

2 SHB 1865 - S COMM AMD
3 By Committee on Law & Justice

4 ADOPTED 4/14/95

5 Strike everything after the enacting clause and insert the
6 following:

7 "**Sec. 1.** RCW 11.88.030 and 1991 c 289 s 2 are each amended to read
8 as follows:

9 (1) Any person or entity may petition for the appointment of a
10 qualified person, trust company, national bank, or nonprofit
11 corporation authorized in RCW 11.88.020 as now or hereafter amended as
12 the guardian or limited guardian of an incapacitated person. No
13 liability for filing a petition for guardianship or limited
14 guardianship shall attach to a petitioner acting in good faith and upon
15 reasonable basis. A petition for guardianship or limited guardianship
16 shall state:

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

19 (b) The nature of the alleged incapacity in accordance with RCW
20 11.88.010;

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

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

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

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

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

34 (h) The reason why the appointment of a guardian or limited
35 guardian is sought and the interest of the petitioner in the
36 appointment, and whether the appointment is sought as guardian or

1 limited guardian of the person, the estate, or both, and why no
2 alternative to guardianship is appropriate;

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

7 (j) The requested term of the limited guardianship to be included
8 in the court's order of appointment;

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

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

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

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

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

32 (b) Notice under this subsection shall include a clear and easily
33 readable statement of the legal rights of the alleged incapacitated
34 person that could be restricted or transferred to a guardian by a
35 guardianship order as well as the right to counsel of choice and to a
36 jury trial on the issue of incapacity. Such notice shall be in
37 substantially the following form and shall be in capital letters,
38 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 OR DIVORCE;
- (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 WHEN THE HEARING IS HELD TO DECIDE WHETHER OR NOT YOU NEED A GUARDIAN.

(5) 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 within such sixty day period and granted for good cause shown. If an extension is granted, the court shall set a new hearing date.

Sec. 2. RCW 11.88.040 and 1991 c 289 s 3 are each amended to read as follows:

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 ((to)) upon the alleged incapacitated person, if over fourteen years of age, and served upon the guardian ad litem.

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

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

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

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

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

27 The alleged incapacitated person shall be present in court at the
28 final hearing on the petition: PROVIDED, That this requirement may be
29 waived at the discretion of the court for good cause other than mere
30 inconvenience shown in the report to be provided by the guardian ad
31 litem pursuant to RCW 11.88.090 as now or hereafter amended, or if no
32 guardian ad litem is required to be appointed pursuant to RCW
33 11.88.090, as now or hereafter amended, at the discretion of the court
34 for good cause shown by a party. Alternatively, the court may remove
35 itself to the place of residence of the alleged incapacitated person
36 and conduct the final hearing in the presence of the alleged
37 incapacitated person. Final hearings on the petition may be held in
38 closed court without admittance of any person other than those
39 necessary to the action or proceeding.

1 If presence of the alleged incapacitated person is waived and the
2 court does not remove itself to the place of residence of such person,
3 the guardian ad litem shall appear in person at the final hearing on
4 the petition.

5 **Sec. 3.** RCW 11.88.045 and 1991 c 289 s 4 are each amended to read
6 as follows:

7 (1)(a) Alleged incapacitated individuals shall have the right to be
8 represented by counsel at any stage in guardianship proceedings. The
9 court shall provide counsel to represent any alleged incapacitated
10 person at public expense when either: (i) The individual is unable to
11 afford counsel, or (ii) the expense of counsel would result in
12 substantial hardship to the individual, or (iii) the individual does
13 not have practical access to funds with which to pay counsel. If the
14 individual can afford counsel but lacks practical access to funds, the
15 court shall provide counsel and may impose a reimbursement requirement
16 as part of a final order. When, in the opinion of the court, the
17 rights and interests of an alleged or adjudicated incapacitated person
18 cannot otherwise be adequately protected and represented, the court on
19 its own motion shall appoint an attorney at any time to represent such
20 person. Counsel shall be provided as soon as practicable after a
21 petition is filed and long enough before any final hearing to allow
22 adequate time for consultation and preparation. Absent a convincing
23 showing in the record to the contrary, a period of less than three
24 weeks shall be presumed by a reviewing court to be inadequate time for
25 consultation and preparation.

