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# *Future Planning Guide*

*Guardianship, Trusts and More*



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**The Arc of Whatcom County's Parent Coalition Program**

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# Introduction

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In *The Future Planning Guide* you will learn about legal issues that apply to people with special needs. We know you have many questions, and we will try to answer them.

## How do I plan for the future of my child or dependent with special needs?

You need to learn as much as you can about federal and state disability laws.

## What do I need to learn?

You will need to learn and understand:

1. How – and why – to apply for **government benefits**
2. **Legal documents** – Special Needs Trusts and guardianships
3. Important **financial issues** that relate to lifetime care and quality of life

## Do I have to do this all by myself?

Not at all! You will need to be the main expert, but there are many people who can help and advise you. They know a lot about people with special needs, and they are there to help you. You are not alone!

## Who can help me?

Here are a few places to look when you need help:

1. Organizations like The Arc of Whatcom County and The Arc of Washington
2. Financial experts who can help you with special needs estate planning
3. Other parents of children with special needs
4. Websites about developmental disabilities
5. Access Washington website: <http://access.wa.gov/>

## Can I find legal advice in *The Future Planning Guide*?

No. *The Future Planning Guide* has **information, but no legal advice**. Only lawyers can give legal advice, and The Arc of Whatcom County does not have lawyers on staff. Before you make any legal decisions, always talk first to a licensed attorney.

## Should I choose a licensed lawyer from the listings in *The Future Planning Guide*, or should I choose one from an advertisement?

Neither by itself will give you *all* the information you need to make a good choice. Use our list on page 41 as a guide to get started, but also look for information from special needs websites, legal websites, the bar association in your area, and from organizations and families of people with special needs.

Keep in mind that websites and listings from *The Future Planning Guide* are not advertisements. They are listed only as information you might find helpful.

When you do hire a lawyer, do not decide upon a lawyer by looking at an ad. Remember, people say all sorts of things in ads, and not everything they say may be true. Your decision about which lawyer to hire is very important!

## How do I find out which lawyers have expertise in disability law?

One way is to ask people in the Parent Coalition about their experiences with lawyers they have hired. Ask who they went to and why they would or would *not* recommend that person. If they recommend someone, ask why. "That lawyer is nice" does not mean "That lawyer is good." If the person says something like, "They always listen and they really helped our family," then you have one good referral. Try to find at least two more referrals so you have a range of choices.

Here are some suggestions from a Nolo Press website (<http://www.nolo.com/legal-encyclopedia/questions-ask-before-hiring-a-disability-attorney.html>). Nolo Press is a publisher of self-help books on a range of legal subjects:

1. Where is the lawyer's office, and is a *convenient location* for me?
2. Is the lawyer a *licensed attorney*?
3. Does the lawyer have *specialized training* in disability law?
4. (If you have a Social Security issue) Is the lawyer a member of the National Organization of Social Security Claimants' Representatives (NOSSCR)?
5. *How much* are the lawyer's fees, and what services do they include?
6. *Which expenses* will I need to pay for, and will I be charged for them if I lose the case?
7. Will the lawyer consider drafting an on-the-record (OTR) request?
8. Does the lawyer arrange *consultative examinations* with doctors?
9. *How often will you discuss the case* with the lawyer before the hearing?
10. Will you meet with the lawyer *before* the hearing?
11. Does the lawyer handle *federal court* cases?

You will find an explanation of each question on the Nolo Press website.

## If I find the name of one or more lawyers I am interested in, what do I do next?

Some lawyers will offer an initial consultation (a first meeting where you find out more about one another) for no charge. Others will charge for this. Be sure and *ask* if they charge for the initial consultation so you will know what to expect.

## How much do lawyers charge?

Each lawyer will have their own fee structure. It is more important to find out what they generally charge for each *procedure* than what they charge *per hour*.

## I looked at your Attorney List. Lawyers usually charge a lot of money. Who will help me if I don't *have* a lot of money?

The Attorney List on page 71 lists a few who charge low fees. However, if you have spoken with some of the attorneys on the list and you still cannot afford an attorney, try these organizations:

1. LAW Advocates: Legal assistance for those in need in Whatcom County: [www.lawadvocates.org/](http://www.lawadvocates.org/).
2. NW Justice Project: Justice for all low-income people in Washington. Call NJP's CLEAR Hotline at (888) 201-1014 or CLEAR\*Sr (age 60 and over) at (888) 387-7111 (<http://nwjustice.org/clear-online>).
3. Columbia Legal Services: Legal assistance for low-income and special needs people and organizations in WA: [www.columbialegal.org](http://www.columbialegal.org).

### Important information about the websites we have listed:

1. Some of the information listed here has not been prepared by us. It was prepared and posted by other people or organizations. For this reason, we cannot guarantee that all information posted on all websites listed in this booklet is 100% accurate. We have shared it with you because you may find it helpful, but *you need to check everything personally*.
2. We are not affiliated with most of the organizations or any of the businesses who created the websites listed in this booklet.
3. We cannot legally use any trade name, registered trademark, logo, legal or official seal, or copyrighted symbol that you may see in the links to the websites.

Information on websites changes all the time. Before relying on information from these websites, you need to check it out personally to make sure it is up-to-date and accurate. This is your personal responsibility.

### DISCLAIMER


**This publication is designed to provide general information and should not be used as a substitute for professional services, legal advice, or other expert assistance.**

# AGES 3 to 11 YEARS

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## AGE 3

Begin Individualized Education Plan (IEP). Create a Trust and a Letter of Intent. Request a Developmental Disabilities Administration (DDA) Waiver.




## Prior to AGE 4

Update DDA eligibility. Get involved with The Arc and other disability advocacy organizations. Carefully draft a Will.



## AGE 8

Update your Wills, Trusts, and Letter of Intent. Work closely with school team about most appropriate placement.



## AGE 10


Enroll child in age appropriate clubs or groups (Boy Scouts, Campfire, Boys & Girls Club, Special Olympics)

# AGES 12 to 17 YEARS

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## AGE 12-14

Start attending Transition Fairs and thinking about successful transition to adult services. Federal law mandates services to begin by age 18.




## AGE 14-15

Start your child's Functional Vocational Evaluation (FVE). Update your child's IEP.



## AGE 16

Complete Individual Transition Plan (ITP), update FVE, obtain WA State ID card or driver's license, and build vocational portfolio with teacher.



## AGE 17

If appropriate, begin guardianship procedures 6-8 months prior to age 18. Begin to explore healthcare financing for young adults.

# ADULTHOOD- AGE 18

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## ***Continue to update:***

ITP, FVE, and Individual Written Rehabilitation Plan (IWRP).




## ***Apply for entitlement services:***

Social Security Income (SSI), Medicaid, Financial Assistance -- the month your child turns 18.



## ***Investigate:***

Residential options with DSHS, DDA, or private. Also consider vocational job options.



## ***Begin Creating:***

A life plan/goal with your teenager, teacher, case managers, counselors, primary physician, friends and family.




# ADULTHOOD- AGE 21

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## ***Keep In Mind:***

Many adult services don't begin until after the 21st birthday. Staying in school until age 21 is important if long-term supports are needed.



## ***Talk with:***

DDA about adult services **AT LEAST 6-8 months** before 21st birthday.



## ***Apply with:***

Department of Vocational Rehabilitation (DVR) **AT LEAST 6-8 months** before 21st birthday.



## ***Update:***

Vocational Assessment and Transition Plan prior to graduation.



## ***Obtain:***

Records of all school transcripts, evaluations, tests, and therapy reports. Request letters of recommendation from any employer (paid or unpaid).

## ADULTHOOD- OVER AGE 21

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*Continue to...*



Maintain and update  
portfolio



Participate in  
volunteer and paid  
positions



Keep communication  
open with vocational  
providers (DVR, DDA)

# Powers of Attorney

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## What is a “Power of Attorney”?

Sometimes you need to authorize another person to make decisions in your place when you are unable to handle them yourself. When you do this, it is called a **power of attorney**. When you give someone a power of attorney, you are called the **principal**. The person with the power of attorney is called the **agent** or the **attorney-in-fact**. You may see either the word “agent” or “attorney-in-fact” in legal documents, and they both mean the same thing. A document signed by a principal giving power to an agent is sometimes itself called a **power of attorney**.

Note: The term “power of attorney” refers to both the *process* of giving someone the power to act in your place, and the *document* that gives power to that person.

A document giving a power of attorney should be clear, and you should be able to understand it yourself. *It should include only the powers you choose to give.* These may be very limited or very broad – it is your personal choice. A power of attorney document can be changed/updated at your discretion.

The basic laws about powers of attorney can be found in Chapter 11.94 of the Revised Code of Washington (RCW). The RCWs are available in all public libraries. There are RCWs about many different things, and a librarian can help you find them. You will want to look up Chapter 11.94. You can find this online at: <http://apps.leg.wa.gov/rcw/default.aspx?cite=11.94>.

