

Slide 1.

Duties of the Guardian of the Person

- Presentation Will Provide General Information About Your Responsibilities as Guardian of the Person.
- The guardian serves under the general direction and control of the court.

Voice Over Narrative:

In this section we will review general information about guardianships and the specific requirements of a guardian of the person. We'll discuss court procedures, timelines and your role as a guardian.

~~Under Washington State statutes, once a guardianship is established, the guardian serves under the general direction and control of the court.~~

Slide 2 (originally slide 6 from this module).

Decisions by a Guardian of the Person

- Living Arrangements.
- Necessary Services and Care.
- Medical Treatment.

Voice Over Narrative:

As guardian of the person you **must** make decisions about the living arrangements of the incapacitated person. During the course of the guardianship, you may be required to make a change in placement from independent living to a more structured setting, such as a care facility. You **will** also be responsible for arranging necessary services such as “meals on wheels”; transportation, and other services that affect the day to day living of the incapacitated person. In addition, you **will** make medical treatment decisions on behalf of the incapacitated person.

Slide 3 (suggested addition of new slide).

Change in Living Arrangements

- Least restrictive setting
- Moving from residence to facility
- Moving from facility to community residence
- Resources

Voice Over Narrative:

As guardian of the person, it may be your duty to make sure that the incapacitated person lives “in the setting least restrictive to the incapacitated person’s freedom and appropriate to the incapacitated person’s person care needs”. In general, people who live in their own residence are considered to be living in “least restrictive” setting, because they have more control over their environment, schedule, and activities than those living in a facility. Larger facilities – for example nursing homes, hospitals, rehabilitation facilities – tend to be “more restrictive” and less flexible to meet the preferences of the individual than smaller facilities, such as adult family homes.

If an incapacitated person is willing to move, all less restrictive options should be explored before making the decision to move to the “more restrictive” setting. Often, state or insurance funded home care can support the person in staying in the residence.

On the other hand, sometimes a person under guardianship already living in a facility may be able to live in a less-restrictive community setting. For example, persons with developmental disabilities or traumatic brain injuries sometimes reside in institutional or rehabilitation facilities, but with adequate support can thrive in a small group home or community residence. It is the guardian’s duty to learn about these options, consider them, and to support the person in living in the less-restrictive option if it meets the needs of the individual.

There are resources that can assist you in supporting the person in the least restrictive setting. See “Stay Right Where You Are: Resources for Seniors and Adults with Disabilities Living at Home in Washington State,” Home Care Referral Registry of Washington State, 2009, <http://www.herr.wa.gov/Consumers2010/StayGuide/StayGuide.v2010.pdf>.

Slide 4 (suggested addition of new slide).

- A guardian is prohibited from moving a person against the person's will.
- A residential treatment facility that provides nursing or other care is prohibited from detaining a person within the facility against the person's will.

Voice Over Narrative:

As guardian, you may not move a person against their will. For instance, you do not have the authority to move the person from their home to a nursing home or other facility where the person objects.

Slide 5 (originally slide 7 from this module).

Medical Decision-Making and Limitations

- Guardian of the Person May Consent to Most Medical Procedures.
- Guardian of the Person May Decline Medical Treatment.
- Medical Decision-Making Standards.

Voice Over Narrative:

A guardian of the person is may be authorized to give consent for medical treatment on behalf of the incapacitated person. Also, in appropriate circumstances, the guardian may choose to decline medical treatment. The guardian should attempt to learn about the incapacitated person's preferences and values. This might involve simply asking the person about his or her desires. However, it might be necessary to explore statements made by the incapacitated person prior to the onset of a disabling condition. Then, a decision should be made which best reflects what the incapacitated person would decide if they had the capacity to do so. If such competent preferences can't be determined, the guardian should simply make a decision in the best interest of the incapacitated person.

Slide 6 (originally slide 8 from Person module).

Medical Decision-Making & Limitations

~~If the incapacitated person is opposed,~~ The guardian of the person may not consent to the following medical procedures without court authorization:

- Electro-Convulsive Therapy (ECT) (e.g., shock therapy)
- Psychosurgery (e.g., lobotomy)
- Psychotropic Medication
- Sterilization

Voice Over Narrative:

While the guardian of the person may consent to most types of medical treatment, there are four medical procedures that require special attention: ~~These include~~

- (1) electro-convulsive therapy;
- (2) psychosurgery, more commonly known as lobotomy
- (3) psychotropic medication or mental health procedures that restrict physical freedom of movement; and
- (4) reproductive surgery, more commonly known as sterilization.

