

(d) The beneficiary has waived the right to disclaim in writing. The written waiver of the right to disclaim also is binding upon all persons claiming through or under the beneficiary.

(2) Notwithstanding the provisions of subsection (1)(a) through (c) of this section, a beneficiary's receipt of a benefit from property shall not necessarily bar such beneficiary's disclaimer of an interest in the same property when, prior to the date of the transfer of the interest to be disclaimed, the beneficiary already owned an interest in such property in joint tenancy, as community property, or otherwise. Any such receipt, in the absence of clear and convincing evidence to the contrary, shall be presumed to be an enjoyment or use of the interest the beneficiary already owned, and only after such interest and any benefit from such interest have been exhausted, shall the beneficiary be deemed to have received or accepted any part of the interest to be disclaimed. [2000 c 24 § 1; 1989 c 34 § 5.]

11.86.061 Effect of spendthrift or similar restriction.

A beneficiary may disclaim under this chapter notwithstanding any limitation on the interest of the beneficiary in the nature of a spendthrift provision or similar restriction. [1989 c 34 § 6.]

11.86.071 Liability for distribution—Effect of disclaimer. No legal representative of a creator of the interest, holder of legal title to property an interest in which is disclaimed, or person having possession of the property shall be liable for any otherwise proper distribution or other disposition made without actual knowledge of the disclaimer, or in reliance upon the disclaimer and without actual knowledge that the disclaimer is barred as provided in RCW 11.86.051. [1989 c 34 § 7.]

11.86.080 Rights under other statutes or rules not abridged. This chapter shall not abridge the right of any person, apart from this chapter, under any existing or future statute or rule of law, to disclaim any interest or to assign, convey, release, renounce or otherwise dispose of any interest. [1973 c 148 § 9.]

11.86.090 Interests existing on June 7, 1973. Any interest which exists on June 7, 1973 but which has not then become indefeasibly vested, or the taker of which has not then become finally ascertained, or of the existence of the transfer of which the beneficiary lacks knowledge, may be disclaimed after June 7, 1973 in the manner provided in RCW 11.86.031. However, for the purposes of RCW 11.86.031(2), the date on which the beneficiary first knows of the existence of the transfer shall be deemed to be the date of the transfer. [1989 c 34 § 8; 1973 c 148 § 10.]

Chapter 11.88 RCW

GUARDIANSHIP—APPOINTMENT, QUALIFICATION, REMOVAL OF GUARDIANS

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11.88.005 Legislative intent. (Effective until January 1, 2022.) It is the intent of the legislature to protect the liberty and autonomy of all people of this state, and to enable them to exercise their rights under the law to the maximum extent, consistent with the capacity of each person. The legislature recognizes that people with incapacities have unique abilities and needs, and that some people with incapacities cannot exercise their rights or provide for their basic needs without the help of a guardian. However, their liberty and autonomy should be restricted through the guardianship process only to the minimum extent necessary to adequately provide for their own health or safety, or to adequately manage their financial affairs. [1990 c 122 § 1; 1977 ex.s. c 309 § 1; 1975 1st ex.s. c 95 § 1.]

Additional notes found at www.leg.wa.gov

11.88.008 "Professional guardian" defined. (Effective until January 1, 2022.) As used in this chapter, "professional guardian" means a guardian appointed under this chapter who is not a member of the incapacitated person's family and who charges fees for carrying out the duties of court-appointed guardian of three or more incapacitated persons. [1997 c 312 § 2.]

Additional notes found at www.leg.wa.gov

11.88.010 Authority to appoint guardians—Definitions—Venue—Nomination by principal. (Effective until January 1, 2022.) (1) The superior court of each county shall have power to appoint guardians for the persons and/or estates of incapacitated persons, and guardians for the estates of nonresidents of the state who have property in the county needing care and attention.

(a) For purposes of this chapter, a person may be deemed incapacitated as to person when the superior court determines the individual has a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety.

(b) For purposes of this chapter, a person may be deemed incapacitated as to the person's estate when the superior court determines the individual is at significant risk of financial harm based upon a demonstrated inability to adequately manage property or financial affairs.

(c) A determination of incapacity is a legal not a medical decision, based upon a demonstration of management insufficiencies over time in the area of person or estate. Age, eccentricity, poverty, or medical diagnosis alone shall not be sufficient to justify a finding of incapacity.

(d) A person may also be determined incapacitated if he or she is under the age of majority as defined in RCW 26.28.010.

(e) For purposes of giving informed consent for health care pursuant to RCW 7.70.050 and 7.70.065, an "incompe-

tent" person is any person who is (i) incompetent by reason of mental illness, developmental disability, senility, habitual drunkenness, excessive use of drugs, or other mental incapacity, of either managing his or her property or caring for himself or herself, or both, or (ii) incapacitated as defined in (a), (b), or (d) of this subsection.

(f) For purposes of the terms "incompetent," "disabled," or "not legally competent," as those terms are used in the Revised Code of Washington to apply to persons incapacitated under this chapter, those terms shall be interpreted to mean "incapacitated" persons for purposes of this chapter.

(2) The superior court for each county shall have power to appoint limited guardians for the persons and estates, or either thereof, of incapacitated persons, who by reason of their incapacity have need for protection and assistance, but who are capable of managing some of their personal and financial affairs. After considering all evidence presented as a result of such investigation, the court shall impose, by order, only such specific limitations and restrictions on an incapacitated person to be placed under a limited guardianship as the court finds necessary for such person's protection and assistance. A person shall not be presumed to be incapacitated nor shall a person lose any legal rights or suffer any legal disabilities as the result of being placed under a limited guardianship, except as to those rights and disabilities specifically set forth in the court order establishing such a limited guardianship. In addition, the court order shall state the period of time for which it shall be applicable.

(3) Venue for petitions for guardianship or limited guardianship shall lie in the county wherein the alleged incapacitated person is domiciled, or if such person resides in a facility supported in whole or in part by local, state, or federal funding sources, in either the county where the facility is located, the county of domicile prior to residence in the supported facility, or the county where a parent or spouse or domestic partner of the alleged incapacitated person is domiciled.

If the alleged incapacitated person's residency has changed within one year of the filing of the petition, any interested person may move for a change of venue for any proceedings seeking the appointment of a guardian or a limited guardian under this chapter to the county of the alleged incapacitated person's last place of residence of one year or more. The motion shall be granted when it appears to the court that such venue would be in the best interests of the alleged incapacitated person and would promote more complete consideration of all relevant matters.

(4) Under RCW 11.125.080, a principal may nominate, by a durable power of attorney, the guardian or limited guardian of his or her estate or person for consideration by the court if guardianship proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification.

(5) Imposition of a guardianship for an incapacitated person shall not result in the loss of the right to vote unless the court determines that the person is incompetent for purposes of rationally exercising the franchise in that the individual lacks the capacity to understand the nature and effect of voting such that she or he cannot make an individual choice. The

court order establishing guardianship shall specify whether or not the individual retains voting rights. When a court determines that the person is incompetent for the purpose of rationally exercising the right to vote, the court shall notify the appropriate county auditor. [2016 c 209 § 403; 2008 c 6 § 802; 2005 c 236 § 3; (2005 c 236 § 2 expired January 1, 2006); 2004 c 267 § 139; 1991 c 289 § 1; 1990 c 122 § 2; 1984 c 149 § 176; 1977 ex.s. c 309 § 2; 1975 1st ex.s. c 95 § 2; 1965 c 145 § 11.88.010. Prior: 1917 c 156 § 195; RRS § 1565; prior: Code 1881 § 1604; 1873 p 314 § 299; 1855 p 15 § 1.]

Short title—Application—Uniformity—Federal law application—Federal electronic signatures in global and national commerce act—Application—Dates—Effective date—2016 c 209: See RCW 11.125.010 and 11.125.900 through 11.125.903.

Findings—2005 c 236: "The legislature finds that the right to vote is a fundamental liberty and that this liberty should not be confiscated without due process. When the state chooses to use guardianship proceedings as the basis for the denial of a fundamental liberty, an individual is entitled to basic procedural protections that will ensure fundamental fairness. These basic procedural protections should include clear notice and a meaningful opportunity to be heard. The legislature further finds that the state has a compelling interest in ensuring that those who cast a ballot understand the nature and effect of voting is an individual decision, and that any restriction of voting rights imposed through guardianship proceedings should be narrowly tailored to meet this compelling interest." [2005 c 236 § 1.]

