comm. Eric B. Watness  
Barbara A. West

© Washington State Certified Professional Guardian Board
Introduction

This Manual is designed to be used as the educational materials for the mandatory training of professional guardians in Washington State for purposes of certification by the Supreme Court in accordance with General Rule 23, and to assist and support individuals who are serving as court-appointed guardians, as well as other participants in the guardianship process such as those who provide or participate in services of a guardian.

The Manual is intended to provide the reader with basic knowledge of the responsibilities and duties of a guardian, whether as a general or limited guardian, and whether as guardian of the person or estate or both. In addition, it covers the issues of standards of practice and fees as they pertain to guardians and guardianships.

Guardianship Forms may be found at the following websites:

http://www.metrokc.gov/kcscc/guardianship.htm
http://www.spokanecounty.org/superiorcourt/GuardianForms.asp

The information contained in this manual does not constitute legal advice. Guardians should consult all applicable statutes and, when appropriate, seek legal advice from an attorney with knowledge and experience in the area of guardianship law. As assets permit, the guardian may retain legal counsel for representation throughout the proceeding. In some circumstances, an attorney may be available on a reduced-fee or fee-waived basis. It is particularly advisable to have an attorney in cases in which the guardianship has substantial assets, owns real property (such as a house), when there is family conflict, or when there have been allegations of abuse, negligent care, or financial impropriety.

The law dealing with guardianships is found in Chapters 11.88 and 11.92 of the Revised Code of Washington. However, because the statutes, court rules and court procedures change constantly and because different courts have varying local rules and resources, the information contained in this Manual will become outdated. The Editor encourages each guardian to review the statutes, court rules, and case law carefully, and often, in addition to the materials in this book.

The law pertaining to guardianships and the rights of incapacitated persons is complex and the procedures and forms are complicated. Accordingly, neither this Manual nor the Model Statewide Guardianship Forms are a substitute for the advice and assistance of an attorney who is familiar with guardianship law, procedure, and issues. Nothing in this manual or in the certification training confers authority to practice law without a license.

All guardians are presumed to know and understand the law governing their actions. The same procedures and standards of conduct apply to professional guardians and to lay or family guardians. The courts hold each guardian to the same high standard of
conduct, regardless of whether or not that guardian is represented by an attorney and whether or not they are compensated for their services.

Serving as a guardian for another person is a serious responsibility. In cases where a guardian neglects his or her duties, mismanages property, fails to provide for the needs of the incapacitated person, or otherwise breaches the duty of a fiduciary, the Court may find that the guardian is personally liable. Financial sanctions and other remedies may be imposed by the court.

With all the foregoing in mind, little more can be said in appreciation for the willingness of persons to accept the responsibilities of guardian, and for their invaluable assistance to all the persons of our state – assisted and unassisted alike – who benefit thereby!

It is the goal of the Certified Professional Guardians Board and the authors and editors of this Manual, that it will significantly contribute to training and educating guardians to be appropriate and ethical fiduciaries appointed to protect minors and incapacitated persons who are vulnerable members of our society.
1) Unit One: Guardians and Guardianships – An Overview
   A. Learning Outcomes 1-1
   B. Legal Rights: the Legal Environment 1-1
   C. Types of Guardians and Guardianships 1-4
   D. Qualifications of All Guardians: Lay, Professional, & Financial Institutions 1-7
   E. Role of the Players in the Guardianship Process 1-8
   F. The Process of Nomination, Selection and Appointment of a Guardian 1-9
   G. Obligations of All Legal Guardians 1-10

2) Unit Two: Responsibilities of the Guardian of the Person
   A. Learning Outcomes 2-1
   B. Responsibilities and Limitations of the Guardian of the Person 2-1
   C. Identifying Needs and Resources 2-2
   D. Personal Care Plan 2-3
   E. Periodic Status Reports 2-4
   F. Petitions to the Court for Relief 2-4
   G. Changes in Circumstances 2-5
   H. Court Supervision and Delinquency Monitoring 2-6
   I. Residential Placement Problems 2-7
   J. Medical Directives on Code Status 2-8
   K. Informed Consent Regarding Extraordinary Medical Procedures 2-10
   L. Ethical Decision Making 2-10

3) Unit Three: Responsibilities of the Guardian of the Estate
   A. Learning Outcomes 3-1
   B. Marshaling and Inventorying the Assets 3-1
   C. Protecting the Assets 3-7
   D. Periodic Reports, Accountings and Budgets 3-10
   E. Significant Changes 3-13
   F. Petitions to the Court for Relief 3-14
   G. Notices to the Court and Designated Persons 3-16
   H. Court Supervision and Delinquency Monitoring 3-17
   I. Sale of Assets 3-17
   J. Gifting of Assets 3-20
   K. The Incapacitated Person as Trust Beneficiary 3-22
   L. Exhibits A 3-24
      B 3-26
      C 3-32
4) Unit Four: Employment of Attorneys and Other Professionals
   A. Learning Outcomes 4-1
   B. Employing Professionals to Assist the Guardian 4-1
   C. Professionals Who May Be Employed Only with Specific Court Authority 4-2
   D. Professionals Employed in the Usual Course of Duties 4-3
   E. Roles and Duties of Employed Professionals 4-5

5) Unit Five: Guardian and Attorney Fees
   A. Unit Learning Outcomes 5-1
   B. Legal Basis for Guardian and Attorney Fees 5-1
   C. Measures for Setting Compensation 5-2
   D. Maintaining Records and Documenting Costs 5-4
   E. Court Process for Approval 5-5
   F. Who Is to Pay? 5-7
   G. Special Rules pertaining to DSHS, VA, and Guardianship Trusts 5-8
   H. Exhibit A 5-12

6) Unit Six: Standards of Practice
   A. Learning Outcomes 6-1
   B. Overview of the Ethical Obligations of a Guardian 6-1
   C. Persons Serving in Multiple Roles 6-4
   D. The Guardian as Beneficiary 6-6
   E. Conflicts Within the Assisted Person’s Family 6-6
   F. The Complaint and Discipline Process 6-12
   G. Certified Professional Guardian Discipline 6-18
   H. Ethics Advisory Opinions 6-18

7) Unit Seven: Government Benefits (intentionally left blank)

8) Unit Eight: Resignation or Removal and Substitution of Guardian
   A. Learning Outcomes 8-1
   B. Voluntary Resignation of Guardian; Procedure for Substitution 8-1
   C. Removal of Guardian or Vacancy in Office; Procedure for Substitution 8-2

9) Unit Nine: Termination of the Guardianship and Closing the File
   A. Learning Outcomes 9-1
   B. Terminating Events 9-1
   C. Guardian’s Duties upon Termination 9-5

10) Unit Ten: Recent Legislation
    A. SSB 5320 Public Guardianship Bill Web Link
    B. HB 2380 Uniform Transfer to Minors Act - Extend age to 25 Web Link
C. HB 1008  Protect Vulnerable Adults - Expands who can petition
D. HB 1114  Prohibiting Marketing Estate Documents by non-lawyers
E. SB 5336  Domestic Partnerships
F. HB 2236  Disposing of Certain Assets
G. SB 5827  Consumer Privacy
H. GR 31
I. GR 22
J. GR 15

11) Unit Eleven: Resources
A. Learning Outcomes
B. Resources

12) Unit Twelve: Appendices
A. Glossary of Terms
B. RCW Chapters 11.88, 11.92, and 11.94
C. Supreme Court Professional Guardian Rule (GR 23)
D. Administrative Regulations 100
E. Insurance Regulation 117
F. CEU Regulations 200
G. Ethics Advisory Opinion Regulations 300
H. Standards of Practice 400
I. Discipline Regulations 500
J. Procedure for the Adoption Amendment and Repeal of Regulations 600
K. CPG Board Ethics Advisory Opinions
L. Case Law

September 2007 Supplemental Course Materials
UNIT ONE: GUARDIANS AND GUARDIANSHIPS – AN OVERVIEW

A. LEARNING OUTCOMES

1. The Guardian will have an understanding of the overall legal process
2. The Guardian will know the definitions and distinctions of each type of guardian and guardianship
3. The Guardian will understand the role of each of the other players in the guardianship process and how they function together
4. The Guardian will have an understanding of the process by which guardians are appointed and supervised
5. The Guardian will know the statutory distinction and the functional differences between certified and lay guardians
6. The Guardian will know who a professional guardian is and how one can be certified

B. LEGAL RIGHTS: THE LEGAL ENVIRONMENT

Rights of the Individual. It is a fundamental principle of Washington law that all adults are presumed to have full legal capacity to make their own personal and financial decisions. Minors lack legal capacity only by virtue of their age. Guardianship for an individual is only appropriate when a person is unable to make appropriate decisions on their own or with such assistance as they might utilize. The failure to do so must be found to have led to an inability to adequately protect or care for their person and/or estate. Guardianship is not a procedure to be used to control the actions and decisions of another merely because that person is not making the best decisions they could, or because they made decisions in a way that others would not.

The law is very specific regarding the definition of incapacity:

- A person may be deemed incapacitated as to person when the superior court determines the individual has a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety;

- A person may be deemed incapacitated as to the person’s estate when the superior court determines the individual is at significant risk of financial harm based upon a demonstrated inability to adequately manage property or financial affairs.¹

There are many causes for an otherwise mentally and physically competent adult to lose the ability to make his or her own decisions. The individual may have a progressive mental disorder, such as dementia, or may suffer from a mental illness.

¹ RCW 11.88.0005
² RCW 11.88.010(1)(a) & (1)(b).
The person may have suffered a physical illness such as a stroke or there may have been an accident in which the individual suffered a head injury or other incapacitating illness.

The court's determination of whether an individual is legally incapacitated is a legal conclusion, not a medical one. While age, eccentricity, poverty or a particular medical diagnosis may support or weaken the allegation of incapacity, the court's determination of capacity is based upon greater information, and specifically focuses on the individual's actual needs and the person's functional ability to meet them. (RCW 11.88.010 (1)(c) )

Even after a finding of incapacity, the court is obligated to consider less restrictive alternatives to the establishment of a guardianship. A guardianship will only be established if the court finds that the person is incapacitated and needs protection and determines that there are no reasonable and sufficient alternatives less restrictive than the appointment of a guardian.

**The Legal Process.** *Before the court has authority to appoint a guardian, a number of steps defined by law must be followed, although there may be minor variations in the procedures followed from county to county and varying with the needs of each individual case. The steps most commonly required and occurring are:*

- A Petition for Guardianship is filed by any interested party. A Guardian ad Litem (GAL) is appointed by the court from the GAL Registry. The Superior Court of each county maintains a list of qualified persons to be appointed with the specific duties of investigating the facts, obtaining a medical or psychological report, and reporting to the court with recommendations as to the need for a guardian, the qualifications of the nominee(s), and any specific powers or limitations on the guardian’s authority. The Guardian ad Litem also examines less restrictive alternatives to a guardianship that the alleged incapacitated person may already have in place such as a trust or durable power of attorney for either medical and health care decisions or for management of financial matters. The Guardian ad Litem can make recommendations to the court regarding the capacity of the alleged incapacitated person to execute a durable power of attorney or other less restrictive alternatives to a guardianship.

- A hearing on the Petition is scheduled, with advance notice served upon the alleged incapacitated person (AIP) and other persons as required by law;

- The court may appoint an Independent Attorney to represent the AIP;

- The Guardian ad Litem performs an investigation, including arranging for a medical or psychological report; interviewing persons with relevant information; and reviewing pertinent legal, medical, and financial records.

- The Guardian ad Litem files a report with the court at least fifteen days prior to the hearing on the petition, serving copies of the report on the alleged

3 RCW 11.88.030 (1)
incapacitated person and other parties and persons having a legal interest in the proceeding.

- The court hearing for appointment of guardian usually occurs between forty-five and sixty days from the filing date of the petition. At the hearing, the court takes testimony from the Guardian ad litem and witnesses; hears the presentations of the attorneys; and reviews the documents offered as evidence. The court then makes its decision, which is reduced to writing as Findings of Fact and Conclusions of Law. The court will then enter (file with the Clerk) an Order Appointing Guardian or Limited Guardian, or an Order Dismissing Petition.

- If the court determines that the AIP is incapacitated either as to person or estate and that no reasonable less restrictive alternatives exist to protect the person or their affairs, the court will then appoint an appropriate person or agency to serve as guardian. The Order Appointing Guardian will specifically delineate the Guardian’s responsibilities and limitations.

**Legal Values.** The protection of individual rights is required in these proceedings. The presumption that all adults have full legal capacity to act remains until the court makes a finding of incapacity. The presumption triggers a number of constitutional and legal safeguards, including:

- the right of the AIP, the custodian, and the family to have notice of the proceedings;
- the requirements of due process, basic fairness, and equal protection of the law;
- the recognition, consideration and accommodation of cultural, disability, and communication differences and needs.

Right to Notice. **Individuals who are the subject of a guardianship petition must be personally served with copies of the Notice of Rights and the Petition for Appointment of Guardian within 5 days of the documents being filed with the court.** There are also notice requirements for close relatives and custodians of persons alleged to be incapacitated. The notice requirements assure that nothing will occur of a legal nature without sufficient opportunity to consult with the interested persons, to hear from them, and in order that all may prepare properly for the hearing to be held on the Petition.

Requirement of Due Process. **Due process is an essential element in guardianship proceedings.** The alleged incapacitated person is entitled to have an independent attorney to represent their interests and be present at the hearing. The AIP is entitled to request a jury trial on the issue of incapacity. The law even provides for the Court to convene at the residence of the alleged incapacitated individual, if it is determined that the AIP wishes to be present at the hearing, but is physically unable to attend a hearing at the Courthouse.

Equal Protection of the Law. **Each person shall be treated equally and accorded their full legal rights under this constitutional principle.** There are
few exceptions to this rule of law, such as when there exists an overriding state interest. No person may be treated adversely or discriminated against because of their age, gender, cultural origin, marital status, sexual preference, or disability.

Consideration of Cultural, Disability, and Communication Issues. The court (judges and court staff) and Guardians ad Litem are trained to respect issues of diversity, and not to impose their own values or standards in situations involving the customs of persons or populations. “Disability” does not equate to “incapacity” as the guardianship law makes clear in all decisions being made. The need for clear and accurate communication among those concerned is also important to a fair process, and must be addressed. In the event of special circumstances, such as the need for an interpreter or for hearing assistance, the court will accommodate the needs of all parties to ensure that individual rights are protected.

C. TYPES OF GUARDIANS AND GUARDIANSHIPS

Legal Guardians.

Guardianship of the Person. A Guardian of the Person is appointed in cases in which the court finds that a person is at significant risk for personal harm due to a demonstrated inability to provide for one’s nutrition, health, housing, or physical safety. Guardians of the Person are required to file a Personal Care Plan within three months of appointment, and to file annually, or at the time an accounting is required of a guardian of the estate, a report on the status and needs of the Incapacitated Person. The guardianship law specifies the contents of both the Care Plan and the Annual (or periodic) Report. In general, the Guardian of the Person makes decisions to protect the Incapacitated Person and to ensure that the personal care needs are met. The Guardian of the Person is authorized to provide informed consent for health care decisions, and to provide for the residence, care and maintenance of the Incapacitated Person in the least restrictive setting appropriate to their personal care needs.

Guardianship of the Estate. A Guardian of the Estate is appointed when the court finds that a person is at significant risk for personal harm as the result of a demonstrated inability to manage property or financial affairs. Guardians of the Estate are required to file a verified Inventory within three months appointment and an Annual (or periodic, as directed by the court) Report of the income, expenses, and assets of the guardianship. Duties include the requirement to protect and preserve the estate, and to faithfully account for the estate. The law identifies restrictions on the guardian's ability to invest and reinvest assets, and to expend estate funds.
Practice Tip. Guardianships of the Person and/or Estate can be limited in any manner that the court believes to be appropriate (RCW 11.88.010[2]). In those instances, the powers of the guardian are limited to those specified in the court order and the limitations are reflected in the Letters of Guardianship issued by the Clerk of the Court.

Co-Guardianship of Person and/or Estate. While the statute does not address the appointment of co-guardians, the court is not restricted in the number of guardians that it might appoint in a guardianship. However, as a practical matter, when co-guardians are appointed the court will generally identify the duties and responsibilities of each guardian as well as the duties and responsibilities of the guardians jointly. The concept of co-guardians should not be confused with the appointment of separate persons or agencies to serve as Guardian of the Person as distinct from a Guardian of the Estate – these are not co-guardians. Only if you have more than one Guardian of the Person or more than one Guardian of the Estate do you have co-guardians.

Minor Guardianship. As with any guardianship, minor guardianships can be of the person and/or the estate, and they can be limited in responsibility, in the discretion of the court. There are different notice and consent requirements in minor guardianships; and the court has the ability to waive the appointment of a Guardian ad Litem, the medical report, and notice of hearing in certain circumstances. When a minor guardianship includes guardianship of the person, unless otherwise limited by the court order, the guardian assumes a duty to provide or see to the appropriate housing, nutrition, training and education of the minor.  

4 RCW 11.88.10 (d)
Practice Tip. Minor guardianships include the same duties and responsibilities as any other guardianship, including reporting requirements. The requirement to provide for training and education serves as a distinguishing characteristic of minor guardianships, as well as the automatic termination of the guardianship upon the minor’s attaining age 18. The latter occurs even if the minor is disabled, so that a disability guardianship may then need to be filed.

**Natural Guardians.** The above types of guardian are all appointed by the court, and are sometimes referred to as “legal guardians.” Although it is slightly confusing, the parents of a minor may be referred to as “natural guardians.” While natural guardians may have the common law duty to care for and provide for their children and make medical decisions, their authority flows from their parenthood. They possess no specific authority or responsibility from the court, and are not legal guardians. Parents of developmentally disabled or mentally ill children often do not realize that their legal decision making authority over their child as natural guardians ends when the child attains the age of 18. At that time, the child is emancipated by law and is presumed then to have full legal capacity. The parent must apply to the court for appointment as legal guardian of the person and/or the estate, if the child is then incapacitated due to ongoing disabilities of any nature.

**Testamentary Guardians.** A testamentary guardian is the individual named in the Will of a deceased parent to act as guardian of a minor child at the time of the parent’s death. This nomination is only legally effective upon the death of the last of the parents to die, as a surviving parent retains all parental rights and obligations as a natural guardian. The practical effect of such an appointment in the Will is to give preferred status to the person named, should they apply to become a court-appointed or legal Guardian of the Person and/or Estate of the minor.5

Practice Tip. The Probate Code favors the appointment of person named in the Will of the deceased to be appointed as the legal guardian of a minor, unless the individual is not qualified to serve.

5RCW 11.88.080
D. QUALIFICATIONS OF ALL GUARDIANS: LAY, PROFESSIONAL, AND FINANCIAL INSTITUTIONS

No person is “qualified” (a legal term) to serve as guardian who is:

- Under 18 years of age – unless he or she is a parent under 18, who is being appointed guardian for his or her own child;
- Of unsound mind;
- Has been convicted of a felony or a misdemeanor involving moral turpitude;
- A nonresident of Washington, who has not appointed a resident agent to accept service of process in all proceedings with respect to the guardianship and filed notice of the appointment with the court;
- A corporation not authorized to act as a fiduciary, guardian, or limited guardian in the State of Washington;
- A person whom the court finds unsuitable.6

Professional Guardians. A professional guardian is one who is:

- not a member of the incapacitated person’s family;
- charges fees for carrying out the duties of guardian for three or more incapacitated persons;
- professional guardians are subject to the certification requirements established by the State Supreme Court and the Administrative Office of the Courts.7

Financial Institutions. Financial institutions are subject to the jurisdiction of the State Superintendent of Banking and are authorized to exercise trust powers. Federally chartered financial institutions may also act as guardian of the estate if they are not otherwise disqualified. They are not required to meet the certification requirements established by the State Supreme Court, even if they serve as Guardian of Estate for more than two persons for compensation.

Practice Tip: A guardian may be nominated in a durable power of attorney. However, the appointment of a guardian is always made by the court of appropriate jurisdiction.

E. ROLE OF THE PLAYERS IN THE GUARDIANSHIP PROCESS

In a guardianship proceeding each “player” has a specific role. In a typical proceeding, the following roles will be filled:

The Court and Jury. The court is the supervisor over all of the proceedings, and is the entity that makes the ultimate decisions regarding the incapacitated individual. The court will decide whether or not the appointment of a guardian is necessary under the

6 RCW 11.88.020
7 RCW 11.88.080
applicable law and facts. If the alleged incapacitated person requests a jury trial, the jury will decide the issue of capacity. In all cases in which a guardian is to be appointed, the designation of whom shall be appointed will be made by the judge. When the court appoints a guardian, it then has the duty to supervise the actions of the guardian in providing for the needs of the incapacitated person and the management of their estate. For example, if the court believes that expenditures have been made inappropriately, it has the authority to order repayment to the guardianship estate of the incapacitated individual. The court also has the authority to “cite” (issue a Citation) or compel people who appear to have inappropriately spent, wasted, or embezzled assets of the incapacitated person to come to court and provide a good explanation for the expenditures, or to pay back the estate. Case law in Washington refers to the role of the court as being the "Super Guardian".

The Petitioner. The petitioner is the person who, upon oath or penalty of perjury, signs the petition alleging the incapacity of the person over whom the proceeding is brought and requests the appointment of a guardian. The petitioner is often a friend or relative of the individual, but can also be any person or entity (such as a hospital or nursing home) with knowledge sufficient to sign a petition. After the filing of the petition, the role of the petitioner is to convey any additional pertinent information to the Guardian ad Litem. After the Guardian ad Litem has reported, the petitioner may respond to the recommendations of the Guardian ad Litem in writing and in court.

The Attorney for the Petitioner. If the Petitioner wishes to have an attorney, that person’s role is to represent the Petitioner and to serve as their advocate in the proceeding. This will take various forms depending upon whether or not the Petitioner agrees with the recommendations of the Guardian ad Litem, whether the alleged incapacitated person requests a jury trial, or a variety of other factors. The role of petitioner’s attorney is to represent the views of the Petitioner.

The Guardian ad Litem. The court appoints an independent and trained person to act as Guardian ad Litem for the alleged incapacitated person from a registry of qualified professionals. The role of the Guardian ad Litem is to represent the best interests of the person alleged to be incapacitated. The Guardian ad Litem is required to inform the alleged incapacitated person of their specific legal rights; to advise the court of the need for appointment of independent counsel, if requested by the alleged incapacitated person; to interview persons with information relevant to the proceeding; to obtain a medical or psychological report; and to make recommendations to the court regarding less restrictive alternatives, the issues of incapacity, and the person nominated to be appointed guardian. The Guardian ad Litem has other duties and authority that may be appropriate in specific cases, such as:

- the authority to give consent for emergency life-saving medical services, in the event the alleged incapacitated person is in need while the petition is pending (prior to entry of the order from the hearing on the petition);

---

8 In re Haegle, 150 Wash. 355, 358, 272 P. 978 (1928) (The court is the “superior guardian of the ward, while the person appointed guardian is deemed to be an officer of the court.”)
• the authority to make a motion to the court for temporary relief under RCW Chapter 74.34 to protect the alleged incapacitated person from abuse, neglect, abandonment, or exploitation or to address any other emergency needs of the alleged incapacitated person.

Upon completion of the duties and the appointment of a guardian or dismissal of the petition, the Guardian ad Litem will be discharged, unless the Guardian ad Litem is specifically ordered to perform additional duties as set forth in a court order.

The Attorney for the Alleged Incapacitated Person. Only the court can appoint an attorney to represent the alleged incapacitated person in a guardianship proceeding and only the court can discharge the attorney. The attorney who represents the alleged incapacitated person in a guardianship action has a unique role. The attorney must advocate for the expressed wishes of the client, which means that they must advocate for what the client wants, even if it is an unreasonable position. They are not to advocate for the best interests of the individual, unless their client is in agreement with that position.

Practice Tip. Standards of Decision Making
Best Interest requires focusing on the needs of the IP and may require rejecting the expressed desires of the IP.

Substitute Judgment entails making the decision one believes the incapacitated person (IP) would make based on the IPs previously expressed and/or current wishes. The Principle of Substituted Judgment is not used when following the IP’s wishes would cause substantial harm to the IP, or when one is unable to establish the IP’s prior or current wishes (See In re Guardianship of Stamm where physicians who examined patient agreed that he was in vegetative state with no hope of improvement, the facts showed that patient would have refused treatment, patient’s guardian had authority to consent to termination of life support systems).

F. THE PROCESS OF NOMINATION, SELECTION, AND APPOINTMENT OF A GUARDIAN

A guardian is nominated for appointment in a number of ways. Some examples:

• A specific person or agency may be nominated in the Petition for Appointment of Guardian. In that circumstance, the Guardian ad Litem is required to assess the qualifications of the proposed guardian, and to assess the appropriateness of the steps the guardian has or intends to
take to address the current and emerging needs of the alleged incapacitated person;

- The guardian ad litem may also nominate a person or agency to be appointed as guardian;

Practice Tip. As a practical matter, the guardian ad litem often engages in a dynamic dialogue with the petitioner and the interested parties in selecting the guardian nominee. There are occasions when the proposed guardian is not qualified to serve, or when a profound dispute exists in regard to the suitability of the proposed guardian. In those instances the Guardian ad Litem advises the parties of the lack of qualifications and proposes an alternative. In other instances when interested parties raise significant objections to a proposed guardian, the Guardian ad Litem may search for a qualified, neutral guardian.

- The alleged incapacitated person may nominate a person to be guardian in the proceeding, or in a Durable Power of Attorney. While the appointment of a guardian is a specific duty and responsibility of the court, the law provides that the court shall make its appointment in accordance with the alleged incapacitated person’s most recent nomination in a durable power of attorney, except for good cause or disqualification of the person so nominated. The durable power of attorney statute, RCW 11.94, provides a procedure for petitions to be made concerning the authority and scope of a durable power of attorney by the attorney-in-fact, the principal, the spouse of a principal or a third party, including a guardian. A proposed guardian named in the durable power of attorney may request authority to serve as guardian and obtain the supervision and protection of the court to perform the duties and responsibilities set-forth in the document. An attorney-in-fact may also petition the court and seek additional authority, including the appointment of a limited guardian or full guardian, in the best interests of a principal who may be an alleged incapacitated person. [See text of RCW 11.94, reference in Unit 12]

G. OBLIGATIONS OF ALL LEGAL GUARDIANS

Contents of the Order Appointing Guardian. The Order Appointing Guardian must address specific issues concerning the obligations of the guardian, including the following:

- The necessity of posting a bond;
- When the next report of the guardian is due;
• Whether a review hearing is required upon the filing of the inventory;
• The authority of the guardian for investment and expenditure of the ward’s estate;
• Names and addresses of the persons to whom the guardian must notify that may request copies of all pleadings filed by the guardian;
• If the appointment is of a limited guardian, the duties, obligations and limits of the authority of the guardian;
• Whether the guardian has the authority to give informed medical consent.
• Whether the individual retains the right to vote in elections
• Whether the individual retains the right to marry.9

The Order Appointing Guardian often contains additional provisions, such as the approval of fees of all counsel involved and the discharge of the Guardian ad Litem.