### ***What kinds of things may I authorize an agent to do?***

Most things people do may be done through agents. *An agent may be authorized to:*

1. Make decisions about your healthcare
2. Make decisions about your mental health treatment
3. Make banking transactions for you
4. Buy or sell your things
5. Manage your business
6. Collect your debts
7. Invest your money
8. Cash your checks
9. Manage your general financial matters
10. Sue in your name

## What is a “Durable Power of Attorney”?

Durable Power of Attorney is the most common type of Power of Attorney used for individuals with IDD. “Durable” means your agent can keep helping you even if you become sick or injured and cannot make decisions for yourself. For more information on Durable Power of Attorney see:

<http://www.washingtonlawhelp.org/resource/questions-and-answers-on-powers-of-attorney?ref=9jRXC>

### ***Durable powers of attorney can be written to cover these situations:***

1. You want your agent to have authority *only* if you become unable to take care of yourself; or
2. You want the power of attorney to take effect *immediately* and continue if you become unable to take care of yourself. Ordinarily the power of attorney ends if you lose mental capacity, so this is an important distinction. If this is the case, you do *not* want a durable power of attorney.

You must specify in the power of attorney document 1) *which* powers are given, 2) *when* those powers should begin, and 3) if or when they should *end*. You may also appoint one or more alternate agents.

## Is a durable power of attorney an alternative to a guardianship?

Only if it is given *before* you become mentally unable to take care of yourself. To give a power of attorney, you must have the mental capacity to understand what you are doing. Once you have lost that capacity, *it is too late for you to give someone a power of attorney*. At that point, a court will have to appoint a guardian for you if you cannot take care of yourself.

## Can a power of attorney be used to make healthcare decisions?

**Yes. A power of attorney can be written to include the power to make most healthcare decisions.** These do not include decisions about a) amputation, b) shock therapy, c) mental health procedures that restrict your freedom of movement, or d) freedom of choice as in the case of sterilization. A court, and not an agent, is needed to authorize such treatments.

**If you give an agent the power to make your healthcare decisions, you need to explain *how* you want the power to be used.** You can give an explanation in writing, either as part of the power of attorney document, or separately.

**Your explanation can detailed, or it can be general.** For example, you can say, “If my heart stops, I do not want cardiopulmonary resuscitation (CPR).” On the other hand, your explanation can be very general. For example, you can say, “I want you to do whatever you think is best for me.” If your explanation is very general, *be sure you can absolutely trust your agent*.

**You may decide to prevent or stop life-sustaining procedures.** Suppose your doctors do not expect you to survive an incurable condition. In this case, it is a good idea to write a directive to physicians, also known as an *Advance Directive* or a *Living Will*. This document tells your doctors not to continue performing certain procedures when you probably will not live very long. Instead, you can direct your doctors to do things such as providing

pain relief, or act on your request to have (or not have) religious support, or even things such as having flowers or music in your room.

**Certain people cannot be given power of attorney to make your healthcare decisions.** These include your doctor, your doctor's employees, and the owner or employees of a healthcare facility where you live.

### Summary

1. A power of attorney can be written to include the power to make most healthcare decisions.
2. It is *very important* to choose the right person to be your agent, so choose wisely.
3. Certain people *cannot* be given power of attorney to make your healthcare decisions.
4. If you give an agent the power to make your healthcare decisions, you need to explain *how* and *when* you want them to do this.
5. Your directives can be very detailed, or they can be very general.
6. You may decide to prevent or stop life-sustaining procedures.

## Are there risks involved in giving someone power of attorney?

**Yes. With a power of attorney, an agent is often entrusted with important decisions.** Your agent may have access to some or all of your property. If your agent is not trustworthy, serious problems can happen. For example, if your agent is dishonest and runs away with your money, it may be difficult or impossible to get it back.

**Your agent is legally forbidden to use your property for their own benefit unless you have authorized them to do so.** Unfortunately, some agents break this law, and you are not always able to get your money or property back. Even worse, *you* are responsible for what the agent does with your money, even when the agent behaves foolishly or dishonestly.

**Example:** Your agent decides to sign a contract to purchase a speedboat in your name. Sadly, you will probably have to pay for your that speedboat! Worse, it will belong to the *agent* after *you* have paid for it.

You can see why it is so important to choose an agent you can trust absolutely. And when you choose your agent, be very careful *which* powers you give them. Remember, *they are making decisions for you when you are not able to make decisions for yourself.*

## What rules should guide an agent in making decisions for me?

Your agent is legally required to make the same decisions you would make for yourself. For how long, you may wonder? For as long as you are *mentally unable* to make your own decisions. If you lose your mental capacity, your agent should make every effort to do what you would have done before you lost your ability to make decisions.

**Example:** Your agent knows you were always opposed to a certain medical procedure, or to investing in a certain company. The agent's duty is to try to prevent that procedure or to avoid investing your money in that company.

## What if an agent cannot decide what you would have wanted when you were mentally capable?

An agent is required to act in your best interest, and to the best of their ability. They must do the best they can. That is why it is so important that they understand you very well and that you are sure you can trust them completely.

## Can I still make my own decisions after giving a power of attorney?

Yes. Giving someone a power of attorney does not prevent you from making decisions or conducting business for yourself. If you and the agent disagree, *your* decision is the most important one, assuming that you announce your decisions at the same time.

*Example:* Suppose an agent has decided to sell your house, and then sold it. Your announcement *afterwards* that you wanted to keep your house will not stop the sale; it's too late.

You can see how important it is to get the *right* agent. If you learn that your agent does not respect your wishes, you can *cancel the power of attorney* and look for another agent. Or you can designate your alternate agent to take over, and then look for a new alternate agent so you always have a good backup plan.

A delicate problem may arise. Suppose an agent with a durable power of attorney believes you now lack the mental capacity to act on your own or to cancel the power of attorney. Suppose you disagree. In such a case, the agent may file a *guardianship proceeding* to ask a *court* to decide if you are mentally able to take care of yourself.

## Can powers of attorney be given to more than one agent *at the same time*?

Technically, yes. You can give powers of attorney to two or more people at the same time. However, it is a better plan to name an *alternate* agent to take over if the first agent is not available, dies, or fails in their duty to you. If two or more agents share power of attorney at the same time, disagreements and complications can result.

## Do I need a lawyer to prepare a power of attorney?

In Washington, you are not legally *required* to have a lawyer prepare your power of attorney or have the document notarized. But – and this is crucial – if you are going to give important powers to an agent, you should probably get legal advice before signing a complicated form. If you sign a power of attorney without fully understanding what it means, and without knowing the risks and alternatives, you could be putting yourself at risk. Lawyers who work with wills and probate, or who refer to their area of practice as “elder law” or “special needs,” are experts in powers of attorney. You can find some helpful information on <http://www.nolo.com/legal-encyclopedia/finalizing-health-care-directive-durable-power-attorney-health-care-washington.html>.

# Advance Directives

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## What is an Advance Directive?

An Advance Directive (also called “healthcare directive,” “living will” or “directives to physician”) is a document that tells your healthcare professionals when to stop life-sustaining medical treatments – treatments that simply keep you alive. Advance Directives are legal in Washington State.

**Advance Directives can be made at any time and should be made *in advance* of a life-threatening situation.**

***The decisions you make in an Advance Directive can be legally carried out in only two situations:***

1. If you will die soon and cannot be saved, and life-sustaining medical treatments will only make your dying process take longer and possibly be more uncomfortable; or
2. If you are permanently unconscious and will probably never wake up (often called a “vegetative state”)

**Procedures needed to ease pain are *not* affected by an Advance Directive.** You can expect to be given whatever treatment you need to remain as comfortable as possible.

Among people who want to use Advance Directives, there are different opinions about whether food or water should be given artificially (by tube or intravenously) when other life-sustaining treatment is stopped. Life-sustaining procedures may include treatments to restore heartbeat or breathing after they have stopped (called “cardiopulmonary resuscitation” or “CPR”), or a mechanical device called a respirator to keep you breathing. They may include tubes down your nose and throat and tubes to remove waste products. Some of the procedures include hand restraints to prevent you from moving. If you can’t speak or move, you will not be able to stop the procedures if you decide you don’t want them anymore. You can see why an Advance Directive is very important for every single person!

## How can I prepare an Advance Directive and what should it say?

**In Whatcom County you can contact the Whatcom Alliance for Health Advancement (WAHA) to learn more about Advance Directives.** WAHA has trained and sensitive volunteers to walk you through every step of the process at a pace that is comfortable for you. They have workshops you can attend to learn more. Here is their website: <http://whatcomalliance.org/end-of-life-care/>.

**You can also find information about Advance Directives and a form at the end of this document from NW Justice:** <http://www.washingtonlawhelp.org/resource/questions-and-answers-on-powers-of-attorney?ref=MuGks>

**Some healthcare providers are not willing to withdraw life support in spite of your Advance Directive.** If your Advance Directive contains conditions your healthcare provider will not respect, you should know this in advance. Always discuss your Advance Directive with your healthcare providers in case their own beliefs could prevent your wishes from being carried out. If this is the case, you might think about whether you should choose another doctor who *will* respect your wishes.

## How must an Advance Directive be signed?

To be valid, your Advance Directive must be dated and signed in the presence of two witnesses. The witnesses may not be:

1. Related to you by blood or marriage
2. Entitled to inherit money or property from you if you die
3. People you owe money to
4. Your attending doctor
5. Any employee in your doctor's office
6. Any employee of a facility where you live or are a patient

It is a good idea to have your Advance Directive notarized by a notary public, but it is not absolutely necessary. If you make out your Advance Directive at Whatcom Alliance for Health Advancement, two witnesses and a notary public are available for no charge.

