

Elder Law Section\_Guardianship Proposal  
DRAFT – Subject to withdrawal if not approved by the WSBA BOG.

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**BILL REQUEST - CODE REVISER'S OFFICE**

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BILL REQ. #: Z-0138.1/11

ATTY/TYPIST: AL:lel

BRIEF DESCRIPTION: Implementing recommendations from the Washington state bar association elder law section's executive committee report of the guardianship task force.

DRAFT

**Elder Law Section\_Guardianship Proposal**  
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AN ACT Relating to the implementation of recommendations from the Washington state bar association elder law section's executive committee report of the guardianship task force; amending RCW 11.88.095, 11.88.140, 11.92.053, 11.92.040, and 11.92.050; and adding a new section to chapter 11.88 RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

**Sec. 1.** RCW 11.88.095 and 1995 c 297 s 5 are each amended to read as follows:

(1) In determining the disposition 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) ~~((When the next report of the guardian is due;~~  
~~(d))~~ 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;

(e) A directive to the clerk of court to issue letters of guardianship that expire on the date specified under (d) of this subsection for the review;

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

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

~~((f))~~ (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; and

~~((g))~~ (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.

(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.

NEW SECTION. **Sec. 2.** A new section is added to chapter 11.88 RCW to read as follows:

A guardian or limited guardian may not act on behalf of the incapacitated person without valid letters of guardianship. Upon appointment and filing the bond, unless the bond was dispensed with by the court, the clerk shall issue letters of guardianship to a guardian or limited guardian appointed by the court in the following form, or a substantially similar form:

IN THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON IN AND FOR THE  
COUNTY OF . . . . .

IN THE MATTER Guardianship Cause No.  
OF THE . . . . .  
GUARDIANSHIP  
OF  
. . . . .  
. . . . .  
. . . . .

Incapacitated Person LETTERS OF GUARDIANSHIP OR  
LIMITED GUARDIANSHIP  
Date Letters  
Expire . . . . .

THESE LETTERS OF GUARDIANSHIP PROVIDE OFFICIAL VERIFICATION OF THE FOLLOWING:

On the . . . . . day of . . . . ., 20 . . . . the Court appointed . . . . .to serve as:

- Guardian of the Person       Full       Limited
- Guardian of the Estate       Full       Limited

for . . . . ., the incapacitated person, in the above referenced matter.

The Guardian has taken and filed the oath. The Court has set or dispensed with the bond, and the Guardian has filed any bond consistent with the Court's order.

The Court, having found the Guardian duly qualified, now makes it known . . . . . is authorized as the Guardian for . . . . . designated in the Court's order as referenced above.

The next filing and reporting deadline in this matter is on the . . . day of . . . . ., . . . . .

THESE LETTERS ARE NO LONGER VALID ON . . . . .

(Next filing date)

This matter is before the Honorable . . . . . of Superior Court, the seal of the Court being affixed this . . . . of . . . . .

State of Washington)

) ss.

County of . . . . . )

I, . . . . ., Clerk of the Superior Court of said County and State, certify that this document represents true and correct Letters of Guardianship in the above entitled case, entered upon the record on this . . . . . day of . . . . ., . . . . . 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)

**Sec. 3.** RCW 11.88.140 and 1991 c 289 s 9 are each amended to read as follows:

(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 NOTICE OF FILING A  
CASE 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  
. . . . ., 19 . . . .; 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  
. . . . ., 19 . . .

.....  
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 (~~thirty~~) 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.

**Sec. 4.** RCW 11.92.053 and 1995 c 297 s 7 are each amended to read as follows:

Within ninety days, unless the court orders a different deadline for good cause, after the termination of a guardianship for any reason, the guardian or limited guardian of the estate shall petition the court for an order settling his or her account as filed in accordance with RCW 11.92.040(2) with regard to any receipts, expenditures, and investments made and acts done by the guardian to the date of the termination. Upon the filing of the petition, the court shall set a date for the hearing of the petition after notice has been given in accordance with RCW 11.88.040. Any person interested may file objections to the petition or may appear at the time and place fixed for the hearing thereof and present his or her objections thereto. The court may take such testimony as it deems proper or necessary to determine whether an order settling the account

should be issued and the transactions of the guardian be approved, and the court may appoint a guardian ad litem to review the report.

