



# **Guardianship and Conservatorship Guidebook**



# Disclaimer

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This publication is designed to provide general information and should not be utilized as a substitute for professional service, legal advice or other expert assistance.

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# What is guardianship?

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A guardianship is the formal establishment of someone as a person's guardian. Courts give the guardian legal authority to make decisions about another person's life.

A developmental disability or mental illness is not, by itself, sufficient reason for a guardianship. Guardianship is appropriate when someone can't make reasoned decisions, putting them at risk of harm.

The guardian has a duty to listen and learn about the preferences and choices of the person subject to guardianship. Usually, the person's preferences can be determined even when the person is non-verbal. The guardian should make decisions that are consistent with what the person would choose if the person had capacity to make his or her own decisions, within safe limits. Where the guardian cannot determine the person's preferences, the guardian will make decisions based on the "best interest" of the person.

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# What is conservatorship?

A conservatorship is the formal establishment of someone as a person's conservator. Courts give the conservator legal authority to make decisions about finances and contracts.

A developmental disability or mental illness is not, by itself, sufficient reason to declare someone in need of a conservatorship. Conservatorship is appropriate when someone cannot make reasoned financial decisions, putting them at risk of financial harm or exploitation.

The conservator has a duty to listen and learn about the preferences and choices of the person. Usually, the person's preferences can be determined even when the person is non-verbal. The conservator should make decisions that are consistent with what the person would choose if the person had capacity to make his or her own decisions, within safe limits. Where the conservator cannot determine the person's preferences, the conservator will make decisions based on the "best interest" of the person.

<b><i>The guardian handles:</i></b>	<b><i>The conservator handles:</i></b>
<ul style="list-style-type: none"><li>• Medial Treatment</li><li>• Living Situation</li><li>• Decisions about marriage</li><li>• Social Decisions</li><li>• Decisions about education</li></ul>	<ul style="list-style-type: none"><li>• Property</li><li>• Contracts</li><li>• Financial Decisions</li></ul>

# Supportive Decision-Making

## *Alternative to Guardianship/Conservatorship*

Supported Decision-Making (SDM) offers an alternative to guardianship/conservatorship. While it may not be the right fit for everyone, SDM is ideal for individuals who, with support, can make decisions about their own lives and communicate those decisions effectively.

**Supported Decision Making is when people receive assistance from one or more trusted friends, family members, professionals, or advocates to help them understand a situation they face and identify the choices and options they have so they can make their own decisions.**

In 2020, Washington State passed a law that formalizes Supported Decision-Making as an alternative to guardianship/conservatorship. Washington law requires considering alternatives to guardianship/conservatorship first, such as SDM.

## Resources on Supported Decision-Making:

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**Washington Law Help |**

<https://www.washingtonlawhelp.org/resource/adult-guardianship-conservatorship-and-other-protective-arrangements>

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**Informing Families SDM Information Page |**

<https://informingfamilies.org/topic/sdm/>

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**National Resources Center for Supported Decision-Making |** <https://supporteddecisionmaking.org/>

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**The Arc of the United States Center for Future Planning |** <https://futureplanning.thearc.org/>

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**WA Pave |** <https://wapave.org/supported-decision-making-is-an-option-for-adults-with-disabilities/>

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# How do guardianship and conservatorship work?

Guardians and conservators are appointed by Superior Court judges or court commissioners. Appointments are made in response to petitions filed in the Superior Court. Any interested person may file a petition. This does not mean the person filing wants to be the appointed guardian or conservator.

## The petition asks the court:

- To determine that the person identified in the petition lacks the ability to meet essential requirements for their care;
- to determine that a guardian and/or conservator is necessary to prevent significant risk of harm; and
- to appoint a guardian and/or conservator.

## Before Guardianship or Conservatorship is granted, several steps must be taken:



1. Notice of the petition must be given to the person identified in the petition;
2. The court must appoint a person (called a 'court visitor') to conduct an investigation and report to the court;
3. The court visitor must obtain a statement from a physician, psychologist, or other qualified medical professional;

The petitioner must file all other required paperwork as required by the court;

4. A hearing must be held.

# Are there limits?

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Courts can appoint **limited guardians** or **limited conservators** for people who are capable of caring for themselves, or arranging for their care, in some ways but not in others.

There are also some things a guardian cannot do without the court. A guardian cannot place a person in a facility against the person's will. A guardian cannot have the person sterilized nor can the guardian authorize a lobotomy or electroconvulsive treatment.

The right to privacy and independence in determining how to manage one's own affairs is paramount and should be protected. The law requires use of the least restrictive arrangement that still provides for the person's needs.

## **Common powers of guardians:**

- Access to and release of confidential records and papers
- Decisions concerning education or counseling
- Determining and monitoring place of the individual's residence
- Healthcare
- Initiating, defending, or settling lawsuit
- Traveling

## **Common powers of conservators:**

- Overseeing regular expenses
- Lending or borrowing money
- Paying or collecting debts
- Possessing or managing real or personal property or income

# How to know if a person may be in need of guardian or conservator?

RCW 11.130.265(1)(a) and RCW 11.130.360(2) define fully when a person may qualify for guardianship or conservatorship.