Additional notes found at www.leg.wa.gov

11.88.020 Qualifications. (Effective until January 1, 2022.) (1) Any suitable person over the age of eighteen years, or any parent under the age of eighteen years or, if the petition is for appointment of a professional guardian, any individual or guardianship service that meets any certification requirements established by the administrator for the courts, may, if not otherwise disqualified, be appointed guardian or limited guardian of the person and/or the estate of an incapacitated person. A financial institution subject to the jurisdiction of the department of financial institutions and authorized to exercise trust powers, and a federally chartered financial institution when authorized to do so, may act as a guardian of the estate of an incapacitated person without having to meet the certification requirements established by the administrator for the courts. No person is qualified to serve as a guardian who is

(a) under eighteen years of age except as otherwise provided herein;

(b) of unsound mind;

(c) convicted of a felony or of a misdemeanor involving moral turpitude;

(d) a nonresident of this state who has not appointed a resident agent to accept service of process in all actions or proceedings with respect to the estate and caused such appointment to be filed with the court;

(e) a corporation not authorized to act as a fiduciary, guardian, or limited guardian in the state;

(f) a person whom the court finds unsuitable.

(2) The professional guardian certification requirements required under this section shall not apply to a testamentary guardian appointed under RCW 11.88.080.

(3) If a guardian or limited guardian is not a certified professional guardian or financial institution authorized under this section, the guardian or limited guardian shall complete any standardized training video or web cast for lay guardians

made available by the administrative office of the courts and the superior court where the petition is filed unless granted a waiver by the court under RCW 11.92.043 or 11.92.040. The training video or web cast must be provided at no cost to the guardian or limited guardian.

(a) If a petitioner requests the appointment of a specific individual to act as a guardian or limited guardian, the petition for guardianship or limited guardianship shall include evidence of the successful completion of the required training video or web cast by the proposed guardian or limited guardian. The superior court may defer the completion of the training requirement to a date no later than ninety days after appointment if the petitioner requests expedited appointment due to emergent circumstances.

(b) If no person is identified to be appointed guardian or limited guardian at the time the petition is filed, then the court shall require the completion of the required training video or web cast by a date no later than ninety days after the appointment. [2011 c 329 § 1; 1997 c 312 § 1; 1990 c 122 § 3; 1975 1st ex.s. c 95 § 3; 1971 c 28 § 4; 1965 c 145 § 11.88.020. Prior: 1917 c 156 § 196; RRS § 1566.]

Banks and trust companies may act as guardian: RCW 11.36.010.

Additional notes found at www.leg.wa.gov

11.88.030 Petition—Contents—Hearing. (Effective until January 1, 2022.) (1) Any person or entity may petition for the appointment of a qualified person, certified professional guardian, or financial institution authorized in RCW 11.88.020 as the guardian or limited guardian of an incapacitated person. No liability for filing a petition for guardianship or limited guardianship shall attach to a petitioner acting in good faith and upon reasonable basis. A petition for guardianship or limited guardianship shall state:

(a) The name, age, residence, and post office address of the alleged incapacitated person;

(b) The nature of the alleged incapacity in accordance with RCW 11.88.010;

(c) The approximate value and description of property, including any compensation, pension, insurance, or allowance, to which the alleged incapacitated person may be entitled;

(d) Whether there is, in any state, a guardian or limited guardian, or pending guardianship action for the person or estate of the alleged incapacitated person;

(e) The residence and post office address of the person whom petitioner asks to be appointed guardian or limited guardian;

(f) The names and addresses, and nature of the relationship, so far as known or can be reasonably ascertained, of the persons most closely related by blood, marriage, or state registered domestic partnership to the alleged incapacitated person;

(g) The name and address of the person or facility having the care and custody of the alleged incapacitated person;

(h) The reason why the appointment of a guardian or limited guardian is sought and the interest of the petitioner in the appointment, and whether the appointment is sought as guardian or limited guardian of the person, the estate, or both;

(i) A description of any alternate arrangements previously made by the alleged incapacitated person, such as trusts or powers of attorney, including identifying any guardianship

nominations contained in a power of attorney, and why a guardianship is nevertheless necessary;

(j) The nature and degree of the alleged incapacity and the specific areas of protection and assistance requested and the limitation of rights requested to be included in the court's order of appointment;

(k) The requested term of the limited guardianship to be included in the court's order of appointment; and

(l) Whether the petitioner is proposing a specific individual to act as guardian ad litem and, if so, the individual's knowledge of or relationship to any of the parties, and why the individual is proposed.

(2) The petition shall include evidence of successful completion of any training required under RCW 11.88.020 by the proposed guardian or limited guardian unless the petitioner requests expedited appointment due to emergent circumstances.

(3)(a) The attorney general may petition for the appointment of a guardian or limited guardian in any case in which there is cause to believe that a guardianship is necessary and no private party is able and willing to petition.

(b) Prepayment of a filing fee shall not be required in any guardianship or limited guardianship brought by the attorney general. Payment of the filing fee shall be ordered from the estate of the incapacitated person at the hearing on the merits of the petition, unless in the judgment of the court, such payment would impose a hardship upon the incapacitated person, in which case the filing shall be waived.

(4) No filing fee shall be charged by the court for filing either a petition for guardianship or a petition for limited guardianship if the petition alleges that the alleged incapacitated person has total assets of a value of less than three thousand dollars.

(5)(a) Notice that a guardianship proceeding has been commenced shall be personally served upon the alleged incapacitated person and the guardian ad litem along with a copy of the petition for appointment of a guardian. Such notice shall be served not more than five court days after the petition has been filed.

(b) Notice under this subsection shall include a clear and easily readable statement of the legal rights of the alleged incapacitated person that could be restricted or transferred to a guardian by a guardianship order as well as the right to counsel of choice and to a jury trial on the issue of incapacity. Such notice shall be in substantially the following form and shall be in capital letters, double-spaced, and in a type size not smaller than ten-point type:

**IMPORTANT NOTICE
PLEASE READ CAREFULLY**

A PETITION TO HAVE A GUARDIAN APPOINTED FOR YOU HAS BEEN FILED IN THE COUNTY SUPERIOR COURT BY IF A GUARDIAN IS APPOINTED, YOU COULD LOSE ONE OR MORE OF THE FOLLOWING RIGHTS:

(1) TO MARRY, DIVORCE, OR ENTER INTO OR END A STATE REGISTERED DOMESTIC PARTNERSHIP;

(2) TO VOTE OR HOLD AN ELECTED OFFICE;

(3) TO ENTER INTO A CONTRACT OR MAKE OR REVOKE A WILL;

(4) TO APPOINT SOMEONE TO ACT ON YOUR BEHALF;

(5) TO SUE AND BE SUED OTHER THAN THROUGH A GUARDIAN;

(6) TO POSSESS A LICENSE TO DRIVE;

(7) TO BUY, SELL, OWN, MORTGAGE, OR LEASE PROPERTY;

(8) TO CONSENT TO OR REFUSE MEDICAL TREATMENT;

(9) TO DECIDE WHO SHALL PROVIDE CARE AND ASSISTANCE;

(10) TO MAKE DECISIONS REGARDING SOCIAL ASPECTS OF YOUR LIFE.

UNDER THE LAW, YOU HAVE CERTAIN RIGHTS.

YOU HAVE THE RIGHT TO BE REPRESENTED BY A LAWYER OF YOUR OWN CHOOSING. THE COURT WILL APPOINT A LAWYER TO REPRESENT YOU IF YOU ARE UNABLE TO PAY OR PAYMENT WOULD RESULT IN A SUBSTANTIAL HARDSHIP TO YOU.

YOU HAVE THE RIGHT TO ASK FOR A JURY TO DECIDE WHETHER OR NOT YOU NEED A GUARDIAN TO HELP YOU.

YOU HAVE THE RIGHT TO BE PRESENT IN COURT AND TESTIFY WHEN THE HEARING IS HELD TO DECIDE WHETHER OR NOT YOU NEED A GUARDIAN. IF A GUARDIAN AD LITEM IS APPOINTED, YOU HAVE THE RIGHT TO REQUEST THE COURT TO REPLACE THAT PERSON.

(6) All petitions filed under the provisions of this section shall be heard within sixty days unless an extension of time is requested by a party or the guardian ad litem within such sixty day period and granted for good cause shown. If an extension is granted, the court shall set a new hearing date. [2011 c 329 § 2; 2009 c 521 § 36; 1996 c 249 § 8; 1995 c 297 § 1; 1991 c 289 § 2; 1990 c 122 § 4; 1977 ex.s. c 309 § 3; 1975 1st ex.s. c 95 § 4; 1965 c 145 § 11.88.030. Prior: 1927 c 170 § 1; 1917 c 156 § 197; RRS § 1567; prior: 1909 c 118 § 1; 1903 c 130 § 1.]

Intent—1996 c 249: See note following RCW 2.56.030.

Additional notes found at www.leg.wa.gov

11.88.040 Notice and hearing, when required—Service—Procedure. (Effective until January 1, 2022.) Before appointing a guardian or a limited guardian, notice of a hearing, to be held not less than ten days after service thereof, shall be served personally upon the alleged incapacitated person, if over fourteen years of age, and served upon the guardian ad litem.