~~If the incapacitated person does not consent to these procedures, they may only be authorized by a specific court order. In any of these cases, the guardian should~~ must seek instructions from the court. The court will want to know the:

- (1) prognosis if no treatment is provided;
- (2) prognosis if one treatment is chosen over another;
- (3) risk of adverse side effects from the proposed treatments;
- (4) intrusiveness or severity of the proposed treatments;
- (5) incapacitated person's ability to cooperate and assist with post-treatment therapy;
- (6) incapacitated person's religious or moral views regarding medical care or the dying process; and
- (7) wishes of family or friends, if those wishes would influence the incapacitated person's decision.

The Court may consider what most people would do in similar circumstances, but this should not be regarded as controlling.

Slide 7 (originally slide 9 from this module).

Duties to be Done Immediately

- Order Appointing.
- File Oath of Guardian.
- Obtain a Fiduciary Bond, if Required.
- File Designation of Resident Agent, if Required.
- Obtain Letters of Guardianship.

Voice Over Narrative:

We will now discuss some of the tasks and timelines you will face as a guardian.

Duties to be Done Immediately

Immediately, after an order appointing you guardian has been signed, you must have the order reviewed by the county clerk. The order alone does not allow you to begin acting as guardian. Several more steps are required before the clerk can issue letters of guardianship. Once the judge has signed an Order appointing you guardian, you must have the Order reviewed by the county clerk. The Order alone does not allow you to begin acting as guardian. Several more steps are required before the clerk can issue you Letters of Guardianship, which is the document you provide to third parties to show you are the guardian.

First, you must file the Oath of Guardian form. This is your statement, under penalty of perjury, that you will faithfully fulfill the duties of guardian. If you are also guardian of the estate and the judge has required a fiduciary bond, you will need to obtain the Bond before letters of guardianship can be issued. The Bond is a form of insurance obtained from a commercial -insurance company. Bonds are discussed further in the guardian of the estate module. ~~Once you obtain the Bond you need to present it to a judge for review and approval. The clerk will verify that the Bond has been approved before issuing letters of guardianship.~~

If you are not a resident of the state of Washington, you will also be required to sign and file a Designation of Resident Agent before Letters of Guardianship can be issued. A Resident Agent is someone who lives in the state of Washington who agrees to accept service of process if a claim is filed against the guardianship. They must then forward the papers to you so that you can respond to the claim. The resident agent is frequently, but not required, to be

an attorney. You should select a resident agent whom you can depend on to perform this job responsibly. The resident agent must sign the designation form confirming that they agree to accept this role.

Assuming that you have done those things, you will then be able to obtain Letters of Guardianship from your county clerk. ~~Take note that~~ The letters of guardianship will contain an expiration date and you will need to. ~~You will need~~ to obtain new letters of guardianship consistent with the expiration date. The letters of guardianship verify for financial institutions and care providers that you have met all the legal requirements to begin serving as guardian.

You may need more than one copy of the letters of guardianship in case a financial institution requires a certified copy for their record. There will be a small fee for issuance of Letters of Guardianship.

Slide 8 (originally slide 10 from this module).

Duties to be done ~~within~~ the first 90 days

- Designate Standby Guardian .
- Complete and File Personal Care Plan.
- Prepare and Submit Order to Approve Initial Personal Care Plan, if required by the court.
- Notice of Right to File a Request for Special Notice Form.

Voice Over Narrative:

Duties to be Done in the first 90 Days

Next are the additional duties you must complete within 90 days of your appointment. First, you must designate a Standby Guardian. A standby guardian is someone who can act in situations when you are unavailable due to absence, illness or disability. Once you have decided who this person should be, you must complete and sign the Designation of Standby Guardian form. The standby guardian must also sign the form, confirming that he or she accepts this responsibility. The completed form must then be filed with the court. Because the standby guardian may be called on to step in from time to time, he or she should be familiar with the circumstances of the incapacitated person.

If you are guardian of the person you must complete an Initial Personal Care Plan. The Initial Personal Care Plan contains a comprehensive inventory of the incapacitated person's living arrangements, including current needs for services and medical care. It also contains your plan for services during the next reporting period. If ordered by the court in the order appointing you, you should present your initial care plan for approval. If you are required to obtain approval of the initial care plan, At the same time you present the initial care plan you should prepare and present an Order Approving that care plan. The mechanics of getting the Order signed may vary from county to county, so you will need to determine the procedure for your county.