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

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

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

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

12 (4) In all proceedings for appointment of a guardian or limited
13 guardian, the court must be presented with a written report from a
14 physician licensed to practice under chapter 18.71 or 18.57 RCW or
15 licensed or certified psychologist selected by the guardian ad litem.
16 The physician or psychologist shall have personally examined and
17 interviewed the alleged incapacitated person within thirty days of
18 preparation of the report to the court and shall have expertise in the
19 type of disorder or incapacity the alleged incapacitated person is
20 believed to have. The report shall contain the following information
21 and shall be set forth in substantially the following format:

22 (a) The name and address of the examining physician or
23 psychologist;

24 (b) The education and experience of the physician or psychologist
25 pertinent to the case;

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

27 (d) A summary of the relevant medical, functional, neurological,
28 psychological, or psychiatric history of the alleged incapacitated
29 person as known to the examining physician or psychologist;

30 (e) The findings of the examining physician or psychologist as to
31 the condition of the alleged incapacitated person;

32 (f) Current medications;

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

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

1 (i) Identification of persons with whom the physician or
2 psychologist has met or spoken regarding the alleged incapacitated
3 person.

4 The court shall not enter an order appointing a guardian or limited
5 guardian until a medical or psychological report meeting the above
6 requirements is filed.

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

9 **Sec. 4.** RCW 11.88.090 and 1991 c 289 s 5 are each amended to read
10 as follows:

11 (1) Nothing contained in RCW 11.88.080 through 11.88.120, 11.92.010
12 through 11.92.040, 11.92.060 through 11.92.120, 11.92.170, and
13 11.92.180, as now or hereafter amended, shall affect or impair the
14 power of any court to appoint a guardian ad litem to defend the
15 interests of any incapacitated person interested in any suit or matter
16 pending therein, or to commence and prosecute any suit in his behalf.

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

22 (a) be free of influence from anyone interested in the result of
23 the proceeding;

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

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

35 (3)(a) The superior court of each county shall develop by September
36 1, 1991, a registry of persons who are willing and qualified to serve
37 as guardians ad litem in guardianship matters. The court shall choose

1 as guardians ad litem only persons whose names appear on the registry,
2 except in extraordinary circumstances.

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

4 (i) Present a written statement of qualifications describing the
5 person's knowledge, training, and experience in each of the following:
6 Needs of impaired elderly people, physical disabilities, mental
7 illness, developmental disabilities, and other areas relevant to the
8 needs of incapacitated persons, legal procedure, and the requirements
9 of chapters 11.88 and 11.92 RCW; and

10 (ii) Complete a training program adopted by the court, or, in the
11 absence of a locally adopted program, a candidate for inclusion upon
12 the registry shall have completed a model training program as described
13 in (d) of this subsection.

14 (c) The superior court of each county shall approve training
15 programs designed to:

16 (i) Train otherwise qualified human service professionals in those
17 aspects of legal procedure and the requirements of chapters 11.88 and
18 11.92 RCW with which a guardian ad litem should be familiar;

19 (ii) Train otherwise qualified legal professionals in those aspects
20 of medicine, social welfare, and social service delivery systems with
21 which a guardian ad litem should be familiar.

22 (d) The superior court of each county may approve a guardian ad
23 litem training program on or before June 1, 1991. The department of
24 social and health services, aging and adult services administration,
25 shall convene an advisory group to develop a model guardian ad litem
26 training program. The advisory group shall consist of representatives
27 from consumer, advocacy, and professional groups knowledgeable in
28 developmental disabilities, neurological impairment, physical
29 disabilities, mental illness, aging, legal, court administration, and
30 other interested parties.

31 (e) Any superior court that has not adopted a guardian ad litem
32 training program by September 1, 1991, shall require utilization of a
33 model program developed by the advisory group as described in (d) of
34 this subsection, to assure that candidates applying for registration as
35 a qualified guardian ad litem shall have satisfactorily completed
36 training to attain these essential minimum qualifications to act as
37 guardian ad litem.

1 (4) The guardian ad litem's written statement of qualifications
2 required by RCW 11.88.090(3)(b)(i) shall be made part of the record in
3 each matter in which the person is appointed guardian ad litem.