## What should I do with a signed Advance Directive?

**Keep the original for your own records, and make copies for:**

1. Your primary care physician
2. Your hospital
3. Your healthcare agent or agents (one for each person)
4. The glove compartment in your car
5. Your refrigerator (emergency personnel always look there)
6. Keep a card in your wallet with the phone numbers of your proxy/proxies and your primary care physician. WAHA will give you a blank card if you complete your Advance Directives at their office.

## What if my loved ones disagree?

A problem can arise if one or more loved ones disagree with your doctors about your wishes. They may argue to sustain your life with procedures you clearly indicated you don't want. That's why it is a good idea to discuss your Advance Directive with family members and friends who may be contacted if your health fails. They are more likely to try to make sure your wishes are followed if they clearly understand what you want.

## What if I change my mind?

An Advance Directive may be cancelled at any time. It may be cancelled by:

1. Physically destroying the document, or authorizing someone to destroy it in front of you,
2. Writing a cancellation that you sign and date, or
3. Telling your doctor that you wish to cancel the Advance Directive, and making sure s/he documents this.



## **Additional information about Advance Directives**

The Washington State Department of Social & Health Services has a pamphlet about Advance Directives. You can also find information from the Washington State Medical Association and the American Bar Association's Commission on Law & Aging; see the "**Resources**" section for details.

## **Keep your Advance Directive up to date**

*You are not done once you have made out your Advance Directive. Be sure to review it once a year to decide if you need to make any changes.*

# Special Needs Trusts

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**A trust is a contract** between a person who creates the trust (called the “grantor” or “trustor”) and a manager of the trust (called the “trustee”) to benefit someone or something (called the “beneficiary”). Trusts are a special type of law. Every state has laws about trusts.

A Special Needs Trust (SNT) is a legal document that holds funds for someone with special needs. An SNT must be written so it meets state and federal laws. It must be written so it does not disqualify your loved one from receiving government benefits such as Medicaid, SSI and subsidized housing. SNT funds can be used for extra care for things like legal fees, transportation and education that government benefits don’t provide.

**If people with special needs own too many assets, they stop qualifying for government benefits. SNTs help avoid this problem** because the trust – not the beneficiary – owns the property. For people with moderate incomes, an SNT can be a good idea. It can be funded with a life insurance policy.

**Someone with a disability cannot inherit more than \$2000 because it will suspend their government benefits.** Fortunately, there is a way around this problem. You can leave assets to your loved one *without* suspending their public benefits – you can put them into an SNT.

Suppose a person with a disability is on SSI or some other government program, and that they have less than \$2000. Suddenly they receive a lot of money from a gift, an inheritance or a legal settlement. Instead of having to spend the money in the same month they receive it to avoid losing their benefits, you can set up an SNT for them.

**There are three types of SNTs, and all three name the person with special needs as the beneficiary.** Set up and maintenance costs can be very different from one trust to another.

## *Types of trusts*

1. A *First-Party Trust* holds assets that belong to the person with special needs, such as an inheritance or an accident settlement.
2. A *Third-Party Trust* holds funds belonging to other people who want to help the person with special needs.
3. A *Pooled Trust* holds funds from many different beneficiaries with special needs.

Before you decide on the best choice of a trust for your own situation, ask yourself how to choose the right person to be the trustee. Here is some advice from Attorney Christopher B. Johnson’s website, <http://www.christopherbjohnson.com/special-needs-trusts/>:

## Choosing a Trustee

**Choosing the trustee for a Special Needs Trust is an important part of special needs planning.** Some of the qualifications of a trustee for a Special Needs Trust are:

1. *Experience with managing assets under prudent investor rules.* These rules require the trustee to invest your money as carefully as they would invest their own money.
2. *For a Pooled Trust, a non-profit organization with trust powers.* An example in Washington state is The Life Opportunities Trust for people under age 65 with developmental disabilities, [www.ddlot.org](http://www.ddlot.org).
3. *Knowing how to use good judgment,* according to the terms of the trust agreement, to make payments in the beneficiary's name for things other than food, clothing or shelter.
4. *The ability to avoid any conflict of interest* that might occur if a family member or friend acted as trustee.
5. *Skills to maintain clear and accurate financial records* which can be used to prepare annual court accountings.
6. *A trustee who will take a friendly and caring interest in the beneficiary.*

### **First-Party Trust ((also known as a Self-Styled or Court-Ordered or (d)(4)(A) or (d)(4)(C) or Type A or OBRA (Omnibus Budget Reconciliation Act) Trust))**

A First-Party Trust contains the assets of the person with special needs. A person with special needs might obtain property through a personal injury award, retirement plan, divorce settlement, life insurance policy, or inheritance. Once income has been received from any source, it is considered a *resource* in same month it was received. But if you put the money into a trust within 30 days, it will not be considered a resource. A trustee must be appointed, the assets go into the trust, and the beneficiary is the one who owns the assets.

#### ***Two possibilities – the choice is yours***

**Scenario 1:** Your brother sends \$10,000 in June to your son. Your son has special needs, and he has SSI. You don't know about trusts, so you put the money in his bank account. Unfortunately, the Social Security Administration (SSA) will suspend his SSI benefits until he "spends down" the money. The money your brother sent has disappeared with no benefit to your son.

**Scenario 2:** Your brother sends \$10,000 in June to your son with special needs and SSI. You decide to open a trust for him within 30 days, and you put the \$10,000 in the trust. SSA will not consider this as income and your son's SSI benefits will continue without any interruption.

#### **Only certain parties are allowed to set up this type of trust:**

1. The *parent* of a person with a disability
2. The *grandparent* of a person with a disability
3. The *legal guardian*
4. A *court*

**To qualify, the person with a disability has to be *under 65 years old* and meet the medical standards of **Social Security** in terms of the disability.** Someone who does not meet the Social Security disability requirement *cannot* obtain this type of trust, even if they are under age 65.

### **Advantages:**

1. Avoids the problem of losing government benefits.
2. Can be useful when someone is already receiving Medicaid.
3. Assets of trust may be used *only* by the beneficiary of the trust.
4. The trust is irrevocable – it cannot be changed once it is put in place. This is also a disadvantage.

### **Disadvantages:**

1. When the person dies, the primary beneficiary is the State of WA (Medicaid). So there is a motivation to spend *all* the money, which may leave the person with nothing.
2. Must be under age 65 when trust is established.
3. Must meet Social Security disability requirements.
4. Any assets added to the trust after the beneficiary turns 65 are subject to the *transfer penalty rules*. This transfer penalty can add up to be quite a bit of money.
5. The disabled person may not authorize transfers from the trust.
6. The trust is irrevocable – it cannot be changed once it is put in place. This is also an advantage.

## **Third-Party Trust (also known as a Family Trust)**

**The most commonly used Special Needs Trust is a family-type trust, which is set up by the parents or other family members.** The family members provide the money for the trust, often in a will or by purchasing life insurance payable to the trust.

In most cases, the family members write a will that passes on money or a house to their child with disabilities (“beneficiary”). After the beneficiary dies, anything left over goes to other family members. The leftover money or property is called the “*remainder*.”

**Some parents place their property in a living trust** that states the child with disabilities is the beneficiary. With that type of trust, there is no need to wait until the parents die, and the trust becomes effective immediately. This is a good idea for families in which aunts, uncles, siblings, grandparents or friends might want to leave money for the trust. People can give money to the trust by writing a check or writing a will.

**Anyone except the person with the disability can put money into a Third-Party Trust.**

**The key to a family-type Special Needs Trust is that the money *cannot* be used for housing, food, or clothing.** These are considered “basic needs” under SSI and Medicaid laws. If the beneficiary receives free housing, food or clothing from someone else, including a family member or a trust, they can lose some or all of their government benefits.

**The trust can be used to buy:**

1. A home to rent to the person with disabilities
2. Repairs, utilities and taxes for the home
3. Furnishings for the home
4. Vacations, summer camp, or trips
5. Many other things – but it doesn’t have to pay for anything *unless the trustee agrees*

**The parents usually serve as trustees. The beneficiary does not have direct access to the trust assets while the parents are living.** And when the parents die, a replacement trustee has to be ready to take over. Some parents choose a bank to serve as trustee, but banks are expensive and have little interest in the personal needs of their child with disabilities. A better choice would be a responsible family member, if one is willing to serve and is qualified.

**Some legal emergencies can be paid out of the trust.** If the beneficiary is not receiving the services they need from Social Security, Medicaid, or other government agencies, the trust can pay for an attorney or other advocate to fight for them.

**Elders who need to qualify for long-term care coverage through Medicaid can transfer their assets into a Third-Party Trust** for their sole benefit without being charged a transfer-of-assets penalty. The elder can then qualify for Medicaid while making sure they get the care they will need in the future.

#### **Advantages:**

1. No age limit when the trust is established.
2. Can be set up by anyone except the person with the disability.

#### **Disadvantages:**

1. Costly to set up and maintain.
2. Cannot be used for housing, food, or clothing (considered “basic needs” under SSI and Medicaid laws).
3. If the person with disabilities is receiving free housing, food or clothing from someone else, including a family member or a trust, then the government benefits will be reduced or eliminated.
4. The beneficiary never owns the assets.

