



# GUARDIANSHIP BASICS



Frequently Asked Questions  
for Case Resource Managers

THESE MATERIALS WERE DEVELOPED AS A GENERAL GUIDE AND ARE NOT INTENDED AS LEGAL ADVICE

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**NOTE: THESE MATERIALS WERE DEVELOPED AS A GENERAL GUIDE AND ARE NOT INTENDED AS LEGAL ADVICE. THEY APPLY TO ADULT CLIENTS OF DDA AND ARE NOT INTENDED TO ENCOMPASS CUSTODY AND GUARDIANSHIP ISSUES FOR MINORS.**

What types of decision-making tools are there?

- Parent: After a person turns 18 years old, they are an adult and their parents are no longer their legal guardians.
- Representative Payee: A person may designate a payee to receive and manage their Social Security benefits. The payee's authority is limited to SSA/SSI benefits and the payee must abide by Social Security Administration rules.
- Supported Decision Making Agreement: A written document signed by the person where the person makes his/her own decisions but has one or more supporters who help them. The person must be capable of understanding what he/she is signing. The agreement must set out how the supporter(s) will assist the person. The supporters *do not* have authority to make decisions for the person. The person retains the right to modify or revoke the agreement.
- Power of Attorney: A written document signed by the person where the person chooses to share decision-making with one or more agents they designate. The person must be capable of understanding what he/she is signing. The agreement must set out the authority the person is sharing with the agent(s). The agent may make decisions for the person if the person has given the agent that authority, and the person retains the right to make his/her own decisions. The person retains the right to modify or revoke the agreement. If the person becomes incapacitated and the POA is not durable, it becomes ineffective.
- Durable Power of Attorney: It operates exactly like a regular power of attorney except that it contains language stating that the person wants the agent(s) to continue to have authority if/when the person becomes incapacitated and unable to make their own decisions.
- Protective Arrangement: A court process where a court, instead of appointing a guardian or conservator, authorizes or directs a transaction necessary to meet the adult's need for health, safety, or care, or to avoid harm to the adult or significant dissipation of the adult's property. This generally requires the same level of need as a guardianship or conservatorship, but the need can be met by a court order without appointing a guardian or conservator.
- Conservatorship: A court process where a court appoints one or more people to be responsible for financial and estate matters only; formerly called guardianship of estate.
- Guardianship: A court process where a court appoints one or more people to be responsible for all non-financial decision-making; formerly called guardianship of person.

- Limited guardianship/conservatorship: A court process where the court appoints a person to be responsible for some decisions but has decided to let an incapacitated person retain any rights it feels he/she is capable of exercising on his/her own. These limitations must be specifically stated in the court order establishing the guardianship/conservatorship.
- Informed Consent for Health Care: RCW 7.70.065 permits a health care provider to obtain informed consent for health care on behalf of a patient who is unable to provide informed consent him/herself from a person according to a statutory hierarchy. The hierarchy includes a guardian first, then an agent under a durable power of attorney, then the patient's spouse or registered domestic partner, then the patient's adult children, then the patient's parents, then the patient's adult siblings, etc. This statute *does not* apply to decisions other than health care decisions or to entities who are not health care providers, such as DSHS.

What do I do when I have a question about a guardian?

- It is important to maintain consistent procedures regarding guardianships and conservatorships. Consult with your supervisor to find the answer. If a question remains, call the guardianship contact in your Region or RHC:
  - **Region 1N: Jeremy Martin**
  - **Region 1S: Nate Sitton**
  - **Region 2: Neal Hallmark**
  - **Region 3: Anna Facio**
  - **Fircrest School: Whitney Swenson**
  - **Lakeland Village: Jana McCluskey**
  - **Rainier School: Devan Skyles**
  - **Yakima Valley School: Jessica Hulteen and Renee McElrea**

What can I rely on as proof that a guardianship/conservatorship has been established?

- When a guardianship/conservatorship is established, the court enters an Order appointing a guardian/conservator/both and the court clerk issues Letters of Office once an oath is taken and proof of lay guardian training is filed, if applicable. DDA must be provided a copy of the current Letters of Office before acknowledging a guardian/conservator's authority. The Letters should be reviewed to determine:
  1. The scope of the guardian/conservator's authority (either full or limited, what limitations exist, if any); and
  2. The current validity of the Letters of Office. Letters are current if they have an expiration date that has not passed. If the Letters are old enough that they do not have an expiration date, then confirm that the court has not issued an order revoking them since they were first issued. As of 2011, new Letters will expire within five years or less from the date they are issued. Without current Letters, the guardian/conservator does not have legal authority to act.

### Can I rely on expired Letters of Guardianship/Letters of Office?

- No, expired Letters is an indication that the guardian/conservator is not in good standing with the court. RCW 11.130.040(5) says “A guardian or conservator may not act on behalf of a person under guardianship or conservatorship without valid letters of office.” The guardianship or conservatorship isn’t expired, only the guardian/conservator’s authority is expired. The person remains legally incapacitated, and the guardian/conservator must resolve the issue with the court. The person still lacks the rights that were revoked by the court when the guardianship/conservatorship was established.