At the hearing on the petition of the guardian or limited guardian, if the court is satisfied that the actions of the guardian or limited guardian have been proper, and that the guardian has in all respects discharged his or her trust with relation to the receipts, expenditures, investments, and acts, then, in such event, the court shall enter an order approving the account, and the order shall be final and binding upon the incapacitated person, subject only to the right of appeal as upon a final order. However, within one year after the incompetent attains his or her majority any such account may be challenged by the incapacitated person on the ground of fraud.

**Sec. 5.** RCW 11.92.040 and 1991 c 289 s 10 are each amended to read as follows:

It shall be the duty of the guardian or limited guardian of an estate:

(1) To file within three months after the guardian's appointment a verified inventory of all the property of the incapacitated person which comes into the guardian's possession or knowledge, including a statement of all encumbrances, liens, and other secured charges on any item;

(2) To file annually, within ninety days after the anniversary date of the guardian's or limited guardian's appointment, and also within ~~((thirty))~~ ninety days after termination of the appointment, unless the court for good cause orders a different deadline to file following termination, a written verified account of the administration for court approval, which account shall contain at least the following information:

(a) Identification of property of the guardianship estate as of the date of the last account or, in the case of the initial account, as of the date of inventory;

(b) Identification of all additional property received into the guardianship, including income by source;

(c) Identification of all expenditures made during the account period by major categories;

(d) Any adjustments to the guardianship estate required to establish its present fair market value, including gains or losses on sale or other disposition and any mortgages, deeds of trust or other encumbrances against the guardianship estate; and

(e) Identification of all property held in the guardianship estate as of the date of account, the assessed value of any real property and the guardian's estimate of the present fair market values of other property (including the basis on which such estimate is made), and the total net fair market value of the guardianship estate. In addition, immediately following such statement of present fair market value, the account shall set forth a statement of current amount of the guardian's bond and any other court-ordered protection for the security of the guardianship assets;

(3) The court in its discretion may allow reports at intervals of up to thirty-six months for estates with assets (exclusive of real property) having a value of not more than twice the homestead exemption. All court orders approving accounts or reports shall direct issuance of new guardianship letters and prominently identify new expiration dates. Notwithstanding contrary provisions of this section, the guardian or limited guardian of an estate need not file an annual report with the court if the funds of the guardianship are held for the benefit of a minor in a blocked account unless the guardian requests a withdrawal from such account, in which case the guardian shall provide a written verified account of the administration of the guardianship estate along with the guardian's petition for the withdrawal. The guardian or limited guardian shall report any substantial change in income or assets of the guardianship estate within thirty days of the occurrence of the change. A hearing shall be scheduled for court review and determination of provision for increased bond or other provision in accordance with RCW 11.88.100;

(4) To protect and preserve the guardianship estate, to apply it as provided in this chapter, to account for it faithfully, to perform

all of the duties required by law, and at the termination of the guardianship or limited guardianship, to deliver the assets of the incapacitated person to the persons entitled thereto. Except as provided to the contrary herein, the court may authorize a guardian or limited guardian to do anything that a trustee can do under the provisions of RCW 11.98.070 for a period not exceeding one year from the date of the order or for a period corresponding to the interval in which the guardian's or limited guardian's report is required to be filed by the court pursuant to subsection (2) of this section, whichever period is longer;

(5) To invest and reinvest the property of the incapacitated person in accordance with the rules applicable to investment of trust estates by trustees as provided in chapter 11.100 RCW, except that:

