

Guardianship in Washington State

An Overview

Washington State Council on Aging

Support with Decision-Making

- ▶ Sometimes a person needs support in making a decision.
- ▶ Less often, a person *does not have the ability to make a decision*, and someone else makes the decision: a substitute decision-maker.
- ▶ The substitute decision-maker's task is to make a decision consistent with what the person would want if the person was able to make the choice.

Guardianship

- ▶ An option if an individual has significant problems managing financial affairs or personal care.
- ▶ Sometimes is only reasonable choice.
- ▶ But, last resort because it requires going to court; is costly & it deprives an adult of very significant personal rights.
- ▶ Our state guardianship law protects individuals from losing these rights without clear and convincing evidence of incapacity.
- ▶ Requires considering alternatives first.

Incapacitated Defined:

- ▶ Person has a significant risk of personal or financial harm.
- ▶ Risk must be evidenced by a demonstrated inability to manage property or financial affairs.
- ▶ Or a demonstrated inability to provide or arrange adequately for nutrition, health, housing or physical safety.

NOTE: Advanced age, eccentricity, poverty, and medical diagnosis are not sufficient to justify guardianship.

Options to support decision-making other than guardianship...

- ▶ Special Needs Trust
- ▶ Powers of Attorney
- ▶ Representative Payeeship

Areas Where Support May Be Needed

- ▶ Day-to-Day Decisions
- ▶ Managing Money
- ▶ Healthcare Decisions
- ▶ Abuse and Exploitation Issues

Guardianship

- ▶ A guardianship petition for an adult is filed in Washington Superior Court.
- ▶ Guardianship may be filed in tribal court if the person needing a guardian is a Native American.
- ▶ A judge or court commissioner appoints a Guardian ad-litem to investigate the facts alleged in the guardianship petition.
- ▶ The Guardian-ad-litem prepares a report for the court including recommendations whether the person is incapacitated (IP) & whether there are less restrictive alternatives than guardianship.
- ▶ If designating incapacitated, the report recommends who the guardian should be and which rights the IP should lose & which they should retain.

Guardianship may be only/best option if:

- ▶ No alternative works for a necessary decision.
- ▶ Family conflict makes it legally hazardous/difficult for anyone with authority through an alternative to take action without court approval.
- ▶ Someone has authority to make decisions but is unqualified, is or may soon become unavailable to serve, is untrustworthy or unstable, or has engaged in abuse, neglect, or financial exploitation.
- ▶ Alternatives have been found inadequate to address or protect the adult.
- ▶ The person's financial or medical needs are too complex for alternatives and best managed through professional certified guardian services.

Courts require written notice about rights the person may lose in guardianship, including:

- ▶ Right to marry or divorce or enter to or end a state registered domestic partnership.
- ▶ To vote or hold an elected office.
- ▶ To enter into a contract; to make or revoke a will.
- ▶ To give a power of attorney.
- ▶ To sue or be sued other than through a guardian; to have a license to drive.
- ▶ To buy, sell, own, mortgage or lease property.
- ▶ To consent to or refuse certain medical treatment.
- ▶ To decide who will provide care and assistance.
- ▶ To make certain decisions about social aspects of life.

Guardian Responsibilities

- ▶ Develop Personal Care Plan.
- ▶ Prepare Reports (Inventory, Annual, Substantial Change).
- ▶ Attend Meetings.
- ▶ Visit the person.
- ▶ Advocate for the person.
- ▶ Watch for and respond to abuse and neglect.
- ▶ Promote independence and employment of person.
- ▶ Show respect and listen.

Limited Guardianship

- ▶ The court can tailor the guardianship to individual needs.
- ▶ To reduce loss of decision-making powers by the incapacitated person of the guardianship.
- ▶ Favored over full guardianship.

Professional Guardianship

- ▶ Certified Professional Guardianship Board ensures standards of practice, discipline & evaluates complaints.
- ▶ Standardized Training for all CPGs

Note: non-professional (family or lay) guardians must complete on-line training

Future of Decision Support

- ▶ The “Age Wave” and demographic shifts mean that the need for support with decision-making will grow.
- ▶ Need effective, low-cost alternatives.
- ▶ Need oversight of guardians, payees, and other fiduciaries.
- ▶ Possible expanded role for Office of Public Guardianship?

Legislative Issues 2016?

- ▶ Informed Consent: additional decision-makers?
- ▶ “Guardian abuse” - authority to isolate, accountability?
- ▶ Guardianship monitoring?
- ▶ Adoption of Uniform Power of Attorney Act:
 - ▶ Revisions proposed by bar association committee.
 - ▶ Include protections, autonomy.
- ▶ Office of Public Guardianship: stable funding, independent, able to serve as guardians for the IP who have no family members willing or suitable to be guardian & who cannot afford a certified professional guardian, in such a manner that the IP uses fewer social services thereby saving the taxpayers money.

“WINGS” (initiated 2015)

- ▶ The Working Interdisciplinary Network of Guardianship Stakeholders serves to enhance the quality of care and life of adults affected or potentially affected by guardianship and other decision-making alternatives. WINGS is an ongoing problem-solving mechanism made up of key stakeholders.
- ▶ Includes lawyers, judges, advocates, people with disabilities, & others.
- ▶ Goal is improving decision support for persons with diminished decision-making ability.

Resources

Disability Rights Washington

Washington Courts including
Office of Public Guardianship

Washington Law Help

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&



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