Before appointing a guardian or a limited guardian, notice of a hearing, to be held not less than ten days after service thereof, shall be given by registered or certified mail to the last known address requesting a return receipt signed by the addressee or an agent appointed by the addressee, or by personal service in the manner provided for services of summons, to the following:

(1) The alleged incapacitated person, or minor, if under fourteen years of age;

(2) A parent, if the alleged incapacitated person is a minor, all known children not residing with a notified person, and the spouse or domestic partner of the alleged incapacitated person if any;

(3) Any other person who has been appointed as guardian or limited guardian, or the person with whom the alleged incapacitated person resides. No notice need be given to those persons named in subsections (2) and (3) of this section if they have signed the petition for the appointment of the guardian or limited guardian or have waived notice of the hearing.

(4) If the petition is by a parent asking for appointment as guardian or limited guardian of a minor child under the age of fourteen years, or if the petition is accompanied by the written consent of a minor of the age of fourteen years or upward, who consents to the appointment of the guardian or limited guardian asked for, or if the petition is by a nonresident guardian of any minor or incapacitated person, then the court may appoint the guardian without notice of the hearing. The court for good cause may reduce the number of days of notice, but in every case, at least three days notice shall be given.

The alleged incapacitated person shall be present in court at the final hearing on the petition: PROVIDED, That this requirement may be waived at the discretion of the court for good cause other than mere inconvenience shown in the report to be provided by the guardian ad litem pursuant to RCW 11.88.090 as now or hereafter amended, or if no guardian ad litem is required to be appointed pursuant to RCW 11.88.090, as now or hereafter amended, at the discretion of the court for good cause shown by a party. Alternatively, the court may remove itself to the place of residence of the alleged incapacitated person and conduct the final hearing in the presence of the alleged incapacitated person. Final hearings on the petition may be held in closed court without admittance of any person other than those necessary to the action or proceeding.

If presence of the alleged incapacitated person is waived and the court does not remove itself to the place of residence of such person, the guardian ad litem shall appear in person at the final hearing on the petition. [2008 c 6 § 803; 1995 c 297 § 2; 1991 c 289 § 3; 1990 c 122 § 5; 1984 c 149 § 177; 1977 ex.s. c 309 § 4; 1975 1st ex.s. c 95 § 5; 1969 c 70 § 1; 1965 c 145 § 11.88.040. Prior: 1927 c 170 § 2; 1923 c 142 § 4; 1917 c 156 § 198; RRS § 1568; prior: 1909 c 118 § 2; 1903 c 130 §§ 2, 3.]

Additional notes found at www.leg.wa.gov

11.88.045 Legal counsel and jury trial—Proof—Medical report—Examinations—Waiver. (Effective until January 1, 2022.) (1)(a) Alleged incapacitated individuals shall have the right to be represented by willing counsel of their choosing at any stage in guardianship proceedings. The court shall provide counsel to represent any alleged incapacitated person at public expense when either: (i) The individual is unable to afford counsel, or (ii) the expense of counsel would result in substantial hardship to the individual, or (iii) the individual does not have practical access to funds with which to pay counsel. If the individual can afford counsel but lacks practical access to funds, the court shall provide counsel and may impose a reimbursement requirement as part of a

final order. When, in the opinion of the court, the rights and interests of an alleged or adjudicated incapacitated person cannot otherwise be adequately protected and represented, the court on its own motion shall appoint an attorney at any time to represent such person. Counsel shall be provided as soon as practicable after a petition is filed and long enough before any final hearing to allow adequate time for consultation and preparation. Absent a convincing showing in the record to the contrary, a period of less than three weeks shall be presumed by a reviewing court to be inadequate time for consultation and preparation.

(b) Counsel for an alleged incapacitated individual shall act as an advocate for the client and shall not substitute counsel's own judgment for that of the client on the subject of what may be in the client's best interests. Counsel's role shall be distinct from that of the guardian ad litem, who is expected to promote the best interest of the alleged incapacitated individual, rather than the alleged incapacitated individual's expressed preferences.

(c) If an alleged incapacitated person is represented by counsel and does not communicate with counsel, counsel may ask the court for leave to withdraw for that reason. If satisfied, after affording the alleged incapacitated person an opportunity for a hearing, that the request is justified, the court may grant the request and allow the case to proceed with the alleged incapacitated person unrepresented.

(2) During the pendency of any guardianship, any attorney purporting to represent a person alleged or adjudicated to be incapacitated shall petition to be appointed to represent the incapacitated or alleged incapacitated person. Fees for representation described in this section shall be subject to approval by the court pursuant to the provisions of RCW 11.92.180.

(3) The alleged incapacitated person is further entitled to testify and present evidence and, upon request, entitled to a jury trial on the issues of his or her alleged incapacity. The standard of proof to be applied in a contested case, whether before a jury or the court, shall be that of clear, cogent, and convincing evidence.

(4) In all proceedings for appointment of a guardian or limited guardian, the court must be presented with a written report from a physician licensed to practice under chapter 18.71 or 18.57 RCW, psychologist licensed under chapter 18.83 RCW, or advanced registered nurse practitioner licensed under chapter 18.79 RCW, selected by the guardian ad litem. If the alleged incapacitated person opposes the health care professional selected by the guardian ad litem to prepare the medical report, then the guardian ad litem shall use the health care professional selected by the alleged incapacitated person. The guardian ad litem may also obtain a supplemental examination. The physician, psychologist, or advanced registered nurse practitioner shall have personally examined and interviewed the alleged incapacitated person within thirty days of preparation of the report to the court and shall have expertise in the type of disorder or incapacity the alleged incapacitated person is believed to have. The report shall contain the following information and shall be set forth in substantially the following format:

(a) The name and address of the examining physician, psychologist, or advanced registered nurse practitioner;

(b) The education and experience of the physician, psychologist, or advanced registered nurse practitioner pertinent to the case;

(c) The dates of examinations of the alleged incapacitated person;

(d) A summary of the relevant medical, functional, neurological, or mental health history of the alleged incapacitated person as known to the examining physician, psychologist, or advanced registered nurse practitioner;

(e) The findings of the examining physician, psychologist, or advanced registered nurse practitioner as to the condition of the alleged incapacitated person;

(f) Current medications;

(g) The effect of current medications on the alleged incapacitated person's ability to understand or participate in guardianship proceedings;

(h) Opinions on the specific assistance the alleged incapacitated person needs;

(i) Identification of persons with whom the physician, psychologist, or advanced registered nurse practitioner has met or spoken regarding the alleged incapacitated person.

The court shall not enter an order appointing a guardian or limited guardian until a medical or mental status report meeting the above requirements is filed.

The requirement of filing a medical report is waived if the basis of the guardianship is minority.

(5) During the pendency of an action to establish a guardianship, a petitioner or any person may move for temporary relief under chapter 7.40 RCW, to protect the alleged incapacitated person from abuse, neglect, abandonment, or exploitation, as those terms are defined in RCW 74.34.020, or to address any other emergency needs of the alleged incapacitated person. Any alternative arrangement executed before filing the petition for guardianship shall remain effective unless the court grants the relief requested under chapter 7.40 RCW, or unless, following notice and a hearing at which all parties directly affected by the arrangement are present, the court finds that the alternative arrangement should not remain effective. [2001 c 148 § 1; 1996 c 249 § 9; 1995 c 297 § 3; 1991 c 289 § 4; 1990 c 122 § 6; 1977 ex.s. c 309 § 5; 1975 1st ex.s. c 95 § 7.]

Intent—1996 c 249: See note following RCW 2.56.030.

Additional notes found at www.leg.wa.gov

11.88.080 Guardians nominated by will or durable power of attorney. (Effective until January 1, 2022.) When either parent is deceased, the surviving parent of any minor child or a sole parent of a minor child, may by last will or durable power of attorney nominate a guardian or guardians of the person, or of the estate or both, of a minor child, whether born at the time of executing the instrument or afterwards, to continue during the minority of such child or for any less time. This nomination shall be effective in the event of the death or incapacity of such parent. Every guardian of the estate of a child shall give bond in like manner and with like conditions as required by RCW 11.88.100 and 11.88.110, and he or she shall have the same powers and perform the same duties with regard to the person and estate of the minor as a guardian appointed under this chapter. The court shall confirm the parent's nomination unless the court finds, based upon evidence presented at a hearing on the mat-

ter, that the individual nominated in the surviving parent's will or durable power of attorney is not qualified to serve. In the event of a conflict between the provisions of a will nominating a testamentary guardian under the authority of this section and the nomination of a guardian under RCW 11.125.410, the most recent designation shall control. This section applies to actions commenced under RCW 11.125.160. [2016 c 209 § 401; 2005 c 97 § 11; 1990 c 122 § 7; 1965 c 145 § 11.88.080. Prior: 1917 c 156 § 210; RRS § 1580; prior: Code 1881 § 1618; 1860 p 228 § 335.]

Short title—Application—Uniformity—Federal law application—Federal electronic signatures in global and national commerce act—Application—Dates—Effective date—2016 c 209: See RCW 11.125.010 and 11.125.900 through 11.125.903.