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

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

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

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

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

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

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

29 (e) To provide the court with a written report which shall include
30 the following:

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

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

37 (iii) An evaluation of the appropriateness of the guardian or
38 limited guardian whose appointment is sought and a description of the

1 steps the proposed guardian has taken or intends to take to identify
2 and meet current and emerging needs of the incapacitated person;

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

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

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

15 (vii) Identification of persons with significant interest in the
16 welfare of the alleged incapacitated person who should be advised of
17 their right to request special notice of proceedings pursuant to RCW
18 11.92.150; and

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

23 Within forty-five days after notice of commencement of the
24 guardianship proceeding has been served upon the guardian ad litem, and
25 at least ten days before the hearing on the petition, unless an
26 extension or reduction of time has been granted by the court for good
27 cause, the guardian ad litem shall file its report and send a copy to
28 the alleged incapacitated person and his or her spouse, all children
29 not residing with a notified person, those persons described in ~~((d))~~
30 (e)(vii) of this subsection, and persons who have filed a request for
31 special notice pursuant to RCW 11.92.150;

32 (f) To advise the court of the need for appointment of counsel for
33 the alleged incapacitated person within five court days after the
34 meeting described in (a) of this subsection unless (i) counsel has
35 appeared, (ii) the alleged incapacitated person affirmatively
36 communicated a wish not to be represented by counsel after being
37 advised of the right to representation and of the conditions under
38 which court-provided counsel may be available, or (iii) the alleged
39 incapacitated person was unable to communicate at all on the subject,

1 and the guardian ad litem is satisfied that the alleged incapacitated
2 person does not affirmatively desire to be represented by counsel.

3 (6) If the petition is brought by an interested person or entity
4 requesting the appointment of some other qualified person or entity and
5 a prospective guardian or limited guardian cannot be found, the court
6 shall order the guardian ad litem to investigate the availability of a
7 possible guardian or limited guardian and to include the findings in a
8 report to the court pursuant to RCW 11.88.090(5)(e) as now or hereafter
9 amended.

10 (7) The court appointed guardian ad litem shall have the authority,
11 in the event that the alleged incapacitated person is in need of
12 emergency life-saving medical services, and is unable to consent to
13 such medical services due to incapacity pending the hearing on the
14 petition to give consent for such emergency life-saving medical
15 services on behalf of the alleged incapacitated person.

16 (8) The guardian ad litem shall receive a fee determined by the
17 court. The fee shall be charged to the alleged incapacitated person
18 unless the court finds that such payment would result in substantial
19 hardship upon such person, in which case the county shall be
20 responsible for such costs: PROVIDED, That if no guardian or limited
21 guardian is appointed the court may charge such fee to the petitioner
22 or the alleged incapacitated person, or divide the fee, as it deems
23 just; and if the petition is found to be frivolous or not brought in
24 good faith, the guardian ad litem fee shall be charged to the
25 petitioner. The court shall not be required to provide for the payment
26 of a fee to any salaried employee of a public agency.

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

34 **Sec. 5.** RCW 11.88.095 and 1991 c 289 s 6 are each amended to read
35 as follows:

36 (1) In determining the disposition of a petition for guardianship,
37 the court's order shall be based upon findings as to the capacities,

1 condition, and needs of the alleged incapacitated person, and shall not
2 be based solely upon agreements made by the parties.

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

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

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

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

9 (d) Whether the guardian ad litem shall continue acting as guardian
10 ad litem;

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

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

15 (g) Names and addresses of those persons described in RCW
16 11.88.090(5)(d), if any, whom the court believes should receive copies
17 of further pleadings filed by the guardian with respect to the
18 guardianship.

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

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

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

32 If there is an existing medical power of attorney, the court must
33 make a specific finding of fact regarding the continued validity of
34 that medical power of attorney before appointing a guardian or limited
35 guardian for the person.