Qualification: Oath, Bond, Blocked Financial Accounts.

Oath: The guardian must sign and file a notarized Oath of Guardian before Letter of Guardianship will be issued by the Clerk of the Court.

Bond: A bond must be executed by the guardian, approved and signed by the court and filed in the guardianship action unless certain exceptions apply. RCW 11.88.100 states as follows:

Before letters of guardianship are issued, each guardian or limited guardian shall take and subscribe an oath and, unless dispensed with by order of the court as provided in RCW 11.88.105, file a bond, with sureties to be approved by the court, payable to the state, in such sum as the court may fix, taking into account the character of the assets on hand or anticipated, and the income to be received, and disbursements to be made, and such bond shall be conditioned substantially as follows:

The condition of this obligation is such, that if the above bound A.B., who has been appointed guardian or limited guardian for C.D., shall faithfully discharge the office and trust of such guardian or limited guardian according to law and shall render a fair and just account of his guardianship or limited guardianship to the superior court of the county …, from time to time as he shall thereto be required by such court, and comply with all orders of the court, lawfully made, relative to the goods, chattels, moneys, care, management, and education of such incapacitated person, or his or her property, and render and pay to such incapacitated person all moneys, goods, chattels, title papers, and effects which may come into the hands or possession of such guardian or limited guardian, at such time in such manner as the court may order, then his obligation shall be void, otherwise it shall remain in effect.

9 RCW 11.88.095
The bond shall be for the use of the incapacitated person, and shall not become void upon the first recovery, but may be put in suit from time to time against all or any one of the obligors, on the name and for the use and benefit of any person entitled by the breach thereof, until the whole penalty is recovered thereon. The court may require an additional bond whenever for any reason it appears to the court that an additional bond should be given.

In all guardianships or limited guardianships of the person, and in all guardianships or limited guardianships of the estate, in which the petition alleges that the alleged incapacitated person has total assets of value of less than three thousand dollars, the court may dispense with the requirement of a bond pending filing of an inventory confirming that the estate has total assets of less than three thousand dollars: PROVIDED, that the guardian or limited guardian shall swear to report to the court any changes in the total assets of the incapacitated person increasing their value to over three thousand dollars: PROVIDED FURTHER: that the guardian or limited guardian shall file a yearly statement showing the monthly income of the incapacitated person if said monthly income, excluding moneys from state or federal benefits, is over the sum of five hundred dollars per month for any three consecutive months.

**Blocked Accounts/Reduction in amount of bond required:** If the court authorizes or orders that financial accounts be blocked (subject to withdrawal only upon court order), the guardian is required to file a verified Receipt for blocked Financial Account. RCW 11.88.105 states as follows:

In cases where all or a portion of the estate consisting of cash or securities has been placed in possession of savings and loan associations or banks, trust companies, escrow corporations, or other corporations approved by the court and if a verified receipt signed by the custodian of the funds is filed by the guardian or limited guardian in court stating that such corporations hold the cash or securities subject to order of the court, the court may in its discretion dispense with the bond or reduce the amount of the bond by the amount of such deposits.

**When a bond is not required:** RCW 11.88.107 states as follows:

In all cases where a bank or trust company, authorized to act as guardian or limited guardian, or where a nonprofit corporation is authorized under its articles of incorporation to act as guardian or limited guardian, is appointed as guardian or limited guardian, or acts as guardian or limited guardian under an appointment as such heretofore made, no bond shall be required: PROVIDED: that in the case of appointment of a nonprofit corporation court approval shall be required before any bond requirement of this chapter may be waived.

**Letters of Guardianship.** Once the oath and bond are filed, the guardian is deemed to have “qualified,” and the clerk can issue Letters of Guardianship. These letters are evidence that the guardian has fulfilled all the requirements to begin acting on behalf of the incapacitated person.
**Designation of Standby Guardian and Resident Agent.** In all cases, a Guardian must file a Notice of Designation of Standby Guardian. The Standby Guardian has a limited role. If the Guardian dies, is out of state or unavailable, or is otherwise unable to fulfill their duties, the Standby Guardian has all the powers of the Guardian to act. In addition, if the appointed Guardian is deceased or will be unable to perform duties for an indefinite period of time, the Standby Guardian has the duty to bring this to the court’s attention within 30 days, and to request the appointment of a successor guardian. Often, the Guardian and Standby Guardian have agreed that the Standby Guardian should be next in line to serve, as well as to assume control as an alternate, if something happens to the appointed Guardian.

A Resident Agent must be appointed for a Guardian if the Guardian does not reside in the State of Washington. The Resident Agent is appointed for the sole purpose of accepting service of process.

**Personal Care Plan; Inventory; Proposed Budget.** In each case in which a guardianship of the person is appointed, the Guardian must file a Personal Care Plan with the court within 90 days of appointment. The Personal Care Plan defines the specific needs of the incapacitated person, and sets forth the plan that the Guardian has of meeting those needs. The Personal Care Plan must updated and filed with the Guardian’s periodic reports, or as the court directs. The form of the annual care plan includes additional information, which is set forth specifically in the guardianship statute and the forms available.

In each case in which a Guardian of the Estate is appointed, the Guardian must file an Inventory of Assets of the estate with the Court within 90 days of appointment. This Inventory must be updated at the time of the filing of the Guardian’s periodic reports (and accountings). The initial Inventory must include all of the assets that are known to the Guardian and of which the Guardian has taken control.

If the Guardian proposes to make any expenditure from the estate, the Guardian must file and seek court approval of a Proposed Budget not later than the filing of the Inventory. An updated Budget must be included in each subsequent Periodic Report and Accounting filed thereafter in which funds are expected to be expended.

**Periodic Reports and Accounting.** The Guardian of Estate must file annually (or biannually or triennially as determined by statute and the court) a periodic accounting of all the financial activities of the guardianship. The Guardian of the Person must file annually (or at the time of a periodic accounting), a report of the status of the incapacitated person, which shall include a list of items set forth in the statute.

**Notice of Substantial Change of Circumstances.** The Guardian of the Estate is required to report any substantial change in the income or assets of the guardianship estate within thirty days of the occurrence of the change, and to schedule a hearing for the court to review the amount of bond required.
The Guardian of the Person is required to report to the court within thirty days any substantial change in the incapacitated person's condition or change in residence. This may include a variety of conditions affecting the incapacitated person, including death.

All Guardians should promptly report any changes of their own addresses, or appointment of Standby Guardian or Resident Agent.
UNIT TWO: RESPONSIBILITIES OF THE GUARDIAN OF THE PERSON

A. LEARNING OUTCOMES

1. The Guardian will understand the responsibilities and limitations of a Guardian of the Person
2. The Guardian will be able to identify needs of the incapacitated person and resources needed to meet those needs
3. The Guardian will understand how to prepare Personal Care Plans and Periodic Reports
4. The Guardian will know his or her duties and role in personal decision-making – Medical, Social, Psychological
5. The Guardian will know what to do when changes in circumstances occur and in what circumstances to request court direction
6. The Guardian will be able to identify special issues facing the guardian of the person: residential placement, code status, and extraordinary medical procedures
7. The Guardian will understand the specific responsibilities and limitations of authority regarding these special issues

B. RESPONSIBILITIES AND LIMITATIONS OF THE GUARDIAN OF THE PERSON

The guardian of the person is responsible for coordinating and managing care to meet the physical, mental, emotional, and social needs of the incapacitated person. These needs include physical health and safety, nutrition, housing, and medical care, as well as emotional and social well being. The court order appointing a guardian of the person defines the scope of the guardian’s authority and may limit that authority based upon the incapacitated person’s ability to perform or assist in some areas of their own care. Any rights not taken away are retained by the incapacitated person.

Upon appointment, the guardian of the person must file a notice designating another individual or entity as standby guardian in the event the guardian of the person dies or becomes legally incapacitated. (See these websites when forms are needed)

The guardian’s duties include: identifying the incapacitated person’s needs, accessing and coordinating services to meet current and emerging needs, developing and implementing a personal care plan, and anticipating the future needs of the incapacitated person. The guardian of the person works directly with the

10 SOP 401.4

12 The duties of the guardian or limited guardian of the person are set forth in RCW 11.92.043.
incapacitated person to involve that person in the personal care plan to their fullest capacity.\textsuperscript{13}

The guardian of the person is also responsible for preparing and filing the initial Care Plan, for preparing and filing the annual Status Report on the incapacitated person, and for providing notice to the court of significant changes in the circumstances of the incapacitated person.

C. IDENTIFYING NEEDS AND RESOURCES

The Personal Care Plan includes the following information: a) an assessment of the incapacitated person’s physical, mental and emotional needs and of the person’s ability to perform activities of daily living; and b), the guardian’s specific plan for meeting the incapacitated person’s identified and emerging personal care needs.\textsuperscript{14}

To identify the areas of need, the guardian meets with the incapacitated person, and perhaps with family members, care providers, or other professionals, to conduct an independent assessment of the functional abilities, residual capacities, and existing support services of the incapacitated person. Assessments made by professional providers or outside agencies may be utilized, but should be confirmed by the experience of the guardian of the person. Areas to be assessed include cognitive functioning, financial management, and activities of daily living, including personal care and community living skills.

The guardian of the person will nearly always identify deficits in the incapacitated person’s cognitive functioning, in the ability to carry out activities of daily living, and in existing services. This is essential to ensure that the needs of the incapacitated person will be completely addressed in the personal care plan. Through meeting with the incapacitated person, the guardian will also develop a sense of the incapacitated person’s residual capacities, personality, values, lifestyle, attitudes and preferences. Strengths must also be identified to maximize residual capacities and promote independence. The guardian of the person must work in coordination with the incapacitated person to develop the personal care plan, and maintain the independence of the incapacitated person.

It is also helpful to determine, at this initial stage, the incapacitated person’s preferences for medical treatment and intervention, including preferences for or against resuscitation in the event of sudden death.\textsuperscript{15} If the incapacitated person is capable of providing input, their wishes must be given substantial weight in making healthcare decisions.\textsuperscript{16} If he or she is unable to provide input, advance directives made prior to incapacity can provide direction to the guardian in making medical decisions and providing informed consent for the incapacitated person. In the absence of advance directives, it may be helpful to meet with family members or friends to determine the incapacitated person’s historical patterns of behavior, belief, and opinion on medical intervention. Choices made by the incapacitated person during a previous illness, or upon the death or illness of a spouse or child, may be instructive of the incapacitated person’s own preferences for medical care and intervention.

\textsuperscript{13} SOP 401.7
\textsuperscript{14} RCW 11.92.043(1).
\textsuperscript{15} SOP 402.1
\textsuperscript{16} See Unit 1; Page 10 Practice Tip Decision Making.
D. PERSONAL CARE PLAN

Implementation of the Personal Care Plan most often begins before the written plan of care is completed and filed with the court due to the necessity of addressing unmet needs or emerging care issues. The guardian of the person has the authority and duty to act on behalf of the incapacitated person upon appointment, filing of oath, and receiving Letters of Guardianship. The guardian must recognize the limits to his or her decision making authority as outlined in the Order Appointing the Guardian or Limited Guardian. Following the needs assessment, the guardian of the person should:

- Consider the options to meet each identified need
- Assess risks and benefits of each option
- Determine the short and long term goals and probable outcomes of choices made on behalf of the incapacitated person
- Anticipate as much as possible changes that might occur in the coming report period
- Prepare a plan for meeting the needs of the incapacitated person.

The guardian should also consider the cost of each service relative to the incapacitated person’s financial resources.

Minimally, the goal of the personal care plan will be stabilization and long-term support for the incapacitated person. This should be accomplished in the least restrictive and most appropriate setting to meet the person’s needs. The ultimate goal is for the incapacitated person to thrive by exercise of individual rights, activities in areas of interest, support in areas of deficit, and a plan for response to emerging needs and changes in circumstance.

The guardian of the person has the responsibility to know the resources and services available in the area where the incapacitated person lives. There are resource guides available to access services for specific populations, and referral services for placement, medical providers, or home care. These services may be offered for a fee. Some referral services are supported by fees paid by service providers. The guardian has the obligation to assess the quality and completeness of services offered and provided to the incapacitated person.

Within 90 days of appointment, the guardian of the person must file a personal care plan with the court.

The plan must include:
a. An assessment of the incapacitated person’s physical, mental, and emotional needs and of such person’s ability to perform or assist in activities of daily living; and
b. The guardian’s specific plan for meeting the identified and emerging personal care needs of the incapacitated person; and
c. A list of all professionals and service providers involved in providing care or services to the incapacitated person.17

E. PERIODIC STATUS REPORTS

The guardian is also required to file an annual report as to status. The purpose of this report is to keep the court informed of the status of the incapacitated person and to give the court an opportunity to monitor the guardian and conduct an independent assessment as to whether the needs of the incapacitated person are adequately met. The annual report as to status must include:

a. The name and address of the incapacitated person and all residential changes that occurred during the report period;
b. The services or programs which the incapacitated person receives;
c. The medical status of the incapacitated person;
d. The mental status of the incapacitated person;
e. Changes in the functional abilities of the incapacitated person;
f. Activities of the guardian during the past report period;
g. Any recommended changes in the scope of the authority of the guardian; and
h. The identity of any professionals who have assisted the incapacitated person during the report period.18

This report is filed along with the annual report of the guardian of the estate, if one exists.

F. PETITIONS TO THE COURT FOR RELIEF

The Guardian may, at any time, petition the court for specific relief or instructions regarding issues which may arise in the course of the guardianship. This course is used by many guardians if family members disagree about care issues, medical issues, etc. and the guardian wants the court to assist and instruct.19

A guardian can also seek an order of protection under the domestic violence statute, RCW 26.50 et seq. This statute provides protection in situations where a family or household member is harming or threatening the incapacitated person. Such harmful activity includes: physical harm, bodily injury, infliction of fear of imminent physical harm, sexual assault, or

17 RCW 11.92.043(1)
18 RCW 11.92.043(2)(a-h)
19 SOP 401.1
stalking. A guardian on behalf of the incapacitated person could bring such a petition. However, even though the guardian must obtain court approval from the guardianship court, the guardian must bring the petition in a separate lawsuit brought under Title 26, rather than in the guardianship action.

A guardian can also seek an order of protection under the vulnerable adult statute, RCW 74.34 et seq. This statute provides protections in situations where a vulnerable person is subject to abuse or neglect by care providers or exploitation in a care facility. A guardian could bring a petition and obtain restraining orders and other relief as may be necessary to protect the vulnerable adult.

**Practice Tip.** Guardians of the person should be aware that if the incapacitated person must pursue a claim or cause of action (i.e. tort, contract, family law), or defend or settle a claim, this must be done by the guardian of the estate, if there is one. RCW 11.92.060. If there is no guardian of estate, then the “IP” personally does this. If such circumstance occurs and the guardian of person determines that the “IP” is incapacitated as to his or her estate, the guardian of person should petition for the appointment of a guardian of the estate.

**G. CHANGES IN CIRCUMSTANCES**

1. **Change of Residence of Assisted Person.** In addition to the initial personal care plan and the annual report as to status, the guardian is required to report to the court within thirty days any significant change in the incapacitated person’s condition, or any changes in residence of the incapacitated person.\(^{20}\)

2. **Notice of Significant Change.** A significant change requiring notice to the court might include a serious injury or diagnosis of disease requiring specialized treatment, a substantial improvement or deterioration in the condition that brought about the need for a guardianship or limited guardianship, or the death of the incapacitated person.

3. **Notices to the Court and Designated Persons.** Any party who has filed a request for special notice of proceedings should also be sent a copy of the notice that is filed with the court.

\(^{20}\) RCW 11.92.043
H. COURT SUPERVISION AND DELINQUENCY MONITORING

Every guardianship of the person is established and monitored by the Washington State Superior Court, under the authority of Washington state law. Most counties have specific procedures in place to ensure that the required reports are filed in a timely fashion. The order appointing guardian should specify a date by which the care plan is to be filed, as well as a date for the next annual report on the status of the incapacitated person. If such documents are not filed by the noted date, the court may cite the guardian into court to show cause why such information has not been filed. Generally speaking, if the guardian is unable to meet the deadline, and appraises the court of a valid reason for the delay, the court will allow a continuance of the date for filing such report.

A person or entity, which has filed a request for special notice, may also petition the court for a citation requiring the guardian to file the delinquent report. The court will then issue a citation for the guardian to show cause why the report has not been filed and will hold a hearing on the matter.21

Practice Tip. If the guardian cannot complete a specific report within the required time period, a request to the court for a continuance should be sought. The guardian should advise the court of the reasons for the delay and provide a report as to the status of the proceeding at that time.

Note: There are statutory requirements to which the guardian is held, whether or not a particular requirement is mentioned in a court order. For example, RCW 11.92.043 requires that the guardian of the person file a care plan within 90 days of appointment. If the order appointing guardian for some reason neglects to direct that a care plan be filed by a certain date, the requirement continues to exist, and the court will hold the guardian to it. It is the responsibility of the guardian to familiarize herself with the statutory requirements, in addition to the elements of the court order.

Personal Health Care Records22

General Rule 22 states:

(1) personal health care records shall be submitted to the clerk under a cover sheet designated "SEALED FINANCIAL SOURCE DOCUMENTS," "SEALED

21 RCW 11.92.160
22 "...means any record or correspondence that contains health information that (1) relates to the past, present, or future physical or mental health condition of an individual including past, present, or future payments for health care; or (2) involves genetic parentage testing."
PERSONAL HEALTH CARE RECORDS" or "SEALED CONFIDENTIAL REPORT" for filing in the court record of family law or guardianship cases.

(2) personal health care records submitted shall be automatically sealed by the clerk. The coversheet or a copy thereof shall remain part of the public court file.

(3) The court may order that any personal health care records be sealed if they have not previously automatically been sealed pursuant to this rule.

(4) These coversheets may not be used for any documents except as provided in this rule. Sanctions may be imposed upon any party or attorney who violates this rule."

I. RESIDENTIAL PLACEMENT PROBLEMS

A guardian cannot force an incapacitated person to be detained in a residential treatment facility against that person’s will either with or without a court order.23 A person can only be detained under the involuntary treatment (civil commitment or summons) provisions of Washington law.24 This includes placements in nursing homes, assisted living centers, boarding homes, or adult family homes. Further, it is the guardian’s responsibility to respect the incapacitated person’s right to live in the setting of his or her choice, even if a person is not, in the opinion of the guardian, acting in his or her own best interests in refusing placement.

Practice Tip. The appropriate placement is not necessarily the most secure or controlled environment available. The standard is to meet the needs of the incapacitated person in the least restrictive setting.25

Resolution to placement issues should first be approached by an objective assessment of the reasons for the incapacitated person’s resistance. If a guardian can identify the person’s true concerns, it may be possible to alleviate these concerns. For instance, perhaps the person is simply overwhelmed by the complexity of a proposed move. Other approaches could involve enlisting the support of a person significant to the incapacitated person (such as a family member, friend, or caregiver) or a person the incapacitated person admires or respects (such as clergy, physician or other health care professional, or even the veterinarian for a pet), trial placement on a temporary basis, etc.

If all attempts to reason with the incapacitated person result in a dead end, and if the incapacitated person is demonstrating a danger to herself or others, referral should be

23 RCW 11.92.190
24 RCW 71.05 – Involuntary Treatment Act (ITA)
25 SOP 404, SOP 404.9
made to the County Designated Mental Health Professional (CDMHP) to evaluate for involuntary treatment.

If a move is necessitated by the incapacitated person’s inability to afford the level of care she needs to continue to reside at home, the same steps toward resolution apply.

If the guardian and the incapacitated person cannot agree on placement choices to meet care needs, the guardian should seek legal counsel, and formulate a resolution consistent with Washington statute. Other professional assessments may help frame the issue for the guardian, attorney, and the court in, for example, appointing a Guardian ad Litem for a thorough assessment or counsel for the incapacitated person. While it is appropriate to seek court direction on residential placement problems, a petition must recognize that neither the guardian nor the court has statutory authority to direct that an incapacitated person live in a particular setting against his or her will.

Practice Tip. Referral to the CDMHP for involuntary commitment or summons should only be made when actual danger to self or others can be demonstrated. Utilizing this safeguard can be ineffective and frustrating to the guardian if the necessary criteria are not met.

J. MEDICAL DIRECTIVES ON CODE STATUS

The authority to give directives on code status by the guardian or any other surrogate decision-maker is a topic of current controversy, with facility licensing requirements in apparent conflict with the guardian’s statutory authority. Until legislation and court cases better define the issues surrounding advance directives, informed consent, and substitute decision making in the area of code status, guardians must work within the DSHS licensing requirements when an incapacitated person resides in a facility.

Upon appointment, the guardian determines as much as possible the incapacitated person’s preferences for medical intervention. This should include a discussion of preferences for resuscitation in the event of sudden death, or “code status.” Cardiopulmonary resuscitation specifically refers to basic rescue procedures including chest compressions and rescue breathing. In a medical setting, resuscitation can also include a full range of cardiac interventions including manually opening the airway, ventilation support, endotracheal intubation, advanced airway management, cardiac monitoring, defibrillation, and intravenous resuscitation medications. A “no code” designation means that none of these procedures will be initiated. A “full code” designation may include any or all of these procedures.

26 SOP 405.3, SOP 405.6
If the guardian determines the incapacitated person wants a no code or “do not resuscitate” designation, arrangements must be made to have this preference respected. Generally, if no arrangements are in place to the contrary, a person is considered “full code” by medical and emergency personnel, and all efforts are made to provide resuscitation in the event of sudden death.27

| Practice Tip. | Having a “no code” designation provides direction regarding staff or medical response in the event of sudden death. A person with a “no code” status may still prefer to receive treatment for any or all other illnesses. |

If the incapacitated person resides at home, a green Department of Health EMS – No CPR directive form can be obtained from the primary care physician. It must be signed by the physician, since emergency medical services (EMS) personnel can only honor it under doctor’s orders. It should also be signed by the guardian, and placed in the home in the locations specified on the form.

EMS forms can also be used in boarding homes, assisted living centers, and adult family homes licensed by DSHS. These facilities are trained to view code status as a medical choice of the resident or authorized surrogate decision maker. However, most facilities of this type do not have licensed health care professionals on staff who can declare a person to be dead, so DSHS requires that facility staff call EMS and administer CPR until they arrive, even if it is against the resident’s wishes. This apparent conflict between DSHS licensing standards, statutes governing EMS personnel, and individual rights to refuse medical intervention is not adequately addressed and may require statutory modification.

In a skilled nursing facility, there is medical staff available around the clock who are authorized to declare someone dead. In these facilities, licensing regulations direct that a code/no code decision is an advance directive if made prior to the time of need, and an informed consent decision if made close to the time of need. The current criteria for determining time of need is; the patient has a terminal, irreversible condition; a permanent unconscious condition or vegetative state; an injury or illness in which CPR would be medically futile; or when there is a high medical probability that the person’s heart or breathing will stop. If a physician determines that any of these conditions are present, the guardian can give informed consent for code status.

K. INFORMED CONSENT REGARDING EXTRAORDINARY MEDICAL PROCEDURES

The guardian of the person has the authority to make healthcare decisions for the incapacitated person if this right is not retained in a limited guardianship. Informed consent consists of making healthcare decisions based on an understanding of the alternatives, risks and outcomes of the treatment or health care service. The guardian of the person should meet with medical professionals, obtain and review records, and disclose information as needed to determine the health status of the incapacitated person, the risk, benefits, and anticipated outcomes of proposed treatments, alternative treatments, and the consequences of non-treatment.

RCW 11.92.043(5) precludes a guardian, limited guardian, or standby guardian from giving consent to:

1) Therapy or other procedure which induces convulsion;
2) Surgery solely for the purpose of psychosurgery;
3) Other psychiatric or mental health procedures that restrict physical freedom of movement or the rights set forth in RCW 71.05.370.

A guardian who believes such procedures are necessary must petition the court for an order approving such procedures. An attorney must be appointed for the incapacitated person and a hearing held on the petition before such relief can be granted.

L. ETHICAL DECISION MAKING

Substitute decision making must always be done in an ethical and principled manner by the guardian. The ethically preferred standard requires that the views and wishes of the incapacitated person receive paramount consideration so far as they can be ascertained and decisions should be as close as possible to the decision the incapacitated person would have made themselves. Each decision should be approached from the perspective and values of the incapacitated person.

This implies a duty of the guardian to make good effort to determine the current and previously stated preferences, views, and values of the incapacitated person. If the incapacitated person is unable to provide input, the guardian may need to seek information from family members, health care providers, or others who have knowledge of the incapacitated person. Other interested parties may see an opportunity to advocate for choices based on self-interest, over-protectiveness, or an incomplete understanding of the duties and authority of the guardian. It is the guardian’s responsibility to make decisions based on the best interests of the incapacitated person rather than the wishes of others.

28 SOP 405.5
29 SOP 402.1
The current wishes of the incapacitated person may be expressed verbally or through behavior. If the incapacitated person is persistent and determined in their communication of a preference, this should be given substantial weight by the guardian, even if the incapacitated person has limited abilities to understand his or her needs.

Where it is not possible to determine how a person would have acted, the guardian should act in the best interest of the person.\textsuperscript{30} This involves making the decision that would be made by a reasonable person in the incapacitated person’s circumstances. This is a less preferred standard, and should not be utilized as a matter of convenience, or before good efforts have been made to determine the incapacitated person’s probable choice. The guardian of the person should strive to provide the highest level of service on behalf of the incapacitated person.

\textsuperscript{30} SOP 402.2
UNIT THREE: RESPONSIBILITIES OF THE GUARDIAN OF THE ESTATE

A. LEARNING OUTCOMES

1. The Guardian will understand the responsibilities and limitations of a guardian of estate
2. The Guardian will be able to identify needs of the incapacitated person and available resources to meet those needs
3. The Guardian will know what can be done without specific court authority
4. The Guardian will know what additional authority a guardian may need
5. The Guardian will know what to do when major financial changes occur
6. The Guardian will be able to identify special financial issues: sales and gifting of assets, marshalling assets, and the incapacitated person as trust beneficiary
7. The Guardian will be able to identify the options and procedures regarding these special financial issues

B. MARSHALING AND INVENTORYING THE ASSETS

It shall be the duty of the guardian or limited guardian of an estate:
To file within three months after the guardian’s appointment a verified inventory of all the property of the incapacitated person which comes into the guardian’s possession or knowledge, including a statement of all encumbrances, liens, and other secured charges on any item.

This section of the guardianship statute sets in motion the process of determining the incapacitated person’s assets and liabilities. The guardian of the estate should carefully review the statute upon appointment, keeping in mind that it may be amended at any time. The statute provides a three-month deadline for reporting the results of the investigative process to the court. The finished document is the Guardianship Inventory.