(a) No investments shall be made without prior order of the court in any property other than unconditional interest bearing obligations of this state or of the United States and in obligations the interest and principal of which are unconditionally guaranteed by the United States, and in share accounts or deposits which are insured by an agency of the United States government. Such prior order of the court may authorize specific investments, or, in the discretion of the court, may authorize the guardian or limited guardian to invest and reinvest as provided in chapter 11.100 RCW without further order of the court;

(b) If it is for the best interests of the incapacitated person that a specific property be used by the incapacitated person rather than sold and the proceeds invested, the court may so order;

(6) To apply to the court no later than the filing of the inventory for an order authorizing disbursements on behalf of the incapacitated person: PROVIDED, HOWEVER, That the guardian or limited guardian of the estate, or the person, department, bureau, agency, or charitable organization having the care and custody of an incapacitated person, may apply to the court for an order directing the guardian or limited guardian of the estate to pay to the person, department, bureau, agency, or charitable organization having the care

and custody of an incapacitated person, or if the guardian or limited guardian of the estate has the care and custody of the incapacitated person, directing the guardian or limited guardian of the estate to apply an amount weekly, monthly, quarterly, semi-annually, or annually, as the court may direct, to be expended in the care, maintenance, and education of the incapacitated person and of his or her dependents. In proper cases, the court may order payment of amounts directly to the incapacitated person for his or her maintenance or incidental expenses. The amounts authorized under this section may be decreased or increased from time to time by direction of the court. If payments are made to another under an order of the court, the guardian or limited guardian of the estate is not bound to see to the application thereof.

**Sec. 6.** RCW 11.92.050 and 1995 c 297 s 6 are each amended to read as follows:

(1) Upon the filing of any intermediate guardianship or limited guardianship account or report required by statute, or of any intermediate account or report required by court rule or order, (~~the guardian or limited guardian may petition~~) the court (~~for~~) shall enter an order settling ((his or her)) the guardianship account or report with regard to any receipts, expenditures, and investments made and acts done by the guardian or limited guardian to the date of the interim report. The order shall set the next review date within one hundred twenty days of the anniversary date of the guardian's or limited guardian's appointment. The order shall direct the clerk of court to issue letters of guardianship that automatically expire on the next review date.

(2) Upon such ((petition)) account or report being filed, the court may in its discretion(~~, where the size or condition of the estate warrants it,~~) set a date for the hearing (~~of the petition~~) and require the service of the (~~petition~~) guardian's report or account and a notice of the hearing as provided in RCW 11.88.040 as now or hereafter amended or as specified by the court; and, in the

event a hearing is ordered, the court may also appoint a guardian ad litem, whose duty it shall be to investigate the account or report of the guardian or limited guardian of the estate and to advise the court thereon at the hearing, in writing.

(3) At the hearing on or upon the court's review of the account or report of the guardian or limited guardian, if the court is satisfied that the actions of the guardian or limited guardian have been proper, and that the guardian or limited guardian has in all respects discharged his or her trust with relation to the receipts, expenditures, investments, and acts, then, in such event, the court shall enter an order approving such account or report.

(4) If a guardian or limited guardian fails to file the account or report or fails to appear at the hearing, the court shall enter an order:

(a) Directing the guardian or limited guardian to appear before the court subject to contempt sanctions;

(b) Appointing a guardian ad litem;

(c) Removing the guardian or limited guardian and appointing a successor; or

(d) Providing other and further relief the court deems just and equitable.

(5) If the court has appointed a guardian ad litem, the order shall be final and binding upon the incapacitated person, subject only to the right of appeal as upon a final order; provided that at the time of final account of said guardian or limited guardian or within one year after the incapacitated person attains his or her majority any such interim account may be challenged by the incapacitated person on the ground of fraud.

~~((+2))~~ (6) The procedure established in ((subsection (1) of)) this section for financial accounts by guardians or limited guardians of the estate shall apply to personal care reports filed by guardians or limited guardians of the person under RCW 11.92.043.