### **If I move out of Washington state, are my Will and Trust documents still valid?**

As different states may have different criteria, it is a good idea to get a new set of documents that clearly meet your new state’s legal requirements. However, as you already have the Washington state documents, it will be a much easier process in your new state.

### **Pooled Trust (also known as a Community Trust; example: Life Opportunities Trust)**

**With a pooled trust, the assets of many individuals are combined for investment purposes.** The funds in the pool are then distributed to each individual beneficiary.

**If you set up this type of trust, the trustee can buy many of the things your son or daughter will need:**

1. An advocate to make sure your loved one gets the services they need when you aren’t there to help them
2. Vacations, social events, and sporting goods
3. A house for your child to live in
4. Certain medical treatments such as massage therapy or items such as glasses, dentures and hearing aids, if Medicaid will not pay for them

**Anyone – parents, grandparents, friends, even the person with the disability – can put money into a Pooled Trust.**

**The trust has to be established and administered through a non-profit agency** such as The Arc of Washington. This nonprofit agency takes care of all the tax preparation and investment decisions, and it also serves as the trustee.

**After the beneficiary dies, any money left in the trust stays in the trust** to help other persons with disabilities. The money does *not* go to Medicaid.

**A Pooled Trust can purchase a home for the beneficiary as well as rent it to him or her.** Before the Pooled Trust is set up, the parents and other family members explain what they want the trust to pay for, and who should be consulted about these matters.

One example of a Pooled Trust is the Life Opportunities Trust which is managed through The Arc of Washington state. The State of Washington established the Developmental Disabilities Endowment Trust Fund in 1999. This public-private partnership creates a stable resource to enhance the quality of life for people with developmental disabilities.

The following information is quoted from *Nolo Press*, "Limitations of Pooled Trusts." <http://www.nolo.com/legal-encyclopedia/pooled-special-needs-trusts.html>

*If you can't come up with a good candidate to serve as a trustee or are leaving a relatively modest sum and don't want to set up a separate Special Needs Trust, consider a "Pooled Trust." These are Special Needs Trusts run by nonprofit organizations that pool and invest funds from many families. Each trust beneficiary has a separate account, and the trustee chosen by the nonprofit spends money on behalf of each beneficiary. Pooled trusts (also called community trusts) are available in many areas of the country.*

***Pooled trusts can be very expensive.** Find out exactly how much a Pooled Trust charges before you join. Generally, there is a one-time setup fee that can run from a few hundred dollars to several thousand dollars. There is also an annual fee based on a percentage of the assets that are put into the trust that can be several thousand dollars a year.*

**Advantages:**

1. The only trust that can be established anyone at all, even the person with the disability
2. Can be a good choice when no good candidate is available to serve as a trustee
3. Useful for small sums of money
4. Can be used to purchase and/or rent a home for the beneficiary

**Disadvantages:**

1. Some can be very costly to set up and maintain
2. Pooled trusts are inflexible – once assets are in a Pooled Trust, it is difficult if not impossible to move the assets to another trust
3. Even if the trustee does a poor job, assets are still stuck in the Pooled Trust

## ABLE Act

An alternative to Special Needs Trusts was created in 2014. It is called the ABLE (*Achieving a Better Life Experience*) Act. The ABLE Act creates a new type of bank account for people with disabilities. Distributions from the account can be used only for “qualified disability expenses” such as health, housing, transportation or education. However, Social Security will count distributions for food or shelter as income (in-kind support and maintenance, ISM). We encourage you to consult with a financial planner or Social Security when considering an ABLE Account.

You can find more information about the Washington State ABLE Program at [www.washingtonstateable.com](http://www.washingtonstateable.com). You can also utilize ABLE accounts from some other states, for more information visit <http://ablenrc.org/>.

### **Advantages:**

1. A good choice for small amounts of money
2. Beneficiaries can control their own accounts
3. The money kept in these accounts will *not* count against SSI or Medicaid benefits

### **Disadvantages:**

1. Not allowed for people who are disabled after age 26
2. Annual deposits limited to the amount of the federal gift tax exclusion (\$14,000 in 2016)
3. Individuals receiving SSI must keep less than \$100,000 in their ABLE accounts to stay qualified for SSI
4. Persons who qualify only for Medicaid (and not SSI) do not have to worry about this federal limitation, but a different, state-determined limitation will apply
5. Must be funded with after-tax dollars (like a Roth IRA)
6. Deposits into the account are taxed
7. There are high taxes on excess income that accumulates above \$100,000 if it is not spent by the beneficiary
8. When the beneficiary dies, the new primary beneficiary becomes Medicaid

*from Kevin Urbatsch and Myers Urbatsch, Nolo Press*

At this point you may wonder if you really need a lawyer to set up your trust, or if you can simply use a form instead. Here are some suggestions from the Nolo Press website:

### **Why Lawyers Write Most Special Needs Trusts**

*Lawyers write most SNTs because in many cases the language must be technical and precise. First-Party Trusts (funded with the beneficiary's money) are particularly complicated. For this reason, it is almost always better for an experienced lawyer to draw up the trust. Third-Party Trusts (funded by someone other than the beneficiary) can be simpler, and people without lawyers can make them successfully.*

*In either case, Special Needs Trusts provide the opportunity to leave very specific instructions about the beneficiary and their needs, as well as instructions for how trust funds can be used. An experienced lawyer will have the skills to include such details and instructions, without risk of making serious errors. A Special Needs Trust form, while providing the nuts and bolts of a trust, will not be tailored to your family's situation.*

*That said, in some situations, making a special needs trust without a lawyer is a reasonable choice.*

### **When You Can Safely Use a Special Needs Trust Form**

Here are the main things to keep in mind for safely using a special needs trust form:

- **If you want to make a Third-Party Trust.** A Third-Party Trust is funded with money or property from someone other than the person with special needs. Very often, a parent or grand-parent funds a third-party special needs trust with what would otherwise be the beneficiary's inheritance.
- **You are willing to spend time and effort.** If you make a Special Needs Trust yourself, you must do it right! So you must be willing to find and use a good product that explains to you exactly how to make the trust. And then you must carefully follow those instructions.
- **If hiring a lawyer is not an option.** In all cases, a knowledgeable and experienced lawyer will be able to make a trust best-suited for your family. So if you can afford it, it makes sense to seek a lawyer's help.

*But hiring a lawyer may not be an option for your family. Trust funds may be too small to justify the cost of a lawyer, or a lawyer is simply too expensive for your family. If you meet the other two criteria above, using a form to create a Special Needs Trust without the help of a lawyer is generally better than not having a special needs trust at all.*

From *Using a Special Trust Form*, <http://www.nolo.com/legal-encyclopedia/using-special-needs-trust-form.html>

If you decide to make your own special needs trust or you just want to learn how they work, *Special Needs Trusts* (<http://www.nolo.com/products/special-needs-trusts-spnt.html>) by Stephen Elias and Kevin Urbatsch might be useful. This book also contains some forms you will need. You can purchase the book, *Special Needs Trusts: Protect Your Child's Financial Future* from Nolo Press at <http://www.nolo.com/products/special-needs-trusts-spnt.html>.

For more information, call The Arc of Whatcom County at (360) 715-0170 or The Arc of Washington State at (888) 754-8798.



# Guardianship and Its Alternatives

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## What is a guardian?

A **guardian** is a person appointed by a court to manage your affairs if you are unable to take care of yourself.

## What is a guardianship?

In the words of The Arc of Washington, “guardianship is the management of the affairs of a person who has been judged unable to manage his or her own affairs. It is a legal relationship between a competent adult and a person who is 18 or older, and who has a disability which causes incapacity. Incapacitation has to do with a person’s inability to make a decision or the risk of harm. The disability may be caused by mental deterioration, physical incapacity, mental illness, or developmental disability.”

## Why would I need a guardian?

**You may be at serious risk of harm because you are unable to** manage your money or property, or to provide for your own nutrition, health, housing or physical safety. If any of these things happen, a guardian may be appointed to make these decisions for you (*from RCW 11.88.010*).

## The Legislative Intent for Guardianship

*It is the intent of the legislature to protect the liberty and autonomy of all people of this state, and to enable them to exercise their rights under the law and to the maximum extent, consistent with the capacity of each person.*

*The legislature recognizes that people with incapacities have unique abilities and needs, and that some people with incapacities cannot exercise their rights or provide for their basic needs without the help of a guardian.*

*However, their liberty and autonomy should be restricted through the guardianship process only to the minimum extent necessary to adequately provide for their own health or safety, or to adequately manage their financial affairs.*

RCW 11.88.005

## Practical Questions to Consider about Guardianship

1. Does the person understand *when* they need to make a decision about something?
2. Does the person understand the possible *choices* they can make about any decision?
3. Does the person understand the *consequences* for each choice before they make a decision?
4. Does the person know *whom to inform and how* once they have made a decision?

## Alternatives to Guardianship

**Guardianship is the most restrictive and expensive solution**, so it makes good sense to look first at less restrictive solutions. Here are some things you need to know:

## Consent to Healthcare Statute

Washington law provides a method for someone else to make healthcare decisions for you when you are not mentally capable of doing this for yourself. *Note:* The mere fact that you have a *physical* ailment does not mean you are incapable of consenting to healthcare.