31 The duties of the guardian or limited guardian of an estate are set forth in RCW 11.92.040. This unit is intended as an overview of the guardian’s responsibilities as set forth in that statute.
32 RCW 11.92.040(1)
It is important to prepare an accurate and detailed inventory, as it will become the starting point from which the guardian of the estate\textsuperscript{33} will work. The guardianship inventory clearly defines the estate for which the guardian is responsible.\textsuperscript{34}

1. **The Marshaling Process.** Marshaling the estate is the process by which the guardian identifies, gathers and organizes the assets and information concerning the liabilities of the incapacitated person. This process can be challenging for the guardian in situations where the incapacitated person has kept inadequate records, or even, in some cases, no records at all. Attention should be given to the process of marshaling the assets to insure that all assets are located and properly identified on the Guardianship Inventory.

Sources of information which may assist the guardian of the estate with the marshaling process, include:

- **Court Documents.** The original petition for guardianship is an excellent source of information identifying assets and liabilities. The Petition for Guardianship must state the approximate value and description of property, including any compensation, pension, insurance, or allowance to which the alleged incapacitated person (AIP) may be entitled.\textsuperscript{35} Thus the original Petition is often a good starting place for the guardian to begin his or her inventory.

In many instances the Guardian ad Litem (GAL) has knowledge of the AIP’s estate and liabilities. Many GALs include the AIP’s financial information in their report. Thus, it is wise to review the GAL report for information or leads on assets and liabilities.

- **Incoming Mail.** Another excellent source of information about the incapacitated person’s assets and liabilities is the incapacitated person’s incoming mail. Most creditors send out a monthly statement. Thus a regular review of the incoming mail during the marshaling process is important.

| Practice Tip. | One of the guardian’s first acts should be to submit a Change of Address Order to the local post office so that the incapacitated person’s mail will be forwarded directly to the guardian. Attaching a photocopy of the letters of guardianship usually ensures the postal services will make the change within five to ten days. |

\textsuperscript{33} This Unit entails responsibilities of the guardian of the estate only. Whenever the text in this Unit refers to the “guardian”, it is only referring to the “guardian of the estate”. Responsibilities of the guardian of the person are discussed in Unit Two, supra.

\textsuperscript{34} RCW 11.92.040(2)

\textsuperscript{35} RCW 11.88.030(1)[c]
- **Back Tax Returns.** The various tax schedules submitted with the incapacitated person’s previous tax returns can be invaluable in identifying possible assets. It is best to review at least the previous three years’ tax returns, including the W-2s and 1099 forms.

  Practice Tip. If the prior returns cannot be found in the incapacitated person’s records, they can be requested from the Internal Revenue Service using IRS Form 4506. It usually takes at least a month for the IRS to respond.

  A proper inquiry to the IRS can also produce information regarding liabilities owed to the agency.

- **Personal Interviews.** Whenever possible, it is recommended to communicate with the incapacitated person on estate matters. Not only might a conversation with the incapacitated person lead to information regarding undiscovered assets, but it will also provide the incapacitated person an opportunity for input into his or her own affairs, creating the basis for a good relationship with the incapacitated person for the duration of the guardianship. Relatives, friends, and neighbors of the incapacitated person should also be consulted.

- **Review of Personal Papers.** The guardian should carefully review all the incapacitated person’s papers, including old mail.

- **Title Searches.** When the guardian is aware of real property owned by the incapacitated person, a full title search should be conducted. The title search reveals information about liens, property tax and other information, which may be beneficial to the guardian. If there is question about the ownership of a particular piece of real property, most title companies will prepare a listing packet, which provides information of recent transactions affecting the real property. The package is provided at no charge and can be especially helpful where there is concern that the incapacitated person may have disposed of property while legally incapacitated or while subject to undue influence.

- **Employer Interview.** In cases where the incapacitated person was employed at some time during his or her life, the previous employers should be contacted. They are a good source of information regarding possible pension benefits, health benefits, and life insurance or disability income.

- **Credit Reports.** A credit report may be helpful in identifying the incapacitated person’s outstanding debts.
2. **Preparing the Guardianship Inventory.**

As noted above, the guardian is required to file the Guardianship Inventory within three months of appointment. The purpose of the Guardianship Inventory is to inform the court and interested parties of the type and value of the incapacitated person's assets and liabilities as of the date of appointment. It is essentially a snapshot of the estate as of the date of the guardian's appointment and provides a foundation upon which periodic reports to the court are based. [See Guardianship Forms – Guardianship Inventory].

The guardian, at the time of appointment, may receive court permission to close, reduce and/or transfer assets during the three-month time period when the marshaling process is occurring and the Guardianship Inventory is being prepared. Descriptions of any changes or movements of assets by the guardian should be noted in the Guardianship Inventory. The Guardianship Inventory should not only provide descriptions of assets and their values but also information regarding the composition and treatment of the assets and any problems or concerns associated with them.

Assets must be identified by location, account number and value as of the appointment date. If the value is uncertain, the manner in which the assigned value was determined should be stated.

**Practice Tip.** For ease of reading and comprehension, the assets should also be grouped by asset type (e.g. bank accounts, stocks, bonds, etc.)

The following are common types of assets and liabilities contained in an inventory:

- **Bank Accounts.** Each account should be listed separately and should give the name of the bank, the bank branch, type of account (certificate, checking, savings, etc.), the account number and the balance as of the date of appointment. A notation as to how the account is registered should also be noted. (e.g.: “Joint account with Rights of Survivorship”) A description of any activity with the account as of the date of the guardian’s appointment should be

---

included. (e.g. $10,000.00 was transferred from this account to open the
guardianship checking account #062-09890-098 at U.S. Bank.) If the guardian
believes that there is a need for any further investigation into the status of an
asset, such concern should be noted. Rates of interest and maturity dates
should be shown for time deposits.

- **Stocks and Bonds.** Stocks and bonds should be listed individually
  indicating the name of the company, type of instrument (e.g. common, preferred,
bearer etc.), the purchase date, number of shares, tax basis, and market value
  as of date of appointment. Any activity since the date of appointment should be
  noted. If stocks or bonds are held in a brokerage account, the name of the firm
  and account number should be given. If the investment is held in the form of
  certificates, the physical location of the certificates should be indicated. As with
  bank accounts, any joint ownership information or payable on death designations
  should be noted. Likewise if the guardian has any specific concerns about an
  asset, this should be referenced in the inventory.

- **Real Property.** Any interest in real property owned by the
  incapacitated person must be included in the Guardianship Inventory. The street
  address is generally sufficient to identify the location of the property. However, if
  the legal description is known at the time the inventory is prepared, it should be
  included. When assigning a value to the real property, if an appraisal has not
  been completed, the tax-assessed value at the year of appointment is typically
  used. The manner in which the property is held should also be included, along
  with the percentage of interest owned by the incapacitated person. The
  existence of any insurance on the property should be noted, giving the name of
  the carrier, the type of insurance, policy number and limits. Details as to the
  condition of the property or any other factors affecting value or marketability
  should be stated. All liens on the property must also be listed.

- **Safe Deposit Boxes.** The bank name, branch, and box number
  should be listed. The guardian should also include information regarding any
  dates of entry into the safe deposit box, an inventory of the contents, including a
  value of the items, and the current whereabouts of any articles which have been
  removed.

- **Personal Possessions.** Personal possession management can be
  one of the more complex responsibilities of the guardian. Identification of
  personal possessions in the Guardianship Inventory will vary widely depending
  upon the nature of the possession. All items of value should be appraised and
  the appraised value used. Often times, however, items having minor value have
  great sentimental value to the incapacitated person or a relative. Such
  information should be reported on the Guardianship Inventory and appropriate
  efforts made to safeguard the items. Although this aspect of the inventory can be
  time consuming, it is advisable to spend the necessary time in order to have a
  complete inventory list.

**Practice Tip.** A videotape of the personal
possessions of the incapacitated person
is an excellent way of documenting the assets which have come into the guardian’s possession. It is also helpful for insurance purposes.

- **Trusts and Estates.** If the incapacitated person is the beneficiary of a trust, that fact should be reported on the inventory, along with the value of the trust and its most important terms. The trust should not however be characterized as an asset of the guardianship estate. If the incapacitated person is an heir in a pending probate matter, this should be reported, along with the expected amount of inheritance.

- **Liabilities.** All liabilities of the incapacitated person must be listed. This includes consumer debt, liens on property, damage claims and any other outstanding debt. The guardian should state his or her plan for satisfying the debt.

- **Investigations.** If the guardian believes that the incapacitated person has incurred debt under questionable circumstances, or that someone may otherwise have taken financial advantage of the incapacitated person, this should be reported on the Guardianship Inventory together with the guardian’s proposed plan for addressing the problem or investigating it further.

3. **Common Misconceptions Regarding the Marshaling of Assets and Preparation of the Guardianship Inventory.**

   - “I have 90 days from my appointment until I am responsible for the assets of the guardianship.”

   The 90-day requirement of RCW 11.92.040(1) is a deadline for submitting the Guardianship Inventory to the court. **The guardian’s responsibility for the safeguarding of the assets commences immediately upon appointment.**

   - “I have 90 days to provide an inventory that is 100% complete and accurate.”

   - “If it is not listed on the inventory, it is not my responsibility.”

   Although 90 days usually provides sufficient time for the guardian to prepare an inventory, some complex situations may require additional time. **The guardian should submit a Guardianship Inventory of known assets within the 90-day deadline and request additional time to complete the investigation and file an updated inventory.**
The guardian is responsible for all assets of the incapacitated person as of the date of appointment

- The value placed on assets and liabilities listed in the Guardianship Inventory reflects their value as of the date the inventory is prepared.
- **NOTE:** The inventory is a “snapshot” of the incapacitated person’s estate at the time of the guardian’s appointment. Thus the value assigned to the assets listed on the inventory reflects their value as of the date of the guardian’s appointment.

## C. PROTECTING THE ASSETS

The guardian is responsible for protecting the incapacitated person’s assets as of the date of appointment.

It shall be the duty of the guardian or limited guardian of an estate...

(4) To protect and preserve the guardianship estate, to apply it as provided in this chapter, to account for it faithfully, to perform all of the duties required by law, and at the termination of the guardianship or limited guardianship, to deliver the assets of the incapacitated person to the persons entitled thereto.”

### 1. **Washington State Guardianship Laws.**

The guardianship statutes pertaining to the incapacitated person’s estate serve to protect and preserve the estate and insure that it is used with the incapacitated person’s best interests in mind. There are, however, a few laws that are very specific to this cause.

- **Bonds.** Bonds act as an insurance policy for the court in the event the guardian intentionally misappropriates funds. The court sets the amount of the bond based upon the amount of liquid assets in the guardianship estate. If a guardian misappropriates funds, upon order of the court, the surety will pay the amount of the bond.

- **Blocked Accounts.** Another protective procedure available to the Court is the power to order the blocking of the incapacitated person’s liquid assets. An order blocking an account prevents all access to the affected account - even by the guardian. The account can only be accessed with a specific court order unblocking it. If accounts are ordered to be blocked, the guardian must obtain receipts for the

37 SOP 406.3
38 RCW 11.92.040(4)
39 SOP 406.1
40 RCW 11.88.100
41 RCW 11.92.056
account from the institution where the asset is held. The receipt must then be filed with the court as confirmation of the court’s order. Blocking of accounts will often reduce the amount of the bond required by the guardian.\textsuperscript{42} [See Guardianship Forms - Receipt of Funds Into Blocked Account].

- **Errors and Omissions Insurance.** Effective January 2008 certified professional guardians (guardians) and certified professional guardian agencies (agencies) shall maintain a minimum of $500,000.00 of errors and omissions insurance which covers the acts of the guardian or agency, and employees of the guardian or agency, unless exempted or waived by regulation.\textsuperscript{43}

Guardians or agencies with 25 or fewer guardianship case appointments at one time and with less than $500,000.00 total countable guardianship assets\textsuperscript{44} under management are exempt from the requirement of maintaining errors and omissions insurance...

By January 31 each year, every guardian and agency shall file with the Certified Professional Guardian Board (Board) a declaration signed under penalty of perjury, on a form approved by the Board, stating that the guardian or agency either maintains a policy of errors and omissions insurance, or is exempt from said requirement, or has petitioned for and received a waiver based on a determination by the Board that it is impractical for the guardian or agency to comply with this regulation and the guardian or agency has provided a satisfactory alternative that meets the purpose of this regulation.

- **Affidavits from Financial Institutions.** This law is very effective in that it not only requires all financial institutions to obtain proof of power from the guardian before allowing the guardian to access the incapacitated person’s accounts, but also mandates that the financial institution send an affidavit directly to the court. The court is then aware of the guardian’s actions as it relates to those specific accounts.\textsuperscript{45}

The affidavit requirement should not be confused with the receipt for blocked accounts.

2. **Guardianship Practices.** The court ordered bond, blocked accounts, and requirements for financial institution affidavits, are requirements enacted by the legislature to protect the incapacitated person’s assets. However, the guardian is

\textsuperscript{42} RCW 11.88.105
\textsuperscript{43} Insurance Regulation 117
\textsuperscript{44} “Countable guardianship assets” shall consist of all real property, money, stocks, bonds, promissory notes and other investments in all of the guardianship estates currently managed by the guardian or agency. The value of an asset shall be its fair market value. In determining the value of an asset, the value as determined by a county assessor, or public price listed on a recognized exchange, may be used as its fair market value. The value of an asset shall not be reduced by the amount of any encumbrance on the asset. Insurance policies and other securities shall be included at face value or as listed on a recognized exchange. Countable guardianship assets shall not include burial trusts, pensions, or personal property.

\textsuperscript{45} RCW 11.92.096(1)
ultimately responsible to preserve the assets of the guardianship and to implement good practices to fulfill this responsibility.\textsuperscript{46}

- **Internal Controls.** Whether the guardian is an individual or a corporation, a strong set of internal controls is necessary to minimize risk of harm to the guardianship estate. Examples of internal controls include establishing policies on paying bills such as requiring dual signatures on checks, establishing policies for conflicts of interest, separation of duties, establishing good billing practices, the use of proxy voting, and utilization of electronic accounting.

- **Securing Assets.** The guardian must immediately secure any asset which comes into its possession or has been identified by the guardian. The following are common classifications of assets with a brief description of the steps necessary to adequately secure such assets.

1. **Bank accounts, stocks, bonds, mutual funds, and treasuries.** Once identified, the registration and address of such accounts must be changed to reflect the guardian of the estate as the owner. Changing of the registrations of these accounts precludes anyone, other than the guardian from accessing the asset.

2. **Real property.** A title search should be requested on the real estate to confirm clear title. If the title is not clear the problem must be addressed. The locks on all property should be changed for security reasons. In some cases it is advisable to install a security system. Homeowner’s insurance should be procured in a sufficient amount, naming the guardian as the loss payee. The county assessor should be notified to change the tax billing address.

   **Practice Tip.** A formal inspection of any real property immediately upon appointment is a good way to determine the safety and maintenance needs of the property.

3. **Personal possessions.** Items of personal property with value should be appraised so they can be properly scheduled and insured. Assignment of value on the Guardianship Inventory of such items is required; however an appraisal is also useful for insurance purposes. Possessions stored outside of the incapacitated person’s home should be properly secured and insured. The guardian may retain assets of value that the incapacitated person can use, provided the court specifically approves the request.\textsuperscript{47}

\textsuperscript{46} SOP 406.2
\textsuperscript{47} RCW 11.92.040(5)[6]
4. **Insurance/Annuities.** The guardian should notify any insurance companies holding policies belonging to the incapacitated person of the existence of the guardianship so premiums and records can be kept current. The insurance and annuity policies should be secured for safekeeping.

- **Maintenance/Repairs.** The guardian has the responsibility of protecting and preserving the assets. Any real property, typically residences, which is part of the guardianship estate must be maintained and kept in good repair. Furs and fine art must be properly stored if not in use. Automobiles, boats and airplanes need regular and proper mechanical and/or body maintenance.

- **Income/Benefits.** Sources of income and benefits such as social security, Medicare, dividends, civil service annuity, and private pensions should be notified of the existence of the guardianship so that the income can be routed to the guardian.

  **Practice Tip.** Special procedures should be implemented to insure that proper attention and monitoring are given to benefits such as SSI, food stamps, Medicaid, and disability pay in order to guarantee continued eligibility.

- **Investing.** In order to effectively preserve the incapacitated person’s estate, a guardian needs to properly invest the assets. The court may give the guardian the power to invest and reinvest property in the same manner as would be given to the trustee of a trust. This responsibility carries with it additional standards for investing and invokes the application of the laws involving trusts in addition to the laws governing guardianships.

  A good standard of practice is for the guardian to create an investment plan. The creation and review of an investment plan provides a process for the court and the fiduciary to ensure that the fiduciary has a coherent, comprehensive plan against which to measure the estate’s investment goals, directions, and performance. (A sample Model Fiduciary Investment Plan can be found in Appendix C of this Unit.)

**D. PERIODIC REPORTS, ACCOUNTINGS AND BUDGETS**

The guardian is responsible for periodically reporting to the court on the incapacitated person’s estate. The two main periodic reports of the guardian of the estate are the accounting and the budget.

---

48 RCW 11.92.040(5)
It shall be the duty of the guardian or limited guardian of an estate:
(2) To file annually, within ninety days after the anniversary date of the guardian’s or limited guardian’s appointment… a written verified account of the administration… 49

1. **Accountings**

   After the incapacitated person’s assets have been marshaled and inventoried, the guardian must continue to keep the court and interested parties apprised of the activity of the guardianship estate. This is done through regularly scheduled accountings. The statute sets forth the specific information which must be contained in the report. [See Guardianship Forms – Guardian’s Report and Accounting and Order Approving Guardian’s Report and Accounting].

   - **The Beginning Balance.** The starting point for the first annual report is a listing of assets and their balances from the inventory. The beginning point of future reports is then the property as of the date of the last account. All good accounting reports have solid beginning balances.

   - **The Income.** The accounting report to the court must contain a section devoted to income received during the period. This section tells the Court whether any additional property has been received or earned and of what type it is.

     **Practice Tip.** For ease of reading, the income can be classified by major categories, i.e.
     - earned income, social security, dividends, interest, etc.

   - **Expenditures.** Similarly to the income section, a detailed section of expenditures is necessary and should be grouped by major category (e.g. personal living expenses, health care, etc.).

   - **Adjustments.** The report must provide the court with a comparison of the fair market value of the assets/liabilities as of the date of the inventory or the end of the last period (beginning balances) with the fair market value of the current assets/liabilities of the guardianship estate (ending balances). This section includes realized and unrealized gains/losses on assets in the estate.

   - **Fair Market Value.** The court essentially wants the report to furnish it with an updated inventory as of the date of the report. The report must thus provide a new snapshot of the assets contained in the guardianship estate as of the end of the accounting period, and their current value. This then serves as the beginning balance for the following years' report. This section should also include information regarding the bond amount and what assets are blocked.

49 RCW 11.92.40(2)
• **Accounting Summary.** It is good practice to provide the court with a report that summarizes all income, expenditures, investment activity, and rate of return. (An example of an Accounting Summary in use in King County can be found in Appendix B of this Unit.)

Many guardianships are on an annual report cycle. However, the court in its discretion can extend the interval up to 36 months if the value of the estate is not more than twice the homestead exemption amount. The court must formally approve all accountings, however, the court’s approval of the report is not a final order, and thus not *res judicata*, until the guardianship is terminated.

**Practice Tip.** The guardian of the estate can request the appointment of a guardian ad litem to review the activities of the guardian. If a guardian ad litem is appointed, the court’s order regarding the report becomes *res judicata*. RCW 11.92.050. Such a request can be useful in cases which are contested.

An exception to the requirement of filing a periodic accounting is provided if the estate assets are held for a minor in a blocked account provided no withdrawals have been made during the year. If such withdrawals have been made, a written verified accounting must be filed with the petition for withdrawal of those funds.

---

*It shall be the duty of the guardian or limited guardian of an estate...*

(6) To apply to the court no later than the filing of the inventory, for an order authorizing disbursements on behalf of the incapacitated person.....

---

2. **Budgets.** At the time of appointment the guardian should review the incapacitated person’s financial needs in order to gain an accurate idea of the amount of money that will be needed to pay for the incapacitated person’s monthly expenses. The guardian must then present a budget to the court for approval and seek authorization from the court to pay the incapacitated person’s expenses as set forth in the proposed budget. The entry of the order authorizing disbursements or approving the budget can be entered at the same time as the order approving the inventory. Preparation of a realistic budget is fundamental for proper management of the estate and for determining if the proposed care plan is feasible. Remember to send copies of the budget to those

---

50 RCW 11.92.040(3)
51 RCW 11.92.040(6)
persons who have requested special notice of proceedings. [See Guardianship Forms- Petition for Approval of Budget and Disbursements].

**Practice Tip.** The guardian should take great care in preparing each item of the budget. The guardian cannot overspend in one category of the budget on the assumption that he can under spend in another so long as the result is a balanced budget. There is no provision for non-intervention powers as in probate statutes. All expenditures must be approved by the court.

As the incapacitated person’s needs change, the guardian must advise the court and seek authorization for any changes in the overall management of the incapacitated person’s assets. A guardian does not have the power to make decisions on behalf of the incapacitated person without reporting to the court.

3. Financial Source Documents

General Rule 22 states:

(1) Financial source documents . . . shall be submitted to the clerk under a cover sheet designated "SEALED FINANCIAL SOURCE DOCUMENTS", "SEALED PERSONAL HEALTH CARE RECORDS" or "SEALED CONFIDENTIAL REPORT" for filing in the court record of family law or guardianship cases.

(2) All financial source documents . . . so submitted shall be automatically sealed by the clerk. The coversheet or a copy thereof shall remain part of the public court file.

(3) The court may order that any financial source documents containing restricted personal identifiers . . . be sealed if they have not previously automatically been sealed pursuant to this rule.

(4) These coversheets may not be used for any documents except as provided in this rule. Sanctions may be imposed upon any party or attorney who violates this rule.

**E. SIGNIFICANT CHANGES**

53 RCW 11.92.150

54 “. . . income tax returns, W-2s and schedules, wage stubs, credit card statements, financial institution statements, checks or the equivalent, check registers, loan application documents, retirement plan orders, as well as other financial information sealed by court order.”
Although the guardian is required to make periodic reports to the court, any significant changes in the incapacitated person’s assets should be reported to the court when such changes occur. The guardian of estate is specifically required to report any substantial change in income or assets to the court within 30 days of the change. A hearing shall be scheduled for court review of these substantial changes, and any adjustments to the bond or other relief.\(^\text{55}\)

Increases in the assets may occur due to inheritance or gifts made to the incapacitated person from others. Decreases in assets are often the result of unexpected illness and increased medical expenses. Significant increases or decreases in the amount of the incapacitated person’s assets may affect the guardianship budget and the court should be kept apprised. In addition to reporting to the court the changes in the incapacitated person’s assets, the guardian should report proposed methods for managing the changes, such as the need to sell assets or decrease spending in other areas. The guardian should seek specific authorization for the proposed fiscal adjustments necessitated by the changes.

**Practice Tip.** Significant changes in the incapacitated person’s assets may also affect the amount of the guardian’s bond. When assets decrease below a certain level, the guardian may seek to decrease the amount of the bond. Conversely, if the incapacitated person’s assets suddenly increase, the guardian should advise the court and perhaps seek authority to place such assets in blocked accounts so as not to require an increase in the bond.

A significant decrease in the incapacitated person’s assets may also affect his or her eligibility for certain public entitlements, such as Medicare or Medicaid. Such significant decreases may warrant a request to the court for a change in the guardian’s reporting requirements. Guardians are typically required to make annual reports and accountings. However, as mentioned earlier, the court has the discretion to change this requirement to as much as a 36-month interval. In the situation where the incapacitated person’s assets have significantly decreased, such a request should be made in order to minimize costs of the guardianship.

**F. PETITIONS TO THE COURT FOR RELIEF**

Guardians or limited guardians herein provided for shall at all times be under the general direction and control of the court making the appointment. …\(^\text{56}\)

\(^{55}\) RCW 11.88.046(3)

\(^{56}\) RCW 11.92.010
The court having jurisdiction over a guardianship is said to be the “superior guardian” of the incapacitated person, while the appointed guardian is essentially deemed to be an officer of the court.\(^{57}\) Thus, the court must approve every action of the guardian. Generally, the most typical activities are approved at the time the Guardianship Inventory and Proposed Budget are filed. As discussed in Sections C and D, the guardian’s Proposed Budget outlines the basic expenditures which will be made on a regular monthly basis. Any activities regarding specific assets are then reported to the court at the next regularly scheduled hearing. There are, however, a number of activities for which the guardian must obtain specific court authority prior to undertaking them.

- **Lawsuits.** The guardian must notify the court of any action commenced against the incapacitated person and must seek court approval to initiate any legal action in the incapacitated person’s name. The guardian must also petition the court for authority to enter into any compromise or settlement of a suit or claim involving the incapacitated person.\(^{58}\)

- **Sale of Real Property.** The court must approve any sale, exchange, lease or mortgage of real property belonging to the incapacitated person. Requests to sell an incapacitated person’s real property must be made in advance. The statute sets out specific requirements which must be followed, all of which require advance notice to the court.\(^{59}\) These requirements are discussed in more detail in Section I of this Unit, *infra*.

- **Sale of Personal Property.** Likewise, the court must approve the sale of an incapacitated person’s personal property after proper notice and adequate consideration. These issues are also dealt with at greater length in Section I of this Unit, *infra*.

- **Estate Planning.** The guardian of the estate may seek authority to take actions on the incapacitated person’s behalf which would be in keeping with the incapacitated person’s wishes, designed to minimize prospective state or federal income and estate taxes.\(^{60}\) Such actions may include gifting to such charities, relatives and friends who would be likely recipients, changing beneficiary designations under insurance and annuity policies, surrendering such policies for cash value and disclaiming interests in the estate of the incapacitated person’s deceased spouse. The guardian should outline the actions for which approval is sought and the results expected to be accomplished. The guardian should also indicate that any planned dispositions are consistent with the incapacitated persons intentions to the extent such intentions can be determined.

---


\(^{58}\) RCW 11.92.060

\(^{59}\) RCW 11.92.090

\(^{60}\) RCW 11.92.140
• **Vulnerable Adult – Restraining Order.** The guardian can petition the court for restraining orders and other relief under RCW 74.34 if the incapacitated person is a victim of financial abuse or exploitation.

**Practice Tip.** If the guardian is ever in doubt about whether to undertake a specific action on the incapacitated person’s behalf, the best policy is to seek direction from the court after giving required notice.

**G. NOTICES TO THE COURT AND DESIGNATED PERSONS**

…When any account, report, petition or proceeding is filed in the estate of which special written notice is requested, the court shall fix a time for hearing which shall allow at least ten days for service of the notice before the hearing; and notice of the hearing shall be served upon the person designated in the written request at least ten days before the date fixed for the hearing….  