Additional notes found at www.leg.wa.gov

11.88.090 Guardian ad litem—Mediation—Appointment—Qualifications—Notice of and statement by guardian ad litem—Hearing and notice—Attorneys' fees and costs—Registry—Duties—Report—Responses—Fee. (Effective until January 1, 2022.) (1) Nothing contained in RCW 11.88.080 through 11.88.120, 11.92.010 through 11.92.040, 11.92.060 through 11.92.120, 11.92.170, and 11.92.180 shall affect or impair the power of any court to appoint a guardian ad litem to defend the interests of any incapacitated person interested in any suit or matter pending therein, or to commence and prosecute any suit in his or her behalf.

(2) Prior to the appointment of a guardian or a limited guardian, whenever it appears that the incapacitated person or incapacitated person's estate could benefit from mediation and such mediation would likely result in overall reduced costs to the estate, upon the motion of the alleged incapacitated person or the guardian ad litem, or subsequent to such appointment, whenever it appears that the incapacitated person or incapacitated person's estate could benefit from mediation and such mediation would likely result in overall reduced costs to the estate, upon the motion of any interested person, the court may:

(a) Require any party or other person subject to the jurisdiction of the court to participate in mediation;

(b) Establish the terms of the mediation; and

(c) Allocate the cost of the mediation pursuant to *RCW 11.96.140.

(3) Upon receipt of a petition for appointment of guardian or limited guardian, except as provided herein, the court shall appoint a guardian ad litem to represent the best interests of the alleged incapacitated person, who shall be a person found or known by the court to:

(a) Be free of influence from anyone interested in the result of the proceeding; and

(b) Have the requisite knowledge, training, or expertise to perform the duties required by this section.

The guardian ad litem shall within five days of receipt of notice of appointment file with the court and serve, either personally or by certified mail with return receipt, each party with a statement including: His or her training relating to the duties as a guardian ad litem; his or her criminal history as defined in RCW 9.94A.030 for the period covering ten years prior to the appointment; his or her hourly rate, if compensated; whether the guardian ad litem has had any contact with

a party to the proceeding prior to his or her appointment; and whether he or she has an apparent conflict of interest. Within three days of the later of the actual service or filing of the guardian ad litem's statement, any party may set a hearing and file and serve a motion for an order to show cause why the guardian ad litem should not be removed for one of the following three reasons: (i) Lack of expertise necessary for the proceeding; (ii) an hourly rate higher than what is reasonable for the particular proceeding; or (iii) a conflict of interest. Notice of the hearing shall be provided to the guardian ad litem and all parties. If, after a hearing, the court enters an order replacing the guardian ad litem, findings shall be included, expressly stating the reasons for the removal. If the guardian ad litem is not removed, the court has the authority to assess to the moving party, attorneys' fees and costs related to the motion. The court shall assess attorneys' fees and costs for frivolous motions.

No guardian ad litem need be appointed when a parent is petitioning for a guardian or a limited guardian to be appointed for his or her minor child and the minority of the child, as defined by RCW 11.92.010, is the sole basis of the petition. The order appointing the guardian ad litem shall recite the duties set forth in subsection (5) of this section. The appointment of a guardian ad litem shall have no effect on the legal competency of the alleged incapacitated person and shall not overcome the presumption of competency or full legal and civil rights of the alleged incapacitated person.

(4)(a) The superior court of each county shall develop and maintain a registry of persons who are willing and qualified to serve as guardians ad litem in guardianship matters. The court shall choose as guardian ad litem a person whose name appears on the registry in a system of consistent rotation, except in extraordinary circumstances such as the need for particular expertise. The court shall develop procedures for periodic review of the persons on the registry and for probation, suspension, or removal of persons on the registry for failure to perform properly their duties as guardian ad litem. In the event the court does not select the person next on the list, it shall include in the order of appointment a written reason for its decision.

(b) To be eligible for the registry a person shall:

(i) Present a written statement outlining his or her background and qualifications. The background statement shall include, but is not limited to, the following information:

(A) Level of formal education;

(B) Training related to the guardian ad litem's duties;

(C) Number of years' experience as a guardian ad litem;

(D) Number of appointments as a guardian ad litem and the county or counties of appointment;

(E) Criminal history, as defined in RCW 9.94A.030; and

(F) Evidence of the person's knowledge, training, and experience in each of the following: Needs of impaired elderly people, physical disabilities, mental illness, developmental disabilities, and other areas relevant to the needs of incapacitated persons, legal procedure, and the requirements of chapters 11.88 and 11.92 RCW.

The written statement of qualifications shall include the names of any counties in which the person was removed from a guardian ad litem registry pursuant to a grievance action, and the name of the court and the cause number of any case in which the court has removed the person for cause; and

(ii) Complete the training as described in (e) of this subsection. The training is not applicable to guardians ad litem appointed pursuant to special proceeding Rule 98.16W.

(c) Superior court shall remove any person from the guardian ad litem registry who misrepresents his or her qualifications pursuant to a grievance procedure established by the court.

(d) The background and qualification information shall be updated annually.

(e) The department of social and health services shall convene an advisory group to develop a model guardian ad litem training program and shall update the program biennially. The advisory group shall consist of representatives from consumer, advocacy, and professional groups knowledgeable in developmental disabilities, neurological impairment, physical disabilities, mental illness, domestic violence, aging, legal, court administration, the Washington state bar association, and other interested parties.

(f) The superior court shall require utilization of the model program developed by the advisory group as described in (e) of this subsection, to assure that candidates applying for registration as a qualified guardian ad litem shall have satisfactorily completed training to attain these essential minimum qualifications to act as guardian ad litem.

(5) The guardian ad litem appointed pursuant to this section shall have the following duties:

(a) To meet and consult with the alleged incapacitated person as soon as practicable following appointment and explain, in language which such person can reasonably be expected to understand, the substance of the petition, the nature of the resultant proceedings, the person's right to contest the petition, the identification of the proposed guardian or limited guardian, the right to a jury trial on the issue of his or her alleged incapacity, the right to independent legal counsel as provided by RCW 11.88.045, and the right to be present in court at the hearing on the petition;

(b) To obtain a written report according to RCW 11.88.045; and such other written or oral reports from other qualified professionals as are necessary to permit the guardian ad litem to complete the report required by this section;

(c) To meet with the person whose appointment is sought as guardian or limited guardian and ascertain:

(i) The proposed guardian's knowledge of the duties, requirements, and limitations of a guardian; and

(ii) The steps the proposed guardian intends to take or has taken to identify and meet the needs of the alleged incapacitated person;

(d) To consult as necessary to complete the investigation and report required by this section with those known relatives, friends, or other persons the guardian ad litem determines have had a significant, continuing interest in the welfare of the alleged incapacitated person;

(e) To investigate alternate arrangements made, or which might be created, by or on behalf of the alleged incapacitated person, such as revocable or irrevocable trusts, durable powers of attorney, or blocked accounts; whether good cause exists for any such arrangements to be discontinued; and why such arrangements should not be continued or created in lieu of a guardianship;

(f) To provide the court with a written report which shall include the following:

(i) A description of the nature, cause, and degree of incapacity, and the basis upon which this judgment was made;

(ii) A description of the needs of the incapacitated person for care and treatment, the probable residential requirements of the alleged incapacitated person and the basis upon which these findings were made;

(iii) An evaluation of the appropriateness of the guardian or limited guardian whose appointment is sought and a description of the steps the proposed guardian has taken or intends to take to identify and meet current and emerging needs of the incapacitated person;

(iv) A description of any alternative arrangements previously made by the alleged incapacitated person or which could be made, and whether and to what extent such alternatives should be used in lieu of a guardianship, and if the guardian ad litem is recommending discontinuation of any such arrangements, specific findings as to why such arrangements are contrary to the best interest of the alleged incapacitated person;

(v) A description of the abilities of the alleged incapacitated person and a recommendation as to whether a guardian or limited guardian should be appointed. If appointment of a limited guardian is recommended, the guardian ad litem shall recommend the specific areas of authority the limited guardian should have and the limitations and disabilities to be placed on the incapacitated person;

(vi) An evaluation of the person's mental ability to rationally exercise the right to vote and the basis upon which the evaluation is made;

(vii) Any expression of approval or disapproval made by the alleged incapacitated person concerning the proposed guardian or limited guardian or guardianship or limited guardianship;

(viii) Identification of persons with significant interest in the welfare of the alleged incapacitated person who should be advised of their right to request special notice of proceedings pursuant to RCW 11.92.150; and

(ix) Unless independent counsel has appeared for the alleged incapacitated person, an explanation of how the alleged incapacitated person responded to the advice of the right to jury trial, to independent counsel and to be present at the hearing on the petition.

