

What to Expect from the Uniform Guardianship Act





CHANGE IS COMING – AND IT WILL BE GOOD!

Most of the current guardianship statutes (RCW Ch. 11.88 and 11.92) have not been significantly amended or updated for more than *20 years*.



WHY THE UNIFORM GUARDIANSHIP ACT?

- The **Uniform Law Commission** is an organization which drafts and proposes consistent, non-partisan, legislation for adoption by states.
- This Commission has drafted acts related to parentage, anatomical gifts, and trade secrets. Its most well-know act is the Uniform Commercial Code.
- The Uniform Guardianship Act is a recent Commission project.



THE UNIFORM GUARDIANSHIP ACT

The full name of the act is

“The Guardianship, Conservatorship, and Other Protective Arrangements Act.”

But we’re going to call it the “UGA” for short.

THE UNIFORM GUARDIANSHIP ACT

The Commission drafted the UGA with several goals, including:

- Person-centered planning
- Enhanced notice
- Enhanced social decision-making rights
- Improved less-restrictive alternatives
- Improved procedural rights
- Updated terminology

WHAT THE UGA WILL MEAN FOR ADULT FAMILY HOMES & RESIDENTS

Out with the old, offensive language!

The Court will no longer call your residents “incapacitated persons.” We will use the term “respondent” instead.

WHAT THE UGA WILL MEAN FOR ADULT FAMILY HOMES & RESIDENTS

Washington will use the same terms used by Oregon and Idaho.

The persons we now call “guardians” will be called “guardians” or “conservators,” depending on their roles.

Guardian = makes health care and person decisions & may in some cases manage some income such as acting as SS payee

Conservator = manages finances and benefits

WHAT THE UGA WILL MEAN FOR ADULT FAMILY HOMES & RESIDENTS

We will still have Certified Professional Guardians / Conservators as well as family member guardians and conservators.

Most often, the “guardian” and the “conservator” will be the same person, but the Court might appoint one person as Guardian to manage personal care and another person as Conservator to manage finances.

WHAT THE UGA WILL MEAN FOR ADULT FAMILY HOMES & RESIDENTS

The Courts will now have the option to appoint Emergency Guardians and Emergency Conservators!

If you have a resident who immediately needs assistance, for example, urgently needs surgery or needs help to access finances to pay for care, the Court can appoint someone to help right away – and will review acts of the Emergency Guardian / Conservator later.

WHAT THE UGA WILL MEAN FOR ADULT FAMILY HOMES & RESIDENTS

The petition process will remain the same – mostly.

Many AFH owners are familiar with the current guardianship petition process, but in case some of you are not, I'll explain it in a nutshell (Please don't take notes on this – I'm just verbally explaining the current process).

WHAT THE UGA WILL MEAN FOR ADULT FAMILY HOMES & RESIDENTS

Under the UGA, an adult family home and any other interested person may petition for a guardian or conservator to be appointed for a resident.

Note that by filing the petition, you are not asking to be appointed as guardian or conservator. You are just bringing your concerns to the Court's attention.

WHAT THE UGA WILL MEAN FOR ADULT FAMILY HOMES & RESIDENTS

When someone files a petition for guardianship or conservatorship, the UGA requires that the petitioner nominate a guardian or conservator by name.

Currently, we often nominate a “Certified Professional Guardian” or a “Suitable Family Member” and let the Court figure it out.

My tip here is to get to know the CPGs who practice in your area, so you will have a good idea who to nominate.

WHAT THE UGA WILL MEAN FOR ADULT FAMILY HOMES & RESIDENTS

Once a petition for guardianship or conservatorship is filed, the Court will appoint a “Court Visitor” to conduct an investigation.

New Term = “Court Visitor”

Old Term = “Guardian ad Litem”

The Court Visitor’s role and duties will not change much under the UGA.

WHAT THE UGA WILL MEAN FOR ADULT FAMILY HOMES & RESIDENTS

Fees and costs associated with guardianship / conservatorship are presumptively paid from the assets of the respondent. But the Court can assess costs against a petitioner who acts in bad faith.

If your resident is a Medicaid long-term care client, DSHS will continue to allow payment of guardian, conservator, and attorney fees from participation.

WHAT THE UGA WILL MEAN FOR ADULT FAMILY HOMES & RESIDENTS

I believe an AFH should never be asked to pay attorney fees, court visitor fees, *etc.* In my opinion, if an attorney is asking an AFH to pay upfront for guardianship, talk to a different attorney.

Tip: Develop a relationship with a guardianship / conservatorship attorney in your area and go over their practices and procedures before you need them.

What to expect AFTER the Guardian or Conservator is appointed

The core duties of a guardian / conservator will remain the same.

Your resident will be receiving more notices, including instructions for how to file complaints against their guardian / conservator.

The Court will encourage your resident to attend court or otherwise participate in their case.

What to expect AFTER the Guardian or Conservator is appointed

Complaints against a guardian / conservator will be easy to file and can be more easily resolved by the Superior Court.

Guardians and Conservators will be expected to involve their clients more in planning and setting goals.

Alternatives offered by the UGA

In addition to offering Guardianship and Conservatorship, the UGA offers a third category of protection called “Other Protective Arrangement.” This is basically an undefined category which allows the Court to be creative and solve some problems short of full guardianship or conservatorship.

Other Protective Arrangement

Because “Other Protective Arrangement” is so open-ended, we don’t know yet what this will look like, but here is one scenario I imagined:

Your resident has a payee and would qualify for Medicaid, except that they have title to some bare land tucked in a far corner of the state. The resident really can’t handle the sale of the land. If this scenario came before the court today, the Court would appoint a guardian of the estate to handle this, but under the UGA . . .

Other Protective Arrangement

Under the UGA, the Court can appoint a “special agent” (for real, this is what the statute calls it) to list the land for sale and deliver the proceeds to the payee. No further action needed.

The “other protective arrangement” will be a useful tool, so feel free to think outside the box!

Supported Decision Making

The UGA also provides Courts with a way to supervise a Supported Decision-Making Agreement. This agreement is meant to give persons who have higher capacity the option to designate a helper to assist by gathering information and records and helping them understand their options.

SUMMARY

Enactment of the UGA will be bumpy, especially for smaller counties, but in the end, I expect the UGA will mean faster results for AFHs and more support for your residents.

MATERIALS PROVIDED

Sample attorney referral form

Sample Court Visitor template

Sample Professional Evaluation template

Sample Guardian / Conservator Complaint
Form



THANK YOU!

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