**If you are an adult, you generally have the right to make decisions about what care or treatment is done to your body. “Informed consent”** means you have made a decision about medical care (including refusal of care) after being informed (told) about possible risks and benefits of the proposed care and of other options. To give informed consent, you must be mentally able to understand your choices and to make such decisions.

**Sometimes not everyone agrees if you *still* have the mental capacity to make your own healthcare decisions.** If you believe you are able to make such decisions but the medical provider disagrees, a court may need to decide in a guardianship proceeding.

When you are unable to consent to healthcare, the “Consent to Healthcare Statute” provides for a substitute decision-maker. The order of priority for the substitute decision makers is:

1. The appointed guardian, if any
2. A person to whom you have given a durable power of attorney that specifically grants authority to make healthcare decisions
3. Your spouse
4. Your children who are at least age eighteen
5. Your parents
6. Your adult brothers and sisters

Before *any* substitute makes a healthcare decision for you, they must decide if you would have agreed to the suggested healthcare procedure while you were still competent. If they cannot figure this out, they must decide based upon your best interest.

A healthcare provider needs informed consent to give you *any* healthcare procedure when you are unable to take care of yourself. When this happens, the provider must make reasonable efforts to get consent from a guardian in the order listed above.

A court order, rather than a substitute’s consent, is required for certain procedures. Exception: when a person has made out a “mental health advance directive.” Without the court order, or consent in a mental health advance directive, not even a guardian or someone with a durable power of attorney may consent to electroconvulsive therapy, psychosurgery, or certain other intensive psychiatric/mental health treatments (*see restrictions described in state law, RCW 11.92.043(5)*).

You cannot ordinarily be placed in a residential treatment facility such as a nursing home against your will (*RCW 11.92.190*). However, placement can be *required* under an order issued under involuntary treatment procedures. (*Note: A patient can provide advance consent to certain mental health treatment, including hospitalization, through a “mental health advance directive.” See above.*)

## Representative Payee

A representative payee is an agency appointed by a government agency such as the Social Security Administration or the Veterans Administration. This person acts as a substitute to receive and handle your

benefits. The representative payee agrees to use government benefits for your personal care or well-being, and to file an annual report. A guardianship is not needed to manage these funds.

You can request a representative payee from the government agency that pays your benefits. Sometimes you do not want a payee, or you want a different person to serve as payee. The agency can explain your rights to object and appeal the representative payee decision.

### **Supervised Individual Indian Money Accounts**

You may be a Native American who receives one-time or recurring income from Indian trust land managed for you by the federal government, or as compensation for the loss of Indian lands. You may already have a guardian, or maybe you have given someone power of attorney. In this case, the Bureau of Indian Affairs (BIA) or the tribal provider of BIA services will work with the person you appointed to manage your “Individual Indian Money” (IIM) funds. The BIA has a trust responsibility to ensure that withdrawals of IIM funds by an agent or guardian are used only for your benefit. If there is no appropriate, available person to serve as guardian or agent, the BIA will supervise your account in its capacity as trustee of Indian funds.

Before the BIA will supervise your account it may require that a court, a BIA or tribal social worker, or another federal agency decide that you need help to manage your money. The BIA can be appointed as representative payee for the Social Security Administration (for SSI or Social Security benefits) or for the Veterans Administration. This appointment will trigger BIA supervision of individual Indian trust income as well.

Requests to have an Individual Indian Money Account or other funds of an incapacitated Native American managed by the BIA should be made to the U.S. Department of Interior, Bureau of Indian Affairs Superintendent at the particular BIA agency that manages the Indian trust land for that individual and tribe.

### **Community-Based Supportive Services**

Sometimes you can solve a problem with community-based services rather than through a guardianship. Such services include:

- **Financial Services**

Money management alternatives include automatic banking, direct deposit and personal money management services. Automatic banking allows the bank to pay regular bills. Direct deposit allows electronic deposit of regular sources of income into your bank account. Personal money management or bill paying services can be helpful but may be expensive. Choosing such a service requires carefully considering the staff qualifications, management practices, and protections such as bonding and insurance to make sure you don't lose your money due to negligence or theft.

- **Respite Care and Other Services**

Social and health services may be arranged directly from providers or through case managers. These services include:

1. Information and referral
2. Home healthcare
3. Household chores and personal care
4. Home-delivered meals (such as Meals on Wheels)
5. Mental health services
6. Vocational services
7. Tenant support
8. Transportation

Eligibility for publicly-funded services may depend on income, age, and type of disability.

- **Case Management**

Case management helps you and your family to obtain important support services. It includes: 1) assessing your abilities and needs, 2) developing a detailed plan of care, and 3) following up to ensure services are provided and changed as needed. You may be able to get free case management under state programs administered by the Division of Developmental Disabilities, Division of Mental Health, Division of Vocational Rehabilitation, or Home and Community Services. Your local Department of Social and Health Services, Division of Developmental Disabilities can direct you to options.

*This information was in part produced by Columbia Legal Services with funding from the Snohomish County*

*Department of Human Services and the Olympic Area Agency on Aging.*

## **What if guardianship is requested for someone who doesn't want a guardian?**

If you don't want a guardian, you have a right to make objections at your hearing, and the judge must consider your objections. You must be represented by your own lawyer at the hearing. If you want a lawyer but cannot afford to hire one, the court will appoint one for you. A guardian may be appointed only if the court is convinced *after* the hearing that you need a guardian. Just because someone *thinks* you need a guardian does not mean that you *will* get one.

## **What if you are not *totally* unable to take care of yourself but you need *some* help?**

Courts can appoint *limited guardians* for you if you can manage your care in some ways but not in others. Guardianships should be limited in this way, and should not be broader than necessary to meet the needs resulting from your limitations.

## Summary of Factors to Consider When Making a Guardianship Decision

IN FAVOR OF GUARDIANSHIP	AGAINST GUARDIANSHIP
<ol style="list-style-type: none"> <li>1. Sometimes it's the only available choice</li> <li>2. Opens doors that would otherwise be closed to allow you to advocate for appropriate services</li> </ol>	<ol style="list-style-type: none"> <li>1. Should be the last resort</li> <li>2. Requires going to court</li> <li>3. Can be costly</li> <li>4. Deprives an adult of very important personal rights</li> </ol>

LIFE SKILL/NEED/ACTIVITY	POSSIBLE ALTERNATIVE TO GUARDIANSHIP
Manage government benefits	Representative payee or authorized representative to handle government benefits
Make sound financial decisions	Withdrawal limits on bank account; financial manager
Pay bills on time	Direct deposits; electronic payments; dual signature account; joint bank account; bill payer program
Understand healthcare issues and follow medical directions	Healthcare advocate; a new and more patient doctor; a friend or relative who accompanies you to appointments
Coordinate medical care	Case or care manager; public health nurse; healthcare advocate; patient navigator; social worker
Manage a home and live independently	Homemaker; adult day care
Shop for groceries and prepare food	Meals on Wheels; Community Supported Agriculture (CSA) basket delivered to your home
Organize transportation	Whatcom Transit Authority; Paratransit
Support the person who takes care of you	Respite care; home nursing; home health aide
Maintain tenancy in your residence	Tenant support; joint tenancy; mental health services
Manage personal care and physical safety	Caregiver

### How would I get a guardian?

Guardians are appointed by Superior Court judges or court commissioners. They are appointed in response to petitions filed in Superior Court. Any interested person may file a petition. The person who files it does not have to be the one who is appointed as guardian; this may be a different person.

A guardianship petition asks the court 1) to determine that you are unable to take care of yourself, and 2) to appoint a guardian. A court cannot appoint a guardian for you unless it decides you are unable to take care of yourself and really do need a guardian.

## How does that happen?

Before a decision is made about whether you need a guardian, 4 steps must be taken:

1. You must be given notice of the guardianship petition.
2. The court must appoint a person (called a “guardian *ad litem*”) to make an investigation and report to the court.
3. The guardian *ad litem* must obtain a statement from a physician or psychologist.
4. The court must hold a hearing.

## Do I need any special training to become a guardian?

Yes. Even family members are required to take an online training course before becoming guardians. You can access training course information here:

[http://www.courts.wa.gov/programs\\_orgs/guardian/?fa=guardian.layGuardianship&type=training](http://www.courts.wa.gov/programs_orgs/guardian/?fa=guardian.layGuardianship&type=training)

## What are a guardian’s responsibilities?

A guardian’s responsibilities depend on *whether and how* their role has been limited by the court. There are two broad area of responsibility – “estate” and “person.” A limited guardianship can contain responsibilities from either or both categories.

A guardian of the estate manages your property and money. They must file an inventory with the court within 3 months of being appointed, then once a year. The court is required to approve certain management decisions.

A guardian of the person assesses your physical, mental and emotional needs, and any need for help with your activities of daily living (ADLs). Your guardian must: 1) create a plan (called a *care plan*) to meet your needs, 2) file the care plan with the court within 3 months of being appointed, 3) do whatever is necessary to administer the plan, and 4) file a status report with the court once a year and make note of any major changes. Your guardian may also be responsible for giving or withholding consent for your medical treatment.