Within forty-five days after notice of commencement of the guardianship proceeding has been served upon the guardian ad litem, and at least fifteen days before the hearing on the petition, unless an extension or reduction of time has been granted by the court for good cause, the guardian ad litem shall file its report and send a copy to the alleged incapacitated person and his or her counsel, spouse or domestic partner, all children not residing with a notified person, those persons described in (f)(viii) of this subsection, and persons who have filed a request for special notice pursuant to RCW 11.92.150. If the guardian ad litem needs additional time to finalize his or her report, then the guardian ad litem shall petition the court for a postponement of the hearing or, with the consent of all other parties, an extension or reduction of time for filing the report. If the hearing does not occur within sixty days of filing the petition, then upon the two-month anniversary of filing the petition and on or before the same day of each following month until the hearing, the guardian ad litem shall file interim reports summarizing his or her activities on

the proceeding during that time period as well as fees and costs incurred;

(g) To advise the court of the need for appointment of counsel for the alleged incapacitated person within five court days after the meeting described in (a) of this subsection unless (i) counsel has appeared, (ii) the alleged incapacitated person affirmatively communicated a wish not to be represented by counsel after being advised of the right to representation and of the conditions under which court-provided counsel may be available, or (iii) the alleged incapacitated person was unable to communicate at all on the subject, and the guardian ad litem is satisfied that the alleged incapacitated person does not affirmatively desire to be represented by counsel.

(6) If the petition is brought by an interested person or entity requesting the appointment of some other qualified person or entity and a prospective guardian or limited guardian cannot be found, the court shall order the guardian ad litem to investigate the availability of a possible guardian or limited guardian and to include the findings in a report to the court pursuant to subsection (5)(f) of this section.

(7) The parties to the proceeding may file responses to the guardian ad litem report with the court and deliver such responses to the other parties and the guardian ad litem at any time up to the second day prior to the hearing. If a guardian ad litem fails to file his or her report in a timely manner, the hearing shall be continued to give the court and the parties at least fifteen days before the hearing to review the report. At any time during the proceeding upon motion of any party or on the court's own motion, the court may remove the guardian ad litem for failure to perform his or her duties as specified in this chapter, provided that the guardian ad litem shall have five days' notice of any motion to remove before the court enters such order. In addition, the court in its discretion may reduce a guardian ad litem's fee for failure to carry out his or her duties.

(8) The court appointed guardian ad litem shall have the authority, in the event that the alleged incapacitated person is in need of emergency lifesaving medical services, and is unable to consent to such medical services due to incapacity pending the hearing on the petition to give consent for such emergency lifesaving medical services on behalf of the alleged incapacitated person.

(9) The court-appointed guardian ad litem shall have the authority to move for temporary relief under chapter 7.40 RCW to protect the alleged incapacitated person from abuse, neglect, abandonment, or exploitation, as those terms are defined in RCW 74.34.020, or to address any other emergency needs of the alleged incapacitated person. Any alternative arrangement executed before filing the petition for guardianship shall remain effective unless the court grants the relief requested under chapter 7.40 RCW, or unless, following notice and a hearing at which all parties directly affected by the arrangement are present, the court finds that the alternative arrangement should not remain effective.

(10) The guardian ad litem shall receive a fee determined by the court. The fee shall be charged to the alleged incapacitated person unless the court finds that such payment would result in substantial hardship upon such person, in which case the county shall be responsible for such costs: PROVIDED, That the court may charge such fee to the petitioner, the

alleged incapacitated person, or any person who has appeared in the action; or may allocate the fee, as it deems just. If the petition is found to be frivolous or not brought in good faith, the guardian ad litem fee shall be charged to the petitioner. The court shall not be required to provide for the payment of a fee to any salaried employee of a public agency.

(11) Upon the presentation of the guardian ad litem report and the entry of an order either dismissing the petition for appointment of guardian or limited guardian or appointing a guardian or limited guardian, the guardian ad litem shall be dismissed and shall have no further duties or obligations unless otherwise ordered by the court. If the court orders the guardian ad litem to perform further duties or obligations, they shall not be performed at county expense.

(12) The guardian ad litem shall appear in person at all hearings on the petition unless all parties provide a written waiver of the requirement to appear.

(13) At any hearing the court may consider whether any person who makes decisions regarding the alleged incapacitated person or estate has breached a statutory or fiduciary duty. [2008 c 6 § 804; 2000 c 124 § 1; 1999 c 360 § 1; 1996 c 249 § 10; 1995 c 297 § 4; 1991 c 289 § 5; 1990 c 122 § 8; 1977 ex.s. c 309 § 6; 1975 1st ex.s. c 95 § 9; 1965 c 145 § 11.88.090. Prior: 1917 c 156 § 211; RRS § 1581; prior: Code 1881 § 1619; 1873 p 318 § 314; 1860 p 228 § 336.]

Rules of court: Judgment for and settlement of claims of minors: SPR 98.16W.

*Reviser's note: RCW 11.96.140 was repealed by 1999 c 42 § 637, effective January 1, 2000.

Intent—1996 c 249: See note following RCW 2.56.030.

Costs against guardian of infant plaintiff: RCW 4.84.140.

District judge, guardian ad litem if defendant minor, appointment of: RCW 12.04.150.

Execution against for costs against infant plaintiff: RCW 4.84.140.

Incapacitated persons

appearance in civil action: RCW 4.08.060.

appointment for civil actions: RCW 4.08.060.

Liability for costs against infant plaintiffs: RCW 4.84.140.

Minors, for

appearance in civil actions: RCW 4.08.050.

appointment for civil actions: RCW 4.08.050.

district court proceedings: RCW 12.04.150.

Registration of land titles, appointment for minors: RCW 65.12.145.

Additional notes found at www.leg.wa.gov

11.88.093 Ex parte communications—Removal. (Effective until January 1, 2022.) A guardian ad litem shall not engage in ex parte communications with any judicial officer involved in the matter for which he or she is appointed during the pendency of the proceeding, except as permitted by court rule or statute for ex parte motions. Ex parte motions shall be heard in open court on the record. The record may be preserved in a manner deemed appropriate by the county where the matter is heard. The court, upon its own motion, or upon the motion of a party, may consider the removal of any guardian ad litem who violates this section from any pending case or from any court-authorized registry, and if so removed may require forfeiture of any fees for professional services on the pending case. [2000 c 124 § 10.]

11.88.095 Disposition of guardianship petition. (Effective until January 1, 2022.) (1) In determining the dis-

position of a petition for guardianship, the court's order shall be based upon findings as to the capacities, condition, and needs of the alleged incapacitated person, and shall not be based solely upon agreements made by the parties.

(2) Every order appointing a full or limited guardian of the person or estate shall include:

(a) Findings as to the capacities, condition, and needs of the alleged incapacitated person;

(b) The amount of the bond, if any, or a bond review period;

(c) The date the account or report shall be filed. The date of filing an account or report shall be within ninety days after the anniversary date of the appointment;

(d) A date for the court to review the account or report and enter its order. The court shall conduct the review within one hundred twenty days after the anniversary date of the appointment and follow the provisions of RCW 11.92.050. The court may review and approve an account or report without conducting a hearing;

(e) A directive to the clerk of court to issue letters of guardianship as specified in RCW 11.88.127;

(f) Whether the guardian ad litem shall continue acting as guardian ad litem;

(g) Whether a review hearing shall be required upon the filing of the inventory;

(h) Whether a review hearing is required upon filing the initial personal care plan;

(i) The authority of the guardian, if any, for investment and expenditure of the ward's estate;

(j) Names and addresses of those persons described in RCW 11.88.090(5)(d), if any, whom the court believes should receive copies of further pleadings filed by the guardian with respect to the guardianship. The guardian, within ninety days from the date of the appointment, shall, in writing, notify the persons identified by the court of their right to request special notice of proceedings as described in RCW 11.92.150; and

(k) A guardianship summary placed directly below the case caption or on a separate cover page in the following form, or a substantially similar form, containing the following information:

GUARDIANSHIP SUMMARY

- Date Guardian Appointed:
Due Date for Report and Accounting:
Date of Next Review:
Letters Expire On:
Bond Amount:
Restricted Account Agreements Required:
Due Date for Inventory:
Due Date for Care Plan:

Incapacitated Person Guardian of: [] Estate [] Person (IP)

Name: Name:

Address:	Address:
Phone:	Phone:
Facsimile:	Facsimile:

Interested Parties	Address	Relation to IP

(3) If the court determines that a limited guardian should be appointed, the order shall specifically set forth the limits by either stating exceptions to the otherwise full authority of the guardian or by stating the specific authority of the guardian.

(4) In determining the disposition of a petition for appointment of a guardian or limited guardian of the estate only, the court shall consider whether the alleged incapacitated person is capable of giving informed medical consent or of making other personal decisions and, if not, whether a guardian or limited guardian of the person of the alleged incapacitated person should be appointed for that purpose.

(5) Unless otherwise ordered, any powers of attorney or durable powers of attorney shall be revoked upon appointment of a guardian or limited guardian of the estate.

