
HOUSE BILL 1053

State of Washington

62nd Legislature

2011 Regular Session

By Representatives Moeller, Kenney, Ladenburg, Appleton, Roberts, Darneille, and Upthegrove; by request of Washington State Bar Association

Prefiled 01/03/11. Read first time 01/10/11. Referred to Committee on Judiciary.

1 AN ACT Relating to the implementation of recommendations from the
2 Washington state bar association elder law section's executive
3 committee report of the guardianship task force; amending RCW
4 11.88.020, 11.88.095, 11.88.125, 11.88.140, 11.92.053, 11.92.040, and
5 11.92.050; and adding a new section to chapter 11.88 RCW.

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

7 **Sec. 1.** RCW 11.88.020 and 1997 c 312 s 1 are each amended to read
8 as follows:

9 (1) Any suitable person over the age of eighteen years, or any
10 parent under the age of eighteen years or, if the petition is for
11 appointment of a professional guardian, any individual or guardianship
12 service that meets any certification requirements established by the
13 administrator for the courts, may, if not otherwise disqualified, be
14 appointed guardian or limited guardian of the person and/or the estate
15 of an incapacitated person. A financial institution subject to the
16 jurisdiction of the department of financial institutions and authorized
17 to exercise trust powers, and a federally chartered financial
18 institution when authorized to do so, may act as a guardian of the

1 estate of an incapacitated person without having to meet the
2 certification requirements established by the administrator for the
3 courts. No person is qualified to serve as a guardian who is

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

6 (b) of unsound mind;

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

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

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

15 (f) a person whom the court finds unsuitable.

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

19 (3) Prior to appointing a guardian or limited guardian, the court
20 may require that the proposed guardian or limited guardian complete any
21 approved guardianship training made available by the court.

22 **Sec. 2.** RCW 11.88.095 and 1995 c 297 s 5 are each amended to read
23 as follows:

24 (1) In determining the disposition of a petition for guardianship,
25 the court's order shall be based upon findings as to the capacities,
26 condition, and needs of the alleged incapacitated person, and shall not
27 be based solely upon agreements made by the parties.

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

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

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

33 (c) ~~((When the next report of the guardian is due;~~

34 ~~(d))~~ The date the account or report shall be filed. The date of
35 filing an account or report shall be within ninety days after the
36 anniversary date of the appointment;

1 (d) A date for the court to review the account or report and enter
2 its order. The court shall conduct the review within one hundred
3 twenty days after the anniversary date of the appointment and follow
4 the provisions of RCW 11.92.050;

5 (e) A directive to the clerk of court to issue letters of
6 guardianship that expire thirty days after the date specified under (d)
7 of this subsection for the review, unless an earlier date is ordered;

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

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

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

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

16 ~~(g))~~ (j) Names and addresses of those persons described in RCW
17 11.88.090(5)(d), if any, whom the court believes should receive copies
18 of further pleadings filed by the guardian with respect to the
19 guardianship. The guardian, within ninety days from the date of the
20 appointment, shall, in writing, notify the persons identified by the
21 court of their right to request special notice of proceedings as
22 described in RCW 11.92.150; and

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

26 **GUARDIANSHIP SUMMARY**

27 Date Guardian Appointed:
28 Due Date for Report and
29 Accounting:
30 Date of Next Hearing
31 New Letters Expire On:
32 Bond Amount: \$.....
33 Restricted Account
34 Agreements Required
35 Due Date for Inventory:
36 Due Date for Care Plan:

<u>Incapacitated Person (IP)</u>	<u>Guardian of: <input type="checkbox"/> Estate <input type="checkbox"/> Person</u>
<u>Name:</u>	<u>Name:</u>
<u>Address:</u>	<u>Address:</u>
<u>Phone:</u>	<u>Phone:</u>
<u>Facsimile:</u>	<u>Facsimile:</u>

<u>Interested Parties</u>	<u>Address</u>	<u>Relation to IP</u>

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

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

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

25 If there is an existing medical power of attorney, the court must
26 make a specific finding of fact regarding the continued validity of
27 that medical power of attorney before appointing a guardian or limited
28 guardian for the person.