## What are the reporting requirements?

Guardians must make regular reports to the courts to show how well they are carrying out their guardianship responsibilities. These reports are made every 12 months, 24 months or 36 months, depending on what the court requires. Your guardian must follow the exact reporting requirements of the particular guardianship created for you.

## Are there decisions that guardians may *not* make?

Yes. For example, a guardian may not put you in a nursing home against your will if you are unable to take care of yourself. Or they may not commit you for mental health treatment if you are unable to take care of yourself.

However, the law *does* allow the guardian to ask a court to *order* you to be committed, even against your will. This is called the *Involuntary Treatment Act*. Under this act, a court order is also required for any therapy or other procedure that produces convulsion, or any psychiatric or mental health procedure that restricts physical freedom of movement.

## What happens to your legal rights when a guardian is appointed?

A court may decide that you are unable to take care of yourself and appoint a guardian. When a guardian is appointed, they may make certain decisions for you when you are unable to take care of yourself. If this happens, you will no longer be allowed to make those decisions.

If the court orders a full guardianship, you lose the right to make most decisions adults usually make for themselves. For example, you will no longer be able to manage your own financial affairs or make your own decisions about medical treatment.

If the court orders a limited guardianship, the court will decide which decisions the guardian can make and which decisions you can make yourself. For example, a limited guardianship order might say that your guardian makes financial decisions for you, but you can make your own healthcare decisions.

Even if a court decides that your guardian makes your healthcare decisions, they are not simply free to do whatever they think is best. Your guardian must make decisions that are consistent with *your* views and values, if known, *before* you became unable to take care of yourself. In addition, you can express your choice about a medical treatment issue and your guardian *must* consider what you want before deciding what to do.

In deciding whether to accept what *you* want, your guardian should consider how well you understand your medical condition and your treatment choices. Your guardian's role is a delicate one and should be performed with common sense and respect for you.

## Isn't a power of attorney an easier alternative?

Yes and no. If you are still able to take care of yourself, you can use a power of attorney to appoint an agent to act in your name. This power of attorney can be written so it remains in effect if you become unable to take care of yourself in the future.

If you have already become unable to take care of yourself, it is now too late to give power of attorney to an agent. If this happens, refer to the section entitled "Public Guardianship" on page 37.

Columbia Legal Services has a pamphlet entitled "Questions & Answers on Powers of Attorney." It is available on the Internet web site <http://www.washingtonlawhelp.org/resource/questions-and-answers-on-powers-of-attorney?ref=x0ZzO>.

## What is the difference between a guardianship and a power of attorney?

A guardianship is the legal responsibility for a person who is physically or mentally incompetent. It cannot be created voluntarily, but must be created by a judge. On the other hand, you can create a power of attorney yourself when you want to give another person the power to act in your name. A paper signed by a principal giving power to an agent is sometimes itself called a power of attorney.

POWER OF ATTORNEY (POA)	GUARDIANSHIP
<b>What is it?</b>	
Document which gives someone else authority to make medical decisions ( <i>medical power of attorney</i> ) or financial ( <i>financial power of attorney</i> ) for you	Legal decision made by a judge that you lack capacity and must have your affairs controlled by someone else
Durable" POA endures; even if you are incapacitated, your agent can still make decisions for you	Guardianship is court-ordered and only a court can reverse it
Financial POA can be effective immediately or only when you become incapacitated	
<b>Who are the players?</b>	
<b>Principal</b> – person who gives another person permission to act for him or her	<b>Incapacitated person</b> – the current legal term for a person the court has decided to lack physical or mental ability to take care of themself
<b>Agent</b> – person who has permission to act for the Principal	<b>Guardian</b> – person approved of and appointed by court to handle personal matters for incapacitated person such as health (guardian of the person) or financial matters for the incapacitated person (guardian of the estate) or both (guardian of the person and estate)
<b>What About Mental Capacity?</b>	
Principal must understand that he is giving authority to the agent in order to have a valid POA	Person must be incapacitated or guardianship will not be established
If the POA is durable, the agent can act for the Principal if the Principal becomes incapacitated	If the Incapacitated person regains capacity, the court will terminate the guardianship
<b>Advantages</b>	
Inexpensive when compared with guardianship	More expensive when compared with POA
Does not require court oversight and associated attorney fees	Court oversight of Guardian to prevent exploitation of the Incapacitated person
Principal remains in control	Guardian is authorized to make decisions so third parties know who to listen to
<b>How Does the Process Start?</b>	
Principal decides they need power of attorney and goes to lawyer to prepare the document	Someone decides the Incapacitated person needs a Guardian and applies to the court to have one appointed (usually hires a lawyer to do this)
<b>What About Third Parties?</b>	
Third parties such as banks do not have to allow an Agent to conduct business for a Principal	All parties are bound by court orders authorizing the Guardian to act
<b>Who Pays For All This?</b>	
Usually the Principal pays out of his own money	Almost everything is paid out of the Incapacitated person's estate
Sometimes the Agent pays out of the Principal's money	
<b>How Does It All End?</b>	
Principal may revoke	Court must terminate
<b>Summary</b>	
To create, the Principal must have capacity	To create, the person must be incapacitated
Relatively inexpensive	Relatively expensive
Principal chooses an Agent	Court chooses a Guardian
No court supervision	Court must approve the Guardian's actions
Principal can revoke (so long as they have capacity)	Only the Court can revoke

(Information in this table was extracted from the Law Offices of Carol Bertsch, <http://www.assistingseniors.com/wp-content/uploads/2012/03/powerofattorney.pdf>)



## **Suppose I am someone who already has power of attorney for another person. If that person becomes unable to take care of themselves, do I need to create a guardianship?**

It depends on what the paper says that give you the power of attorney. Some powers of attorney, called “durable powers of attorney” (DPOA) continue after the person becomes unable to take care of themselves. But this is true only if the paper they signed says it does. If you are not sure whether they have given you a DPOA, you both should ask a lawyer.

Even with a durable power of attorney, there is sometimes a need to petition for guardianship. An agent may have a DPOA and think the person with the disability is now unable to take care of themselves. If the person disagrees and conflict develops, a court will need to decide. The issue may be presented in a guardianship proceeding or in a proceeding brought under the power-of-attorney statute (*RCW 11.94.090*).

## **Can a guardianship be modified or terminated?**

Yes. Letters of guardianship are now set to expire at a maximum of 5 years and need to be reissued as part of the typical reporting cycle. It is important to remain current on the reporting requirements for your guardianship and any other requirements the court imposes.

Suppose you believe that:

1. Your guardian should be replaced, or
2. Your guardian’s responsibilities should be changed, or
3. Your guardian has acted improperly, or
4. You are no longer in need of a guardian.

Discuss your concerns with your guardian, if that seems to make sense. Otherwise, you may write to the clerk of the Court and ask for modification or termination of the guardianship. The clerk will refer your letter to a judge for action.

## **What costs are involved in a guardianship proceeding?**

Your major costs for an ordinary guardianship proceeding include:

1. \$240 to file the guardianship papers
2. \$45-\$200/hour (or \$1500-\$3500 for the entire process) for the lawyer
3. \$1000-\$3500 deposit + \$75-\$200/hour for the guardian *ad litem* (see <http://www.co.whatcom.wa.us/DocumentCenter/View/698> for a list of Whatcom County guardians ad litem and what each person charges)
4. \$20-\$400 for the physician’s or psychologist’s report

If you have very limited means, the county may pay your fee for the guardian *ad litem*. If your assets are less than \$3000, you will not have to pay a filing fee. You must make a request to the court in your petition to cover these costs. Your lawyer’s fee will depend on how complicated your case is and how much time it will take. You should *always* discuss fees in detail and be very sure what costs are involved *before* agreeing to hire a lawyer.

## How will your guardian be paid?

1. If you have enough money, a court will usually allow reasonable fees to be paid from your bank account.
2. You may be on Medicaid, in a nursing home, or receiving services under the COPES program. In this case, the Department of Social and Health Services (DSHS) may be able to use part of your income to pay the guardian fee that was decided by the court. DSHS will only do this if you follow certain rules. Be sure to discuss this with your lawyer who is helping with the guardianship proceeding (*the rules are found in Washington Administrative Code, Chapter 388-79*).

## What if you need a guardian, but there is no one to start a guardianship proceeding or serve as guardian?

### Public Guardianship

#### The Office of Public Guardianship

The Office of Public Guardianship will contract with public and private agencies and/or individuals to provide public guardianship services for people who are:

1. Age 18 or older whose income is not more than 200% of the federal poverty level, or
2. Receiving long-term care services through DSHS, and
3. There is no one else willing and able to serve.

You may be considered to be unable to take care of yourself. The Superior Court may decide you are at serious risk of personal harm because you are unable to provide for your own nutrition, health, housing, or physical safety. In this case, you would be considered to be incapacitated.

A determination of incapacity is a *legal* – not a *medical* – decision. It is based upon *proof* (not just someone's opinion) that you have failed to take care of your own financial or personal needs for a period of time. Being old, eccentric, poor or ill are not enough to find you incapable of caring for yourself.

#### Long-term Care Services (LTC)

Services provided through the department of social and health services either in a hospital or skilled nursing facility, or in another setting under a home and community-based waiver authorized under 42 U.S. C. Sec. 1396n.