If there is an existing medical power of attorney, the court must make a specific finding of fact regarding the continued validity of that medical power of attorney before appointing a guardian or limited guardian for the person. [2011 c 329 § 4; 1995 c 297 § 5; 1991 c 289 § 6; 1990 c 122 § 9.]

Additional notes found at www.leg.wa.gov

11.88.097 Guardian ad litem—Fees. (Effective until January 1, 2022.) The court shall specify the hourly rate the guardian ad litem may charge for his or her services, and shall specify the maximum amount the guardian ad litem may charge without additional court review and approval. The court shall specify rates and fees in the order of appointment or at the earliest date the court is able to determine the appropriate rates and fees and prior to the guardian ad litem billing for his or her services. This section shall apply except as provided by local court rule. [2000 c 124 § 13.]

11.88.100 Oath and bond of guardian or limited guardian. (Effective until January 1, 2022.) Before letters of guardianship are issued, each guardian or limited guardian shall take and subscribe an oath and, unless dispensed with by order of the court as provided in RCW 11.88.105, file a bond, with sureties to be approved by the court, payable to the state, in such sum as the court may fix, taking into account the character of the assets on hand or anticipated and the income to be received and disbursements to be made, and such bond shall be conditioned substantially as follows:

The condition of this obligation is such, that if the above bound A.B., who has been appointed guardian or limited guardian for C.D., shall faithfully discharge the office and

(2021 Ed.)

trust of such guardian or limited guardian according to law and shall render a fair and just account of his or her guardianship or limited guardianship to the superior court of the county of, from time to time as he or she shall thereto be required by such court, and comply with all orders of the court, lawfully made, relative to the goods, chattels, moneys, care, management, and education of such incapacitated person, or his or her property, and render and pay to such incapacitated person all moneys, goods, chattels, title papers, and effects which may come into the hands or possession of such guardian or limited guardian, at such time and in such manner as the court may order, then this obligation shall be void, otherwise it shall remain in effect.

The bond shall be for the use of the incapacitated person, and shall not become void upon the first recovery, but may be put in suit from time to time against all or any one of the obligors, in the name and for the use and benefit of any person entitled by the breach thereof, until the whole penalty is recovered thereon. The court may require an additional bond whenever for any reason it appears to the court that an additional bond should be given.

In all guardianships or limited guardianships of the person, and in all guardianship or limited guardianships of the estate, in which the petition alleges that the alleged incapacitated person has total assets of a value of less than three thousand dollars, the court may dispense with the requirement of a bond pending filing of an inventory confirming that the estate has total assets of less than three thousand dollars: PROVIDED, That the guardian or limited guardian shall swear to report to the court any changes in the total assets of the incapacitated person increasing their value to over three thousand dollars: PROVIDED FURTHER, That the guardian or limited guardian shall file a yearly statement showing the monthly income of the incapacitated person if said monthly income, excluding moneys from state or federal benefits, is over the sum of five hundred dollars per month for any three consecutive months. [2010 c 8 § 2088; 1990 c 122 § 10; 1983 c 271 § 1; 1977 ex.s. c 309 § 7; 1975 1st ex.s. c 95 § 10; 1965 c 145 § 11.88.100. Prior: 1961 c 155 § 1; 1951 c 242 § 1; 1947 c 145 § 1; 1945 c 41 § 1; 1917 c 156 § 203; Rem. Supp. 1947 § 1573; prior: 1905 c 17 § 1; Code 1881 § 1612; 1860 p 226 § 329.]

Citation of surety on bond: RCW 11.92.056.

Suretyship: Chapter 19.72 RCW.

Additional notes found at www.leg.wa.gov

11.88.105 Reduction in amount of bond. (Effective until January 1, 2022.) In cases where all or a portion of the estate consisting of cash or securities has been placed in possession of savings and loan associations or banks, trust companies, escrow corporations, or other corporations approved by the court and if a verified receipt signed by the custodian of the funds is filed by the guardian or limited guardian in court stating that such corporations hold the cash or securities subject to order of court, the court may in its discretion dispense with the bond or reduce the amount of the bond by the amount of such deposits. [1990 c 122 § 11; 1975 1st ex.s. c 95 § 11; 1965 c 145 § 11.88.105.]

Additional notes found at www.leg.wa.gov

11.88.107 When bond not required. (Effective until January 1, 2022.) In all cases where a bank or trust company, authorized to act as guardian or limited guardian, or where a nonprofit corporation is authorized under its articles of incorporation to act as guardian or limited guardian, is appointed as guardian or limited guardian, or acts as guardian or limited guardian under an appointment as such heretofore made, no bond shall be required: PROVIDED, That in the case of appointment of a nonprofit corporation court approval shall be required before any bond requirement of this chapter may be waived. [1990 c 122 § 12; 1977 ex.s. c 309 § 8; 1975 1st ex.s. c 95 § 12; 1965 c 145 § 11.88.107.]

Additional notes found at www.leg.wa.gov

11.88.110 Law on executors' and administrators' bonds applicable. (Effective until January 1, 2022.) All the provisions of this title relative to bonds given by executors and administrators shall apply to bonds given by guardians or limited guardians. [1975 1st ex.s. c 95 § 13; 1965 c 145 § 11.88.110. Prior: 1917 c 156 § 204; RRS § 1574; prior: Code 1881 § 1617; 1860 p 228 § 334.]

11.88.115 Notice to department of revenue. (Effective until January 1, 2022.) Duty of guardian to notify department of revenue; personal liability for taxes upon failure to give notice: See RCW 82.32.240.

11.88.120 Modification or termination of guardianship—Procedure. (Effective until January 1, 2022.) (1)(a) At any time after establishment of a guardianship or appointment of a guardian, the court may, upon the death of the guardian or limited guardian, or, for other good reason, modify or terminate the guardianship or replace the guardian or limited guardian or modify the authority of a guardian or limited guardian. Such action may be taken based on the court's own motion, based on a motion by an attorney for a person or entity, based on a motion of a person or entity representing themselves, or based on a written complaint, as described in this section. The court may grant relief under this section as it deems just and in the best interest of the incapacitated person. For any hearing to modify or terminate a guardianship, the incapacitated person shall be given reasonable notice of the hearing and of the incapacitated person's right to be represented at the hearing by counsel of his or her own choosing.

(b) The court must modify or terminate a guardianship when a less restrictive alternative, such as a power of attorney or a trust, will adequately provide for the needs of the incapacitated person. In any motion to modify or terminate a guardianship with a less restrictive alternative, the court should consider any recent medical reports; whether a condition is reversible; testimony of the incapacitated person; testimony of persons most closely related by blood, marriage, or state registered domestic partnership to the incapacitated person; testimony of persons entitled to notice of special proceedings under RCW 11.92.150; and other needs of the incapacitated person that are not adequately served in a guardianship or limited guardianship that may be better served with a less restrictive alternative. All motions under the provisions of this subsection (1)(b) must be heard within sixty days unless an extension of time is requested by a party or a guardian ad litem within such sixty-day period and granted for

good cause shown. An extension granted for good cause should not exceed an additional sixty days from the date of the request of the extension, and the court must set a new hearing date.

(2)(a) An unrepresented person or entity may submit a complaint to the court. Complaints must be addressed to one of the following designees of the court: The clerk of the court having jurisdiction in the guardianship, the court administrator, or the guardianship monitoring program, and must identify the complainant and the incapacitated person who is the subject of the guardianship. The complaint must also provide the complainant's address, the case number (if available), and the address of the incapacitated person (if available). The complaint must state facts to support the claim.

(b) By the next judicial day after receipt of a complaint from an unrepresented person, the court's designee must ensure the original complaint is filed and deliver the complaint to the court.

(c) Within fourteen days of being presented with a complaint, the court must enter an order to do one or more of the following actions:

(i) To show cause, with fourteen days' notice, directing the guardian to appear at a hearing set by the court in order to respond to the complaint;

(ii) To appoint a guardian ad litem to investigate the issues raised by the complaint or to take any emergency action the court deems necessary to protect the incapacitated person until a hearing can be held;

(iii) To dismiss the complaint without scheduling a hearing, if it appears to the court that the complaint: Is without merit on its face; is filed in other than good faith; is filed for an improper purpose; regards issues that have already been adjudicated; or is frivolous. In making a determination, the court may review the matter and consider previous behavior of the complainant that is documented in the guardianship record;

(iv) To direct the guardian to provide, in not less than fourteen days, a written report to the court on the issues raised in the complaint;

(v) To defer consideration of the complaint until the next regularly scheduled hearing in the guardianship, if the date of that hearing is within the next three months, provided that there is no indication that the incapacitated person will suffer physical, emotional, financial, or other harm as a result of the court's deferral of consideration;

(vi) To order other action, in the court's discretion, in addition to doing one or more of the actions set out in this subsection.

(d) If after consideration of the complaint, the court believes that the complaint is made without justification or for reason to harass or delay or with malice or other bad faith, the court has the power to levy necessary sanctions, including but not limited to the imposition of reasonable attorney fees, costs, fees, striking pleadings, or other appropriate relief.