1 **Sec. 3.** RCW 11.88.125 and 2008 c 6 s 805 are each amended to read
2 as follows:

3 (1) The person appointed by the court as either guardian or limited
4 guardian of the person and/or estate of an incapacitated person(~~(τ)~~)
5 shall file in writing with the court, within ninety days from the date
6 of appointment, a notice designating a standby limited guardian or
7 guardian to serve as limited guardian or guardian at the death or legal
8 incapacity of the court-appointed guardian or limited guardian. The
9 notice shall state the name, address, zip code, and telephone number of
10 the designated standby or limited guardian. Notice of the guardian's
11 designation of the standby guardian shall be given to the standby
12 guardian, the incapacitated person and his or her spouse or domestic
13 partner and adult children, any facility in which the incapacitated
14 person resides, and any person entitled to special notice under RCW
15 11.92.150 or any person entitled to receive pleadings pursuant to RCW
16 11.88.095(2)(~~(g)~~) (j). Such standby guardian or limited guardian
17 shall have all the powers, duties, and obligations of the regularly
18 appointed guardian or limited guardian and in addition shall, within a
19 period of thirty days from the death or adjudication of incapacity of
20 the regularly appointed guardian or limited guardian, file with the
21 superior court in the county in which the guardianship or limited
22 guardianship is then being administered, a petition for appointment of
23 a substitute guardian or limited guardian. Upon the court's
24 appointment of a new, substitute guardian or limited guardian, the
25 standby guardian or limited guardian shall make an accounting and
26 report to be approved by the court, and upon approval of the court, the
27 standby guardian or limited guardian shall be released from all duties
28 and obligations arising from or out of the guardianship or limited
29 guardianship.

30 (2) Letters of guardianship shall be issued to the standby guardian
31 or limited guardian upon filing an oath and posting a bond as required
32 by RCW 11.88.100 as now or hereafter amended. The oath may be filed
33 prior to the appointed guardian or limited guardian's death. Notice of
34 such appointment shall be provided to the standby guardian, the
35 incapacitated person, and any facility in which the incapacitated
36 person resides. The provisions of RCW 11.88.100 through 11.88.110 as
37 now or hereafter amended shall apply to standby guardians and limited
38 guardians.

1 (3) In addition to the powers of a standby limited guardian or
2 guardian as noted in subsection (1) of this section, the standby
3 limited guardian or guardian shall have the authority to provide
4 timely, informed consent to necessary medical procedures, as authorized
5 in RCW 11.92.040 as now or hereafter amended, if the guardian or
6 limited guardian cannot be located within four hours after the need for
7 such consent arises.

8 NEW SECTION. **Sec. 4.** A new section is added to chapter 11.88 RCW
9 to read as follows:

10 A guardian or limited guardian may not act on behalf of the
11 incapacitated person without valid letters of guardianship. Upon
12 appointment and fulfilling all legal requirements to serve, as set
13 forth in the court's order, the clerk shall issue letters of
14 guardianship to a guardian or limited guardian appointed by the court
15 in the following form, or a substantially similar form:

16 IN THE SUPERIOR COURT OF THE
17 STATE OF WASHINGTON IN AND FOR THE
18 COUNTY OF

19 IN THE MATTER OF Guardianship Cause No.
20 THE
21 GUARDIANSHIP OF
22
23 Incapacitated Person LETTERS OF
24 GUARDIANSHIP OR LIMITED
25 GUARDIANSHIP
26
27 Date Letters Expire

28 THESE LETTERS OF GUARDIANSHIP PROVIDE OFFICIAL VERIFICATION OF THE FOLLOWING:

29
30 On the day of, 20.... the Court appointed to serve as:

- 31
32 Guardian of the Person Full Limited
33 Guardian of the Estate Full Limited
34

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

2
3 The Guardian has fulfilled all legal requirements to serve, including, but not limited to: Taking and filing the oath;
4 filing any bond consistent with the court's order; filing any blocked account agreement consistent with the court's order;
5 and appointing a resident agent for a nonresident guardian.

6
7 The Court, having found the Guardian duly qualified, now makes it known is authorized as the Guardian
8 for designated in the Court's order as referenced above.