## **Guardianship:**

1. The person lacks the ability to meet essential requirements for physical health, safety, or self-care;
2. Appointment is necessary to prevent significant risk of harm to the adult's physical health, safety, and self-care; and
3. The identified needs cannot be met by a less restrictive alternative.

## **Conservatorship:**

1. The adult is unable to manage property or financial affairs,
2. Appointment is necessary to avoid harm or significant dissipation of property and/or obtain funds or other property needed for the person's welfare;
3. The adult's identified needs cannot be met by other less restrictive alternatives.

## **Practical Questions Determining need:**

1. Does the person understand that a particular decision needs to be made?
2. Does the person understand the options available in any decision?
3. Does the person understand the consequences of each option?
4. Can the person learn to make his/her own decision?



# HOW TO CHOOSE A GUARDIAN OR CONSERVATOR

In making the selection of an individual to serve as guardian and/or conservator, first consideration is usually given to those who play a significant role in the person's life. The guardian and/or conservator should be someone who is both aware of and sensitive to the needs and preferences of the person.

**It is important to remember that guardianship/conservatorship is a relationship in which the court places trust and confidence in the capability and integrity of another.**

Courts can name co-guardians or co-conservators.

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## Who may act as guardian or conservator?

Any suitable person at least 21 years of age who is not of unsound mind, has not been convicted of a serious crime and meets certification requirements and is acceptable to the court, may be named guardian or conservator.



Agencies, public or private, may also serve as guardian or conservator. Washington has certified professional guardians and conservators that are regulated by the Certified Professional Guardianship and Conservatorship Board.



# WHERE TO BEGIN?

In most instances an attorney is retained to file a petition at the court in the county of residence of the person for whom guardianship or conservatorship is being sought. Although an individual seeking guardianship or conservatorship for another may do so without an attorney, **the advice of legal counsel may be beneficial and helpful**, especially where the person objects to guardianship/conservatorship or where complicated personal or financial issues are presented to the court. If proceeding without an attorney, the clerk of the court should be consulted to obtain copies of local court forms and to learn about the scheduling of cases.

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## Less Restrictive Alternatives to Guardianship

Sometimes an alternative to guardianship will address all necessary issues. Some examples include:

A **representative payee** is a person who is appointed to manage Social Security benefits on behalf of an individual. Requests for a representative payee should be directed to Social Security.

A **case manager** through DDA can sometimes arrange services such as respite care, information and referral, adult day care, home health care, homemaker and personal care, home delivered meals, mental health services, day program and vocational services, tenant support and transportation. Eligibility for publicly funded services may depend on income, age, and type of disability.

A **power of attorney** for health care and/or finances allows an individual to designate someone to make decisions on their behalf. This is much simpler than a guardianship, but will sometimes not adequately protect the individual with disabilities. Also, some people with disabilities do not have the capacity to understand a power of attorney.

# How long does the guardianship process take?

The length of time required for the guardianship/conservatorship process when an emergency does not exist is **usually about 60 days after filing the petition**. It can take longer if the person with the disability opposes the guardianship or if there are ex-spouses who both want to be guardian.

It is important to thoroughly investigate the case before filing it, because it requires court permission to dismiss it.



## Appointment of a Court Visitor

After a Petition for Guardianship and/or Conservatorship is filed and presented to the court, the court must appoint a Court Visitor to check out the situation and make recommendations to the court.

***The Court Visitor has the duty of investigating both:***

1. the need of a guardian and/or conservator; and
2. whether the proposed guardian/conservator is appropriate.

The Court Visitor will also determine whether the individual needs an attorney to represent his or her interests. The Court Visitor is also responsible for filing a Professional Report (medical or psychological). The individual has to see his or her doctor or psychologist and request that the professional fill out a court-required form **within 30 days of the visit**. The Court Visitor then files a written report with the court.



## Appointment of a Court Visitor

The proposed person subject to guardianship or conservatorship must be present, unless good cause for his or her absence is shown, at the hearing on the petition. Usually, the proposed guardian and/or conservator is also present. The court will review the written report of the Court Visitor as well as the medical report. The court relies on both of these reports to determine if a guardianship and/or conservatorship is appropriate.

The court may also determine that a full guardianship/conservatorship is not warranted and rule for a limited version or none at all.

# After Guardianship and/or Conservatorship Is Granted

Upon appointment, a bond may be required if the amount of the person subject to conservatorship's assets or estate exceeds \$3,000. The court then sets a deadline for the guardian/conservator to file a Plan and an Inventory.

Depending on the size of the estate and other factors, the guardian and/or conservator will be expected to report to the court on an annual or tri-annual basis.

A conservator's report provides an accounting of the income received and expenditures made during the reporting period. The guardian's report explains the person's mental and medical status, any changes in functional ability, residential changes, and activities of the guardian.

## More informational Resources:

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**Washington Law Help** | <https://www.washingtonlawhelp.org/resource/adult-guardianship-conservatorship-and-other-protective-arrangements>

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**Informing Families Guardianship Information Page** | <https://informingfamilies.org/topic/guardianship/>

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**Washington Professional & Lay Guardian Trainings** | <https://www.courts.wa.gov/guardianportal/>

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