(3) The court may order persons who have been removed as guardians to deliver any property or records belonging to the incapacitated person in accordance with the court's order. Similarly, when guardians have died or been removed and property or records of an incapacitated person are being held by any other person, the court may order that person to

deliver it in accordance with the court's order. Disobedience of an order to deliver is punishable as contempt of court.

(4) The administrative office of the courts must develop and prepare, in consultation with interested persons, a model form for the complaint described in subsection (2)(a) of this section and a model form for the order that must be issued by the court under subsection (2)(c) of this section.

(5) The board may send a grievance it has received regarding an active guardian case to the court's designee with a request that the court review the grievance and take any action the court deems necessary. This type of request from the board must be treated as a complaint under this section and the person who sent the complaint must be treated as the complainant. The court must direct the clerk to transmit a copy of its order to the board. The board must consider the court order when taking any further action and note the court order in any final determination.

(6) In any court action under this section that involves a professional guardian, the court must direct the clerk of the court to send a copy of the order entered under this section to the board.

(7) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Board" means the certified professional guardianship board.

(b) "Complaint" means a written submission by an unrepresented person or entity, who is referred to as the complainant. [2017 c 271 § 2; 2015 c 293 § 1; 1991 c 289 § 7; 1990 c 122 § 14; 1977 ex.s. c 309 § 9; 1975 1st ex.s. c 95 § 14; 1965 c 145 § 11.88.120. Prior: 1917 c 156 § 209; RRS § 1579; prior: Code 1881 § 1616; 1860 p 227 § 333; 1855 p 17 § 11.]

Findings—2017 c 271: "The legislature finds that an incapacitated person should retain basic rights enjoyed by the public, including the freedom of associating with family and friends. A court or guardian should not remove or restrict the rights of an incapacitated person under a guardianship except when absolutely necessary to protect the incapacitated person. The legislature finds that less restrictive alternatives are preferred to guardianships and limited guardianships when they provide adequate support for an incapacitated person's needs. The legislature also recognizes that less restrictive alternatives are typically less expensive to administer than a guardianship, thereby preserving state resources, court resources, and the incapacitated person's estate. A less restrictive alternative may be in the form of a power of attorney, or a trust, or other legal, financial, or medical directives that allow an incapacitated person to enjoy a greater degree of individual liberty and decision making than for persons under a guardianship." [2017 c 271 § 1.]

Additional notes found at www.leg.wa.gov

11.88.125 Standby limited guardian or limited guardian. (Effective until January 1, 2022.)

(1) Any individual or professional guardian appointed by the court as either guardian or limited guardian of the person and/or estate of an incapacitated person shall file in writing with the court, within ninety days from the date of appointment, a notice designating a standby guardian or standby limited guardian to serve as guardian or limited guardian at the death, legal incapacity, or planned absence of the court-appointed guardian or limited guardian. The notice shall state the name, address, zip code, and telephone number of the designated standby guardian or standby limited guardian. Notice of the guardian's designation of the standby guardian or standby limited guardian shall be given to the standby guardian or standby limited guardian, the incapacitated person and his or her spouse or

domestic partner and adult children, any facility in which the incapacitated person resides, and any person who requested special notice under RCW 11.92.150.

(2)(a) If the regularly appointed guardian or limited guardian dies or becomes incapacitated, then the standby guardian or standby limited guardian shall have all the powers, duties, and obligations of the regularly appointed guardian or limited guardian and in addition shall, within a period of thirty days from the death or adjudication of incapacity of the regularly appointed guardian or limited guardian, file with the superior court in the county in which the guardianship or limited guardianship is then being administered, a petition for appointment of a substitute guardian or limited guardian. Upon the court's appointment of a new, substitute guardian or limited guardian, the standby guardian or standby limited guardian shall make an accounting and report to be approved by the court, and upon approval of the court, the standby guardian or standby limited guardian shall be released from all duties and obligations arising from or out of the guardianship or limited guardianship.

(b) Letters of guardianship shall be issued to the standby guardian or standby limited guardian upon filing an oath and posting a bond as required by RCW 11.88.100. The oath may be filed prior to the regularly appointed guardian's or limited guardian's death or incapacity. The standby guardian or standby limited guardian shall provide notice of such appointment to the incapacitated person and his or her spouse or domestic partner and adult children, any facility in which the incapacitated person resides, and any person who requested special notice under RCW 11.92.150.

(c) The provisions of RCW 11.88.100 through 11.88.110 shall apply to standby guardians and standby limited guardians.

(3)(a) A standby guardian or standby limited guardian may assume some or all of the duties, responsibilities, and powers of the guardian or limited guardian during the guardian's or limited guardian's planned absence. Prior to the commencement of the guardian's or limited guardian's planned absence and prior to the standby guardian or standby limited guardian assuming any duties, responsibilities, and powers of the guardian or limited guardian, the guardian or limited guardian shall file a petition in the superior court where the guardianship or limited guardianship is being administered stating the dates of the planned absence and the duties, responsibilities, and powers the standby guardian or standby limited guardian should assume. The guardian or limited guardian shall give notice of the planned absence petition to the standby guardian or standby limited guardian, the incapacitated person and his or her spouse or domestic partner and adult children, any facility in which the incapacitated person resides, and any person who requested special notice under RCW 11.92.150.

(b) Upon the conclusion of the hearing on the planned absence petition, and a determination by the court that the standby guardian or standby limited guardian meets the requirements of RCW 11.88.020, the court shall issue an order specifying: (i) The amount of bond as required by RCW 11.88.100 through 11.88.110 to be filed by the standby guardian or standby limited guardian; (ii) the duties, responsibilities, and powers the standby guardian or standby limited guardian will assume during the planned absence; (iii) the

These Letters remain in full force and effect until the date of expiration set forth above.

The seal of Superior Court has been affixed and witnessed by my hand this day of,

., Clerk of Superior Court

By, Deputy

.
(Signature of Deputy)

(2) The court shall order the clerk to issue letters of guardianship that are valid for a period of up to five years from the anniversary date of the appointment. When determining the time period for which the letters will be valid, the court must consider: The length of time the guardian has been serving the incapacitated person; whether the guardian has timely filed all required reports with the court; whether the guardian is monitored by other state or local agencies; and whether there have been any allegations of abuse, neglect, or a breach of fiduciary duty against the guardian. [2011 c 329 § 6.]

11.88.130 Transfer of jurisdiction and venue. (Effective until January 1, 2022.) The court of any county having jurisdiction of any guardianship or limited guardianship proceeding is authorized to transfer jurisdiction and venue of the guardianship or limited guardianship proceeding to the court of any other county of the state upon application of the guardian, limited guardian, or incapacitated person and such notice to an alleged incapacitated person or other interested party as the court may require. Such transfers of guardianship or limited guardianship proceedings shall be made to the court of a county wherein either the guardian or limited guardian or alleged incapacitated person resides, as the court may deem appropriate, at the time of making application for such transfer. The original order providing for any such transfer shall be retained as a permanent record by the clerk of the court in which such order is entered, and a certified copy thereof together with the original file in such guardianship or limited guardianship proceeding and a certified transcript of all record entries up to and including the order for such change shall be transmitted to the clerk of the court to which such proceeding is transferred. [1990 c 122 § 16; 1975 1st ex.s. c 95 § 15; 1965 c 145 § 11.88.130. Prior: 1955 c 45 § 1.]

Additional notes found at www.leg.wa.gov

11.88.140 Termination of guardianship or limited guardianship. (Effective until January 1, 2022.) (1) TERMINATION WITHOUT COURT ORDER. A guardianship or limited guardianship is terminated:

(a) Upon the attainment of full and legal age, as defined in RCW 26.28.010 as now or hereafter amended, of any person defined as an incapacitated person pursuant to RCW 11.88.010 as now or hereafter amended solely by reason of youth, RCW 26.28.020 to the contrary notwithstanding, subject to subsection (2) of this section;

(b) By an adjudication of capacity or an adjudication of termination of incapacity;

(c) By the death of the incapacitated person;

(d) By expiration of the term of limited guardianship specified in the order appointing the limited guardian, unless prior to such expiration a petition has been filed and served, as provided in RCW 11.88.040 as now or hereafter amended, seeking an extension of such term.