You are required to send a Notice of Right to File a Request for Special Notice form to certain parties who ~~may~~ have an significant interest in the welfare of the incapacitated person, the guardianship. These parties ~~are~~ should be identified in the Order Appointing you guardian. ~~They are typically immediate family members of the incapacitated person, or a manager of a facility in which the incapacitated person resides.~~ This notice lets them know

that you have been appointed guardian for the incapacitated person. It also advises them they have a right to request notice of any proceedings or hearings in the case. ~~A party may limit their request notice of only a particular action, such as a request to sell a home. If they don't specify a particular type of report or proceeding, y~~ You ~~may need to~~ must serve them with a copy of every document you file with the court and notify them of every hearing, depending on what is requested by the person.

Slide 9 (originally slide 11 from this module).

Duties To Be Done Periodically

- Reports are Due Periodically.
- Report Period Begins When Guardian is Appointed.
- ~~Prepare and Submit Periodic~~ Guardian's Report and Personal Care Plan.
- ~~Prepare and Submit~~ Provide an Order for Court Hearing to Approve Personal Report and Personal Care Plan.
- _____
- Medical Information Should Be Sealed.
- ~~Guardian's Report, Accounting, Proposed Budget.~~
- _____
- ~~Notice of Hearing and Declaration of Mailing.~~

Voice Over Narrative:

Duties to be Done ~~Annually~~ Periodically

A guardian of the person must file a Periodic Personal Care Plan. This updates the court on any changes in the circumstances of the incapacitated person since the filing of the Initial Personal Care Plan. The Periodic Personal Care Plan is normally due once a year, 90 days after the anniversary date of the guardian's appointment. In appropriate circumstances, the law allows less frequent reporting up to every three (3) years or triennially. If you are only the guardian of the person or if the assets of the incapacitated are less than \$3,000, it is likely that the court will allow you to report every three years. In other circumstances, the law allows for a biannual report.

If you are only guardian of the person you must provide the court with an order form to approve the periodic personal care plan. If you are guardian of the person and estate, you will submit an order to approve your report and accounting.

Keep in mind that procedures in local courts vary. Check with your court to determine how care plans and other reports are filed and approved. Some courts may require that you appear at a pre-set review hearing. ~~Other courts may allow you to have the order signed on the day you file the report.~~

Slide 10 (originally slide 12 from this module).

Important Forms and Notices

- Notice of Change of Address (within 30 days).
- Notice of Death (within 30 days).
- Petition for Instructions.

Voice Over Narrative:

You must advise the court of certain events that may occur during the course of the guardianship. If either you, as the guardian, or the incapacitated person change your address, you are required to notify the court in writing within 30 days. You are also required to file a Notice of Death within 30 days of the death of the incapacitated person. There are model forms available to provide these notices.

During your service as guardian, situations may arise when you need direction from the court. ~~For example, earlier we talked about certain medical procedures which cannot be authorized by the guardian against the wishes of the incapacitated person. An order must be obtained from the court providing direction on how to proceed. If there is a situation where~~ ~~In this or any similar situation in which~~ you are uncertain how to proceed as guardian, you may file a Petition for Instructions. In your petition you describe the facts of your situation and seek guidance from the court. Check with your local court to see when and how to present your petition. The court will review your petition and issue an order with instructions on how to proceed.

Slide 11 (originally slide 13 from this module).

Summary and Final Thoughts

- The Guardian Holds an Important Position of Trust.
- The Guardian Serves Under the Direction and Control of the Court.
- Various Reports, Care Plans and Designations Must be Filed in a Timely Fashion.

Voice Over Narrative:

I expect that after reviewing this material, you now have a better appreciation of your role as guardian. It is truly an important position of trust. You will be expected to make important decisions on behalf of another person. Keep in mind that you serve as an appointee of the court. As such, you are required to serve under the general direction and control of the court. You've been entrusted ~~It may seem like there are~~ with a lot of responsibilities. However, if you proceed one step at a time it should be manageable.

Slide 12 (originally slide 14 from this module).

Summary and Final Thoughts

- The Guardian Must Keep Track of Due Dates.
- In the First Year the Guardian has Tasks Due Immediately, and within 90 Days.
- ~~Thank You!~~

Voice Over Narrative:

Remember, you must get organized and keep track of the due dates for each of your duties. It is very important that you file your reports on time. The first year will be the most complicated. Certain tasks begin as soon as you are appointed. Others are due within 90 days. Then you are set until the first Annual Report and/or Care Plan is due 90 days after the anniversary date of your appointment. Subsequent years will seem much simpler.

Thank you for your attention and for your willingness to serve on behalf of a vulnerable adult.

[You may now close your browser window and proceed to the Guardianship of the Estate module.](#)