

What happens when a minor child is entitled to receive money?

It is well-settled law and common sense that someone under age 18 cannot receive property. Then what happens to that property? It goes to the child's legal guardian. Contrary to popular belief, a minor's parent is not automatically their legal guardian – guardianship is a separate and distinct role from the natural rights of a parent. The mere death of one parent may vest custody of the child in the surviving parent, but it does not automatically vest legal guardianship in that parent.

Minors are, in the eyes of the law, incompetent to contract, and unable to legally own anything. Fortunately, there are several ways to handle property passing to a minor. These options vary according to the amount and circumstance surrounding the transfer. While not exhaustive, this list illustrates the types of arrangements that commonly occur in an estate planning or probate context, as well as unexpected circumstances. The examples are listed from least restrictive to most restrictive.

1. Custodial account governed by Washington's Uniform Transfers to Minors Act (UTMA), Ch. 11.114 RCW.
  - a. Establishment. A custodial account can typically be established without court order and without any formalities if the custodian is nominated in the transferring instrument or if the distribution is made to an adult in the minor's immediate family. RCW 11.114.030. If no nomination is made or no suitable person found, or if the need to clarify the scope of the custodial account arises, an application to the Superior Court may be made.
  - b. Scope. UTMA accounts are generally limited to \$30,000 in value, but this amount may be increased by the court under compelling circumstances. RCW 11.114.060.
  - c. Distributions and Accountings. UTMA accounts are not under ongoing court supervision. There is a requirement that custodians keep UTMA property separate from other property. RCW 11.114.120(4). The statute otherwise imposes general fiduciary duties on the custodian. RCW 11.114.120(2). That said, custodians are given broad authority to use the custodial property for the minor's benefit (RCW 11.114.140), and may also reimburse themselves for reasonable expenses and take reasonable compensation for their services (RCW 11.114.150). Nevertheless, accountings should be maintained to be produced upon request to the minor after turning age 18. RCW 11.114.190.

- d. Termination. If designated in the transferring instrument the account may last until age 21; otherwise, it shall terminate at age 18. RCW 11.114.200.
  - e. Summary. UTMA accounts are preferable for amounts around \$30,000 or less that do not need formal accounting. Common examples include basic life insurance benefits or small inheritances from relatives.
2. Trust Account for the benefit of the minor
- a. Establishment. A trust generally needs to be established during the grantor's lifetime, either in a standalone instrument or as part of a Will.
  - b. Scope. A trust covers a broad range of amounts and circumstances for transfers to minors. If planning ahead, this would be the preferable way to pass wealth to a minor.
  - c. Distributions and Accounts. Trustees generally have broad authority under RCW 11.98.070 to effectuate the purposes of the trust, although this authority is always subject to specific restrictions provided in the trust instrument itself. Trustees have a default duty to account that is detailed under Ch 11.106 RCW, but this can be modified by the Trust instrument. Washington has also adopted a high burden on trustees to provide notices and accountings to the beneficiaries (RCW 11.98.072), although this can also be waived somewhat by the Trust instrument, and minors are generally not entitled to accountings. Note that this is a hotly litigated issue in Washington, and whole CLE's could be devoted to the issue of whether or not beneficiaries are entitled to know what is in a trust.
  - d. Termination. Trusts can last a lifetime, or up to 150 years after creation. RCW 11.98.130. This makes them the most flexible vehicle to transfer and preserve wealth after death.
  - e. Summary. If you have the opportunity to plan ahead for a transfer of wealth to a minor, drafting a trust, either standalone or in a Will, is the easiest and most flexible option.
3. Minor Settlement

This area of the law is outside of the specialized practice of Title 11 RCW matters and so it will not be covered here in detail, but nonetheless is relevant to the question at hand. If a minor is to receive property by settlement of a civil suit, then the court has jurisdiction to safeguard the property in such a manner as to preserve it for the child's benefit. SPR 98.16W governs minor settlements and lays out in detail the process for approving a settlement. If the settlement

exceeds \$25,000, then the court will require either a guardianship to be created or utilized (see below), or a trust to be imposed (see above). In contrast to the trusts discussed above that typically do not require the trustee to be bonded, the minor settlement trust requires the fiduciary to be bonded or insured, more like a guardian. The court may also retain jurisdiction of the trust, requiring it to file periodic reports similar to a guardianship.