1. **Notices.** The guardianship statute provides that anyone with an interest in the proceedings of the guardianship estate, or with the incapacitated person, can request notice of any or all proceedings in the guardianship. If the request for special notice does not specify matters for which the notice is requested, the guardian must provide copies of all documents that are filed with the court and give advance notice of any petitions made to the court. The statute requires at least 10 days notice of any hearing in the guardianship matter. [See Guardianship Forms – Notice of Right to Request Special Notice and Request for Special Notice of Proceedings].

**Practice Tip.** Various counties have various rules regarding notice. The Special Proceeding Rules of the court in which the guardianship is pending should be consulted to be sure that requirements of notice are met in each case. Working copies of the pleadings to be discussed at the hearing should also be provided in advance of the hearing to the Court Commissioner or Judge who will hear the matter.

2. **Designation of Standby Guardian.** Upon his or her appointment, the guardian of the estate must file a form designating another individual or entity as

---

61 RCW 11.92.150  
62 SOP 401.17
guardian in the event the guardian of the estate dies or is otherwise incapacitated and unable to serve. [See Guardianship Forms – Designation of Standby Guardian].

H. COURT SUPERVISION AND DELINQUENCY MONITORING

The court oversees every guardianship which is established. Most counties have specific procedures in place to insure that the required reports are filed in a timely fashion. The order appointing guardian will note whether receipts for blocked accounts are required and the date the receipts must be filed. A date for the Inventory will be noted as well as a date for the next Annual Report. If such documents are not filed by the noted date, the court may cite the guardian into court to show cause why such information has not been filed. Generally speaking, the courts will allow a continuance of the date for filing such report, provided good cause is shown.

A person or entity, which has filed a request for special notice, may also petition the court for a citation requiring the guardian to file the delinquent report. The court will then issue a citation for the guardian to show cause why the report has not been filed and will hold a hearing on the matter.\(^{63}\)

**Practice Tip.** If the guardian cannot complete a specific report within the required time period, a request to the court for a continuance should be sought. The guardian should advise the court of the reasons for the delay and provide a report as to the status of the proceeding at that time.

I. SALE OF ASSETS

Whenever it shall appear to the satisfaction of a court by the petition of any guardian or limited guardian, that it is necessary or proper to sell, exchange, lease, mortgage, or grant an easement, license or similar interest in any of the real or personal property of the estate of the incapacitated person for the purpose of paying debts or for the care, support and education of the incapacitated person, or to redeem any property of the incapacitated person's estate covered by a mortgage or other lien, or for the purpose of making any investments, or for any other purpose which to the court may seem right and proper, the court may make an order directing such sale, exchange, lease, mortgage, or grant an easement, license or similar interest of such part or parts of the real or personal property as shall to the court seem proper.\(^{64}\)

\(^{63}\) RCW 11.92.160
\(^{64}\) RCW 11.92.090
A number of reasons exist for a guardian to want or need to sell an incapacitated person's assets, including the following: to pay for the incapacitated person's care and support, to satisfy debts or claims, or for tax and investment purposes. The guardian should give careful consideration to the sale and its impact on the incapacitated person and his or her estate. The best practice is then for the guardian to obtain court authority for the sale after proper notice to all parties.

1. **The Decision and Actual Sale.** The guardian should use great care in both the decision-making process and in the actual sale.

   - **Decision to Sell.** The guardian must be able to support his or her reasons for desiring to sell a particular asset. The guardian must seek authority to sell the asset and the petition to the court should clearly state the reasons why the sale is in the incapacitated person's best interests. When making such a decision, consideration should be given to both short and long-term goals, tax consequences of the sale, the cash flow needs and personal desires of the incapacitated person.

   **Example.** A decision to sell 1000 shares of Texaco stock to reduce the concentration of oil stock in a portfolio may appear very straightforward until the guardian considers that the tax basis is very low and that the incapacitated person had worked for Texaco for 40 years and never wanted to sell any of his beloved stock.

   - **Actual Sale.** After obtaining proper authority, the guardian should monitor the sale and pay special attention to the following:

     1. **Price.** The asset should be sold at fair market value. The fair market value can be determined in a variety of ways; for example, a professional appraisal or bluebook values.

     2. **Seller.** When an asset is sold through an agent, the guardian should be sure that the agent has a good reputation, sufficient experience and, whenever possible, is bonded.

     3. **Market Exposure.** The asset to be sold should be adequately exposed to the market. Good sources of market exposure are public auctions, newspapers, consignment shops, and a multiple listing service for real estate.

   - **Conflict of Interest.** The guardian should not undertake to sell any of the incapacitated person's assets to the guardian or to any employee of the firm for which the guardian works.
Practice Tip. The guardian should create and follow a strict policy against self-dealing in all areas, but particularly as regards the sale of assets. An example of a self-dealing policy is: "No employee of this company shall purchase real or personal property from any estate administered by this office. No such sales shall be allowed even if the fair market value of the property can be determined and is offered. Sales to a third party or 'straw man' to circumvent the intent of this rule are also prohibited."

2. Types of Assets Commonly Sold.

- Bank certificates of deposit, stocks, bonds and annuities. The guardian's decision to sell these types of assets is almost always a financial one. The most typical reason for selling such assets is to pay debts and meet the client's financial needs. The tax consequences of the sale should be closely reviewed along with the overall investment balance of the account. Penalties for early withdrawal should also be considered.

- Personal possessions. The sale of personal possessions is by nature difficult at best. The guardian should always consider the emotional and sentimental value of the items to the incapacitated person and family members. The court may order that a specific piece of property be used by the incapacitated person rather than sold and the proceeds invested, if it determines this is in the best interest of the incapacitated person.65

Practice Tip. It is always wise for the guardian to obtain court authority of his or her plan for treatment of the incapacitated person's personal property, whether it is to sell, rent, donate, store, or dispose of the property.

- Real estate. The sale of the incapacitated person's real estate is a complex procedure, involving multiple court hearings before the sale can be finalized. The guardian should be thoroughly familiar with the process in advance.66 The guardian should also be aware of alternatives to selling the property, such as reverse mortgages.

65 RCW 11.92.040(5)(b)
66 RCW 11.92.110; RCW 11.92.115; RCW 11.92.120
The very first step in the sale of real estate is to obtain court authority allowing it. Before listing the property for sale, the guardian should determine how the incapacitated person acquired title to the property. Often other family members—siblings or spouses—have an interest in the property which may not have been properly documented. Deeds from these other individuals or their consent to the sale should be obtained in advance. The guardian should also be very careful of the representations he or she makes regarding the property. The guardian typically has inadequate information about the history of the property to make proper disclosures to prospective buyers. The guardian is not required to complete a Form 17.

Purchase and sale agreements can only be made subject to court approval. The price must be at least 90% of the appraised value.

Once a purchase and sale agreement is accepted by the guardian, the guardian then petitions the court for an Order Directing Sale as per the terms of the offer. [See Guardianship Forms – Petition and Order Directing Sale of Real Property].

After the Order Directing Sale has been obtained, the guardian must then publish a Notice of Sale once in a newspaper in the county in which the property is being sold. The notice must contain the legal description of the property, the sale price, and date after which the sale can be confirmed.

**Practice Tip.** The legal description should be obtained from a deed, deed of trust, mortgage or title report. The descriptions on tax statements are often incomplete.

Ten days after publication of the Notice of Sale the guardian must file the Return of Sale with the court and obtain an Order Confirming Sale. This is usually done on the same day and at the same time.

After publication of the Notice of Sale, but before the Order Confirming Sale is obtained, any other party can come forward and offer 10% more than the offered sale price. Such an offer must be accompanied by cash, cashier's check, money order, or certified check representing 20% of the overall sale price. This amount must be deposited with the clerk of the court. The property will then be subject to a bidding process outlined in RCW 11.56.110.

**J. GIFTING OF ASSETS**

A number of sound reasons exist for a guardian to gift or donate parts of the incapacitated person's estate. These include:

---

67 SOP 406.6
• **Client’s Wishes.** An incapacitated person may be able to clearly express a desire to donate his or her assets or make a gift to charity, a relative, or a friend. As with all client requests, the guardian must consider the reasonableness of the request and should consider whether it is in keeping with the client’s personal history. If the guardian determines that the incapacitated person's request is reasonable, he or she should obtain court approval prior to making the requested donation or gift.

• **Public Entitlements.** There are some public entitlements which are invaluable to certain protected persons. Eligibility for these entitlements is however often based on the amount of assets the incapacitated person has. In certain circumstances it may be in the incapacitated person’s best interest to gift property in order to establish his or her eligibility for such entitlement. The guardian should consider whether the incapacitated person's quality of life would improve with the entitlements and not simply focus on the need to preserve the estate for the incapacitated person's relatives or others standing to gain from such preservation.

  **Practice Tip.** The guardian must understand the specific Medicaid Eligibility “look back” rules governing gifting, or obtain legal advice.

• **Estate planning.** The Internal Revenue Code allows each taxpayer to make gifts up to $11,000 per year to any individual without incurring any gift tax consequences. A taxpayer can also directly pay the costs of education and/or medical expenses for any individual without any tax consequences. Such gifts will reduce the incapacitated person's estate and could ultimately save estate taxes at time of death. All gifts should be done after consideration of the incapacitated person's best interests and his or her expressed wishes, if any.

  **Practice Tip.** Whenever an estate will exceed the current applicable credit amount – (Federal = $2 million in 2007 and State of Washington = $2 million in 2007) – the guardian should consider various methods of reducing the estate in order to minimize the estate taxes imposed by either Washington State and/or Federal regulations at time of death.

Another common way of reducing an estate is through donations. A client may have a consistent history of donations to specific charities. With court approval,

---

68 By virtue of the **Economic Growth and Tax Relief Reconciliation Act of 2001** signed into law by President Bush on June 7, 2001, the $2 million exemption is scheduled to increase as follows: $2 million in 2007 and 2008 and $3.5 million in 2009. However, the new tax law has a “sunset” provision that makes the future status of the estate tax somewhat uncertain.
the guardian can continue the incapacitated person's donative tradition on his or her behalf. Donations are not restricted to cash but may include other assets such as securities and real or personal property.

The guardian must seek court authorization for authority to gift or donate any part of the estate. Whatever the reason for gifting or donating, the guardian must always be sure it is in the best interests of the incapacitated person. In the plan presented to the court for approval the guardian must address the incapacitated person's future care, maintenance and support. The guardian must outline the actions for which authorization is sought and the results expected to be accomplished. The guardian should also indicate that any planned dispositions are consistent with the incapacitated person's intentions to the extent such intentions can be determined.

K. THE INCAPACITATED PERSON AS TRUST BENEFICIARY

The incapacitated person may be the beneficiary of a trust. The trust may have been established by a relative, or may have been established by the incapacitated person prior to the determination of incapacity and appointment of a guardian or may have been established at the time of settlement of an injury or other action on the incapacitated person's behalf.

The guardian should contact the trustee. The guardian should provide the trustee with a copy of the order of appointment and a copy of the Letters of Guardianship. Generally, the assets in the trust will not be considered to be assets which are subject to administration by the guardian. The guardian should request a copy of the trust agreement and all amendments. The guardian should also request a statement of the assets of the trust. The trustee may not supply the latter two items of information, reasoning that the trust is not an asset of the guardianship and that the trustee has duties directly to the trust beneficiary. It is common for trust agreements to contain language providing that, for example, all income is to be paid to or for the benefit of the beneficiary each year. It is also common for trust agreements to contain a provision to the effect that the trustee may elect to either provide funds directly to the beneficiary, or to a duly appointed guardian for the beneficiary. Trustees may be uncomfortable providing funds directly to a person who has been adjudicated to be incapacitated. Trust agreements usually go on to provide that a distribution of funds to a guardian satisfies the trustee’s obligation to provide funds to the trust beneficiary. The guardian should review the provisions of the trust to determine what benefits the incapacitated person is to receive and how.

The guardian may also be charged with investigating the actions of a trustee with respect to the administration of the trust. This would not differ from an investigation into the actions of any predecessor fiduciary, such as an attorney-in-fact, joint signer on a bank account, etc.

69 RCW 11.92.140
**Inter Vivos (Living) Trusts.** This is a trust which is established during a person’s lifetime.

The incapacitated person may have established a living trust some time before the establishment of the guardianship. The guardian may be charged with the responsibility of transferring assets to that trust, in situations in which the incapacitated person did not properly effect the transfer of the property. It is not unusual that a person may forget to properly transfer property or may ineffectively transfer property to the trust. If the person is incapacitated, he or she can no longer effect the transfer of property. Thus, it may fall to the guardian, with proper court authority, to transfer property into the trust.

**Testamentary Trusts.** This is a trust established in a Will. The incapacitated person may be a beneficiary of such a trust created by another.

**Special Needs Trusts.** This is a special variant of the trusts which are described above. Those established by the terms of a Will are most often established by a family member. These trusts are intended to benefit a person suffering from either physical or mental disabilities. They preserve the person’s eligibility for benefits, such as Supplemental Security Income and Medicaid, while still allowing funds to be used to “supplement” their basic needs. The funds in these trusts cannot be used for basic support or maintenance.

It is sometimes to the benefit of an incapacitated person that a Special Needs Trust be established by the court after the guardianship is established. If the guardian determines that the creation of such a trust would be in the best interests of the incapacitated person, then the guardian should consult with counsel knowledgeable in this specific area of the law. If it appears that a Special Needs Trust would be in the best interests of the Incapacitated Person, the guardian should seek court authority to have such a trust established.

A special needs trust may also be established for an incapacitated person as the result of the settlement of a personal injury action (or an award of damages after a case has gone to trial). The process for seeking approval of such a settlement is prescribed in a court rule recently revised by the Washington Supreme Court. Annual reports to the court from the trustee are required. The prudent guardian would take steps to ensure that the guardian received a copy of those Reports and advance notification of the date, time and place at which the report is reviewed at a court hearing.

**Disputes About Trust Administration.** The Washington State Legislature enacted a law commonly knows as the “Trusts and Estates Dispute Resolution Act” (hereinafter “TEDRA”). One of the purposes of that legislation is to require that there be attempts to resolve disputes about the administration of trusts at the lowest possible level. Thus, mediation is generally required prior to seeking judicial resolution of the dispute. The guardian should seek legal advice on when this statute applies and its effect upon disputes.
L. **EXHIBIT A**

<table>
<thead>
<tr>
<th>Task</th>
<th>Done</th>
<th>By</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>I. General</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1) Interview incapacitated person/relatives/friends</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2) Complete search of residence.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3) Review prior year's tax return</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4) Review property and casualty insurance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5) Inspect assets in safe-deposit boxes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6) Review investment records</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7) Check mail for dividend checks annual reports, etc.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>II. Assets in incapacitated person’s possession</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1) Determine disposition of incapacitated person’s purse or wallet</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>III. Unquoted checks</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1) Deposit checks if not stale dated</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2) Return stale dated checks for reissue</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>IV. Checking accounts</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1) Locate all checkbooks</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2) Verify existence of accounts, balance at date of appointment, and present balance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3) Confirm direct deposits</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>V. Savings accounts</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1) Locate all savings passbooks and certificates of deposit</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2) Check income tax returns for interest income</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3) Write to local banks to request a search</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4) Determine if accounts can be closed without loss of interest</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>VI. Social security benefits - government entitlements</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1) Apply for benefits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2) Letter to governmental entitlements (SSA, CSA, Railroad Retirement, and VA) re: benefits and unquoted checks</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>VII. Accounts receivable</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1) Make or pursue claims for tax refunds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2) Enforce judgments</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3) Collect sales proceeds</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>VIII. Stocks, bonds, and mutual funds</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1) Locate evidence of ownership</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2) Brokerage accounts\mutual funds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. Write letter informing of appointment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3) Lost certificates - write companies</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>IX. Government bonds, T-bills, banker's acceptances, etc.</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1) Locate evidence of ownership</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2) Provide certified copy of letters to custodial bank</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3) Series &quot;E&quot; and &quot;H&quot; bonds</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>X. Notes</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1) Check for collection agreements</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2) Verify balance and interest</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3) Determine date of last payment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4) Determine nature of security, if any</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
5) If mortgage or trust deed:
   a. Was document recorded?
   b. Have property taxes been paid?
   c. Determine value of property
6) Notify payer

XI. Real estate
1) Locate real estate documents
   a. Deeds
   b. Title policies (obtain preliminary title report)
   c. Leases
   d. Tax bills - are taxes current?
   e. Insurance policies (make certain fiduciary as guardian is lost payee)
2) Rental properties
   a. Decide whether or not to continue property manager
   b. Determine status of rents
   c. Notify tenants of change of ownership
3) Out-of-state properties (arrange for ancillary proceedings)
4) Vacation homes
   a. Contact rental agent, if any
   b. Secure property

XII. Business interests
1) General
   a. Obtain several years’ financial statements for each enterprise
   b. Determine objectives of each enterprise
   c. Re-register stock
2) Partnerships and joint ventures

XIII. Mineral interests
1) Locate evidence of interest
   a. Deeds
   b. Oil leases
   c. Division orders
   d. Royalty agreements

XIV. Life insurance policies
1) Locate policies. Check with insurance agent to make certain that list of policies is complete
2) Obtain values from companies
   a. Cash surrender
   b. Death benefit
   c. Loans
3) Payable to named beneficiaries

XV. Health insurance
1) Accident and health policies
   a. Locate policies
   b. Obtain claim forms
   c. Consider continuation
2) Medicare
   a. Determine if incapacitated person qualifies
L. EXHIBIT B

ACCOUNTING SUMMARY

A. Total Market Value as of beginning of review period, ___/___/___ $_______

Income Received from All Sources
(Do not include new assets purchased)

Wages $________
Social Security $________
Retirement Benefit $________
Disability $________
Health Insurance Benefit $________
Other: ________________________ $_______ $_______

Interest and Dividends
List account & amount received

____________________________________ $_______
____________________________________ $_______ $_______

Other Receipts
List source & amount received

____________________________________ $_______
____________________________________ $_______ $_______

B. Total Income: $_______

Disbursements & Outgoing Payments

Personal Living Expenses

Housing/Facility/Rent $_______
Companion/Attendant Care $_______
Food & Groceries $_______
Incidentals/Clothing $_______
Utilities $_______
Phone/Cable $_______
Insurance $_______
Personal Allowance $_______
### Auto & Transportation

- Other: ________________________
  - Amount: $__________

### Healthcare Expenses

- **Medical/Dental**
  - Amount: $__________

- **Pharmaceutical**
  - Amount: $__________

- **Medical Transportation**
  - Amount: $__________

- **Health Insurance premiums**
  - Amount: $__________

- **Case Management Fees**
  - Amount: $__________

- Other: ________________________
  - Amount: $__________  $__________

### Guardian and Trustee Fees

- **Guardian Fees**
  - Amount: $__________

- **Trustee Fees**
  - Amount: $__________  $__________

### Professional Fees Paid to Others

- **Guardian ad Litem Fees**
  - Amount: $__________

- **Attorney fees for Guardian**
  - Amount: $__________

- **Attorney fees for:**
  - Amount: $__________

- **Asset Management Fees**
  - Amount: $__________

- **Bond Premium**
  - Amount: $__________

- **Medical Claims Assistance**
  - Amount: $__________

- **Accountant/Tax Preparation Fees**
  - Amount: $__________

- Other: ________________________
  - Amount: $__________  $__________

### Real Property Expenses

- **Maintenance & Repair**
  - Amount: $__________

- **Homeowner/Co-op Dues**
  - Amount: $__________

- **Property Taxes**
  - Amount: $__________

- **Mortgage**
  - Amount: $__________

- **Insurance**
  - Amount: $__________

- Other: ________________________
  - Amount: $__________  $__________

### Investment Property

- Amount: $__________  $__________
Expenses

Other Expenses

Employment Taxes $________
Income Tax Payments $________
Costs Advanced $________
Bank/Service Fees $________
Other: ________________________ $________ $________

C. Total Disbursements $________

Adjustments to Market Value of Estate

Addition of Assets/(Liabilities) not previously reported [Do not use this section for assets purchased]

______________________________ $________

Deletion or Reduction in Value (Assets)/Liabilities listed on previous Accounting

______________________________ $________

Gifts Received/(Made) and date of Court Order Authorizing

______________________________ ___/___/___ $________

Net Actual Gains/(Losses) from Sales of Assets

______________________________ $________

______________________________ $________

Unrealized Gains/(Losses)

Increase/(decrease) in unrealized gain on securities $________
Increase/(decrease) in market value of real property $________
Increase/(decrease) in market value of personal property $________

Other Adjustments (specify)

______________________________ $________

D. Total Adjustments to Market Value of Estate $________

E. Ending Balance at Market Value, as of ___/___/___ $________

[A + B - C + D]

Balance Sheet for the Guardianship/Trust Estate

<table>
<thead>
<tr>
<th>Descriptions</th>
<th>Market Value at beginning</th>
<th>Market Value at end</th>
<th>Cost Basis at end</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>/</strong>/</td>
<td><strong>/</strong>/</td>
<td><strong>/</strong></td>
</tr>
</tbody>
</table>

Unit 3: Responsibilities of the Guardian of the Estate
<table>
<thead>
<tr>
<th>Descriptions</th>
<th>Market Value at beginning</th>
<th>Market Value at end</th>
<th>Cost Basis at end</th>
</tr>
</thead>
<tbody>
<tr>
<td>Real Property</td>
<td>________________________</td>
<td>____________________</td>
<td>____________________</td>
</tr>
<tr>
<td>Receivables (mortgages, liens notes, payable to ward/estate)</td>
<td>________________________</td>
<td>____________________</td>
<td>____________________</td>
</tr>
<tr>
<td>Blocked Liquid Assets (investment accounts, securities, IRAs, cash)</td>
<td>________________________</td>
<td>____________________</td>
<td>____________________</td>
</tr>
<tr>
<td>Unblocked Liquid Assets (investment accounts, securities, IRAs, cash)</td>
<td>________________________</td>
<td>____________________</td>
<td>____________________</td>
</tr>
<tr>
<td>Personal &amp; Other Property (household goods, vehicles, life insurance)</td>
<td>________________________</td>
<td>____________________</td>
<td>____________________</td>
</tr>
<tr>
<td>TOTAL ASSETS</td>
<td>________________________</td>
<td>____________________</td>
<td>____________________</td>
</tr>
<tr>
<td>LIABILITIES</td>
<td>________________________</td>
<td>____________________</td>
<td>____________________</td>
</tr>
<tr>
<td>TOTAL LIABILITIES</td>
<td>________________________</td>
<td>____________________</td>
<td>____________________</td>
</tr>
<tr>
<td>NET TOTAL ESTATE</td>
<td>________________________</td>
<td>____________________</td>
<td>____________________</td>
</tr>
</tbody>
</table>
Approximate Rate of Return

[See attached worksheet with guidelines. Guardians and Trustees may include a time-weighted rate or return calculation in addition to the rate or return formula below.]

Fees for Managing Assets as Percentage of Market Value of Estate

[Guardianship/trust fees incurred in managing assets for the entire review period divided by the average of Total Beginning Market Value and Total Ending Market Value X 100]

Fees for Managing Care of the Person as Percentage of Market Value of Estate

[Guardianship/trust fees incurred in managing care of the person for the entire review period divided by the average of Total Beginning Market Value and Total Ending Market Value X 100]

Proposed Budget [ ]

The Guardian of the Estate/Trustee seeks authority to make expenditures for the incapacitated person/beneficiary according to the proposed budget attached.

Investment Plan [ ]

The investment plan of the Guardian of the Estate/Trustee is attached to this report.
### Approximate Rate of Return Calculation Worksheet

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A.</td>
<td>Beginning Balance: $___________</td>
</tr>
<tr>
<td>B.</td>
<td>Interest Received: $___________</td>
</tr>
<tr>
<td>C.</td>
<td>Dividends Received: $___________</td>
</tr>
<tr>
<td>D.</td>
<td>Net Gain/Loss in Equity*: $___________</td>
</tr>
<tr>
<td>E.</td>
<td>Change in Value of Investments for Period (B + C + D): $___________</td>
</tr>
<tr>
<td>F.</td>
<td>Change in Value (E) divided by Beginning Balance (A) [E/A]: ____________</td>
</tr>
<tr>
<td>G.</td>
<td>(F) X 100 = APPROXIMATE RATE OF RETURN [Put the percentage return figure into the Approximate Rate of Return blank on the accounting form.]: ____________ %</td>
</tr>
</tbody>
</table>

H. List and explain any significant inflows or outflows which would affect the approximate rate or return calculation. Include date, description and amount.