(2) TERMINATION OF GUARDIANSHIP FOR A MINOR BY DECLARATION OF COMPLETION. A guardianship for the benefit of a minor may be terminated upon the minor's attainment of legal age, as defined in RCW 26.28.010 as now or hereafter amended, by the guardian filing a declaration that states:

(a) The date the minor attained legal age;

(b) That the guardian has paid all of the minor's funds in the guardian's possession to the minor, who has signed a receipt for the funds, and that the receipt has been filed with the court;

(c) That the guardian has completed the administration of the minor's estate and the guardianship is ready to be closed; and

(d) The amount of fees paid or to be paid to each of the following: (i) The guardian, (ii) lawyer or lawyers, (iii) accountant or accountants; and that the guardian believes the fees are reasonable and does not intend to obtain court approval of the amount of the fees or to submit a guardianship accounting to the court for approval. Subject to the requirement of notice as provided in this section, unless the minor petitions the court either for an order requiring the guardian to obtain court approval of the amount of fees paid or to be paid to the guardian, lawyers, or accountants, or for an order requiring an accounting, or both, within thirty days from the filing of the declaration of completion of guardianship, the guardian shall be automatically discharged without further order of the court. The guardian's powers will cease thirty days after filing the declaration of completion of guardianship. The declaration of completion of guardianship shall, at the time, be the equivalent of an entry of a decree terminating the guardianship, distributing the assets, and discharging the guardian for all legal intents and purposes.

Within five days of the date of filing the declaration of completion of guardianship, the guardian or the guardian's lawyer shall mail a copy of the declaration of completion to the minor together with a notice that shall be substantially as follows:

CAPTION OF CASE NOTICE OF FILING A DECLARATION OF COMPLETION OF GUARDIANSHIP

NOTICE IS GIVEN that the attached Declaration of Completion of Guardianship was filed by the undersigned in the above-entitled court on the day of, (year); unless you file a petition in the above-entitled court requesting the court to review the reasonableness of the fees, or for an accounting, or both, and serve a copy of the petition on the guardian or the guardian's lawyer, within thirty days

after the filing date, the amount of fees paid or to be paid will be deemed reasonable, the acts of the guardian will be deemed approved, the guardian will be automatically discharged without further order of the court and the Declaration of Completion of Guardianship will be final and deemed the equivalent of an order terminating the guardianship, discharging the guardian and decreeing the distribution of the guardianship assets.

If you file and serve a petition within the period specified, the undersigned will request the court to fix a time and place for the hearing of your petition, and you will be notified of the time and place of the hearing, by mail, or by personal service, not less than ten days before the hearing on the petition.

DATED this day of, (year)
Guardian

If the minor, after reaching legal age, waives in writing the notice required by this section, the guardian will be automatically discharged without further order of the court and the declaration of completion of guardianship will be effective as an order terminating the guardianship without an accounting upon filing the declaration. If the guardian has been required to furnish a bond, and a declaration of completion of guardianship is filed according to this section, any bond furnished by the guardian shall be automatically discharged upon the discharge of the guardian.

(3) TERMINATION ON COURT ORDER. A guardianship or limited guardianship may be terminated by court order after such notice as the court may require if the guardianship or limited guardianship is no longer necessary.

The guardian or limited guardian shall, within ninety days of the date of termination of the guardianship, unless the court orders a different deadline for good cause, prepare and file with the court a final verified account of administration. The final verified account of administration shall contain the same information as required for (a) an intermediate verified account of administration of the estate under RCW 11.92.040(2) and (b) an intermediate personal care status report under *RCW 11.92.043(2).

(4) EFFECT OF TERMINATION. When a guardianship or limited guardianship terminates other than by the death of the incapacitated person, the powers of the guardian or limited guardian cease, except that a guardian or limited guardian of the estate may make disbursements for claims that are or may be allowed by the court, for liabilities already properly incurred for the estate or for the incapacitated person, and for expenses of administration. When a guardianship or limited guardianship terminates by death of the incapacitated person, the guardian or limited guardian of the estate may proceed under RCW 11.88.150 as now or hereafter amended,

but the rights of all creditors against the incapacitated person's estate shall be determined by the law of decedents' estates. [2016 c 202 § 9; 2011 c 329 § 7; 1991 c 289 § 9; 1990 c 122 § 17; 1977 ex.s. c 309 § 11; 1975 1st ex.s. c 95 § 16; 1965 c 145 § 11.88.140.]

*Reviser's note: RCW 11.92.043 was amended by 2017 c 268 § 3, changing subsection (2) to subsection (1)(b).

Procedure on removal or death of guardian or limited guardian: RCW 11.88.120.

Settlement of estate upon termination: RCW 11.92.053.

Additional notes found at www.leg.wa.gov

11.88.150 Administration of deceased incapacitated person's estate. (Effective until January 1, 2022.)

(1) Upon the death of an incapacitated person, a guardian or limited guardian of the estate shall have authority to disburse or commit those funds under the control of the guardian or limited guardian as are prudent and within the means of the estate for the disposition of the deceased incapacitated person's remains. Consent for such arrangement shall be secured according to RCW 68.50.160. If no person authorized by *RCW 68.50.150 accepts responsibility for giving consent, the guardian or limited guardian of the estate may consent, subject to the provisions of this section and to the known directives of the deceased incapacitated person. Reasonable financial commitments made by a guardian or limited guardian pursuant to this section shall be binding against the estate of the deceased incapacitated person.

(2) Upon the death of an incapacitated person intestate the guardian or limited guardian of his or her estate has power under the letters issued to him or her and subject to the direction of the court to administer the estate as the estate of the deceased incapacitated person without further letters unless within forty days after death of the incapacitated person a petition is filed for letters of administration or for letters testamentary and the petition is granted. If the guardian or limited guardian elects to administer the estate under his or her letters of guardianship or limited guardianship, he or she shall petition the court for an order transferring the guardianship or limited guardianship proceeding to a probate proceeding, and upon court approval, the clerk of the court shall reindex the cause as a decedent's estate, using the same file number which was assigned to the guardianship or limited guardianship proceeding. The guardian or limited guardian shall then be authorized to continue administration of the estate without the necessity for any further petition or hearing. Notice to creditors and other persons interested in the estate shall be published and may be combined with the notice of the guardian's or limited guardian's final account. This notice shall be given and published in the manner provided in chapter 11.40 RCW. Upon the hearing, the account may be allowed and the balance distributed to the persons entitled thereto, after the payment of such claims as may be allowed. Liability on the guardian's or limited guardian's bond shall continue until exonerated on settlement of his or her account, and may apply to the complete administration of the estate of the deceased incapacitated person with the consent of the surety. If letters of administration are granted upon petition filed within forty days after the death of the incapacitated person, the personal representative shall supersede the guardian or limited guardian in the administration of the estate and the

estate shall be administered as a decedent's estate as provided in this title, including the publication of notice to creditors and other interested persons and the barring of creditors claims. [2010 c 8 § 2089; 1990 c 122 § 18; 1977 ex.s. c 309 § 12; 1975 1st ex.s. c 95 § 17; 1965 c 145 § 11.88.150.]

***Reviser's note:** The reference to RCW 68.50.150 appears to be erroneous. RCW 68.50.160 was apparently intended. RCW 68.50.150 was subsequently repealed by 2005 c 365 § 161.

Settlement of estate upon termination: RCW 11.92.053.

Additional notes found at www.leg.wa.gov

11.88.160 Guardianships involving veterans. (Effective until January 1, 2022.) For guardianships involving veterans see chapter 73.36 RCW. [1990 c 122 § 13.]

Additional notes found at www.leg.wa.gov

11.88.170 Guardianship courthouse facilitator program. (Effective until January 1, 2022.) A county may create a guardianship courthouse facilitator program to provide basic services to pro se litigants in guardianship cases. The legislative authority of any county may impose user fees or may impose a surcharge of up to twenty dollars, or both, on superior court cases filed under chapters 11.88, 11.90, 11.92, and 73.36 RCW to pay for the expenses of the guardianship courthouse facilitator program. Fees collected under this section shall be collected and deposited in the same manner as other county funds are collected and deposited, and shall be maintained in a separate guardianship courthouse facilitator account to be used as provided in this section. [2015 c 295 § 1.]

11.88.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (Effective until January 1, 2022.) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 35.]

Chapter 11.90 RCW

UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

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GENERAL PROVISIONS

11.90.010 Short title. This chapter may be cited as the uniform adult guardianship and protective proceedings jurisdiction act. [2009 c 81 § 1.]

Additional notes found at www.leg.wa.gov

11.90.020 Definitions. (Effective until January 1, 2022.) In this chapter:

- (1) "Adult" means an individual who has attained eighteen years of age.
- (2) "Guardian of the estate" means a person appointed by the court to administer the property of an adult, and includes a conservator appointed by the court in another state.
- (3) "Guardian of the person" or "guardian" means a person appointed by the court to make decisions regarding the person of an adult.
- (4) "Guardianship order" means an order appointing a guardian of the person or guardian of the estate.
- (5) "Guardianship proceeding" means a judicial proceeding in which an order for the appointment of a guardian of the person or guardian of the estate is sought or has been issued.
- (6) "Incapacitated person" means an adult for whom a guardian of the person or guardian of the estate has been appointed.
- (7) "Party" means the respondent, petitioner, guardian of the person or guardian of the estate, or any other person allowed by the court to participate in a guardianship or protective proceeding.
- (8) "Person," except in the term incapacitated person or protected person, means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- (9) "Protected person" means an adult for whom a protective order has been issued.