#### 4. Guardianship of the estate of a minor

- a. Establishment. "Any suitable person over the age of eighteen years, or any parent... may, if not otherwise disqualified, be appointed guardian..." RCW 11.88.020. Disqualifications include having an unsound mind, conviction of a felony, or any other person found to be unsuitable. A guardianship is a civil action, but it has a unique civil procedure for appointing a guardian. The court also retains jurisdiction for periodic accountings and non-routine expenditures or situations, continuing until termination at age 18, or until there is no disability, or death.
  - i. Petition for Appointment of a guardian. This is the foundational pleading that initiates the proceeding. It formally requests the court to appoint a guardian, and it suggests who the guardian should be and why. In an uncontested guardianship, this is the most important document for explaining to the court why it should appoint someone (not necessarily the petitioner) as guardian. The filing fee to start the action is \$240, filed with a case coversheet, and is waivable if there are less than \$3,000 in assets.
  - ii. Notice of Guardianship Petition. This is a standard pleading that informs the alleged incapacitated person that a Petition has been filed. It would be comparable to a Summons in civil procedure. It must be served with the Petition on the person for whom you are claiming guardianship.
  - iii. Declaration of proposed guardian. This pleading confirms for the court that the proposed guardian is not disqualified.
  - iv. Declaration of Completion of Guardianship Training. The proposed guardian needs to complete a training. In King County, this can be done by watching a YouTube video. Otherwise, there is an interactive training on the Administrative Office of the Courts' site, and after passing the quizzes, it will produce a certificate of completion. The Declaration can be filed after appointment if you are granted an extension in the Order Appointing Guardian.

- v. GAL Report. In an adult guardianship, a guardian ad litem investigation and recommendation to the court is required. However, this is specifically waived for guardianships of minors. RCW 11.88.090(3)(b).
- vi. Medical Report. Typically this report confirms the need for a guardianship by a qualified medical professional. This is also waived for minor guardianships. RCW 11.88.045(4)(i).
- vii. Notice of Hearing. The statute requires at least 10 days' notice of a hearing. Note that in King County, local rules amend this to require 14 days' notice, and if mailing notice, then an additional 3 days. KCLCR 98.20(d). The notice requirement is waived if the child is under 14 and it is a parent applying to be guardian, or if the child is over 14 and consents, or if a nonresident guardian is establishing a guardianship in Washington. RCW 11.88.040(4). However, in practice, it is helpful to file the Petition, note the hearing at least 14 days out, and thereby allow the court sufficient time to be prepared to consider the matter. If there are other family members, such as an older sibling or other parent, they should also be given notice of the hearing under RCW 11.88.040(2).
- viii. Order Appointing Guardian. This document is quite long and details the scope of the guardianship. It should be prepared with great care to check only the appropriate boxes that apply to the particular situation. In King County, you can fill in the boxes for the due dates with just a reference to the case schedule. Once the guardianship Order is signed, the Clerk will issue a case schedule, as well as Letters of Guardianship (see below).
- ix. Bond. This will be required if there are more than \$3,000 in assets. Sometimes the court will waive it if all assets in excess of \$3,000 are blocked, meaning the guardian cannot access them without a court order. A typical guardianship bond in the amount of \$50,000 will cost approximately \$300. That will allow the guardian to have up to \$50,000 in liquid funds to pay for expenses. Assets in excess of the bond amount must be blocked – work with someone knowledgeable at the financial institution to make sure the accounts are properly titled and restricted.
- x. Oath. The guardian must file an oath before Letters of Guardianship can be issued. The name on the oath must *exactly* match the name on the Guardianship order (e.g. if the Order

appoints Jane Doe as guardian, the oath should not read Jane Q. Doe, and vice versa).