#### Professional Guardian (PG)

A guardian appointed by the superior courts of Washington who is not a member of your family and who charges fees for carrying out the duties of a court-appointed guardian of three or more people who are unable to take care of yourself.

#### Public Guardianship Services (PGS)

The services provided by a guardian or limited guardian appointed under chapters 11.88 and 11.92 RCW, who is compensated under a contract with the Office of Public Guardianship.

**Contact**

The Office of Public Guardianship is located at: 1112 Quince St SE (Bldg. 1), PO Box 41170, Olympia, WA 98504-1170. Phone: (360) 705-5302 Fax: (360) 956-5700 E-mail: [Thai.Kien@courts.wa.gov](mailto:Thai.Kien@courts.wa.gov)

## Definitions of Terms Used in *The Future Planning Guide*

**Advance Directive:** A paper that tells your doctors or others who provide your healthcare when you want them to stop life-sustaining medical treatment and let you die.

**Agent:** The person you give the power of attorney is called the agent or the attorney-in-fact.

**Attorney-in-fact:** The person you give the power of attorney is called the agent or the attorney-in-fact.

**Court-Ordered Trust:** *See First-Party Trust*

**Determination of incapacity:** A legal, not a medical decision based upon proof that you have been unable to manage over a period of time in the areas of person or estate.

**Directive to physicians:** *See Advance Directive.*

**Durable power of attorney:** a power of attorney document that states it is to remain in effect and not be limited by any future disability of the principal.

**Family Trust:** A trust established so assets can be passed on to children or other heirs rather than to a surviving spouse.

**First-Party Trust:** A trust that holds assets that belong to the person with special needs, such as an inheritance or an accident settlement.

**Functional Vocational Evaluation (FVE):** An assessment process that provides information about job or career interests, aptitudes, and skills. The person is observed in the actual job setting to help decide upon what kinds of future educational experiences the person needs.

**Guardianship:** Legal responsibility by someone other than the parent for a person who is physically or mentally incompetent.

**Individual Transition Plan (ITP):** A written plan which outlines what a student will need for daily life, work and recreation as an adult. The plan specifies what everyone should do to provide the training and services needed to make the transition from school.

**Individual Written Rehabilitation Plan (IWRP):** A written plan which tells a student's present strengths, educational goals and objectives for the school year, with plans for learning skills to help a person become more independent.

**Individualized Education Plan (IEP):** A legal document that specifies a person's learning needs, the services the school will provide, and how progress will be measured.

**Letter of Intent:** A letter that states that the writer intends to do something, such as signing a contract. It is not a promise, but it gives notice that the writer *will* carry out a particular act.

**Living will:** *See Advance Directive.*

**Notary public:** An individual who is legally authorized to administer oaths and attest to signatures.

**Pooled Trust:** A Pooled Trust holds funds from many different beneficiaries with special needs.

**Power of attorney:** When you give someone the power to act for you, you give what is called a power of attorney. A paper signed by a principal giving power to an agent is sometimes itself called a power of attorney.

**Principal:** If you give a power of attorney, you are called the principal.

**Revised Code of Washington (RCW):** The collection of all permanent laws now in effect. It is a collection of Session Laws enacted by the Legislature and signed by the Governor or enacted via the initiative process.

**Self-Styled Trust: Special Needs Trust:** *See First-Party Trust*

**Third-Party Trust:** A Third-Party Trust holds funds belonging to other people who want to help the person with special needs.

**Transition Fair:** An opportunity for students transitioning into adult services and anyone else to meet with the people who can connect them with a variety of community resources and agencies.

**Trust:** a contract between the person who creates the trust (called the “grantor” or “trustor”) and the manager of the trust (called the “trustee”) to benefit someone or something (called the “beneficiary”).

**Transition Plan:** The section of the Individualized Education Program (IEP) that summarizes transition goals and services for a student.

**Vocational Assessment:** the process of identifying and appraising an individual's ability to prepare for a vocation and make decisions about employment.

## Special Needs Attorney List

The attorney list we have included is intended to give families a starting point of local attorneys who are familiar with issues related to developmental disabilities, estate planning, guardianship law, social security, or Special Needs Trusts.

The Arc does not endorse or take responsibility for any attorney or for their fees or services.

You should interview more than one attorney to get a “feel” for working with them. Most will offer a one-time free consultation, but be sure to ask in case they charge for this. Remember to ask your attorney to include it as part of your guardianship petition (if applicable).

*Please feel free to let us know about your experience working with these or any other attorneys.*

Attorney and Law Firm	Contact Information	DD Law	Estate Planning	Guardianship Law	Social Security	Special Needs Trusts
Steven D. Avery (Avery Elder Law)	801 Samish Way Suite 202 Bellingham, WA 98229 (360) 325-2550 <a href="mailto:steve@averyelderlaw.com">steve@averyelderlaw.com</a> <a href="http://www.averyelderlaw.com/">http://www.averyelderlaw.com/</a>		X	X		X
Nathan T. Dwyer (Robinson & Kole)	911 Dupont St Bellingham, WA 98225 (360) 671-8112 <a href="http://www.robinsonandkole.com">www.robinsonandkole.com</a>				X	
K. T. Esp (Law Office of Katti Esp)	301 Prospect St Bellingham, WA 98225 (360) 715-3100 fax (360) 392-3928 <a href="mailto:ktesp@openaccess.org">ktesp@openaccess.org</a> <a href="http://www.estateplanningesp.com">www.estateplanningesp.com</a>		X			X (within wills)
Erin Crisman Glass Chuckanut Law	306 N. Commercial St., Suite B Bellingham, WA 98225 (360) 450-4255 <a href="mailto:info@chuckanutlaw.com">info@chuckanutlaw.com</a>		X			X
Sara LC Hulford (Meyers, Neubeck & Hulford)	2828 Northwest Ave Bellingham, WA 98225 (360) 647-8846 <a href="mailto:info@elderlaw-nw.com">info@elderlaw-nw.com</a> <a href="http://www.elderlaw-nw.com">www.elderlaw-nw.com</a>		X	X		X
Michael T. Kleps (Kleps Law Office)	114 W. Magnolia St., Suite 400 Bellingham, WA 98225 (360) 650-1766		X	X		X
Margaret Mary Mawson (Mawson & Mawson)	103 E Holly St Ste 508 Bellingham, WA 98225 (360) 647-0076 <a href="mailto:mawson@mawsonlaw.com">mawson@mawsonlaw.com</a>			X		

Attorney and Law Firm	Contact Information	DD Law	Estate Planning	Guardianship Law	Social Security	Special Needs Trusts
Richard Scott Mawson (Mawson & Mawson)	103 E Holly St Ste 508 Bellingham, WA 98225 (360) 647-0076 <a href="mailto:mawson@mawsonlaw.com">mawson@mawsonlaw.com</a>			X		
David M. Neubeck (Elder Law Offices of Barry M. Meyers)	2828 Northwest Ave Bellingham, WA 98225 (360) 647-8846 <a href="mailto:info@elderlaw-nw.com">info@elderlaw-nw.com</a> <a href="http://www.elderlaw-nw.com">www.elderlaw-nw.com</a>		X	X		X
David W. Robinson (Robinson & Kole)	911 Dupont St Bellingham, WA 98225 (360) 207-2477 <a href="http://www.robinsonandkole.com">www.robinsonandkole.com</a>				X	
Lisa Saar	805 Dupont St. Suite #6 Bellingham WA 98225 (360) 733-3374 <a href="http://www.lsaarlaw.com">www.lsaarlaw.com</a>		X	X	X	X
Jacob Ladd Smith Jr (Smith Kosanke & Wright)	105 5 <sup>th</sup> St Ste 201 PO Box 632 Lynden, 98264 (360) 354-4482 <a href="mailto:jsmith@skwlaw.net">jsmith@skwlaw.net</a>		X			X
Stephen C. Schutt <sup>1</sup>	1011 8 <sup>th</sup> St PO Box 1032 Anacortes, 98221 (360) 293-5094 <a href="mailto:schuttatty@yahoo.com">schuttatty@yahoo.com</a>		X	X		X
Northwest Justice Project <sup>2</sup>	1814 Cornwall Ave Bellingham, WA 98225 (360) 734-8680 or CLEAR 1-888-201-1014 <a href="http://www.nwjustice.org/">http://www.nwjustice.org/</a>	X		X	X	X

<sup>1</sup> Will represent families for simple uncontested guardianships for \$600 in Skagit County filed cases. (9/14/15: Shelly will check this out and call me back.)

<sup>2</sup> Offers legal services for extremely low-income individuals/families. Fees and qualifications for their services are based on income/resources.





# *Planning Tools*

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There are tools which may be used to provide you, your family and the professionals in your son's or daughter's life with valuable information specific to your child's needs.

1. Guardianship Information Sheet
2. Letter of Intent Worksheet

**Completing these forms before speaking to an attorney will save time and money.**

# Guardianship Information Sheet

Date \_\_\_\_\_

## 1. Alleged Incapacitated Person

---

The person for whom you wish to have guardian appointed.

