

# GUARDIANSHIP



The following information is intended to give an overview of guardianship in Washington State. It is for educational purposes only and is not a substitute for legal advice. For advice on making legal decisions, please seek the assistance of an attorney.

## Reasons to seek guardianship:

- A child with a disability who is turning 18
- A person who is being abused, neglected or exploited
- A person who has dementia and can't live independently
- A person who cannot manage his money to meet his needs
- A person who cannot make health care decisions

In and of themselves, the reasons listed above do not indicate that guardianship is necessary. If problems arise, respectful interventions by friends and family are often enough to help the individual solve many issues that pose a risk to health, safety, and financial stability.

When petitioning the court to become a guardian, the **category** and **scope** of guardianship must be identified.

## CATEGORIES of Guardianship:

- Guardian of the Estate
- Guardian of the Person
- Guardian of the Person and Estate

**Guardian of the Estate Responsibilities:** Management of the individual's property and finances (including signing contracts). A Guardian of the Estate needs to keep meticulous records of the person's property and finances; that is, everything the person owns, pays for and receives. The guardian must file with the court an inventory (of all the person's possession and assets) within three months of appointment, as well as an annual accounting of income and expenses that must balance and be supported by records and receipts. Some management decisions will require court approval.

**Guardian of the Person Responsibilities:** Non-financial decision making (medical, living situation, marriage)A Guardian of the Person makes sure that the person's physical, mental and emotional needs—along with any need for assistance in activities of daily living—are being assessed and addressed. The guardian is responsible for implementing a plan to meet these needs, and must file a care plan (identifying needs and explaining how they will be met) with the court within three months.

## SCOPE of Guardianship

- Limited
- Full

### Limited

A limited guardianship grants the authority to make specific decisions identified in a court order and may be time-limited. Guardianships are supposed to be no broader than necessary to meet the needs resulting from a person's incapacity. Courts can appoint limited guardians for people who are capable of caring for themselves, or arranging for their care in some ways but not in others.

[Note: Incapacitation is not a statement about the individual's full range of abilities. For example, a person may not be able to manage his money, but he may have the ability to understand what a Power of Attorney is and, therefore, avoid guardianship by signing a Power of Attorney.

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## Full

A full guardianship grants the authority to make all make decisions provided under the law. Full guardianship denies a person significant rights, which may include the right to vote, marry, get a driver's license, enter into contracts, or decide who will provide care. It should be entered into only if alternatives to guardianship, or limited guardianship, are not sufficient.

## THE PROCESS

### 1. Training for Non-Professional (Lay) Guardians

Before a family member or other non-professional can petition the court for guardianship, s/he must complete a free online training that covers guardianship duties and responsibilities, forms and timelines. The training is very easy, and can be done in one sitting (about two hours for most people) or in several sessions, moving at your own pace. Keep the declaration of completion (from the training) to show the court (that is, if you choose to petition for guardianship after going through the training).

### 2. Petitioning the Court

Any person seeking guardianship must file a petition with the Superior Court. After completing the training, you can then petition court for the type of guardianship you feel is necessary and appropriate. Forms for petitioning for guardianship may be found here. The petition asks the court to determine that the person identified in the petition is incapacitated, and to appoint a guardian. Notice of the guardianship petition is given to the person identified in the petition.

### 3. Guardian Ad Litem Appointed by the Court

Once a petition to court is made, a guardian ad litem is appointed to investigate and report to the court.

### 4. A Hearing is Held

A hearing is held and if the petitioner is appointed by the court to serve as guardian, letters of guardianship are obtained.

### 5. Letters of Guardianship

This is the formal document that allows the guardian to act on behalf of the person, as well as restrictions placed on the guardianship.

## REPORTING REQUIREMENTS

Serving as a guardian of the person and/or the estate is a lot of work. It's important to keep thorough records so that everything done on behalf of the person is supported with receipts or other records.

There are generally three types of reporting:

- 1) Annual Guardian report
- 2) Annual Accounting and Proposed Budget
- 3) Plan of Care (if guardian of the person)

Reporting procedures in local courts vary from county to county. Some courts may require that you appear at a review hearing. Be sure to find out your county's specific reporting requirements.