- x. Letters of Guardianship. It is a certificate from the court for the purpose of confirming for third parties who the guardian is. Typically institutions will require certified copies, \$5 each. If there are less than \$3,000 in assets then this can be issued at no cost.
  - xii. Order Authorizing Disbursements, Budget, and Care Plan. Within 90 days of appointment, the court expects the guardian to return to court having filed a budget (if financial guardian of the "estate") and care plan (if physical guardian of the "person"). The court also expects an Order Authorizing Disbursements. Unlike the custodian of a custodial account, the guardian does not intrinsically have the authority to expend funds for the minor's benefit. Everything must be done with court approval and with full accounting to the court. Therefore, any expenditures should be approved in advance, although this can be done with a general order granting disbursements for living expenses, recreation, etc. not to exceed the budget. Ideally, any expenditures outside the budget will be brought to the court for prior approval. Emergency expenditures can be made, but should promptly be disclosed for court ratification, or if small amounts, then prominently disclosed on the next periodic report (typically every 12 months, though it can be every 24 or 36 months by court order).
  - xiii. Right to Request Special Notice. If other family members were notified of the hearing, then they should be given notice after the appointment that they can "request special notice" – typically that means copies of periodic reports and notice if any unusual distributions are to be made or changes to the scope of the guardianship. RCW 11.92.150.
  - xiv. Forms. King County Superior Court maintains a list of guardianship forms as well as a helpful instruction brochure on its website (<https://www.kingcounty.gov/courts/superior-court/ex-parte-probate/guardianship-forms.aspx>). Washington Courts also has additional guardianship forms on its website (<http://www.courts.wa.gov/forms/>).
- b. Scope. This will be laid out in the Petition as well as the Order Appointing Guardian. Typically if the minor is just inheriting money, then a guardianship of the estate (financial guardianship) will suffice. It can be

limited in scope, meaning that the minor retains the right to possess some funds (e.g. having an allowance). If both parents have died, then it may be sensible for the petitioner to request guardianship of the person (physical guardianship) as well. This would appoint a guardian who could decide where the minor would live, what doctor he or she would see, make medical decisions on their behalf, and so forth. Typically this is limited in scope as well, with the minor retaining the right to make social decisions, enter in marriage, etc.

- c. Distributions and Accounting. Guardianships are the most restrictive form of managing money for another person. Distributions are only allowed by court order. All funds must be accounted for. The court requires periodic accountings, and in theory the court will review your accounting to make sure it is accurate. The financial institution can report the guardian to the court if there is an overdraft or if there are frequent cash withdrawals, which defeats the ability to track funds. Careful attention should be paid to properly account for funds and to stay within the authorization for disbursement. If there is a large expenditure that is necessary, the guardian should return to the court for prior approval. If no one has requested special notice, then this can typically be done ex parte without notice.
- d. Termination. The Guardianship terminates at age 18 and the funds distributed to the minor, unless the minor is disabled, in which case the guardian can petition the court to continue the guardianship for the duration of the disability. Unlike a trust or UTMA account that can continue past age 18, the Guardianship must be terminated at age 18. Many clients fret that their young children will come into such substantial amounts of money. Some attempts to preserve wealth beyond age 18 include diverting funds to college savings accounts, which courts will generally approve.
- e. Summary. Guardianship is the most restrictive form of holding assets for another, and is generally only used when necessary. In most situations, if the opportunity arises, parents with minor children should execute a Will that includes a testamentary trust for minor beneficiaries to avoid the need for guardianship. When parents fail to plan, a minor guardianship is often the result, which creates considerable duties to account for funds, but may also preserve some amounts past age 18 if the funds are carefully managed.