36 **Sec. 6.** RCW 11.92.050 and 1990 c 122 s 23 are each amended to read
37 as follows:

1 (1) Upon the filing of any intermediate guardianship or limited
2 guardianship account required by statute, or of any intermediate
3 account required by court rule or order, the guardian or limited
4 guardian may petition the court for an order settling his or her
5 account with regard to any ~~((and all))~~ receipts, expenditures, and
6 investments made and acts done by the guardian or limited guardian to
7 the date of ~~((said))~~ the interim report. Upon such petition being
8 filed, the court may in its discretion, where the size or condition of
9 the estate warrants it, set a date for the hearing of ~~((such))~~ the
10 petition and require the service of the petition and a notice of
11 ~~((such))~~ the hearing as provided in RCW 11.88.040 as now or hereafter
12 amended; and, in the event ~~((such))~~ a hearing ~~((be))~~ is ordered, the
13 court ~~((shall))~~ may also appoint a guardian ad litem, whose duty it
14 shall be to investigate the report of the guardian or limited guardian
15 of the estate and to advise the court thereon at ~~((said))~~ the hearing,
16 in writing. At ~~((such))~~ the hearing on ~~((said))~~ the report of the
17 guardian or limited guardian, if the court ~~((be))~~ is satisfied that the
18 actions of the guardian or limited guardian have been proper, and that
19 the guardian or limited guardian has in all respects discharged his or
20 her trust with relation to ~~((such))~~ the receipts, expenditures,
21 investments, and acts, then, in such event, the court shall enter an
22 order approving such account~~((, and such))~~. If the court has appointed
23 a guardian ad litem, the order shall be final and binding upon the
24 incapacitated person, subject only to the right of appeal as upon a
25 final order; provided that at the time of final account of said
26 guardian or limited guardian or within one year after ~~((said))~~ the
27 incapacitated person attains his or her majority any such interim
28 account may be challenged by ~~((said))~~ the incapacitated person on the
29 ground of fraud.

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

34 **Sec. 7.** RCW 11.92.053 and 1990 c 122 s 24 are each amended to read
35 as follows:

36 Within ninety days after the termination of a guardianship for any
37 reason ~~((other than the death of the incapacitated person intestate))~~,
38 the guardian or limited guardian of the estate shall petition the court

1 for an order settling his or her account as filed in accordance with
2 RCW 11.92.040(2) with regard to any ~~((and all))~~ receipts, expenditures,
3 and investments made and acts done by the guardian to the date of
4 ~~((said))~~ the termination. Upon ~~((such))~~ the filing of the petition
5 ~~((being filed))~~, the court shall set a date for the hearing of ~~((such))~~
6 the petition after notice has been given in accordance with RCW
7 11.88.040. Any person interested may file objections to ~~((such))~~ the
8 petition or may appear at the time and place fixed for the hearing
9 thereof and present his or her objections thereto. The court may take
10 such testimony as it deems proper or necessary to determine whether an
11 order settling the account should be issued and the transactions of the
12 guardian be approved, and the court may appoint a guardian ad litem to
13 review the report.

14 At ~~((such))~~ the hearing on ~~((said))~~ the petition of the guardian or
15 limited guardian, if the court ~~((be))~~ is satisfied that the actions of
16 the guardian or limited guardian have been proper, and that the
17 guardian has in all respects discharged his or her trust with relation
18 to ~~((such))~~ the receipts, expenditures, investments, and acts, then, in
19 such event, the court shall enter an order approving ~~((such))~~ the
20 account, and ~~((such))~~ the order shall be final and binding upon the
21 incapacitated person, subject only to the right of appeal as upon a
22 final order~~((:—PROVIDED, That))~~. However, within one year after
23 ~~((said))~~ the incompetent attains his or her majority any such account
24 may be challenged by the incapacitated person on the ground of fraud.