<table>
<thead>
<tr>
<th>Date/Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>$___________</td>
</tr>
<tr>
<td>2.</td>
<td>$___________</td>
</tr>
<tr>
<td>3.</td>
<td>$___________</td>
</tr>
<tr>
<td>4.</td>
<td>$___________</td>
</tr>
<tr>
<td>5.</td>
<td>$___________</td>
</tr>
</tbody>
</table>

* Item D is calculated as follows: realized gains, less (-) realized losses, plus (+) unrealized gains, less (-) unrealized losses for this accounting period. This figure does not include other inflows, such as gifts received, or additional assets into the estate.
L. EXHIBIT C

SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY
In the Matter of the Guardianship/Trust/Settlement of: )
) No.
) MODEL FIDUCIARY’S INVESTMENT PLAN

I. General Information

1. Name of Fiduciary: _______________________ Prof. License #
   __________
2. Effective date of this Investment Plan:
   ________________________________
3. Date this Plan will next be reviewed by the Fiduciary:
   _____________________________
4. Date this Plan was reviewed with Beneficiary, if appropriate:
   _____________________________
5. Date last Investment Plan approved by Fiduciary:
   ______________________________
6. Name of Lifetime Beneficiary: ________________________________ Age:
   _____

II. Investment Plan

1. Purpose of estate or trust:
   ________________________________
2. Primary factors affecting plan:
   ________________________________
   ________________________________
   ________________________________
   _____
3. Estate planning and tax impact of plan:
   ________________________________
4. Investment goal and objectives:

5. Investment strategies to be employed to attain objectives:

6. Target annual rate of return on equities: ______ % ; on income assets: ______% 

7. Timetable for implementation of plan:

8. Changes from last investment plan:

9. Estimated life of account with current rate of expenditures: 

III. Annual Income and Expense :

Annual Amounts

1. Annual income expected from investments during period of Inv. Plan: 

   $____

   Fixed income expected from other sources (Soc. Sec., Annuity, etc.):

   $____

   Receipts from additional/other sources of funds:

   $____
Total annual income for period of Investment Plan: $____

2. Annual ongoing budgeted expenses for Investment Plan period: $____

Total annual one-time/extraordinary expenses for Plan period: $____

Total annual expenses for period of Investment Plan: $____

3. Difference (net cash flow): $____

IV. Current Asset and Liabilities Information and Portfolio Profile:

<table>
<thead>
<tr>
<th>Proposed</th>
<th>Net Value or</th>
<th>Current</th>
<th>Net Value or</th>
<th>Current</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash/ Cash Equivalents</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Checking/ Savings Accounts</td>
<td>$_________ ________ %</td>
<td></td>
<td>%</td>
<td></td>
</tr>
<tr>
<td>2. Money Market Accounts</td>
<td>$_________ ________ %</td>
<td></td>
<td>%</td>
<td></td>
</tr>
<tr>
<td>3. Treasury Bills</td>
<td>$_________ ________ %</td>
<td></td>
<td>%</td>
<td></td>
</tr>
<tr>
<td>4. Certificates of Deposit</td>
<td>$_________ ________ %</td>
<td></td>
<td>%</td>
<td></td>
</tr>
<tr>
<td>5. Other</td>
<td>$_________ ________ %</td>
<td></td>
<td>%</td>
<td></td>
</tr>
<tr>
<td>TOTAL CASH/ CASH EQUIVALENTS</td>
<td>$_________ ________ %</td>
<td></td>
<td>%</td>
<td></td>
</tr>
</tbody>
</table>
### Bonds

1. Treasury & Government Bonds $________  ______%  
   ______%  
2. Corporate Bonds rated A or higher $________  ______%  
   ______%  
3. Bonds rated lower than A (any service) $________  ______%  
   ______%  

**TOTAL BONDS** $________  ______%  
   ______%

### Stocks & Other Securities

1. Stock in public-traded corps. & funds $________  ______%  
   ______%  
2. Portion in closely held corps. & business $________  ______%  
   ______%  
3. Portion in other securities. $________  ______%  
   ______%  

**TOTAL STOCKS** $________  ______%  
   ______%

### Real Estate and Other Investments

1. Commercial property $________  ______%  
   ______%  
2. Rental residential property $________  ______%  
   ______%  
3. REI or LLC trust $________  ______%  
   ______%  
4. Real estate contracts $________  ______%  
   ______%  
5. Family residence & vacation property $________  ______%  
   ______%  
6. Non-performing assets $________  ______%  
   ______%  

**TOTAL REAL ESTATE & OTHER** $________  ______%  
   ______%
GRAND TOTAL OF ALL ASSETS $________ 100 %

V. Balance of Portfolio by Goal: (should = 100%)
1. Portion of estate in income-prod. assets $_______ _____%
   _______%
2. Portion of estate in equity/growth assets $_______ _____%
   _______%
3. Portion of estate in non-performing assets $_______ _____%
   _______%
TOTAL VALUE OF PORTFOLIO $________ 100%

VI. Physical Location of Investment Assets: (Should = 100%)
1. Certificates, documents & assets located in U.S. $_______ _____%
   _______%
2. Assets & accounts physically located outside US. $______ _____%
   _______%
TOTAL VALUE OF PORTFOLIO $______ 100%

VII. Plan for Security and Protection of the Assets:
General Fiduciary Information
1. Name of specific individual supervising this Estate:

_______________________
2. Amount of Fiduciary’s general surety bond, if any:  $

____________________
3. Policy limits of Fiduciary’s errors & omissions insurance: $

__________________
4. Total value of assets of all Estates under Fiduciary’s control: $

_______________
5. Total of assets of all Estates individually bonded or in blocked accounts: $

_____
6. Number of court-supervised Estates under Fiduciary’s control: ______
7. Percent of assets of all estates held by Fiduciary, which are invested in pooled or common financial accounts, funds or securities: ________ %
Individual Client Information

1. Market value of this Estate’s investment portfolio: $ ______________
2. Amount of Fiduciary’s individual surety bond for this Estate, if any: $ __________

Portfolio Balance by Court-Ordered Restriction of Assets: (should = 100%)

<table>
<thead>
<tr>
<th>Amount</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Assets in blocked or restricted financial accounts $___________</td>
<td>______ %</td>
</tr>
<tr>
<td>2. Assets in unrestricted financial accounts $___________</td>
<td>______ %</td>
</tr>
<tr>
<td>3. Assets not held in financial accounts (e.g. real estate, stock options, interests in closely-held corporations) $___________</td>
<td>______ %</td>
</tr>
</tbody>
</table>

4. TOTAL VALUE OF ESTATE ASSETS: $______________

100 %

Balance of Portfolio by Government Insurance: (should = 100%)

<table>
<thead>
<tr>
<th>Amount</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Assets in government/insured accounts $___________</td>
<td>______ %</td>
</tr>
<tr>
<td>2. Assets in not in government/insured accounts $___________</td>
<td>______ %</td>
</tr>
</tbody>
</table>

3. TOTAL VALUE OF ESTATE ASSETS: $______________

100 %

VIII. Annual Administrative Costs of Investment Program:

<table>
<thead>
<tr>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Estimated Annual Fiduciary Fees for All Investment Activities:</td>
</tr>
</tbody>
</table>

1. Pooled account & common trust fund fees $______________
2. Flat fees $______________
3. Transaction fees $______________
4. Hourly fees $______________
5. Percentage fees charged (to be charged) $______________
6. Other: _________________________________ $______________

TOTAL INVESTMENT FEES OF FIDUCIARY: $______________

Estimated Annual Outside Fees for all Investment Activities:

1. Estimated annual cost of fund manager $______________
2. Estimated attorney fees related to investment $______________
3. Estimated cost of securities purchases and sales $______________
4. Estimated cost of premiums, loads, points to be paid
   $________
5. Other: _________________________________ $______________

TOTAL OUTSIDE FEES FOR ALL INVESTMENT SERVICES: $__________
IX. Information on Outside Investment Manager, Financial Planner or Advisor If Any:

1. Name of outside Investment Manager(s) or Service, Financial Planner or Advisor, if any:
   __________________________________________________________
   Address: ____________________________Phone: ______________

2. Qualifications of outside investment advisor named in #1 above:
   __________________
   __________________________________________________________

3. What relationship does any financial advisor have to the Fiduciary (such as, friend /relative /arms-length professional):
   __________________________________________________________

4. Describe any contractual or financial relationship or arrangement which exists between the Fiduciary and each financial advisor named in #1 above:
   __________________
   __________________________________________________________

5. Who selected the outside advisor (Fiduciary / family / attorney/ other__________):
   __________________________________________________________

6. For how many of the Fiduciary’s cases is this person the financial advisor?
   No__
   Percent? __________% 

Signed this on _____________________, 2000, at _____________________, Washington.
UNIT FOUR: EMPLOYMENT OF ATTORNEYS AND OTHER PROFESSIONALS

A. LEARNING OUTCOMES

1. The Guardian will know which professionals they may employ to assist them only with specific court approval
2. The Guardian will know which professionals they may employ to assist them without specific court approval
3. The Guardian will understand the specific roles and duties of counsel and other professionals

B. EMPLOYING PROFESSIONALS TO ASSIST THE GUARDIAN

The Guardian may need to employ and pay other professionals to assist in carrying out the duties set forth in the statutes and court orders in each case. The determination of which professional services are needed is unique to each case and the Guardian must decide, given the facts of each case, what is reasonable and necessary regarding the employment of professionals. This Unit will refer to but not cover Ethical Issues or Fee Issues in depth, as those are each subject of subsequent Units.

Examples of professional persons appropriate to assist a Guardian of the Estate may include: attorneys, accountants, bookkeepers, appraisers, financial advisors, property managers, real estate agents, contractors, maintenance and yard service companies.

Examples of professional persons appropriate to assist a Guardian of the Person may include: attorneys, therapists (music, massage, psycho-, pet, occupational, physical), geriatric specialists, companions, doctors, nurses, education specialists, employment specialists or job coaches, case managers, and caregivers.

Examples of professional services not generally permissible or appropriate are those involving experimental procedures, those that do not directly benefit the incapacitated person (primary benefit to Guardian or others), or those unnecessary to the performance of guardianship duties (improvements to real estate, operating a business).

Whether or not specific court approval is required when the Guardian wishes to retain a professional, the Guardian must (1) determine that the service is reasonable and necessary for the performance of their duties; (2) select persons or agencies competent for the task; (3) see that the work is appropriately performed; (4) pay only reasonable amounts for the services; and (5) maintain adequate records of the transaction.

Some rules assist the Guardian in determining which whether the Guardian can hire a professional without specific additional authority:
• Rule #1: Seek appropriate guidance from the Guardianship Statute and the Guardian’s Code of Conduct.
• Rule #2: If a Guardian is still uncertain whether specific authority is required, seek legal advice.
• Rule #3: If any doubt remains, the Guardian should petition the court for an order specifically authorizing the retention and payment of the professional, BEFORE engaging the services.

If specific or additional authority is required, it may be given by the court in an order entered upon a Petition; as a part of another order, such as the Order Appointing Guardian; or may be granted pursuant to a monthly or annual budget previously approved by the court. However, it is not sufficient to employ the professional and simply report the expense in the Guardian’s next or a subsequent Report and Accounting filed with the court. If authority is required, it must be specifically given in order to protect the estate, the Guardian, and the professional.

**C. PROFESSIONALS WHO MAY BE EMPLOYED ONLY WITH SPECIFIC COURT AUTHORITY**

There are a few classes of professionals, for whom the statute requires the Guardian to obtain court authority **prior to** retaining them.

**Practice Tip.** It is always a “best practice” to obtain prior court approval to retain and pay professionals. The risk of not obtaining prior approval is that upon review of the Guardian’s Report and Accounting or petition for fees, the court may determine that the employment or amount of compensation paid was not necessary or reasonable. This will create awkward and potentially expensive issues for the Guardian and is to be avoided.

**Legal Services:** Specific authority is required for the employment (and payment) of an attorney to perform other than routine services for the representation of the Guardian. For example, authority is required before retaining an attorney to pursue a lawsuit on behalf of the incapacitated person\(^70\) or to represent the incapacitated person.\(^71\) Additional examples include retaining an attorney to do estate planning, gifting, or drafting a trust for or on behalf of the incapacitated person.

These examples are distinct from the ability of the Guardian to retain an attorney to perform routine guardianship services, such as the presentation of documents

\(^70\) RCW 11.92.060(1).
\(^71\) RCW 11.88.045(2), 11.92.180.
or reports to the court, advice concerning guardianship activities, tax advice, and review or advice given in connection with the sale of property. However, in all cases, the amount of a lawyer’s compensation is subject to court review and approval after the services have been rendered, and prior to their payment.72

Guardianship Services: The Guardian may not pay oneself, a Co-Guardian or another Guardian (such as the Guardian of Estate paying the fees of the Guardian of the Person) without prior court approval. While the court may specifically approve an advance on fees, the subject of a Guardian’s compensation is dealt with more fully in Unit V.

D. PROFESSIONALS EMPLOYED IN THE USUAL COURSE OF DUTIES

There are many professionals whom a guardian can employ in the usual course of duties without a specific court order or statutory authority. These actions and the fees incurred for them, are always subject to reporting to the court, and the court’s later review and approval of them. In fact, there may be a presumption as to their necessity and reasonableness, as they are incurred in the guardian’s discretion in carrying out statutorily-mandated duties. It is a “best practice” to obtain prior court approval of services of any significant magnitude, however, when there exists doubt as to authority, or for activities or services that family members or others might later question.

1. Guardian of the Person. A Guardian of the Person is obligated to take care of the incapacitated person. The Guardian of the Person has the duty to:

    …care for and maintain the incapacitated person in the setting least restrictive to the incapacitated person’s freedom and appropriate to the incapacitated person’s personal care needs, assert the incapacitated persons rights and best interests, and if the incapacitated person is a minor or where otherwise appropriate, to see that the incapacitated person receives appropriate training and education and that the incapacitated person has the opportunity to learn a trade, occupation, or profession. 73

These duties imply that the Guardian can retain all necessary and reasonable medical and care professionals, such as doctors, nurses, therapists, caregivers, case managers, occupational specialists, job coaches, and so forth. The best approach the Guardian can take is to consult with and document the advice and recommendations of the primary doctors and therapists providing services to the incapacitated person. For example, if the occupational therapist advises the Guardian that the incapacitated person would benefit from working part-time, the

72 RCW 11.92.180, SPR 98.12W.

73 RCW 11.92.043(4).
Guardian should look into how this can be accomplished. If a job coach is needed to assist in the employment area, it should be considered. If the doctor recommends physical therapy, the Guardian should retain a physical therapist.

2. **Guardian of the Estate.** A Guardian of Estate has many varied duties for which professionals be required to assist the Guardian. Some examples are: an appraiser to provide the fair market value of real estate for the inventory and accounting; an accountant to prepare tax returns and advise about taxes; or a financial advisor to give advice on the soundness of investments, risk factors, appropriate rates of return, and so forth. If any real estate is owned by the estate, the Guardian may have to hire maintenance people, painters, garden services, and others in order to “protect and preserve the guardianship estate.”

3. **Retaining an Attorney in the Usual Course of the Guardianship.** Distinct from the requirement that the “hiring” of an attorney in specific circumstances requires a prior court order (as described in Section C above), it is implied that the guardian has the authority to retain an attorney to represent the guardian in guardianship matters required under the statute. Note: there is no authority to pay the attorney without prior court approval, however, as the fees sought must be approved by the court.

For instance, a Guardian of the Person has the duty to file a Personal Care Plan within three months of appointment and to file a yearly or periodic status report. While the filing of these documents does not appear to require a hearing for court approval under the statute, this is the primary means by which court approval is given of the proposed acts of the guardian, as well as a Budget. In most courts and counties such hearings are required, so it is common practice to obtain an order approving these reports. For these routine, statutory services, the Guardian of the Person can (and must, if the Guardian is not an individual) employ an attorney for representation in these guardianship hearings.

Since a guardianship is essentially a court-created and ordered relationship, most Guardians will find that the services of an attorney are useful and necessary in many instances. For example, using an attorney’s services may be helpful in the following:

- The sale of real estate or personal property of the guardianship estate
- Issues of Medicaid eligibility and requirements
- Tax law issues
- Divorce or family law issues affecting the incapacitated person
- Elder law issues, such as trusts, directives to physicians

It is commonly understood by attorneys who practice guardianship law, that they can be retained by a Guardian to perform these services, although they cannot be paid until they submit their fees to the court for review and approval.

---

74 RCW 11.92.040(4).
75 RCW 11.92.043(1)-(2).
E. ROLES AND DUTIES OF EMPLOYED PROFESSIONALS

It is important to distinguish between those professionals the Guardian “employs” or “retains” and those “appointed” by the court. For instance, the Guardian may retain an attorney for representation in the presentation of a Report and Accounting. On the other hand, the court may appoint an attorney to either represent the incapacitated person or to investigate something the Guardian has done. In this case, the court may order the Guardian to pay the attorney fees out of the guardianship estate, while the attorney (or Guardian ad Litem) has not been retained by and is not the Guardian’s attorney.

1. **Attorney for Guardian.** An attorney retained by a Guardian to represent the Guardian has an attorney-client relationship with that Guardian and all the duties and obligations, which flow from that relationship, such as privileged communications.

2. **Attorney for Incapacitated Person.** It is well to note the role of an attorney “appointed” by the court, which is to represent an incapacitated person and their wishes. This is in contrast to the role of the Guardian, who “stands in the shoes of” the incapacitated person, acting and representing the best interests of the person and estate. An appointed attorney has an independent duty to the incapacitated person, which may conflict with the role of the Guardian.

There is no statute that specifically addresses the role and duties of an attorney appointed for an incapacitated person during the pendency of a guardianship. It is generally understood that the statute addressing the appointment of an attorney for an “alleged” incapacitated person prior to the establishment of a guardianship provides the same standard for an attorney appointed after the establishment of the guardianship. The statute provides that:

> Counsel for an alleged incapacitated individual shall act as an advocate for the client and shall not substitute counsel's own judgment for that of the client on the subject of what may be in the client's best interests. Counsel's role shall be distinct from that of the guardian ad litem...  

3. **Guardian ad Litem Appointed During Guardianship.** This situation is similar to the appointment of the attorney for the incapacitated person, in that there is no statute that specifically addresses this person’s duties during a guardianship – that is, after a Guardian has been appointed.

However, the statute provides that the Guardian ad Litem has a role that is distinct from the attorney for the “alleged” incapacitated person. The guardian ad litem is

---

76 RCW 11.88.045(b).
expected to promote the best interest of the alleged incapacitated individual, rather than the alleged incapacitated individual’s expressed preferences.  

As with an attorney for the incapacitated person appointed after a Guardian has been appointed, it is generally understood that a Guardian ad Litem appointed after a Guardian’s appointment has the same distinct role from either the Guardian or an appointed attorney for the incapacitated person.

4. Other Professionals. A Guardian may initially feel that other professionals employed are under the Guardian’s control and direction as they would be in a traditional employment situation. Many of them are and their roles and duties are determined by the Guardian’s instructions to them.

However, especially in the medical field, many professionals have other, independent duties of a professional relationship with the incapacitated person, which transcend any duty they may have to the Guardian. The doctor-patient relationship in a guardianship situation is complex. While the doctor must, in most instances, listen to the instructions of the Guardian, most doctors will take action if they feel the Guardian is making improper medical decisions regarding the incapacitated person. There are also laws requiring medical personnel to report any abuse to Child Protective Services or Adult Protective Services, and they can do this without notifying the Guardian.

5. Notes of Caution. The hiring of professionals is an area in which the greatest caution should be exercised. The Guardian’s acts will be reviewed later by, and can be subject to criticism by, the court, the incapacitated person, family members, DSHS, Adult Protective Services, the Ombudsman, and many others. Therefore, in this area perhaps more than most, the Guardian should take great lengths to ensure that they not only do the correct thing, but that what they do also has the appearance of correctness. Before hiring professionals guardians should review SOP 401.18. In order to avoid the most frequent circumstances in which questions arise:

- The Guardian should maintain “professional” relationships with those who are hired and not mix business and personal relationships.
- The Guardian should avoid self-dealing, such as hiring oneself or one’s family or friends to do services not usual or common to guardianship responsibilities.
- The Guardian should not take unfair advantage by accepting gifts or having oneself listed in the Will of an incapacitated person either as Executor or beneficiary.
- The Guardian should not hire another person in the proceeding or mix roles, such as hiring the Guardian ad Litem to serve as the Guardian’s attorney; or employ an attorney who has already appeared for another party in the same proceeding.

77 RCW 11.88.045
The Guardian, when faced with conflicts, should rarely, *if ever*, waive a conflict when so informed, as usually the incapacitated person is the one who could be prejudiced (*or appear to be prejudiced*) and that person does not have the ability to waive a conflict.
UNIT FIVE: GUARDIAN AND ATTORNEY FEES

A. LEARNING OUTCOMES

1. The Guardian will know the basis upon which fees are to be requested
2. The Guardian will know how to maintain records and document costs
3. The Guardian will know the process for gaining court approval of fees
4. The Guardian will know who is responsible to pay the guardian’s fees
5. The Guardian will know the special rules pertaining to payment by DSHS, VA, and cases handled as trusts

B. LEGAL BASIS FOR GUARDIAN AND ATTORNEY FEES

The payment of fees and costs of a guardian or the guardian’s attorney is one of the most difficult and often abused areas of guardianship practice. Why? Because, contrary to other fee arrangements, there is no arms-length relationship which would provide the checks and balances guarding against unreasonable charges. The guardian is in a conflict-of-interest situation when applying for payment the guardian’s own fees. Even when the guardian is petitioning for fees to be paid from the guardianship estate to the guardian’s attorney, it often does not provide the safeguards of an arms-length transaction as many attorneys routinely represent the same guardian and are often friends with the guardian.

Hence, the clear and unequivocal basis in law and practice that guardian and attorney fees and costs paid from a guardianship estate are scrutinized more stringently, require proper documentation, must be reasonable and necessary, and must be approved by the court prior to payment. This is one of the critical ways in which the court protects the incapacitated person by monitoring these fees paid from that person’s estate.

There are many applicable statutes, regulations, court rules, and cases governing guardian and attorney fees in guardianships. A list of the most common laws governing guardian and attorney fees is attached as Appendix A. A guardian must become familiar with these requirements, but is well advised to seek appropriate counsel if there are questions regarding the payment of any fees or costs from a guardianship estate. And, if there are further questions, “best practice” would be for the guardian to seek authority and guidance from the court.

---

78 Reference to “fees” includes “costs”; fees consisting of charges for time and services, costs consisting of expenses incurred for such items as photocopying, long distance phone charges, mileage, etc.
79 RCW 11.92.180.
81 It is beyond the scope of these materials to cite all the various cases pertaining to specific fact patterns or to cover all instances. The services and advice of an attorney may be required in unique, complex or questionable cases.
Some general principles which can be derived in analyzing the legal basis for granting fees in a guardianship proceeding include:

1) No guardian fees or attorney fees may be paid from a guardianship estate without prior court approval;
2) The court has wide discretion to award or deny guardian and attorney fees;
3) The court has wide discretion to determine whether the estate or one of the parties shall pay the fees – “as justice may require;”
4) Guardians will be allowed fees for services “as the court shall deem just and reasonable”;
5) If the guardian is also an attorney and provides services to the guardianship, those services provided as a guardian and those services provided as an attorney shall be separately accounted for and documented;
6) If the court finds that the guardian has not fulfilled the guardian’s duties, it can reduce or deny the award of fees;
7) Where the incapacitated person is a client of DSHS or receives VA benefits, there are certain other, more specific, standards and notice requirements which bind the guardian and the court as to the amount of fees;
8) In special circumstances of misfeasance or neglect of duty, the guardian can be responsible for other parties’ attorney fees and costs and judgment can be rendered against the guardian and/or the guardian’s bonding company for those fees and costs.

C. MEASURES FOR SETTING COMPENSATION

A guardian or limited guardian shall be allowed such compensation for his or her services as guardian or limited guardian as the court shall deem just and reasonable. RCW. 11.92.180

Before compensation shall be allowed to any personal representative, guardian, or attorney in connection with any probate matter or proceeding…, and before any agreement therefore shall be approved, the amount of compensation claimed shall be definitely and clearly set forth in the application therefore… SPR 98.12W

In determining the reasonableness of attorney fees charged in a guardianship accounting, the court should consider the factors set forth in Rules of Professional Conduct (RPC) 1.5(a).82

The factors set forth in the Rules of Professional Conduct are:

1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
3) The fee customarily charged in the locality for similar legal services;

(4) The amount involved and the results obtained,
(5) The time limitations imposed by the client or by the circumstances,
(6) The nature and length of the professional relationship with the client;
(7) The experience, reputation, and ability of the lawyer or lawyers performing
  the services; and
(8) Whether the fee is fixed or contingent.
RIPC 1.5(a)(1)-(8).

All fees and cost in a guardianship are based on applicable laws and
properly presented facts. In other words, there are “legal measures” and
“factual measures”. The statutory legal bases and court rules have been
set forth above. There are, in addition, many cases interpreting the
statutes and rules. There are also many different factual measures which
the court needs to consider which determine the amount and
reasonableness of the fees. The court has wide discretion to determine
what compensation ought to be made to the guardian or to the guardian’s
attorney in a guardianship proceeding. The court applies the law to the
facts and determines what is “just and reasonable.” There is also case law
which requires that there be “benefit to the person or estate.”

Most of the case law determining fees in guardianship settings actually
involve attorney fees for litigation, for representing various prevailing or
losing parties to disputes, etc. However, it is widely held that similar
standards and factors would be applied to guardian fees in a guardianship
if an appellate court were interpreting the applicable statutes and court
rules.

Essentially, the work of the guardian is compensated out of the guardianship
estate for an amount that is “just and reasonable” if, and to the extent that, a
benefit has been conferred on the incapacitated person or estate. The benefit to
the incapacitated person must be substantial. If the work benefits someone else,
such as creditors, the children or future heirs or in some way benefits the
guardian and not the incapacitated person, then the fees should not be paid by
the guardianship estate. Examples of services that do benefit the guardianship
estate, which ordinarily are compensated for, include management of the funds
of the incapacitated person, insuring the proper residence, daily supervision and
care of the incapacitated person, and providing investment and financial
oversight. The guardian should also be compensated for using his or her good
faith in defending the guardianship from claims and legal actions against it.

The approval of fees is based on several sources of information:
- First, is the accurate, contemporaneous recording of the date of
  work performed, total of the time spent, a description of the activity
  involved and documentation of the out of pocket costs associated
  with the actions being taken on behalf of the guardianship.
- Second, is a recitation of the way in which the services brought
  benefit to the guardianship estate or the incapacitated person.
• Third, is comparison of the fees and costs requested to the fees and costs customarily charged in the community for similar work and benefit conferred.

• Finally, the court must be informed about the specialized expertise of the individual involved to insure that the rate of compensation is fair and reasonable given the work performed.

It is the guardian’s responsibility to furnish all of this information to the court in support of the fees requested.

Practice Tip. The guardian should prepare a Declaration and complete it each time fees are requested setting out the guardian’s fee schedule and rates of the guardian and each staff member working on that matter, time sheets which contemporaneously track time and detailed charges, any information relevant to the court’s determination of “benefit to the person or estate” and the “reasonableness” of the fees and costs, and which disclose to the court all information helpful to the court in its decision.

D. MAINTAINING RECORDS AND DOCUMENTING COSTS

As stated above, the guardian has an affirmative duty to keep accurate, contemporaneous records of the work performed. In most instances, a daily calendar or other written tabulation of the actual time spent and the work performed will be sufficient to establish the amount of compensation requested. The guardian is also required to maintain copies of receipts and other written documentation of expenditures made on behalf of the guardianship. Whatever is required as backup for tax reporting purposes, is typically sufficient for documentation in the guardianship. However, electronic record keeping is preferred where the amount of entries is significant, there is a need to compile time and billing for several cases, or where there is a need to keep sub-account records for various functions and differing billing rates for a single case. It must be recognized that the time consumed keeping track of time and costs should be in line with the time being recorded, thereby preserving a reasonable balance. On the other hand, failure to adequately document time and expenses may result in a denial of payment.

Simply submitting a time and billing record without demonstrating other factors that make the compensation reasonable is not a sufficient record for issuing an order approving attorney fees. While guardian fees are somewhat different, the guardian should be ready to establish conclusively that the fees are proper in the event of an objection to the request.
If the guardian is also an attorney there must be accurate segregation of the time and billing records to reflect service performed by the attorney as the attorney (payable at attorney fee rates) and services performed for a specific guardianship function (payable at the rate applicable for persons of that nature).

When are fees found not to be reasonable and just?

By statute fees may be either disapproved or reduced if the court finds that the guardian has failed to discharge his or her duties in any respect. Some examples of cases in which fees have been reduced or denied include:

- gross misfeasance and willful or through indifference of the guardian.
- the work performed was not done by the applicant, but by the co-guardian.
- the guardian kept no account of the estate and used the money of the estate for the guardian’s own purposes.
- the guardian was not allowed in another case to make a profit on the handling of the guardianship accounts.
- time loss in handling the guardianship affairs is not a basis for compensation either.
- compensation should not be granted for work performed and expenses incurred that could have been avoided by a less expensive method. For instance, travel expenses should not be authorized where business could have been handled by mail.
- fees for services at professional rates should not be granted where a person with less skill and training could perform the work. A classic example would be making financial transactions at a bank or inventorying personal property in the family home at professional fee rates where the financial or inventory activity did not involve an exercise of the professional’s expertise.