9
10 The next filing and reporting deadline in this matter is on the . . . day of,

11 THESE LETTERS ARE NO LONGER VALID ON

12 (Next filing date)

13 These letters can only be renewed by a new court order. If the court grants an extension, new letters will be issued.

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

16
17 State of Washington)

18) ss.

19 County of)

20
21 I,, Clerk of the Superior Court of said County and State, certify that this document represents true and
22 correct Letters of Guardianship in the above entitled case, entered upon the record on this day of,

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

24
25 The seal of Superior Court has been affixed and witnessed by my hand this day of,

26
27
28, Clerk of Superior Court

29
30 By, Deputy

31
32
33 (Signature of Deputy)

34 **Sec. 5.** RCW 11.88.140 and 1991 c 289 s 9 are each amended to read
35 as follows:

36 (1) TERMINATION WITHOUT COURT ORDER. A guardianship or limited
37 guardianship is terminated:

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

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

8 (c) By the death of the incapacitated person;

9 (d) By expiration of the term of limited guardianship specified in
10 the order appointing the limited guardian, unless prior to such
11 expiration a petition has been filed and served, as provided in RCW
12 11.88.040 as now or hereafter amended, seeking an extension of such
13 term.

14 (2) TERMINATION OF GUARDIANSHIP FOR A MINOR BY DECLARATION OF
15 COMPLETION. A guardianship for the benefit of a minor may be
16 terminated upon the minor's attainment of legal age, as defined in RCW
17 26.28.010 as now or hereafter amended, by the guardian filing a
18 declaration that states:

19 (a) The date the minor attained legal age;

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

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

25 (d) The amount of fees paid or to be paid to each of the following:
26 (i) The guardian, (ii) lawyer or lawyers, (iii) accountant or
27 accountants; and that the guardian believes the fees are reasonable and
28 does not intend to obtain court approval of the amount of the fees or
29 to submit a guardianship accounting to the court for approval. Subject
30 to the requirement of notice as provided in this section, unless the
31 minor petitions the court either for an order requiring the guardian to
32 obtain court approval of the amount of fees paid or to be paid to the
33 guardian, lawyers, or accountants, or for an order requiring an
34 accounting, or both, within thirty days from the filing of the
35 declaration of completion of guardianship, the guardian shall be
36 automatically discharged without further order of the court. The
37 guardian's powers will cease thirty days after filing the declaration
38 of completion of guardianship. The declaration of completion of

1 guardianship shall, at the time, be the equivalent of an entry of a
2 decree terminating the guardianship, distributing the assets, and
3 discharging the guardian for all legal intents and purposes.

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

8
9
10 CAPTION OF CASE NOTICE OF FILING A
11 DECLARATION OF
12 COMPLETION OF
13 GUARDIANSHIP

14 NOTICE IS GIVEN that the attached Declaration of
15 Completion of Guardianship was filed by the undersigned
16 in the above-entitled court on the day of,
17 19 . . .; unless you file a petition in the above-entitled court
18 requesting the court to review the reasonableness of the
19 fees, or for an accounting, or both, and serve a copy of the
20 petition on the guardian or the guardian's lawyer, within
21 thirty days after the filing date, the amount of fees paid or
22 to be paid will be deemed reasonable, the acts of the
23 guardian will be deemed approved, the guardian will be
24 automatically discharged without further order of the court
25 and the Declaration of Completion of Guardianship will be
26 final and deemed the equivalent of an order terminating the
27 guardianship, discharging the guardian and decreeing the
28 distribution of the guardianship assets.

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

35 DATED this day of, 19 . . .

1 New Letters Expire On:

2 Bond Amount: \$.....

3 Restricted Account

4 Agreements Required

5 Incapacitated Person (IP) Guardian of: Estate Person

6 <u>Name:</u>	<u>Name:</u>
7 <u>Address:</u>	<u>Address:</u>
8 <u>Phone:</u>	<u>Phone:</u>
9 <u>Facsimile:</u>	<u>Facsimile:</u>

10 Standby Guardian Address Relation to IP

11		
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12 Interested Parties Address Relation to IP

13		
14		
15		
16		
17		

18 **Sec. 7.** RCW 11.92.040 and 1991 c 289 s 10 are each amended to read
 19 as follows:

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

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

27 (2) To file annually, within ninety days after the anniversary date
 28 of the guardian's or limited guardian's appointment, and also within

1 ((~~thirty~~)) ninety days after termination of the appointment, unless the
2 court for good cause orders a different deadline to file following
3 termination, a written verified account of the administration for court
4 approval, which account shall contain at least the following
5 information:

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

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

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

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

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

26 (3) The court in its discretion may allow reports at intervals of
27 up to thirty-six months for estates with assets (exclusive of real
28 property) having a value of not more than twice the homestead
29 exemption. All court orders approving accounts or reports shall direct
30 issuance of new guardianship letters and prominently identify new
31 expiration dates. Notwithstanding contrary provisions of this section,
32 the guardian or limited guardian of an estate need not file an annual
33 report with the court if the funds of the guardianship are held for the
34 benefit of a minor in a blocked account unless the guardian requests a
35 withdrawal from such account, in which case the guardian shall provide
36 a written verified account of the administration of the guardianship
37 estate along with the guardian's petition for the withdrawal. The
38 guardian or limited guardian shall report any substantial change in

1 income or assets of the guardianship estate within thirty days of the
2 occurrence of the change. A hearing shall be scheduled for court
3 review and determination of provision for increased bond or other
4 provision in accordance with RCW 11.88.100;

5 (4) To protect and preserve the guardianship estate, to apply it as
6 provided in this chapter, to account for it faithfully, to perform all
7 of the duties required by law, and at the termination of the
8 guardianship or limited guardianship, to deliver the assets of the
9 incapacitated person to the persons entitled thereto. Except as
10 provided to the contrary herein, the court may authorize a guardian or
11 limited guardian to do anything that a trustee can do under the
12 provisions of RCW 11.98.070 for a period not exceeding one year from
13 the date of the order or for a period corresponding to the interval in
14 which the guardian's or limited guardian's report is required to be
15 filed by the court pursuant to subsection (2) of this section,
16 whichever period is longer;

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

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

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

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

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

14 **Sec. 8.** RCW 11.92.050 and 1995 c 297 s 6 are each amended to read
15 as follows:

16 (1) Upon the filing of any intermediate guardianship or limited
17 guardianship account or report required by statute, or of any
18 intermediate account or report required by court rule or order, (~~the~~
19 ~~guardian or limited guardian may petition~~) the court (~~for~~) shall
20 enter an order settling (~~his or her~~) the guardianship account or
21 report with regard to any receipts, expenditures, and investments made
22 and acts done by the guardian or limited guardian to the date of the
23 interim report. The order shall set the next review date within one
24 hundred twenty days of the anniversary date of the guardian's or
25 limited guardian's appointment. The order shall direct the clerk of
26 court to issue letters of guardianship that automatically expire thirty
27 days after the next review date, unless an earlier date is ordered.

28 (2) Upon such (~~petition~~) account or report being filed, the court
29 may in its discretion(~~, where the size or condition of the estate~~
30 ~~warrants it,~~) set a date for the hearing (~~of the petition~~) and
31 require the service of the (~~petition~~) guardian's report or account
32 and a notice of the hearing as provided in RCW 11.88.040 as now or
33 hereafter amended or as specified by the court; and, in the event a
34 hearing is ordered, the court may also appoint a guardian ad litem,
35 whose duty it shall be to investigate the account or report of the
36 guardian or limited guardian of the estate and to advise the court
37 thereon at the hearing, in writing.

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

8 (4) If a guardian or limited guardian fails to file the account or
9 report or fails to appear at the hearing, the court shall enter an
10 order for one or more of the following actions:

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

13 (b) Appointing a guardian ad litem;

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

16 (d) Completing any approved guardianship training made available to
17 the guardian by the court;

18 (e) Directing the clerk to extend the letters, for good cause
19 shown, for no more than ninety days, to permit the guardian to file his
20 or her account or report; or

21 (f) Providing other and further relief the court deems just and
22 equitable.

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

30 ~~((+2))~~ (6) The procedure established in (~~subsection (1) of~~) this
31 section for financial accounts by guardians or limited guardians of the
32 estate shall apply to personal care reports filed by guardians or
33 limited guardians of the person under RCW 11.92.043.

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