25 **Sec. 8.** RCW 11.92.180 and 1994 c 68 s 1 are each amended to read
26 as follows:

27 A guardian or limited guardian shall be allowed such compensation
28 for his or her services as guardian or limited guardian as the court
29 shall deem just and reasonable. Guardians and limited guardians shall
30 not be compensated at county or state expense. Additional compensation
31 may be allowed for other administrative costs, including services of an
32 attorney and for other services not provided by the guardian or limited
33 guardian. Where a guardian or limited guardian is an attorney, the
34 guardian or limited guardian shall separately account for time for
35 which compensation is requested for services as a guardian or limited
36 guardian as contrasted to time for which compensation for legal
37 services provided to the guardianship is requested. In all cases,
38 compensation of the guardian or limited guardian and his or her

1 expenses including attorney's fees shall be fixed by the court and may
2 be allowed at any annual or final accounting; but at any time during
3 the administration of the estate, the guardian or limited guardian or
4 his or her attorney may apply to the court for an allowance upon the
5 compensation or necessary expenses of the guardian or limited guardian
6 and for attorney's fees for services already performed. If the court
7 finds that the guardian or limited guardian has failed to discharge his
8 or her duties as such in any respect, it may deny the guardian any
9 compensation whatsoever or may reduce the compensation which would
10 otherwise be allowed. Where the incapacitated person is a department
11 of social and health services client residing in a nursing facility or
12 in a residential or home setting and is required by the department of
13 social and health services to contribute a portion of their income
14 towards the cost of residential or supportive services then the
15 department shall be entitled to notice of proceedings as described in
16 RCW 11.92.150. The amount of guardianship fees and additional
17 compensation for administrative costs shall not exceed the amount
18 allowed by the department of social and health services by rule(~~(, and~~
19 ~~shall not include compensation for services provided or funded by the~~
20 ~~department or a department contractor that the incapacitated person is~~
21 ~~eligible to receive)).~~

22 **Sec. 9.** RCW 11.94.010 and 1989 c 211 s 1 are each amended to read
23 as follows:

24 (1) Whenever a principal designates another as his or her attorney
25 in fact or agent, by a power of attorney in writing, and the writing
26 contains the words "This power of attorney shall not be affected by
27 disability of the principal," or "This power of attorney shall become
28 effective upon the disability of the principal," or similar words
29 showing the intent of the principal that the authority conferred shall
30 be exercisable notwithstanding the principal's disability, the
31 authority of the attorney in fact or agent is exercisable on behalf of
32 the principal as provided notwithstanding later disability or
33 incapacity of the principal at law or later uncertainty as to whether
34 the principal is dead or alive. All acts done by the attorney in fact
35 or agent pursuant to the power during any period of disability or
36 incompetence or uncertainty as to whether the principal is dead or
37 alive have the same effect and inure to the benefit of and bind the
38 principal or the principal's guardian or heirs, devisees, and personal

1 representative as if the principal were alive, competent, and not
2 disabled. A principal may nominate, by a durable power of attorney,
3 the guardian or limited guardian of his or her estate or person for
4 consideration by the court if protective proceedings for the
5 principal's person or estate are thereafter commenced. The court shall
6 make its appointment in accordance with the principal's most recent
7 nomination in a durable power of attorney except for good cause or
8 disqualification. If a guardian thereafter is appointed for the
9 principal, the attorney in fact or agent, during the continuance of the
10 appointment, shall account to the guardian rather than the principal.
11 The guardian has the same power the principal would have had if the
12 principal were not disabled or incompetent, to revoke, suspend or
13 terminate all or any part of the power of attorney or agency.

14 (2) Persons shall place reasonable reliance on any determination of
15 disability or incompetence as provided in the instrument that specifies
16 the time and the circumstances under which the power of attorney
17 document becomes effective.

18 (3) A principal may authorize his or her attorney-in-fact to
19 provide informed consent for health care decisions on the principal's
20 behalf. Unless he or she is the spouse, or adult child or brother or
21 sister of the principal, none of the following persons may act as the
22 attorney-in-fact for the principal: Any of the principal's physicians,
23 the physicians' employees, or the owners, administrators, or employees
24 of the health care facility where the principal resides or receives
25 care. This authorization is subject to the same limitations as those
26 that apply to a guardian under RCW (~~11.92.040(3) (a) through (d)~~)
27 11.92.043(5) (a) through (c)."

28 **SHB 1865** - S COMM AMD
29 By Committee on Law & Justice

30 ADOPTED 4/14/95

31 On page 1, line 1 of the title, after "guardianship;" strike the
32 remainder of the title and insert "and amending RCW 11.88.030,
33 11.88.040, 11.88.045, 11.88.090, 11.88.095, 11.92.050, 11.92.053,
34 11.92.180, and 11.94.010."

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