It is easy to say that a person should just use common sense. Is what I am doing reasonable in light of the duties required in this guardianship, the size and complexity of the estate, or the condition and needs of the incapacitated person. Every guardian has had a ward who calls them everyday and would talk for an hour if you let them. It would be a very rare case, indeed, in which it would be proper for the guardian to talk to their ward and bill the estate for an hour a day.

E. COURT PROCESS FOR APPROVAL

While it sometimes happens that a guardian performs services or retains an attorney to perform services prior to obtaining court approval, the best practice is to obtain prior approval. In order to preserve a claim that the fees were

---

83 In re Guardianship of Atkins, 57 Wn. App. 771; 790 P.2d 210 (1990)
reasonably and legitimately incurred, the guardian should seek approval of actions on behalf of the guardianship before commencing work or before retaining an attorney. Waiting for approval of fees until after the action has been taken runs the risk that the action will be found to have been improper or without authority or not of benefit to the estate. If that occurs, the guardian’s or attorney’s fees will probably be reduced or disallowed.

Of course, there are times when one needs to retain an attorney or do work on a matter and there is not sufficient time, or it would not be cost effective, to go into court and get prior approval. In those instances, it would be important that the guardian petition the court as soon as reasonably possible and at that time the guardian should fully document for the court the reasons it was necessary to proceed prior to obtaining a specific order.

To receive payment for performing services as a guardian or for paying attorney fees from a guardianship estate, the guardian must obtain court approval for the activities and the corollary fees charged. Obtaining the approval of the court requires a series of steps, all governed by statute and both state and local court rules. The steps include submitting the proper paperwork with supporting documentation of the services performed on behalf of the incapacitated person (as set forth above), delineation of fees charged, notifying the proper parties, and presenting the fee request to the court.

1. **Pleadings and Notice for Fee Request.** Normally, the attorney for the guardian would prepare a Petition regarding fees. To “petition” the court for approval of a fee is to ask the court in writing to approve fees incurred for the benefit of the incapacitated person or estate. The petition for approval of fees is the foundation document to your fee request and must be submitted to the court, either alone as a separate Petition For Approval of Guardianship Fees or using the same language within the Annual Report or Annual Accounting. A separate Declaration Supporting Request for Fees from each professional seeking payment should be submitted, setting forth all pertinent information and facts supporting the fee request in the Petition or Report. For example “management,” “personal care management,” etc., summarizing the time spent in each area. Again, the goal of the Petition and Declaration is clarity of information to allow the court to understand what has happened in this guardianship and enable the court to make an informed decision about fees.

| Practice Tip. In a routine guardianship where there are just guardian and attorney fees paid once per year at the time of the annual report and accounting, the report or accounting would contain the request for fees and both the guardian and the attorney would submit declarations setting out the activities performed, time spent, and rates charged. The court then approves fees as part of the order approving the report and account. |
Proper notices must be provided to those entitled as in any other proceeding in the guardianship. A copy of the Petition and a “proposed” order (Working Papers) are submitted prior to the hearing. Once signed by the judicial officer, it is no longer “proposed”, but is the binding order regarding fees to be paid from the guardianship.

Best practice would be to include Findings of Fact and Conclusions of Law. These, at a minimum, should set out the legal basis for the fees and costs and the reason for the amounts.

2. **Court Hearing.** Once the documents are completed and submitted and proper notice given, it is time for the court hearing. The guardian must be prepared to explain any charges and why they are reasonable and necessary in the particular case.

3. **Post Hearing Issues.** If the court has denied or granted your fee request only in part, review carefully what the court said. If it was denied because of lack of information, lack of supporting documentation, or a procedural defect (improper notice etc.), then do it right and resubmit the request.

However, if it was denied due to substantive issues (i.e. no prior court approval was obtained to incur higher fees, services provided were unnecessary or inefficient, or other reasons), then learn from the experience and move on. It is always uncomfortable to have your request denied or limited. However, if upon review, there seems to be genuine grounds for disagreement, a reconsideration of the court’s ruling may be sought. The procedure for seeking reconsideration is beyond the scope of these materials, but remember that very tight timelines are imposed and that delaying too long could deny you the opportunity for review.

**F. WHO IS TO PAY?**

Ordinarily the guardianship estate will be responsible for guardian and the guardian’s attorney fees and costs, provided they are reasonable. In these instances, the court enters the appropriate order upon a finding that the compensated time and expenses have benefited the incapacitated person or estate. Statutory authority also exists for reimbursement for administrative costs, including the services of an attorney and for necessary services to the incapacitated person not performed by the guardian.

There have been instances where the guardian was authorized to collect fees on behalf of the estate against a third party pursuant to other statutes and proper court order.

Guardians may not be compensated at county or state expense. However, where the incapacitated person qualifies for certain public assistance benefits, income of the incapacitated person can be “set aside” to pay for guardianship and administrative costs including attorney fees up to certain limited amounts provided advance notice has been provided to the state. (see G. 1. below).
In cases where there is guardianship litigation or contested matters, the court can
determine which party will be responsible for paying the guardian and/or
guardian’s attorney fees. 84

**G. SPECIAL RULES PERTAINING TO DSHS, VA, AND GUARDIANSHIP TRUSTS**

There are special rules which pertain to guardian and other fees when the
incapacitated person receives benefits from the Department of Social and Health
Services (DSHS), the Department of Veterans Affairs (VA), and when the
guardianship funds are being administered through a guardianship trust or the
guardian is given trust powers by the court as allowed by the statute.

1. **DSHS Cases.** The method of payment for guardian and attorney fees in
cases where there is a DSHS client who must use part of their income for their
care as participation requires understanding of the regulations to request
payment of guardian and administrative costs, definitions of guardianship related
expenses, and limitations of those expenses as provided in the regulation. 85

   a) **Introduction.** The statute governing these payments for guardianship
fees states:

   Where the incapacitated person is a department of social
   and health services client residing in a nursing facility or in a
   residential or home setting and is required by the
department…
   to contribute a portion of their income towards the cost of
   residential or supportive services then the department shall
   be entitled to notice of proceedings as described in RCW
   11.92.150. The amount of guardianship fees and additional
   compensation for administrative costs shall not exceed the
   amount allowed by the department …by rule. 86

The “rule” referred to is found in the Washington Administrative Code (hereafter
WAC). WAC 388-79 sets forth the provisions establishing guardian fees and
associated costs which can be allowed by the court to be paid from money that
would otherwise be part of the client’s participation. 87 The guardian should
obtain proper legal advice and representation to determine how to provide proper
and adequate notice to the Department to request guardian and administrative
fees.

---

85 See WAC 388-79 et. seq.
86 RCW 11.92.180.
87 As with statutes, the WAC can be changed at various times. The guardian should consult the
actual source or obtain proper advice each time this process is required in a case.
costs and fees and the procedure used by the Department for allowing fees and
costs from the client’s participation.
One of the challenges with DSHS cases is determining who to serve notice of the
guardianship to request guardian and administrative fees as required under WAC
388-79-050. The organization of DSHS is very complex. For our purposes, the
easiest to determine who to send notice is to ask the DSHS case manager or look
at the most recent award letter of the incapacitated person. If you do not know
who the case manager is or there is no award letter then two or three questions
may help resolve the matter:

- Is the client in a Nursing Facility? If yes, Aging and Adult Services
  Administration (AASA), Home and Community Services Division
  (HCS) gets the notice.
- Is the client developmentally disabled (any age)? If yes, then
  Division of Developmental Disabilities (DDD) gets the notice.
- Is the client receiving services for mental illness? If so, then the
  local Regional Support Network (RSN) gets the notice.
- Is the client living in the community and over 55; or under 55 but
  over the age of eighteen. If so, then AASA (HCS) gets the notice,
  if the client is receiving a long-term care benefit for which they pay
  participation. They may be getting a benefit (SSI) that does not
  require participation.

Residential care includes persons living in Nursing Homes (Nursing Facilities),
Boarding Homes (which may be called Assisted Living, Residential Care, or
Enhanced Residential Care, and used to be called CCF’s (Continuing Care
Facilities)), and Adult Family Homes.

You may also be able to find out which program the client is receiving services
from by contacting DSHS. DSHS can be reached through the internet at
www.dshs.wa.gov or Aging and Disability Services toll-free telephone number of
1-800-422-3268.

1. Cases with Fees Under $175 per Month
For cases with $175 or less per month in fees for the guardian and less than
$600.00 for the attorney in any three year period send the order to the Regional
Administrator (RA) of the office the client is receiving financial services. A
financial worker will review and issue a new award letter.

2. Cases with Fees Greater than $175 per Month
In cases where a fee greater than $175 per month is desired, then notice of the
hearing to obtain the fee and the supporting documents should be sent to the
Regional Administrator of the office the client is receiving financial services.
Documented support for the fees should be made other than just copies of bills
and time sheets. The agency needs to know why this case will, or has, cost
more than other cases. Orders allowing past due fees, or higher attorneys fees
than allowed by the WAC will be treated by the department as asking for fees
above the $175 level.
3. **Cases Where No Fee Is Possible**

There is no budget or method to pay for guardians in some cases because the client does not have any income to pay for these fees. Some administrations have not adopted WAC 388-79 by reference. This is especially true of SSI recipients living in the community.

The department will not pay:

- For fees incurred more than three months prior to eligibility;
- For guardian ad litem fees or filing fees. Clients of the department are indigent and these are paid by the county;
- For fees of an attorney-in-fact.
- For fees after death. There is clear case law that these can only be paid in probate;

**d)** **Summary.** The guardianship fee rule, WAC 388-79, describes the notice requirements, and amounts the Department will pay for guardian and administrative fees and costs.

2. **Department of Veterans Affairs (VA).** The payment of guardian and attorney fees from a guardianship receiving VA benefits is governed by special rules. The guardianship statute specifically references guardianships involving veterans and refers to RCW 73.36, which is commonly referred to as the Veteran's Guardianship Act.

The Act provides that the “administrator” of Veterans Affairs is a “party in interest” to any guardianship proceeding of any ward whose “estate includes assets derived in whole or in part from benefits heretofore or hereafter paid by the veterans administration.”

Proper notice of hearings – in this case to approve accountings and/or fees – must be given to the proper “office of the veterans administration” fifteen (15) days prior to the hearing, unless they waive it in writing.

There is a provision of the Act which purports to limit guardian fees to 5% of the amount of money received by the guardian, but there is also an exception that, in extraordinary circumstances, reasonable compensation can be awarded by the court in a sum above the 5%. In practice, the guardian petitions, gives proper notice, and the VA has been honoring the court orders.

A guardian who is not familiar with the VA procedures and is asked to become guardian for an incapacitated person receiving benefits should consult with an attorney or another guardian with experience in this area.

3. **Guardianship Trusts and Guardians with Trust Powers.** There are more and more instances in which the court places funds of an incapacitated individual

---

88 RCW 11.88.160.
89 RCW 73.36.020.
90 RCW 73.36.120.
into a settlement trust or a special needs trust. These are becoming commonly referred to as Guardianship Trusts because they are merely an alternative investment vehicle for what would be guardianship funds created in order to provide enhanced protection for the estate of an incapacitated person or in order to qualify the incapacitated person for government benefits. These trusts are under the supervision of the court, require yearly accountings, and the fees must be approved in the same manner as guardian fees.

However, in addition to the guardianship statutes and the court rules, other statutes, including the Washington Trust Act, govern the administration of such trusts and traditional trustee fees are normally allowed for the services performed as a trustee, as long as they are reasonable and consistent with other trustee’s charges for similar services in the same area. While not universal, trustee fees historically have consisted of quarterly fees of administration and a yearly percentage fee paid quarterly on the balance of the trust corpus.

In some instances, when a Guardian of Estate is granted trust powers to invest as a trustee, the courts have allowed the same types and amounts of fees as charged by trustees for similar services in the same area as the work required and the liability involved is commensurate with that of a trustee.

A trustee of a Guardianship Trust must still document fees and costs and be able to show benefit to the “estate” of the incapacitated person by their services and the charges requested.

---

91 Unit Seven deals with this in more detail.

92 RCW 11.92.040(5)(a).
Either the superior court or any court on an appeal, may, in its discretion, order costs, including attorneys' fees, to be awarded to any party: (a) From any party to the proceedings; (b) from the assets of the estate or trust involved in the proceedings; or (c) from any non-probate asset that is the subject of the proceedings. The court may order the costs, including reasonable attorneys' fees, to be paid in such amount and in such manner as the court determines to be equitable. In exercising its discretion under this section, the court may consider any and all factors that it deems to be relevant and appropriate, which factors may but need not include whether the litigation benefits the estate or trust involved.” RCW 11.96A.150

A guardian or limited guardian shall be allowed such compensation for his or her services as guardian or limited guardian as the court shall deem just and reasonable. Guardians and limited guardians shall not be compensated at county or state expense. Additional compensation may be allowed for other administrative costs, including services of an attorney and for other services not provided by the guardian or limited guardian. Where a guardian or limited guardian is an attorney, the guardian or limited guardian shall separately account for time for which compensation is requested for services as a guardian or limited guardian as contrasted to time for which compensation for legal services provided to the guardianship is requested. In all cases, compensation of the guardian or limited guardian and his or her expenses including attorney's fees shall be fixed by the court and may be allowed at any annual or final accounting; but at any time during the administration of the estate, the guardian or limited guardian or his or her attorney may apply to the court for an allowance upon the compensation or necessary expenses of the guardian or limited guardian and for attorney's fees for services already performed. If the court finds that the guardian or limited guardian has failed to discharge his or her duties as such in any respect, it may deny the guardian any compensation whatsoever or may reduce the compensation which would otherwise be allowed. Where the incapacitated person is a department of social and health services client residing in a nursing facility or in a residential or home setting and is required by the department of social and health services to contribute a portion of their income towards the cost of residential or supportive services then the department shall be entitled to notice of proceedings as described in RCW 11.92.150. The amount of guardianship fees and additional compensation for administrative costs shall not exceed the amount allowed by the department of social and health services by rule. RCW 11.92.180

If, in any probate or guardianship proceeding, any personal representative shall fail or neglect to report to the court concerning his trust and any beneficiary or other interested party shall be reasonably required to employ legal counsel to institute legal proceedings to compel an accounting, or if an erroneous account or report shall be rendered by any personal representative and any beneficiary of
said trust or other interested party shall be reasonably required to employ legal counsel to resist said account or report as rendered, and upon a hearing an accounting shall be ordered, or the account as rendered shall not be approved, and the said personal representative shall be charged with further liability, the court before which said proceeding is pending may, in its discretion, in addition to statutory costs, enter judgment for reasonable attorney’s fees in favor of the person or persons instituting said proceedings and against said personal representative, and in the event that the surety or sureties upon the bond of said personal representative be made a party to said proceeding, then jointly against said surety and said personal representative, which judgment shall be enforced in the same manner and to the same extent as judgments in ordinary civil actions. RCW 11.76.070

Before compensation shall be allowed to any personal representative, guardian, or attorney in connection with any probate matter or proceeding…, and before any agreement therefore shall be approved, the amount of compensation claimed shall be definitely and clearly set forth in the application therefore, and all parties interested in the matter shall be given notice of the amount claimed in such manner as shall be fixed by statute, or, in the absence of statute, as shall be directed by the court; unless such application be filed with or made a part of a report or final account of such personal representative, guardian, receiver, or attorney. SPR 98.12W

### Maximum fees and costs

The superior court may allow guardianship fees and administrative costs in an amount set out in an order. For orders entered after June 15, 1998, where the order establishes or continues a legal guardianship for a department client, and requires a future review or accounting; then unless otherwise modified by the process described in WAC 388-79-040:

1. The amount of guardianship fees shall not exceed one hundred seventy-five dollars per month;
2. The amount of administrative costs directly related to establishing a guardianship for a department client shall not exceed seven hundred dollars; and
3. The amount of administrative costs shall not exceed a total of six hundred dollars during any three-year period. WAC 388-79-030.

### Procedure for allowing fees and costs from client participation after September 1, 2003.

1. After September 1, 2003, where a client is subject to a guardianship the department shall be entitled to notice of proceedings as described in RCW 11.92.150.
2. The notice must be served to the department's regional administrator of the program that is providing services to the client. A list of the regional administrators will be furnished upon request.
3. If the fees and costs requested and established by the order are equal to or less than the maximum amounts allowed under WAC 388-79-030, then the department will adjust the client's current participation to reflect the amounts allowed upon receipt by the department of the court order setting the monthly amounts.
(4) Should fees and costs in excess of the amounts allowed in WAC 388-79-030 be requested:
   (a) At least ten days before filing the request with the court, the guardian must present the request in writing to the appropriate regional administrator to allow the department an opportunity to consider whether the request should be granted on an exceptional basis.
   (b) In considering a request for extraordinary fees or costs, the department must consider the following factors:
       (i) The department's obligation under federal and state law to ensure that federal Medicaid funding is not jeopardized by noncompliance with federal regulations limiting deductions from the client's participation amount;
       (ii) The usual and customary guardianship services for which the maximum fees and costs under WAC 388-79-030 must be deemed adequate for a Medicaid client, including but not limited to:
           (A) Acting as a representative payee;
           (B) Managing the client's financial affairs;
           (C) Preserving and/or disposing of property;
           (D) Making health care decisions;
           (E) Visiting and/or maintaining contact with the client;
           (F) Accessing public assistance programs on behalf of the client;
           (G) Communicating with the client's service providers; and
           (H) Preparing any reports or accountings required by the court.
       (iii) Extraordinary services provided by the guardian, such as:
           (A) Unusually complicated property transactions;
           (B) Substantial interactions with adult protective services or criminal justice agencies;
           (C) Extensive medical services setup needs and/or emergency hospitalizations; and
           (D) Litigation other than litigating an award of guardianship fees or costs.
   (c) Should the court determine after consideration of the facts and law that fees and costs in excess of the amounts allowed in WAC 388-79-030 are just and reasonable and should be allowed, then the department will adjust the client's current participation to reflect the amounts allowed upon receipt by the department of the court order setting the monthly amounts.

(5) In no event may a client's participation be prospectively or retrospectively reduced to pay fees and costs incurred before the effective date of the client's Medicaid eligibility; or during any subsequent time period when the client was not eligible for, or did not receive long-term care services; or after the client has died. There is no client participation towards DDD certified and contracted supported living services under chapter 388-820 WAC, so the department has no responsibility to reimburse the client for guardianship fees when those fees result in the client having insufficient income to pay their living expenses.

(6) If the court at a prior accounting has allowed the guardian to receive fees and costs from the client's monthly income in advance of services rendered by the guardian, and the client dies before the next accounting, the fees and costs allowed by the court at the final accounting may be less than, but may not exceed, the amounts advanced and paid to the guardian from the client's income.

(7) Guardians must furnish the regional administrator with complete packets to
include all documents filed with the court and with formal notice clearly identifying the amount requested. WAC 388-79-050.
A. LEARNING OUTCOMES

1. The Guardian will understand the ethical and professional duties set forth in Standards of Practice for Certified Professional Guardians which have been established by the CPG Board under GR 23(2)(ii).
2. The Guardian will be able to identify, anticipate and avoid circumstances that may violate any regulations set forth in the Standards of Practice.
3. The Guardian will understand the possible ramifications of any Practice or decision that does not comply with the Standards of Practice.
4. The Guardian will understand how the Standards of Practice may be enforced through Disciplinary Regulations established by the CPG Board under GR 23(2) (viii), (ix) and (x).
5. The Guardian will know where to find current Standards of Practice and Disciplinary Regulations as these may be amended from time to time.

B. OVERVIEW OF THE ETHICAL AND PROFESSIONAL OBLIGATIONS OF A GUARDIAN

The Guardian holds a position of trust and has a duty to deal with the incapacitated person and their affairs with the utmost honesty, integrity, trust, and fidelity. Furthermore, the Guardian is obligated to maintain an appearance of utmost honesty, integrity and fidelity. The general rules of ethical and professional conduct for Certified Professional Guardians in the state of Washington are set forth in the Standards of Practice. While the Standards of Practice are binding on Certified Professional Guardians (having been formally adopted by the Certified Professional Guardian Board), they can be seen as applicable and helpful to family and other volunteer guardians as well.

The Guardian should clearly understand that the Standards of Practice establish minimum guidelines. Certified Professional Guardians, as well as family and volunteer guardians, should strive to maintain ethical and professional standards well above these minimum guidelines.

Whenever discussing the issue of ethics in a professional context, such as the conduct of a Guardian, several concepts immediately come to the fore. Each should be well understood; so as to be on the Guardian’s mind at all times.

---

93 See Unit Twelve, Appendix D, Standards of Practice.
• **Conflict of Interest** — a conflict of interest occurs when (1) a person or agency (not just the Guardian!) having authority regarding an issue, (2) can or does make a decision or direct a course of action, (3) in which the Guardian or another person or agency may receive a personal benefit or gain, either financial or otherwise, (4) without fair compensation or consideration. Additionally, (5) if the one receiving the benefit or gain is the same as the one having authority (such as the Guardian), then it does not matter, even if consideration was paid or provided. The ability to choose an option giving benefit or advantage constitutes an “actual conflict of interest.”

• **Appearance of Conflict**— an appearance of a conflict of interest occurs when an actual conflict of interest does not exist in fact, but it does or could appear to others with less knowledge or familiarity with the matter that there is or could be an actual conflict of interest. In this area of law, an apparent conflict of interest can be as unethical as an actual conflict of interest, as everybody involved needs to be able to rely on there not being any conflict whatsoever. It is inappropriate for a third party to have to investigate or otherwise determine that there is no conflict. Rather, it is for the fiduciary to be above question at all times and conduct oneself in such a way as to not even suggest a conflict.

• **Self-dealing** — self-dealing occurs when a person having the authority or responsibility over an act or matter makes a decision that will personally benefit, whether directly or indirectly, such person, their family, or associates. It does not matter that compensation or fair consideration is paid or provided for the benefit, as such action will always constitute an apparent conflict of interest and may create the opportunity to take unfair advantage.

Self-dealing most frequently occurs when one sells goods or services of oneself or a family member to the estate or entity under the person’s control. Another form of self-dealing – serving in multiple roles – is discussed below.

• **Independence** — the Guardian must remain independent of others in all dealings and decisions. The responsibility of a Guardian is non-delegable. One can enlist others to assist, but the ultimate responsibility for the protection of the person or estate, success or failure, must rest with the Guardian.

---

94 Standard of Practice 403.1  
95 Standard of Practice 403.1
• **Sense of Fairness** – a basic sense of fairness should be the governing rule to be followed in all decisions and dealings. A fiduciary should not commit to actions which are unfair to others, even if there is apparent, momentary gain to the person or estate. To do so exposes the Guardian personally and professionally to follow-up questions and actions. Tests of fairness include answering these questions: Does this decision or action seem or feel right? How will it look to others? Would I do this for myself? Would I allow others to do this to or for me?

• **Notice** – the concept of notice is that all persons having a legitimate and bona fide interest in a matter or its outcome will be advised of each significant step in the process. It is a legal notion that has been imported to Guardianship practice from law. Notice does not mean that the Guardian is turning over decision-making authority to another; it simply means that others can rely on being informed at each juncture wherein they may have an interest, may want to participate or question the decision, or may want to seek further instruction or guidance on a matter. Persons legally entitled to notice are parties to a proceeding, and those who have filed a “Request for Special Notice of Proceedings.” Others may have a right to notice, if their interests or property is, or will be, affected; or if they have had a substantial role previously in the decision or activity involved – such as the role of spouse or parent. The giving of notice before a decision is made or actively initiated can avoid costly disputes later, even if the decision or activity proves to have been correct in the first place. The concept of notice always implies the word “advance,” for to notify someone after the fact is often too late!

• **Authority & Responsibility** – “Authority” is the lawfully granted power to make a decision or initiate a course of action. “Responsibility” is the obligation to see that appropriate decisions are made, and courses of action are completed within the parameters of the scope of authority. A Guardian has the authority to perform care and protective duties, and in so doing is responsible to the “Super Guardian,” the court.

With the above concepts firmly in mind, now turn to Unit 12, Appendix D to read the current Standards of Practice for Certified Professional Guardians. In reading each standard, think of one or more “real life” circumstances that could arise pertinent to each. What are the choices? Would they be any different if you were the Guardian, or if it was another person (or Guardian) asking you for your advice? How would it look to you if you were the beneficiary or disabled person?
In reviewing or preparing to deal with ethical and professional standards issues, there are several steps that form a progression to the resolution of the problem:

1. Recognize the problem.
2. Seek appropriate information or assistance pertaining to the issue.
3. Define and evaluate alternative courses of action to resolve the problem.
4. Disclose the problem to those affected by it or entitled to know of it.
5. Seek immediate resolution:
   a. If the problem or issue is one that can be waived by others upon notice, you may seek a resolution based upon a written waiver by those persons or agencies. Note: if the Guardian is one of the potential parties to the conflict, waiver is NOT an acceptable choice, as the incapacitated person does not have the ability to waive the conflict, and the Guardian’s doing so on their behalf would be self-serving and create a conflict itself.
   b. If there is a path or resolution in the best interests of the incapacitated person which you can adopt that will eliminate the problem, you may make that choice.

If neither of the above is appropriate, helpful, or sufficient, then you should disclose the problem to the court (if you have not already done so) and seek instruction and authority from the court to resolve the issue.

Ethical and professional standard complexities do not go away by ignoring them. Indeed, they often become problems that turn into official complaints to the CPG Board or the court when they are ignored. Recognizing and resolving these issues early reduces the likelihood of intervention by others, sanctions or disciplinary action. Prompt remedial action taken by the Guardian as soon as an ethical or professional standard issue appears to be in question, benefits everyone concerned.

C. PERSONS SERVING IN MULTIPLE ROLES

Guardians must exercise caution when choosing to serve in multiple roles. One of the most frequently occurring causes of ethical concern and complaints are related to guardians serving in multiple roles. While sometimes, the guardian may attempt to reduce fees by serving differing persons and interests, they can end up compromising the entire process if they are not very careful. This is especially true for the Guardian taking on more than one role in a particular case. The common dangers are:

- Breach of duty in an existing professional relationship
- Violation of the rules of privilege and confidentiality
- Self-dealing or the appearance thereof
- An actual conflict of interest (i.e. when issues of quality control or fees arise)
- The appearance of a conflict of interest
Examples of multiple roles for a **Guardian** include:

- A Guardian ad litem who offers to serve as Guardian
- A Guardian who solicits appointment as executor in a will
- A Guardian who is named as beneficiary in a will
- A Guardian who hires one’s family members or personal friends to provide goods or services
- A Guardian ad litem who recommends an employer or client to be Guardian
- A Guardian who is the Petitioner nominating oneself to be appointed as Guardian.

