

## Quick Facts: Alternatives to Guardianship

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- ❖ For more detailed information, including legal citations, read [Alternatives to Guardianship](#). That longer guide, this “Quick Facts,” and all the fact sheets we link to here are available at [www.washingtonlawhelp.org](http://www.washingtonlawhelp.org).
  - ❖ Read this only if you live in the state of Washington, or you know someone living in Washington who might need a guardian.
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### What is a guardianship?

It is a court process where a judge gives someone (the “**guardian**”) the power to make decisions for an adult who is at risk of harm because they cannot manage their finances and/or health care.

### What does “incapacitated” mean?

Someone is “**incapacitated**” when their inability to provide for nutrition, health, housing, or physical safety puts them at risk of serious harm.

### Can a guardian put someone in a nursing home if they don’t want to go?

**No.** Usually a guardian cannot place someone in a nursing home, institution, or other facility against their will, or commit someone for mental health treatment without their consent.

### Where can I find out more about guardianship?

Read [Questions and Answers on Guardianship](#).

## Why should I care about alternatives to guardianship?

Guardianship should be the last resort in helping someone with their finances or health care. There are several reasons for this:

- Guardianship can take away a person’s rights, including the right to make decisions about their own care, their right to marry or divorce, their right to vote, their right to hold a driver’s license and other rights.
- You have to go to court to get a guardianship.
- It can cost a lot to get guardianship.
- The person who becomes a guardian is responsible for reporting to the court every 1 to 3 years.
- The law says you must first consider the alternatives to guardianship.

## What are some alternatives to guardianship for managing money and property?

- **Durable Power of Attorney for Finances:** This form lets someone choose a trusted friend or relative to help with their finances. If it is “durable,” it does not end if the person who signed it becomes incapacitated. Durable Power of Attorney documents are easier and cheaper than guardianship. The person who signs it can always cancel it later if they change their mind. Read [Durable Power of Attorney Documents](#).
- **Living Trust:** This document is usually written by a lawyer. It lets someone put their money and property in a trust to be managed by someone else (a “trustee”).
- **Representative Payee:** This is someone a government agency (like the Social Security Administration or VA) selects to receive and manage benefits on behalf of someone else.
- **Individual Indian Money (IIM) Accounts:** Some Native Americans have income held in IIM accounts managed by the federal government. These accounts may be restricted if the BIA determines that account holders needs help managing their property. If the IIM account is restricted, the Bureau of Indian Affairs (BIA) or the tribal provider of BIA services will work with the

account holder, a guardian, or person appointed under power of attorney to develop a distribution plan for the funds. If there is no guardian or power of attorney, the Bureau of Indian Affairs (BIA) can supervise the account as a trustee.

- **Joint Banking:** When two people are on a joint checking or savings account, they can both manage the money in the account even if one of them becomes incapacitated.

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❖ **Joint banking comes with risks.** One joint owner can take money out without the other's authorization. If one joint owner has debts, the creditors may come after all the money in the account. It might be safer to make someone who wants to help an **"authorized signer"** to an account, or to use a power of attorney.

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- **Joint Property Arrangements:** Some people choose to own property together so that if one becomes incapacitated, the other can manage the property. Both need to understand what may happen to the property if the other dies, divorces or needs medical assistance from the government. Get legal or financial advice from a professional about joint property arrangements.

## What are some alternatives to guardianship for managing health care?

- **Durable Power of Attorney for Health Care Decisions:** This form lets someone choose a trusted friend or relative to help with their health care. If it is "durable," it does not end if the person who signed it becomes incapacitated. Durable Power of Attorney documents are easier and cheaper than guardianship. The person who signs it can always cancel it later if they change their mind. Read [Durable Power of Attorney Documents](#).
- **Health Care Directive (or Living Will):** This form lets you say what kind of medical treatments you do or do not want if you are terminally ill or permanently unconscious and cannot make decisions for yourself. It also lets you write down your health care values. Read [Health Care Directives \(or Living Wills\)](#).

- **Mental Health Advance Directives:** This form lets you say what kind of mental health treatment, including medications, short-term admission to inpatient treatment and electroconvulsive therapy, you do or do not want if you cannot make decisions for yourself. Read [Mental Health Advance Directive](#) and [Living with Dementia Mental Health Advance Directive](#).
- **Consent to Health Care Law:** Washington’s informed consent law for adults lists specific people who can make health care decisions for a patient who doesn’t have capacity to make decisions for themselves. According to the law, these people, in order of priority, can make decisions for a patient who is incapacitated:
  1. Guardian
  2. Durable power of attorney for health care
  3. Spouse or state-registered domestic partner
  4. Adult children
  5. Parents
  6. Adult siblings
  7. Adult grandchildren who are familiar with the patient
  8. Adult nieces and nephews who are familiar with the patient
  9. Adult aunts and uncles who are familiar with the patient
  10. An adult who:
    - Has exhibited special care and concern for the patient;
    - Is familiar with the patient's personal values;
    - Is reasonably available to make health care decisions;
    - Is not the patient’s doctor or an employee of the doctor; the owner, administrator, or employee of a health care facility, nursing home, or long-term care facility where the patient lives or gets care; or paid to provide care to the patient; and

- Provides a signed declaration meeting the requirements of RCW 7.70.065(1).

According to the consent to health care law, a medical provider who needs consent for medical treatment for an incapacitated patient must make reasonable efforts to find and get consent from a person in the highest priority class on the list above.

If no one is available in the highest priority class, the doctor can try to get authorization from the available people in the next lower priority class. You cannot get consent if a person in a higher priority class has already refused to give consent to health care. When the priority class has multiple members (example: two parents), all available members of the priority class must agree to consent.

- **Vulnerable Adult Protection Order (VAPO):** This court order can protect an adult who is vulnerable due to mental or physical disability or who is victimized by abandonment, abuse, neglect, or financial exploitation. An interested person can file for a VAPO in court even when the vulnerable adult cannot or will not seek help. Read [Protecting Elders and Vulnerable Adults from Abuse and Neglect](#).

## Can Community-Based Supportive Services help?

Maybe! Finding the right services in the community might solve problems that otherwise could lead to an unnecessary guardianship. Many community-based support services organizations provide case management services, food delivery services, respite (caregiver relief) services, and much more.

- **Senior Information and Assistance:** Reach out to your local senior information and assistance office to find out what services are available in your community. You can find your local office on the Department of Social and Health Services website at [www.dshs.wa.gov/AL TSA/resources](http://www.dshs.wa.gov/AL TSA/resources).
- **Washington State Community Living Connections** can help you connect with community-based support services. Find out more: visit their website at [www.washingtoncommunitylivingconnections.org](http://www.washingtoncommunitylivingconnections.org).

## What if I need legal help?

- **If you live outside King County**, call the CLEAR hotline weekdays from 9:15 am to 12:15 pm at 1-888-201-1014. You can also apply online at [nwjustice.org/get-legal-help](http://nwjustice.org/get-legal-help).
- **If you live in King County**, call 2-1-1 for information and referral to a legal services provider weekdays from 8:00 am to 6:00 pm. You can find more information online at [www.resourcehouse.com/win211/](http://www.resourcehouse.com/win211/).
- **Deaf, hard of hearing or speech impaired** callers can call CLEAR or 2-1-1 (or toll-free 1-877-211-9274) using the relay service of their choice.
- Free legal education publications, videos and self-help packets covering many legal issues are available at [WashingtonLawHelp.org](http://WashingtonLawHelp.org).

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