### When is a guardianship/conservatorship warranted?

- The court may appoint a guardian if the adult:
  - a. Lacks the ability to meet essential requirements for physical health, safety, or self-care because he/she is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance, or supported decision making;
  - b. Appointment is necessary to prevent significant risk of harm to the adult’s physical health, safety, or self-care; and
  - c. Their needs cannot be met by a protective arrangement instead of guardianship or other less restrictive alternative.
- The court may appoint a conservator if the adult:
  - a. The adult is unable to manage property or financial affairs because of a limitation in the adult’s ability to receive and evaluate information or make or communicate decisions, even with the use of appropriate supportive services, technological assistance, or supported decision making, or the adult is missing, detained, or unable to return to the U.S.;
  - b. Appointment is necessary to avoid harm to the adult or significant dissipation of the property of the adult, or obtain or provide funds or other property needed for the support, care, education, health, or welfare of the adult or a person entitled to the adult’s support; and
  - c. Their needs cannot be met by a protective arrangement instead of conservatorship or other less restrictive alternative.

### What are alternatives to guardianship/conservatorship?

- Not every adult with a disability needs a guardianship or conservatorship. If the only issue for a client is financial management, and their estate is limited to their Social Security benefits, a representative payee may be all that is needed. If the client is able to understand and sign a supported decision-making agreement or power of attorney, this might be a less restrictive way for the client to retain some decision-making for themselves while getting help from trusted family or friends when needed.

### What duties does a guardian/conservator have and how does DDA fit in?

- The duties of a guardian/conservator are outlined in the court order that appoints them. In general, this includes financial management, health care decision-making, residential decisions, reporting to the court, and miscellaneous decision-making as needed to provide for what the person would want if the person were able to make his/her own decisions or in the person's best interest. Guardians/conservators do not manage every aspect of a person's life, and they are not care providers. Questions about the proper scope of a guardian/conservator's duties should be directed to the guardianship contact in your Region or RHC.

### How can DDA establish a guardianship/conservatorship if it is needed?

- If a case manager identifies a client who needs a guardian/conservator or protective arrangement, the case manager should contact his/her supervisor and the guardianship contact in his/her Region or RHC. Whether DDA will pursue a guardianship/conservatorship usually depends on three things:
  1. Does the person have family active in their life? If so, the family may be in the best position to pursue guardianship/conservatorship. The guardianship contact can give them general advice on the process including a link to the court's pattern forms online.
  2. Have the case manager and supervisor determined there is an emergency involved? In some cases, a medical emergency, self-neglect, or other concerns place a person at risk. If a client is at risk, follow your regional policy for contacting Adult Protective Services or law enforcement. Also follow the procedures outlined in DDA Policy 12.01, *Incident Management*. If APS substantiates abuse, neglect, or exploitation, it may have jurisdiction to file for guardianship/conservatorship through its own AAG.
  3. In a case where there is no abuse, neglect, or exploitation, but you still feel guardianship/conservatorship is necessary, discuss the issue with your guardianship contact. The guardianship contact may make a referral to the AAG or staff it with the AAG. The AAG may choose to proceed with a petition if it appears to meet the legal standard and there is no private party able or willing to petition. As of 2022, state statute requires a petitioning party to identify a proposed guardian/conservator within 14 days of filing the petition. If there is no proposed guardian/conservator, this may limit the AAG's ability to file a petition.

### What are the duties of a court visitor (formerly called a guardian ad litem)?

- The court will appoint a court visitor to investigate whether the person needs a guardian/conservator and whether the proposed guardian/conservator is suitable. They make recommendations to the court. They *do not* have authority to make decisions on the person's behalf while the case is pending.

How does a person's transition to adulthood at age 18 affect the need for a guardian/conservator?

- People who are minors have most of their decisions made by their parents or legal guardians of a minor. When a person turns 18, the person becomes an adult and the parent/guardian of minor can no longer make those decisions. This is a critical point for DDA clients and planning for ongoing decision-making support should begin at least six months in advance. Any transition plan should be coordinated with the Department of Children, Youth, & Families (DCYF) if they are involved in the child's life.

Can guardians/conservators be removed or modify the guardianship/conservatorship?

- Yes, guardians/conservators are subject to oversight by the court that appointed them. They can be removed if they are not acting in the person's best interest or following the court's reporting procedures. Guardianships can be modified for many reasons, including a change in the person's situation, a change in the guardian/conservator's ability to serve.

If I am asked to fill out a declaration, will I have to go to court?

- When DDA is petitioning to create, modify, or terminate a guardianship or conservatorship, the case manager will usually be asked to describe the facts of the case and make recommendations to the court. This is called a declaration and is the case manager's written testimony. In consultation with the AAG, you may be asked to attend and testify at a court hearing. Usually, the written declarations are adequate, but sometimes the judge may have additional questions.

How are tribal guardianships/conservatorships different?

- If a guardianship was established by a tribal court, only that court has the authority to modify it. Each individual tribe has its own rules and regulations which it applies to guardianship issues. Because there are rules about who can appear in tribal court, you may need to work with the tribe's social services staff when researching a guardianship issue. They may be able to bring the matter to the tribe's attention and work with the state to solve the problem. You should consult with the guardianship contact in your Region or RHC when tribal issues are involved.

How are guardian/conservator and attorney fees handled when a client pays participation toward the cost of their DSHS care?

- Guardians/conservators are required to provide notice to DSHS when they are requesting fees to be paid as a deduction from the client's participation. Fee deductions are made according to Health Care Authority rule in WAC 182-513-1530. Otherwise, fees are paid from the client's estate and all fees must be approved by the court.

What informational resources can I use to learn about guardianship/conservatorship?

- Revised statutes are in RCW 11.130.
- Information and forms are available at [www.courts.wa.gov](http://www.courts.wa.gov).