Examples of multiple roles for a **lawyer** include:

- A Guardian ad litem who becomes an attorney for a party or Guardian
- Attorney for petitioner who becomes attorney for Guardian (if they are different persons)
- Attorney for incapacitated person who becomes attorney for Guardian
- An attorney-Guardian in an agency, who then represents the agency in court
- An attorney-Guardian ad litem who hires oneself to draft a trust, become a trustee, or then represent the trustee
- An attorney who drafts a trust for court approval, then names oneself as trustee, Trust Advisory Committee (T.A.C.) member, or counsel for the trustee or T.A.C.

*See also, CPG Board Ethics Advisory Opinions in Unit 12, Appendix F (also available on the AOC website at http://www.courts.wa.gov/committee/?fa=committee.home&committee_id=127

- Opinion # 2005-003, November 13, 2006: Pre-Appointment Conduct
- Opinion # 2002-0003: Simultaneous Appointment as Guardian for Both Spouses or Domestic Partners.

Not all multiple roles and appointments present ethical or standards of practice problems. Some are expressly permitted by statute, rules, or custom. However, all situations must be evaluated to consider any potential financial or personal harm to the incapacitated person or others involved.

The Guardian should consider the following in deciding to serve in multiple roles:

1. Will any of the Standards of Practice be called into question?
2. Will different persons or competing interests be represented?
3. Is there potential for self-dealing or an appearance of self-dealing?
4. Who are all the interested parties that would be entitled to notice of a potential conflict of interest? Who might have standing to file a complaint?
5. Is it possible and realistic to obtain a waiver from all interested parties based on full and adequate disclosure?

6. Is it possible and realistic to provide full and adequate disclosure to all interested persons of the multiple roles held or sought by the Guardian, as well as full disclosure of all contracts and relationships among and between the interested parties so they truly understand?

7. Who makes the decision regarding multiple roles? If the Guardian makes an independent decision, it may be wise to seek the advise of an attorney. If the court makes the decision, the Guardians must make full disclosure to the court.

D. THE GUARDIAN AS BENEFICIARY

The surest way to attract negative attention or a complaint is to perform an act which appears to be self-benefiting. None of these are more obvious than when a Guardian receives gifts from an incapacitated person. The Guardian is a fiduciary. In a fiduciary relationship, receipt of gifts is presumed to be self-dealing. The burden of proving a gift from an incapacitated person was voluntarily and knowingly given, shifts to the Guardian. The Guardian must explain or justify the presumed abuse of the fiduciary relationship. Very few exceptions justify a gift or bequest to a Guardian. One exception is for the Guardian who is a family member, and that exception goes only to the extent that all other family members of the same degree of kinship received gifts of the same nature. Another rare, but possible exception, might be a gift in lieu of compensation for a Guardian who provided care without payment or benefit. This circumstance also pertains generally to a Guardian who is a family member.

In short, the receipt of gifts, of any nature (other than common hospitality such as holiday cards or enjoying a cup of coffee) under any circumstances presents an awkward situation to be avoided. At best, it will appear to be unethical to all that are aware of the gift, and at worst it will constitute a violation of the Standards of Practice resulting in disciplinary action in which the Guardian may lose certification.

E. CONFLICTS WITHIN THE ASSISTED PERSON’S FAMILY

The potential for controversy and conflict in Guardianships abound. Incapacitated persons often have mental conditions that cause them to resist assistance. Long-simmering family problems tend to crystallize and come to a head when one of them becomes incapacitated. Families have limitations, emotional problems and dysfunctions of their own, which lead to conflict. The legal system itself is oriented toward resolving disagreements through an adversarial system. The personalities or approaches taken by professionals can make problems worse. The Guardian, an outsider to the family, can become the focus of the anger and unhappiness.

96 Standard of Practice 406.7
It is impossible to describe the variety of causes of controversy in a guardianship, and there is no "cookbook" approach to avoiding or resolving controversy. The next section, however, provides some factual situations that illustrate common topics of controversy in guardianships. These issues may trigger ethical or conduct complaints and should be evaluated in light of the Standards of Practice.

**Conflicts and Controversies**

During times of controversy between family members or other interested parties, the Guardian should not lose sight of the fact that each problem is to be considered from the perspective of what the incapacitated person would want if they were able to make the decision, and what constitutes the best interests under the circumstances. The first question a Guardian should ask when a problem arises is "whose problem is this?" The Guardian should avoid becoming embroiled in problems that do not bear directly on the expressed desires and best interests of the incapacitated person, or the Guardian's role as outlined by state law or the Order Appointing Guardian.

- **Personal Property.** It is common that when an incapacitated elder moves out of the family home, various items of personal property are distributed to relatives. When the incapacitated elder is unable to participate in this process, or when the family members are unable to agree, the Guardian or the court is asked to resolve the issue. Unless instructed by the court, the Guardian should avoid dealing with the distribution of personal property and, when possible, store personal property until the appropriate time if distribution or sale. Depending on the circumstances, the executor of the decedent’s probate estate may be the more appropriate person to address distribution problems.

  Family members must be instructed to communicate their requests to the Guardian, rather than to the incapacitated person. It is appropriate and proper, however, for the Guardian to discuss with incapacitated persons the issue of what should be done with their property, if they have the ability to participate in the discussion and can independently express an interest in doing so.

  If the decision has been made that the incapacitated person’s best interests would be served by selling the personal property, discussing the decision with family members is appropriate. The Guardian should be sensitive to the sentimental attachments family members have for various items. If the incapacitated person expressly indicates a desire for particular items to go to family members or close friends, it is appropriate to give those items away (after receiving approval from the court), as long as they are not of significant value. Items of value, such as cars, should be sold and the proceeds applied to the estate of the incapacitated person. If a family member is interested in acquiring an item of value to be sold, the family member may be allowed a preference to purchase the item, consistent with the order authorizing sale. In the event that family members or others do not agree with the decisions of the Guardian, they may present their requests to the court. Ultimately it is the court’s decision whether the Guardian may store, release or sell items to any other person.

- **Will Contest.** This situation arises when a person has executed a Will or
Power of Attorney at some point after the onset of disability. Such events may precipitate the filing of a Guardianship petition. Often, these situations involve a non-family member of fairly recent acquaintance, who would benefit from a change in a long-standing estate plan. Sometimes the new beneficiary is a family member. In all cases it is important to keep in mind that, aside from tax considerations affecting large estates, the Guardian has no authority to alter a properly formalized estate plan, or to determine in advance what Will or estate plan will be accepted by the court.

A Professional Guardian may be appointed as a neutral third party. All participants then attempt to make their case to the Guardian. The Guardian may be asked to intercede with the incapacitated person to redo the Will. Or, the incapacitated person may express an interest in writing a new Will. Either way, the Guardian should not attempt to influence the incapacitated person in any way, but should make appropriate arrangements for the incapacitated person to consult in private with an attorney other than the Guardian’s. Otherwise, it is not appropriate for the Guardian to be involved.

Parties may seek an order from the court directing the Guardian to obtain the Will, to publicize it, or to investigate whether undue influence was exercised in the execution of the Will. Once again, this should be avoided. The heirs and beneficiaries have the legal right to take action to contest a Will, but this is not the Guardian’s issue, unless it involves the distribution of property prior to death. In general, the Guardian should not even reveal the contents of a Will unless it is in the best interests of the incapacitated person, and then upon legal advice or court order.

- **Family Members** - In many cases a professional guardian is hired because family member can’t decide which member should serve as the guardian. The Guardian should avoid becoming a combatant. The Guardian’s duty is to the incapacitated person. The approach for the Guardian to take is that so long as an individual behaves responsibly, and the parent in no way suffers because of the relationship, all is well.

To avoid complaints regarding ethics or conduct, the Guardian’s approach should be as non-judgmental as possible. The Guardian should quickly set expectations, create a plan of care that is reasonable, and should document any problems that are caused by either duelist. Sometimes the plan of care includes a rigid schedule of visitation, so that the family members do not encounter one another. It is important that each sibling understands that upsetting the parent by saying negative things about the other sibling will not be tolerated. Inappropriate behavior by one or the other that harms the incapacitated person should be addressed without excess emotion or accusation, but may include limiting visitation or access to the incapacitated person.

- **Spouses.** An incapacitated person, whose spouse is active and appropriately involved, seldom needs a Guardian. But reasonable minds differ, and the Guardian must always remember that, whenever possible, decisions made should be based on what the incapacitated person would want and not what is in the spouse’s interests. The following are a few scenarios that do occur:
Late marriage, adult children from a previous marriage: An example is a widower with children who, years after the death of his wife, remarries and then becomes incapacitated. The children’s expectation of an inheritance may be at risk, since the husband is likely to be the first to die. If the new spouse is significantly younger; if the marriage was very sudden; or if there is a significant difference in the wealth of the partners, conflict may arise. If the care needs of the incapacitated person dictate that care out-of-the home is appropriate, the other complications of the situation are magnified, particularly if the unimpaired spouse is financially dependent, or chooses to reside in the family home. The Guardian needs to clarify the financial relationship between the marriage partners.

De facto divorce: Not all long-term marriages are happy. The relationship may have been an abusive one, a spouse may have alcohol problems, and people sometimes get tired of one another. Occasionally the onset of disability is the catalyst that effectively ends the relationship. People are not always clear with themselves or others about what they want. Sometimes problems are more overt, and the spouse has to be restrained from carrying out an unfair division of assets.

The Guardian cannot coerce the spouse into accepting an unwanted living situation, but must assure that the assets of the couple are handled reasonably. When assets are limited or when the spouse of the incapacitated person seeks to retain the exclusive use of the home the Guardian must work out a solution. While the Guardian’s authority and responsibility extends to all assets of the incapacitated person, separate and community, the Guardian may end up seeking court orders that constitute a property division comparable to a legal separation.

- Mental Illness. One of the most difficult challenges for a Guardian is that of providing appropriate services to a person who experiences cycles in capacity. At some point, a person can be completely unable to manage anything, and can act in ways that present real physical and financial risks. A person who is in a manic state will ordinarily have vehement objections to virtually every action of the Guardian, and may behave in deceptive and even illegal ways to acquire money, credit cards, a car or other items. The Guardian’s goal should be to allow the individual to have the amenities which most people have, such as credit, access to reasonable amounts of cash, personal transportation, independent living, choice of roommates, travel, choice of therapists, and privacy. The Guardian will usually want to structure access to finances in a way that allows the Guardian to withdraw that access easily and quickly. Access to a car is often a significant issue, due to the essentially lethal possibilities present should the individual become manic.

Living arrangements should come under similar scrutiny.

During periods in which the individual is in remission, the Guardian should take the lead in making arrangements that are sufficiently protective, but which are
reversible. This is also the time to consider less restrictive alternatives such as powers of attorney, medical powers of attorney, and trusts


This manual contains most of the information a Guardian needs to avoid or manage controversy and avoid unnecessary complaints related to Standards of Practice. This section will highlight and reinforce that information.

   a. Always remain within the authority and direction granted by the statutes and the court. While this is addressed in other Units, it cannot be overemphasized. Failure to abide by this principle will either create or exacerbate controversy, and inject the Guardian into the middle of it. Exceeding the scope of authority granted to the Guardian will very likely result in a complaint and discipline.

   b. Seek instruction from the court. If a situation arises in which the Guardian is concerned about the appearance of a planned activity when reported to the court, take the initiative to seek direction. Due to cost, this tool should not be used frivolously. At other times, third parties may be seeking actions in which the Guardian has no strong opinion, but which should not become the genesis of controversy. Divisions of personal property not intrinsically valuable, allowing a family member the use of vacation property, and visitation issues are examples of matters in which the Guardian can facilitate family or others seeking direction from the court.

   c. Don’t hide the ball. One of the worst things a Guardian can do is to act evasively for the purpose of avoiding criticism. Especially when there are very adverse parties, it is important to give notice of any planned or significant changes in advance. Parties with an interest who have not formally asked to have notice of proceedings should be given notice in any case. Every act of the Guardian is ultimately a matter of public interest, public record and may be questioned. Adverse parties who have had the knowledge or the opportunity to make suggestions are generally more agreeable to any action taken by the Guardian. A person who has had advance notice of a planned action may have greater difficulty proving harm or detriment later.

   d. Avoid discounting a complaint because of the source. The court is less interested in the source of a concern than with its possible validity. The Guardian should be very careful not to ignore a serious problem because of the person calling it to attention or the form of its presentation. The court has an obligation to question the Guardians actions an ensure compliance with the Standards of Practice in order to confirm that the incapacitated person is receiving proper services, care and respect.

97 Standard of Practice 401.1 and 401.4
98 Standard of Practice 401.1
e. **Hold on tightly, let go lightly.** The Guardianship is not about the Guardian. No one has a right to be appointed or to remain as Guardian. As long as one is the appointed Guardian, one should act diligently and, when necessary, forcefully to address and protect the best interests of the incapacitated person. The Guardian cannot allow his/her own tenure to become a significant issue. When it is suggested that the Guardian be removed, remember that the Guardian serves at the pleasure of the court. However, the Guardian is obligated under the Standards of Practice to give an honest opinion about the value of continuing to serve. The Guardian should oppose the appointment of any successor, whom the Guardian considers unfit for the case. Attention and care must be given to the proposed court Findings of Fact and Order, insofar as they describe events leading up to the change. And in the end, the Guardian must be willing to withdraw when the situation or the court requires withdrawal.

f. **Acknowledge error.** The Guardian has a duty to the incapacitated person and to the court of fidelity, honesty and candor. While it may be unrealistic to expect that a Guardian will impeach oneself, the Guardian may not misrepresent one’s actions. Any attempt to do so will invariably cause more harm than good to both the Guardian and the interests of the incapacitated person. Misrepresentation may also justify disciplinary action against a Certified Professional Guardian. If the Guardian makes an error, the best course of action is to acknowledge the error and take appropriate remedial action immediately.

g. **Show of authority.** The Guardians are well advised to avoid giving the impression that they have an over-inflated sense of their authority. Most problems are best addressed in a low-key manner, seeking agreement as much as possible and deferring to the authority of the court to resolve controversy. Power plays are seldom required. They generate distrust. And they shift the focus to the Guardian rather than the real issue(s) at hand.

When addressing the best interests of the incapacitated person, however, the Guardian truly does have considerable authority. Assuming that the court has granted the necessary level of authority, the Guardian can restrict certain individuals from visiting with the incapacitated person or the residential facility. The Guardian can change doctors, or other care providers who are not assisting cooperatively. And the Guardian can remove property or change locks on buildings owned by the incapacitated person. If the incapacitated person does not object, the Guardian can move the incapacitated person to another residence. The Guardian can seek emergency restraining orders or orders blocking bank accounts. The action of the Guardian can have tremendous impact on the live of everyone connected to the guardianship.

h. **Accept the inevitable.** Although many controversies can be avoided, some issues simply cannot be resolved without an order from the court. The Guardian must accept this, do thorough and careful work, and be prepared to take it to the best and most appropriate forum.

i. **Have realistic expectations of the court.** The court, having vested the Guardian with responsibility, will ordinarily grant the Guardian the
benefit of the doubt when relief is being sought. However, courts are very cautious. Courts do not want to risk making a wrong decision. This may prove highly frustrating to the Guardian, when presented with complaints that seem frivolous on their face or when the court makes provisions which accommodate others or seem to limit the Guardian’s ability to act. But the role of the court is not to vindicate the acts of the Guardian. The obligation of the court it is to continually question and apply solutions in the best interests of the incapacitated person.

j. **Seek to have jurisdiction retained.** In a contested proceeding or when it is likely that there will be a number of issues brought before the court over time, it is often best to have the same judge become familiar with the case and hear all related matters. This provides continuity for the Guardianship, allows the judge to consider the outcome of past rulings when making new rulings, and instills greater confidence among the parties in the process and the outcomes. Many courts have informal procedures whereby cases are assigned to the same judge.

**F. THE COMPLAINT AND DISCIPLINE PROCESS**

RCW 11.92.010 Guardians or limited Guardians herein provided for shall at all times be under the general direction and control of the court making the appointment.

RCW 11.88.090 (13). At any hearing the court may consider whether any person who makes decisions regarding the alleged incapacitated person or estate has breached a statutory or fiduciary duty.

RCW 11.88.120 (1) At any time after establishment of a Guardianship or appointment of a Guardian, the court may, upon the death of the Guardian or limited Guardian, or for other good reason, modify or terminate the Guardianship or replace the Guardian or limited Guardian. (2) Any person, including an incapacitated person, may apply to the court for an order to modify or terminate a Guardianship or to replace a Guardian or limited Guardian. If applicants are represented by counsel, counsel shall move for an order to show cause why the relief requested should not be granted. If applicants are not represented by counsel, they may move for an order to show cause, or they may deliver a written request to the clerk of the court.

RCW 11.88.120(3) By the next judicial day after receipt of an unrepresented person's request to modify or terminate a Guardianship order, or to replace a Guardian or limited Guardian, the clerk shall deliver the request to the court. The court may (a) direct the clerk to schedule a hearing, (b) appoint a Guardian ad litem to investigate the issues raised by the application or to take any emergency action the court deems necessary to protect the incapacitated person until a hearing can be held, or (c) deny the application without scheduling a hearing, if it appears based on documents in the court file that the application is frivolous. Any denial of an application without a hearing shall be in writing with the reasons for the denial explained. A copy of the order shall be mailed by the clerk to the applicant, to the Guardian, and to any other person entitled to receive notice of
proceedings in the matter. Unless within thirty days after receiving the request from the clerk the court directs otherwise, the clerk shall schedule a hearing on the request and mail notice to the Guardian, the incapacitated person, the applicant, all counsel of record, and any other person entitled to receive notice of proceedings in the matter.

RCW 11.88.120(4). In a hearing on an application to modify or terminate a Guardianship or to replace a Guardian or limited Guardian, the court may grant such relief as it deems just and in the best interest of the incapacitated person.

The Nature of Complaints and How They Arrive.

The courts actively supervise the conduct of Guardians. This section details how concerns by the court or third parties about actions of a Guardian are handled. Complaints about the acts or conduct of a Guardian arise most commonly in the form of:

**A letter of complaint or concern written to the Guardian…**
- These are best handled informally by a prompt and courteous response to the complainant.

**A letter of complaint or concern written to the court…**
- The Guardianship statute provides that upon receipt of a letter of complaint or concern the court
  — Shall schedule a hearing on the allegations,
  — Shall appoint a Guardian ad litem to investigate the allegations, or
  — May dismiss the complaint after completing its own investigation.

**A letter of complaint or concern written to the Certified Professional Guardian Board**...
- If the complaint does not concern a Certified Professional Guardian, it will be returned to the complainant, as the Board will lack jurisdiction to take any other action.
- If the complaint concerns a Certified Professional Guardian’s actions or neglect in a specific case, the complainant will be referred to the Superior Court supervising the Guardianship to investigate, conduct a hearing, and enter Findings of Fact, Conclusions of Law, and an Order regarding the allegations.
- The Board and the Administrative Office of the Courts will investigate a complaint regarding a Certified Professional Guardian, if...
  - Complaints Regarding Active Cases
    - A complaint regarding an active case is one which is complete and grounded, but which references actions in a

---

99 Disciplinary Regulations are being revised by the Certified Professional Guardian Board and changes will likely occur in 2008.
100 Disciplinary Regulation 500
specific guardianship that the court has not had the opportunity to review. The Standards of Practice Committee will forward a copy of a complaint regarding an active case to the appropriate superior court. The Standards of Practice Committee will request the court complete a response form and return it to the Standards of Practice Committee. The Standards of Practice Committee will review the action taken by the court within a reasonable time and shall take further action, as it deems appropriate.

- Complaints that include court orders, or supporting findings of fact or conclusions of law that indicate:
  - Failure to adhere to any legal requirement for a court's appointed guardian;
  - Failure to comply with orders of the court;
  - Conduct or a pattern of behavior in violation of the Standards of Practice, and
  - Complaints involving other grounds for disciplinary action.

- Complaints, which raise concerns about the conduct or practices of a guardian, but which cannot be related to an individual case or where there is no court with present jurisdiction, will be forwarded to the Board for review.

- All complaints originating from a judicial officer.

**A complaint or concern voiced at a court hearing...**
- The court will listen to the allegations, and
  - Resolve the matter based on the information before it,
  - Continue the hearing, so that the allegations may be answered, or
  - Appoint a Guardian ad litem to investigate, recommend and report back to the parties and court.

**A Citation issued by the court for the Guardian to Show Cause regarding discovery of assets; an insufficient or lacking accounting; or allegations of self-dealing, conflicts, neglect, or malfeasance...**
- The parties may discuss the terms of an informal settlement, or
- The court will hear the matter and enter appropriate Findings of Fact, Conclusions of Law, and an Order after considering the allegations and the evidence.

**A file review by court officials, which review indicates one or more areas of non-compliance...**
- The matter may be cited into court on an Order to Show Cause or Citation to explain the actions taken or neglected,
—The matter may be “selected” for review on a Delinquency or Status Calendar,
—If earlier steps do not secure sufficient compliance, the court may issue a Citation for Contempt of Court, on the hearing of which the court may remove the Guardian, appoint a successor Guardian, take any necessary remedial steps, and impose sanctions.

The purpose of a complaint process is to assure compliance with the law. Guardian’s who do not comply with the law will likely be removed and or decertified. Fees and costs incurred by an investigation or hearing may be assessed against the Guardian, and the bond may be applied to restoring the Guardianship and the estate to the status to which it would have been but for the acts or neglect of the Guardian.

**Practice Tip:** The Guardian should always keep interested parties informed, even when they are adverse. Any disputes, especially those with the incapacitated person should be included in the annual report. The more information the Guardian communicates, the less likely it is that a dispute will arise; and if a dispute does arise, the Guardian is better positioned to respond effectively.

At any time, any interested person may file a complaint against a Guardian. This may be done either by the individual, or through an attorney. If the complainant can show that there is an emergency, the court may hear the matter with little or no notice to the Guardian.

The court is not likely to dismiss a concern. The court can ill-afford to take the chance that a valid concern may be ignored. A frequently occurring example is the circumstance of a person having advance notice of a hearing on an annual report, who does not file written objections, but does appear at the hearing with complaints. It may seem that the court ought not to hear this person. However, the court’s concern is the well being and best interests of the incapacitated person, who would be the loser if a valid concern is not heard due to manner of the presentation by a complainant.

2. *The Processing of the Complaints by the Court.*

Whatever the source of the concern or the timing of its expression, the court generally either makes a ruling or follows one or more of the courses of action described below. Once again, the primary goal is assuring that the best interests of the incapacitated person are properly addressed.

1. **Schedule a Hearing.** Most of the time, the court will want all interested parties to have time to make a response and recommendations regarding any complaint. Usually, the hearing will be set two or more weeks into the future. These hearings may be continued if it appears that the parties are nearing an agreed resolution, or further investigation is
required. Eventually, however, the court will conduct a hearing and approve an order resolving the problem.

2. **Require a Report.** Often, the court will direct the Guardian to make a response and include recommendations. If the complaint is being made by a third party and is in a form that the court considers to be lacking, the court can defer action until the complainant has corrected the problem.

3. **Appoint a Guardian ad Litem.** A Guardian ad litem can be appointed at any time to investigate, make a report and recommendations. The GAL commonly seeks to work out an agreed resolution of the problem, but is ultimately responsible for advising the court as to the best interests of the incapacitated person. The judge will often consider re-appointing the original GAL to the case, based upon that person’s prior involvement. However, the judge has the discretion to select a GAL from the rotational list or to select a GAL based on the special circumstances of the situation.

**Practice Tip:** Whenever a Guardian ad litem is being appointed in a complaint situation, the court should enumerate the specific duties and expectations of the GAL and set a timeline for completion. For example, the Order might specify the investigation and report that is desired, with whom the GAL should consult, the type of recommendations the court wishes to have, and due dates for circulation of a report. Fee limits for the GAL should be stated whenever a GAL is appointed.

4. **Appoint an Attorney for the Incapacitated Person.** This is most often done when the incapacitated person is the one lodging the complaint or if the incapacitated person requests one. The court will first inquire whether there can be a meaningful attorney-client relationship. The incapacitated person may have the attorney of one’s choice, provided that choice was not due to coercion or duress by others, and the attorney is willing to serve based on the fee allowances set. Otherwise the judge will appoint an attorney, usually from the registry of attorneys who have been trained and qualified to serve as Guardians ad Litem.

3. **Remedies for Complaints Against Guardians.**

The court’s first priority is fostering and protecting the best interests of the incapacitated person. The court will usually seek to preserve family relationships, minimize future controversy and minimize future expense. It will also seek to maintain continuity for the incapacitated person by not changing guardians unless good cause is found. Most complaint situations are resolved using one or more of the following:

- **Dismissal of the Complaint.** If the court is persuaded that the Guardian has acted properly and within authority, the court may thank the parties for their interest and issue an order approving of the actions of the Guardian. This may
be done in the context of an agreement of the parties as to future behavior of the Guardian, and this agreement can be included in the order as well.

- **Create Conditions.** If the court believes that the Guardian has acted in good faith, but in a way that is not in the best interests of the incapacitated person, the court can require the Guardian to change behavior or conduct in some defined way. There is no limit to the number of alternatives available to effect this. For example, the court may mandate certain budgeting, such as the provision of personal funds to the incapacitated person; may order changes in the residential or caretaker services; or may enter other remedial orders. It may require or increase the bond amount, or require that funds be placed in a blocked financial account.

- **Limit the Guardianship.** If the court finds that the incapacitated person has capacities that ought to be recognized, it can change the authority of the Guardian or modify the guardianship. Examples: An estate Guardianship can be limited to investment funds, permitting the incapacitated person to receive pension income directly. A personal Guardianship can be limited, so that the Guardian has access to medical records, but the incapacitated person remains as the person to give informed consent.

- **Order Specific Reporting.** In the context of other remedies, the court can require the Guardian and other parties to report on the development of problems and the effectiveness of remedies. This is a way to preserve the court’s increased supervision of a problem that may not be ripe for a full resolution.

- **Change Guardians.** No one has a right to be Guardian. Even a Guardian whose behavior has been acceptable and appropriate is sometimes replaced as a means of preventing future controversy. This can occur when a family member is Guardian and there are ongoing personality conflicts within the family. It can also occur when a professional Guardian has taken actions, which have permanently alienated the Guardian from the incapacitated person or family.

If the Guardian is found to have acted in bad faith, has violated the law, is incapable of carrying out the duties of Guardian or is unwilling to accept the requirements set by the court, the Guardian will almost always be replaced and may be subject to the imposition of sanctions.

4. **Sanctions Against Guardians.**

If a Guardian is found to have violated the law or an order of the court, has acted in bad faith, has failed to properly manage the assets of the incapacitated person or has caused harm to come to the incapacitated person, the court may take one or more of the following measures.

- **Citation on the Bond.** A Guardian’s bond is insurance policy protecting the incapacitated person from the misdeeds or neglect by the Guardian. If the court finds that the Guardian has intentionally taken or mismanaged the assets,
the court can order the bond paid to the estate of the incapacitated person as restitution. The bond proceeds may also be sued to reimburse the costs of implementing and enforcing remedies, such as the appointment of a Guardian ad litem. The company that issued the bond may seek reimbursement or indemnification for its loss personally from the person who was serving as Guardian.

- **Fee Allocation.** The court has the power not only to set the fee to be paid to the attorneys and the Guardian ad Litem, but the court also has the power to require parties to pay certain fees. If the court finds the Guardian to have acted wrongly, the court can require the Guardian to pay the fees of the Guardian ad Litem, the Guardian’s attorney or the attorney for the incapacitated person or a third party. The court can also impose this requirement on a third party complainant, whom the court judges to have acted in bad faith.

- **Denial of Fees to a Guardian.** The court can limit or deny fees to a Guardian who was found to be ineffective, inefficient, or not sufficiently protective of the incapacitated person or their affairs. This is also the case for Guardians who fail to segregate their billings contemporaneously based upon the difficulty of the work, who bill at too high a rate or who bill for work performed outside of the scope of the appointment.

**G. CERTIFIED PROFESSIONAL GUARDIAN DISCIPLINE**

The Certified Professional Guardian Board has, under the authority of the Washington State Supreme Court, established a process of discipline of professional Guardians. The discipline regulations are included in Appendix E (see also Unit Twelve) and should be reviewed carefully by all professional Guardians. These are in addition to the process used by the court to discipline, sanction, or remove a Guardian in an individual case.

**H. ETHICS ADVISORY OPINIONS**

The Supreme Court amended GR 23 in spring, 2002, to permit the Certified Professional Guardian Board to issue Advisory Opinions based upon hypothetical, common fact patterns. Any Professional Guardian or Board member may request such an opinion. These are not intended to be legal rulings or pertain to specific cases; rather they are to be used as a guide for Guardians in understanding and employing the Standards of Practice. Compliance with an Ethical Advisory Opinion may be deemed evidence of good faith for a Guardian in any disciplinary proceeding. The new amendment to the Rule is set forth in Unit Twelve, Appendix C and the new Regulations pertaining to Advisory Opinions is set forth in Unit Twelve, Appendix F. The Ethics Advisory Opinions can be found at [http://www.courts.wa.gov/programs_orgs/guardian/?fa=guardian.Ethics](http://www.courts.wa.gov/programs_orgs/guardian/?fa=guardian.Ethics) and Unit Twelve, Appendix G.
Section 7-Government benefits Intentionally Left Blank, To be completed
A. LEARNING OUTCOMES

1. The Guardian will understand the circumstances and process for voluntary resignation as guardian
2. The Guardian will understand the circumstances and process for involuntary removal as guardian
3. The Guardian will understand the procedures for substitution of guardian

B. VOLUNTARY RESIGNATION OF GUARDIAN; PROCEDURE FOR SUBSTITUTION

A guardian may resign as guardian for any reason. However, the guardian must first obtain the court’s approval to resign. It is very important to remember that the guardian’s legal obligations and duties continue until the guardian is officially discharged by the court and a substitute guardian has been appointed by court order.

If the guardian wishes to resign, he or she should consult with counsel of his or her choosing. If the guardian chooses to proceed with resignation without the assistance of counsel, he or she should consult the guardianship statutes, the Court Rules, and the Local Rules for the specific county.

The first step in resigning as guardian is to prepare a notice of the guardian’s intent to withdraw (See Guardianship Forms – Notice of the Guardian’s Intent to Resign and Petition to Appoint Successor Guardian). The original notice must be filed with the court. Copies of the notice must be served on all parties who require notice or who have filed a Request for Special Notice of Proceedings. Service can be either by personal service or by mail. (Service requirements are described in RCW Title 4 and the Court Rules.)

The guardian must then file a petition for (1) discharge as guardian; (2) approval of the final accounting; and (3) discharge of any bond in the guardian’s name. (Remember, if there is a bond, the guardian must notify the bond company of discharge.) At the same time, the guardian must also file a final accounting. Copies of the petition and the final accounting must also be served upon all parties who require notice or who have requested notice.

The petition must be noted for a hearing. This is done by filing a Notice of Hearing with the appropriate court. Copies must be served on all persons who require notice or who have requested notice. The Notice of Hearing, Petition, and Final Accounting must be filed 20 days before the actual hearing date.

Any interested person can file a response to the petition or the accounting. If a response is received, the guardian may reply to the response. The original reply must be filed with the court, and copies must be served on all parties who require notice or who have filed a Request for Special Notice of Proceedings.
The court may appoint a guardian ad litem to assist in the selection of a substitute guardian.

At the hearing, a judge or court commissioner will determine whether the guardian’s final accounting and report should be approved and the guardian should be discharged. The guardian continues to be obligated to perform all of his or her duties as guardian until the court has signed an Order of Discharge and appointed a successor guardian. After the guardian has been removed, he or she cannot act on behalf of the incapacitated person.

After the guardian has been discharged, the court may order the guardian to deliver property or records to the incapacitated person or to the successor guardian. All court orders must be followed.

C. REMOVAL OF GUARDIAN OR VACANCY IN OFFICE; PROCEDURE FOR SUBSTITUTION

Any person, including the incapacitated person, may ask the court to remove a guardian.101 The court can remove a guardian only “for good reason,”102 This means there must be evidence that removal of the guardian is in the best interest of the incapacitated person. Examples of “good reason” for removal are: mishandling the estate of the incapacitated person, fraud, self-dealing, and failure to make a required report or follow a court order. There may also be good cause for removal if the relationship between the guardian and the incapacitated person is poor.

Practice Tip. Even though a petition to remove the guardian has been filed, the guardian’s duties and obligations continue until an Order of Discharge has been signed by the Court and until a successor guardian has been appointed by the court.

If an application is made to remove the guardian, the guardian will either be served with an order to show cause why he or she should not be removed as guardian, or the guardian will receive a notice of a hearing from the court. The order or notice will state the time and place the guardian is to appear for the hearing.

A guardian must appear in court after receiving an order to show cause. If the guardian does not appear, he or she can be held in contempt of court and the court can take other actions affecting the guardian.

101 RCW 11.88.120(2)
102 RCW 11.88.120(1)
The guardian may agree to resign as guardian, subject to the appointment of a substitute guardian. Often agreeing to resign is the best course of action if relations between the guardian and the incapacitated person or the incapacitated person’s family have deteriorated. Agreeing to resign is not an admission of wrongdoing. But if the parties are unhappy with the guardian, he or she will most likely not be able to act in the incapacitated person’s best interests.

However, if the guardian has knowledge that a petition to remove him or her as guardian has been filed by someone with improper motives, the guardian has a duty to advise the court of his or her knowledge. In this case, the guardian should also recommend that a guardian ad litem be appointed to assure that the best interests of the incapacitated person are represented independently.

If the guardian wishes to oppose his or her removal as guardian, a response must be filed with the court. Copies of the response must be served on all parties who require notice or who have requested special notice of proceedings.

The court may appoint a guardian ad litem to investigate the issues raised in the application for removal of the guardian or to take any emergency action need to protect the incapacitated person. A guardian ad litem may also be appointed to assist in the selection of a substitute guardian.\(^{103}\)

At the hearing, the court will consider the petition for removal of guardian. The court’s decision is to be based upon what it deems, “just” and in the best interests of the incapacitated person.\(^ {104}\) If the court agrees that the guardian should be removed, the court will discharge the guardian and appoint a successor guardian.

If the guardian is removed, the guardian will be required to file a final accounting. The court may also order the guardian to deliver property or records to the incapacitated person or to the successor guardian. All court orders must be followed, subject to contempt of court.\(^ {105}\)

The guardian continues to be obligated to perform all of his or her duties as guardian until the court has signed an Order of Discharge and appointed a substitute guardian. After the guardian has been removed, he or she cannot act on behalf of the incapacitated person.

\(^{103}\) RCW 11.88.120(3)
\(^{104}\) RCW 11.88.120(4)
\(^{105}\) RCW 11.88.120(5)
A guardian that is removed guardian does not have standing to appeal the decision to remove him or her as guardian. However, other orders, such as denying fees, or the 6-b entering of sanctions by the court, may be appealed by the guardian. Seek advice of counsel regarding legal standing to pursue an appeal of a court decisions or a motion for reconsideration.

A guardian who has been removed as guardian for any reason must notify the Certified Professional Guardian Board of removal within a reasonable time after removal.\textsuperscript{106}

\textsuperscript{106} GR 23 (d)(8)(e)
UNIT NINE: TERMINATION OF GUARDIANSHIP AND CLOSING THE FILE

A. LEARNING OUTCOMES

1. The Guardian will know the terminating events of a guardianship
2. The Guardian will know what their duties and responsibilities are upon termination
3. The Guardian will know the process to be discharged from further obligations

B. TERMINATING EVENTS

Termination of a guardianship can occur for a variety of reasons:\(^{107}\)

- An incapacitated person may recover from an injury or illness and regain legal capacity.
- In the case of the guardianship of a minor, it is automatically terminated when the minor reaches the age of majority, unless the minor is also incapacitated and the guardianship was established for incapacity other than minority. (Otherwise, a separate petition would have to be filed to extend the guardianship beyond age 18.)
- A guardianship is also terminated when the incapacitated person dies.

In these and other situations, a petition can be filed with the court to terminate the guardianship or confirm termination by operation of law.

1. Regaining Capacity\(^{108}\) The incapacitated person may regain capacity by recovery from the condition upon which the court based its finding of incapacity. Medical or psychiatric evaluations may be obtained in support of terminating or modifying the guardianship. If the condition that caused the incapacity is resolved, the court may be asked to terminate the guardianship entirely. If there has been partial, but not full, recovery from the incapacitating condition, the court may be asked to modify the guardianship so as to have the incapacitated person’s rights restricted as little as possible. However, the guardianship continues until a court order is entered with a finding that the incapacitated person has regained legal capacity and there is a termination of incapacity. After an order adjudicating the legal capacity of the previously incapacitated person has been entered, the guardianship is terminated. The guardian must take the necessary steps detailed below in Part III for final settlement of the guardianship estate and to be discharged by the court.

\(^{107}\) RCW 11.88.140(1)
\(^{108}\) SOP 407.1, SOP 407.2, SOP 407.3
An incapacitated person may regain the ability to manage his or her own affairs in a variety of circumstances. For instance, a guardianship may have been established because the incapacitated person suffered a stroke. The medical incapacity may have resulted in the legal incapacity of the person because of the inability to make personal and medical care decisions, to manage the estate, or to obtain assistance in meeting the financial and legal obligations. A guardianship proceeding may have been initiated because a person needed the assistance of a legal representative in civil proceedings. A guardian may be appointed to represent an incapacitated person in a divorce, personal injury settlement or other legal matters such as an estate tax issue and related financial concern. Upon the resolution of the civil matter, the termination of the guardianship in favor of a less restrictive alternative or a limitation of the guardianship may be appropriate.

The court may consider a change in circumstances of the incapacitated person and the issue of capacity at any time. Incapacitated persons have the right to request that the court appoint an attorney to represent them in the guardianship proceeding. The attorney for the incapacitated person may petition to terminate or limit the guardianship. A petition states the issues for the court to consider in making a determination and adjudication regarding legal capacity. The petition provides information regarding the change in circumstances of the incapacitated person that resulted in regaining capacity. Depending on the circumstances of the initial incapacity and the subsequent regaining of capacity, the petition may request the court to either terminate or limit the guardianship. A petition may seek a restoration of specific rights previously restricted by the guardianship. If the recovery of capacity is partial, then the petition may request only a limitation of the guardianship or a less restrictive alternative to the guardianship. In addition to the incapacitated person or his or her attorney, a guardian or any other interested person may initiate the proceeding for a judicial determination of capacity. All persons who have requested notice in the proceeding must be sent a copy of the petition and notice of any hearing on the petition to terminate the guardianship.

When a petition to terminate or limit a guardianship is filed, a guardian ad litem can be appointed at the discretion of the court. The guardian ad litem will make an independent review and investigation of the relief sought in the petition to terminate or limit the guardianship. A report prepared by the guardian ad litem is submitted to the court. It advises the court as to whether the incapacitated person has the legal capacity under the statutory standard to make decisions and whether the individual rights restricted by the guardianship should be restored. If the incapacitated person is not represented by counsel, the guardian ad litem may petition the court to appoint an independent attorney for the incapacitated person.

The report prepared by the guardian ad litem includes recommendations to the court based on the information obtained from investigating the circumstances raised in the petition. The guardian ad litem will meet with both the incapacitated person and the guardian to consider medical or other testimony concerning the issue of capacity and the petition to terminate or limit the guardianship. The
guardian has an affirmative duty to support a less restrictive alternative if it is in the best interest of the incapacitated person. The guardian ad litem must follow the procedural requirements concerning the filing of the report before the hearing. It must be distributed to all of the parties of record in the guardianship proceeding. Any party, including the guardian, may file objections and responses to the report and any recommendations of the guardian ad litem. The guardian ad litem report provides the court with important information about the incapacitated person and whether a guardianship remains necessary. The recommendations of the guardian ad litem help the court to determine whether the relief requested in the petition for a full or partial termination of the guardianship is in the best interest of the incapacitated person. An incapacitated person has the right to request a trial on the issue of legal capacity and the continued need for the guardianship. The recommendations of the guardian ad litem regarding the issue of capacity may be included as findings of fact and conclusions of law in the order entered by the court on the petition to terminate or limit the guardianship.

Less Restrictive Alternatives. In certain situations the incapacitated person may have legal capacity to execute documents that provide for a less restrictive alternative to guardianship. The capacity to execute documents in favor of a less restrictive alternative may arise when a person required a guardianship because of circumstances at a point in time when no other alternative was available. Subsequently the person may require help with routine personal care and medical treatment or need assistance with the management of assets. However, they have the legal capacity to direct their surrogate decision-maker without the court supervision of a guardianship. If the incapacitated person has the capacity to execute a durable power of attorney, the court may terminate the guardianship on the condition that an appropriate document is signed upon the review and recommendation of a guardian ad litem. If the person is able to manage personal and medical care needs but unable to manage financial affairs, a trust may be appropriate as a less restrictive alternative to a guardianship of the estate. A special needs type of trust should be considered as an option if the person is entitled to obtain public medical benefits. This type of trust may be an effective alternative to an existing guardianship if the primary issue precipitating the guardianship is addressing the financial management needs of the incapacitated person.

2. No Further Need for a Guardian. There are situations in which the purpose of the guardianship has been fulfilled, and the guardianship can be terminated. For instance a guardian may be appointed solely to commence litigation on behalf of an incapacitated person. After the litigation has been completed, the purpose of the guardianship has been fulfilled. At that time, the court can consider a request by the guardian or another party to terminate the guardianship. Depending on the circumstances of the civil proceedings the court may appoint a guardian ad litem to make recommendations regarding the termination of the guardianship.

109 SOP 401.7, SOP 401.12
A petition to terminate a guardianship is not required if the guardianship was only for a limited term and that term has expired. Also if a guardianship was established for a specific purpose and the duties of the guardian are limited to that purpose, it can be terminated when the provisions of the order approving the limited guardianship have been met. The guardian can immediately proceed to settle the guardianship estate in both circumstances. However, a guardian may always seek instructions from the court regarding a limited guardianship. The guardian may request instructions regarding the termination, seek additional orders regarding the limited purpose of the guardianship, or prepare a final report and petition to discharge the guardian and exonerate the bond.

3. **Attainment of Age of Majority.** If the sole reason for the guardianship was due to the person being a minor, then upon the person attaining 18 years of age (the current age of majority in this state), the guardianship can terminate without further court order. **In this circumstance alone**, the guardian can accomplish the final settlement by merely filing a Declaration of Completion, Notice of Filing, together with a Declaration of Mailing. (See Guardianship Forms - Declaration of Completion of Guardianship of Minor and Notice of Filing a Declaration of Completion of Guardianship of Minor.)

The guardian must deliver the property in the guardianship estate directly to the minor who has reached the age of majority. Another person, including a parent, can not receive the property on behalf of the former minor. When the guardian delivers the property to the former minor, it is important that the guardian have the former minor sign a receipt for the property. The original receipt is filed with the court as evidence that the guardianship estate has been transferred correctly.

Within five (5) days of filing with the court the original Declaration of Completion of Guardianship of Minor, the guardian must mail to the former minor a Notice of Filing a Declaration of Completion of Guardianship of Minor along with a copy of the Declaration of Completion of Guardianship of Minor. The Notice advises the former minor of procedural and other rights related to terminating the guardianship. The former minor has the right to question the guardian’s fees or fees for the attorney or accountant, she can petition the court for an order requiring the guardian to obtain court approval for the payment of the fees, provided such petition is filed within 30 days after the filing of the Declaration of Completion of Guardianship of Minor.

The former minor may also petition the court within the 30-day period for an order requiring the guardian to file a full accounting. The guardian will then need to comply with the requirements for a final report and accounting and obtain an appropriate order of the court prior to discharge and exoneration of the bond.

If the former minor does not file a petition within 30 days of the filing of the Declaration of Completion, the guardian is automatically discharged without further court order. If a bond was required in the guardianship, the guardian may

---

110 RCW 11.88.140(2)(d)
have the bond exonerated by sending the bonding company copies of both the
Declaration of Completion of Guardianship of Minor and the Notice of Filing of
Declaration of Completion of Guardianship of Minor.

The Guardian may request that the former minor sign a waiver of Notice of
Completion. If the waiver is signed, then the guardian is not required to serve a
Notice of Completion on the former minor. The guardian may then immediately
request cancellation of the bond without waiting for the expiration of the 30-day
period for action by the former minor.

4. **Death of Incapacitated Person.** Death of the incapacitated person
automatically terminates the guardianship without further order of the court.
However, a Notice of Death of Incapacitated Person should be filed with the
court. (See Guardianship Form – Notice of Death of Incapacitated Person).
The guardian must then proceed to close the guardianship estate as provided
below in Section C.

The guardian may expend funds under the guardian’s control for the disposition
of the deceased incapacitated person’s remains. If the decedent left a signed
and witnessed document stating the decedent’s wishes for disposition of the
remains, those wishes should be followed. If no written directions were left by
the decedent and the decedent had no prepaid pre-arrangements, then the
disposition of the decedent's remains should be directed by the following person
or persons in the order of preference listed:

a) Surviving Spouse;
b) Surviving Adult Children;
c) Surviving Parents;
d) Surviving Siblings.

If none of the above persons accept responsibility for the decedent's remains,
then the guardian may make final arrangements in accordance with the wishes of
the deceased incapacitated person, if any are known or petition the court for
instructions.

C. **GUARDIAN’S DUTIES UPON TERMINATION**

In the event that a guardianship is terminated, certain legal steps must be taken
to settle the guardianship estate and to obtain court discharge of the guardian
and to exonerate the guardian’s bond. This section discusses the role of a
guardian in the termination of a guardianship and the necessary steps for settling
or transferring the guardianship estate, discharging the guardian, and
exonerating the bond.

1. **Steps Toward Closing the File.** If the incapacitated person regains full
capacity, a Notice of Change in Circumstances should be filed with the court by
the guardian and delivered to all interested persons who have requested notice.
(See Guardianship Form - Notice of Change in Circumstances). If the court has previously entered an order that provides that a change in capacity triggers the termination of the guardianship, the guardian should petition the court to end the guardianship. Similarly, if the incapacitated person has died, notice of the death must be filed with the court by the guardian and delivered to the interested parties. The guardian must proceed to prepare the final report and petition the court to terminate the guardianship, discharge the guardian, and exonerate the bond.

2. **Final Report to the Court.** Except in the case of a guardianship terminating as a result of a minor reaching the age of majority, discussed above, the guardian must always file a final report and accounting with the court. Unless the guardianship is limited to a specific time or purpose, the format of the Final Report is similar to the format of the Annual Report. Depending on the type of guardianship, the final report includes the reports of the both the guardian of the person and the guardian of the estate. A final accounting that covers the financial period from the last annual report to the terminating event is required. Like the annual report, the final report of the guardian provides the court with all relevant personal and medical information about the subject of the guardianship. The report on the guardianship of the estate should detail income and expenditures since the last report to the court, including expenditures for the disposition of the decedent’s remains, if any. If the termination is due to the death of the incapacitated person, the final report must be filed within 30 days of the date of death and a copy sent to the personal representative and all other parties of record.

Within 90 days of the termination of the guardianship, the guardian must petition the court to settle the guardianship estate and discharge the guardian. As stated above the guardian prepares a final accounting and petitions the court for its approval. A hearing date is scheduled with the court pursuant to local rules. Notice of the hearing and a copy of the petition must be given to any person who has requested notice.

The final report and petition should include a proposal by the guardian for the distribution and delivery of the guardianship assets to the appropriate persons. If the incapacitated person has regained capacity, then the guardianship estate will be delivered to that formerly incapacitated person upon the court’s entry of an order of capacity terminating the guardianship. In cases where the court has limited or terminated the guardianship in favor of a less restrictive alternative, the guardian may deliver the assets to the designated attorney-in-fact or a trustee. Generally, if the incapacitated person is deceased the appropriate person to receive the decedent’s remaining assets is the personal representative of the probate estate. However if a probate is not commenced, then 40 days after the date of death the guardian may petition the court for an order transferring the guardianship cause to a probate cause.

3. **Transfer of Assets and Care; Receipts.** After the final report is approved, the guardian must transfer the guardianship assets to the appropriate person or
entity. In the case of a full restoration of capacity, the formerly incapacitated person will receive all of the assets. It is important that the guardian obtain receipts from the formerly incapacitated person to acknowledge the delivery of the assets. If an attorney-in-fact or trustee is designated by the formerly incapacitated person, and the court approves the designation as a less restrictive alternative, the guardian should obtain receipts when the assets are transferred to the attorney-in-fact or trustee. If the incapacitated person is deceased, the guardian should obtain receipts for the assets that are transferred to the personal representative of the estate.

Practice Tip. The guardian should obtain receipts for all property of the guardianship estate that is delivered to anyone as part of the closing of the guardianship estate. The original signed receipts should be filed with the court. The guardian should always retain conformed copies of each receipt as part of the guardian’s permanent record.

4. **Order of Discharge and Exoneration.** When the Final Report of the Guardian has been approved, the court may order the guardian to do certain tasks prior to ordering the discharge of the guardian and exoneration of the bond. Once those tasks have been accomplished and any necessary receipts filed with the court, the guardian should petition the court for discharge and for exoneration of the bond.
# Unit 10, Recent Legislation

Unit Ten: Recent Legislation

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A.</strong></td>
<td>SSB 5320 Public Guardianship Bill</td>
<td>Web Link</td>
</tr>
<tr>
<td><strong>B.</strong></td>
<td>HB 2380 Uniform Transfer to Minors Act - Extend age to 25</td>
<td>Web Link</td>
</tr>
<tr>
<td><strong>C.</strong></td>
<td>HB 1008 Protect Vulnerable Adults - Expands who can petition</td>
<td>Web Link</td>
</tr>
<tr>
<td><strong>D.</strong></td>
<td>HB 1114 Prohibiting Marketing Estate Documents by non-lawyers</td>
<td>Web Link</td>
</tr>
<tr>
<td><strong>E.</strong></td>
<td>SB 5336 Domestic Partnerships</td>
<td>Web Link</td>
</tr>
<tr>
<td><strong>F.</strong></td>
<td>HB 2236 Disposing of Certain Assets</td>
<td>Web Link</td>
</tr>
<tr>
<td><strong>G.</strong></td>
<td>SB 5827 Consumer Privacy</td>
<td>Web Link</td>
</tr>
<tr>
<td><strong>H.</strong></td>
<td>GR 31</td>
<td>Web Link</td>
</tr>
<tr>
<td><strong>I.</strong></td>
<td>GR 22</td>
<td>Web Link</td>
</tr>
<tr>
<td><strong>J.</strong></td>
<td>GR 15</td>
<td>Web Link</td>
</tr>
</tbody>
</table>
UNIT ELEVEN: RESOURCES

A. LEARNING OUTCOMES

1. The Guardian will know the types of resources that are available to them and how to find them
2. The Guardian will know what kind of resources they need

B. RESOURCES

Organizations / Agencies

The Administrative Office of the Court (AOC) acts as the arm of the Supreme Court, which administers guardianship policies and guardianship procedures. www.courts.wa.gov/guardian


DSHS: DSHS offers many services for aging, incapacitated and/or vulnerable persons. http://www1.dshs.wa.gov/

Access Washington Resource Directory provides information about services for citizens of Washington State for clients, case managers, and counselors. There are 22 types of agencies or organizations listed by service type. The Washington Administrative Code is linked to this site www.awrd.org

Seattle Public Access Network Community Resources Online for Seattle and King County provides programs, service and resource information including crisis intervention assistance. www.pan.ci.seattle.wa.us/crisi/clinical/default.htm

Senior Services of Seattle/King County provides many resource listing as well as links to senior services in other areas of the State of Washington. www.seniorservices.org

American Society on Aging provides resources, journal publications and training on various aging topics. Located in San Diego, CA. (415) 974-9600 www.asa.asaging.org

The National Association of Geriatric Care Managers 1504 N. Country Club Road Tucson, Arizona 85716 (520) 881-8008 provides membership, resource information and publishes a quarterly newsletter listing many resources as well as a quarterly journal and conferences. www.caremanager.org
The National Guardianship Association 1504 N. Country Club Road Tucson, Arizona 85716 (520) 881-6561 provides membership, resource information, quarterly publications and conferences. www.guardianship.org

Columbia Legal Services and the Northwest Justice Project: provides free civil (not criminal) legal services to people who are low-income or have special legal needs throughout Washington State. http://www.columbialegal.org/


King County Bar Association Guardianship and Elder Law Section: An association of attorneys, guardians and guardians ad litem. http://www.kcba.org/membership/sections/gel-home.html

**Assessment Reference Books.**


Mental Health Practice in Geriatric Health Care Settings Peter A. Lichtenberg: The Hawthorn Press 1998


Diagnostic Manuals such as:


   - Diagnostic and Statistical Manual of Mental Disorders (DSM IV) published by the American Psychiatric Association

Please send additional references or resources you think may be helpful to guardians to:

Sylvia Nelson
Administrative Office of the Courts
PO Box 41170
Olympia, WA 98504-1174
Phone: (360) 705-5282
Fax: (360) 586-8869
UNIT 12: APPENDICES

Unit Twelve: Appendices

A. Glossary of Terms
B. RCW Chapters 11.88, 11.92, and 11.94
C. Supreme Court Professional Guardian Rule (GR 23)
D. Administrative Regulations 100
E. Insurance Regulation 117
F. CEU Regulations 200
G. Ethics Advisory Opinion Regulations 300
H. Standards of Practice 400
I. Discipline Regulations 500
J. Procedure for the Adoption Amendment and Repeal of Regulations 600
K. CPG Board Ethics Advisory Opinions
L. Case Law