\_\_\_\_\_  
Name of incapacitated person

\_\_\_\_\_  
Address

\_\_\_\_\_  
Length of Time at Current Residence

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Social Security Number

\_\_\_\_\_  
Date of Birth

\_\_\_\_\_  
Present Age

\_\_\_\_\_  
Post Office Address

\_\_\_\_\_  
If Group Home, person in Charge

## 2. Petition

---

The person(s) who is/are filing the Petition. If husband and wife, please indicate the full name of each.

\_\_\_\_\_  
Name(s)

\_\_\_\_\_  
Address

\_\_\_\_\_

**3. Nature And Degree Of Alleged Incapacity**

---

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**4. Description/Values**

---

- a) Real Property: \_\_\_\_\_
- b) Stock and Bonds: \_\_\_\_\_
- c) Mortgages and Notes: \_\_\_\_\_
- d) Bank Accounts: \_\_\_\_\_
- e) Furniture: \_\_\_\_\_
- f) Other personal property: \_\_\_\_\_
- g) Cash on hand: \_\_\_\_\_
- h) Social Security/SSI: \_\_\_\_\_
- i) Pension/Insurance: \_\_\_\_\_

Are total assets under \$3,000.00?       Yes     No

**5. Proposed Guardian**

---

The person(s) who will act as guardian. If husband and wife, please so state and indicated full name of each. You must also appoint an alternative or standby guardian in the event that you are unable to serve in the future.

Guardian \_\_\_\_\_

Address \_\_\_\_\_

Phone Number \_\_\_\_\_

Relationship to Incapacitated Person \_\_\_\_\_

Alternate Guardian \_\_\_\_\_

Address \_\_\_\_\_

Phone Number \_\_\_\_\_

Relationship to Incapacitated Person \_\_\_\_\_

## 6. Relatives Or Other Persons Significantly Involved With Alleged Incapacitated Person

---

a) Name: \_\_\_\_\_

Address: \_\_\_\_\_

Relationship: \_\_\_\_\_

b) Name: \_\_\_\_\_

Address: \_\_\_\_\_

Relationship: \_\_\_\_\_

c) Name: \_\_\_\_\_

Address: \_\_\_\_\_

Relationship: \_\_\_\_\_

d) Name: \_\_\_\_\_

Address: \_\_\_\_\_

Relationship: \_\_\_\_\_

## 7. Care Facility

---

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
When did the person move to facility?

## 8. Reason For Guardianship

---

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**9. Why Is No Alternative To Guardianship Appropriate?**

---

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**10. Areas Of Assistance**

---

List specific areas of protection and assistance required:

- a) \_\_\_\_\_
- b) \_\_\_\_\_
- c) \_\_\_\_\_
- d) \_\_\_\_\_
- e) \_\_\_\_\_
- f) \_\_\_\_\_

**11. Medical**

---

- a) Doctor: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_
- b) Doctor: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_

## Letter of Intent Worksheet

### Considering \_\_\_\_\_'s Future

For each applicable area below, consider your son or daughter's future. List 3 options to guide future caregivers in decision making and interaction with your child. Draw upon what you know about your son or daughter, through observation and through discussion with your child, and share what you've learned!

#### Residence

If something should happen to you tomorrow, where will your son or daughter live?

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

#### Education

You have a lifelong perspective of your son or daughter's capabilities. Share it!

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

#### Employment

What has your son or daughter enjoyed? Consider their goals, aspirations, etc.

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

**Medical Care**

What has and has not worked with your son or daughter? What should future caregivers know?

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

**Behavior Management**

What consistent approach has worked best in your absence during difficult transition periods in your son or daughter's life?

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

**Socialization and Recreation**

What activities make life meaningful for your son or daughter? What brings them joy?

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

**Other Information**

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**Advocate/Guardian**

Who will look after, fight for, and be a friend and support to your son or daughter?

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

**Trustee**

Who do you trust to manage your son or daughter's supplementary funds?

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

---

Signature

Date



# Resources

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Planning for your family member with special needs involves a great deal of research to compile a huge amount of information related to your child's well-being. You may need up-to-date medical, educational, financial, and legal information, depending on recent changes in the law. Below is a list of resources which may help you.

## Advance Directives

- **End of Life Choices.** Whatcom Alliance for Healthcare Advancement: <http://whatcomalliance.org/end-of-life-care/>.
- **End-of-Life Resources: Advance Directives.** Washington State Medical Association: <http://www.wsma.org/advance-directives>.
- **Myths and Facts about Health Care Advance Directives.** American Bar Association, Commission on Law & Aging: [http://www.americanbar.org/content/dam/aba/migrated/Commissions/myths\\_fact\\_hc\\_ad.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/Commissions/myths_fact_hc_ad.authcheckdam.pdf).
- **Washington State Department of Social & Health Services:** <https://www.dshs.wa.gov/altsa/home-and-community-services/legal-planning>. Information about our legal right to make decisions about healthcare and Advance Directives in Washington State.

## Estate Planning

- **Member Directory.** American Academy of Estate Planning Attorneys: [http://www.aaepa.com/member\\_directory/](http://www.aaepa.com/member_directory/).

## Financial Planning

- **Compass Health:** <http://www.compasshealth.org/services/payee-ship-and-finance-management-services/>. Representative Payee financial management services.
- **Special Needs Financial Planning.** Shepherd Financial Planners: [www.specialneedsplanning.com](http://www.specialneedsplanning.com).
- **Special Needs Planning.** MetLife: [https://www.metlife.com/individual/planning/special-needs/index.html?WT.ac=PRO\\_PRO\\_ChildSpecialNeeds\\_5-11181\\_T3621-IN-insurance&oc\\_id=PRO\\_PRO\\_ChildSpecialNeeds\\_5-11181\\_T3621-IN-insurance#overview](https://www.metlife.com/individual/planning/special-needs/index.html?WT.ac=PRO_PRO_ChildSpecialNeeds_5-11181_T3621-IN-insurance&oc_id=PRO_PRO_ChildSpecialNeeds_5-11181_T3621-IN-insurance#overview).
- **Sunrise Mental Health** In partnership with **Washington Home of Your Own (WAHOYO):** <http://sunrisecommunityliving.com/services/financial-management-payee-services/>. Representative Payee financial management services in Whatcom County.
- **The Voice Newsletter**, published by Special Needs Alliance: <http://www.specialneedsalliance.org/>. Articles on Financial planning that include:
  - Estate Planning for Families with Special Needs Children*
  - Income Tax Benefits for Families with Special Needs Children*
  - Planning for Multiple Generations*
  - What Property May a Person Receiving SSI Own?*

## Guardianship and Alternatives to Guardianship

- **Alternatives to Guardianship for Adults.** NW Justice Project: <http://www.washingtonlawhelp.org/resource/alternatives-to-guardianships-for-adults?ref=x0ZzO>.
- **Guardianship: Appointment, Qualification, Removal of Guardians.** Chapter 11.88 RCW. Washington State Legislature Revised Code of Washington: <http://apps.leg.wa.gov/rcw/default.aspx?cite=11.88&full=true>
- **Guardianship: Powers and Duties of Guardian or Limited Guardian.** Chapter 11.92 RCW. Washington State Legislature Revised Code of Washington: <http://apps.leg.wa.gov/rcw/default.aspx?cite=11.92&full=true>
- **LawHelp.org.** Columbia Legal Services: [www.lawhelp.org](http://www.lawhelp.org). Type in 'questions on guardianship' in the search box.
- **Lay/Family (Non-Professional) Guardian Training.** Washington Courts: [http://www.courts.wa.gov/programs\\_orgs/guardian/?fa=guardian.layGuardianship&type=training](http://www.courts.wa.gov/programs_orgs/guardian/?fa=guardian.layGuardianship&type=training).
- **Lifetime Advocacy Plus:** [www.laplus.org](http://www.laplus.org). Information on guardianship, advocacy, trust, financial management and personal services.
- **National Academy of Elder Law Attorneys:** <http://www.naela.org/>.
- **Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.** Chapter 11.90 RCW. Washington State Legislature Revised Code of Washington: <http://apps.leg.wa.gov/rcw/default.aspx?cite=11.90&full=true>.
- **The Voice Newsletter**, published by Special Needs Alliance: <http://www.specialneedsalliance.org/>. Articles on Guardianship and Alternatives to Guardianship that include *Does My Child Need a Guardianship?*
- **Washington Law Help:** <http://www.washingtonlawhelp.org/>. Type in 'alternatives to guardianship' in the search box.

## Legal Issues

- **Disability Rights Washington** (formerly Washington Protection & Advocacy System (WPAS)): <http://www.disabilityrightswa.org/>.
- **Nolo Press:** <http://www.nolo.com/>. Self-help legal press with books and articles on Legal Issues that include:
  - Disability discrimination at school*
  - Disability Rights*
  - Every Dog's Legal Guide (for people with assistance dogs)*
  - Finding an education lawyer*
  - How Section 504 helps people with a physical or mental disability at school*
  - Questions to Ask Before Hiring a Disability Lawyer*
  - Special Education and IEPs*
  - Special Education Lawyers: Do You Need One?*
  - Your Rights in the Workplace*
- **Revised Code of Washington (RCW).** Washington State Legislature: <http://apps.leg.wa.gov/rcw/>
- **The Voice Newsletter**, published by Special Needs Alliance: <http://www.specialneedsalliance.org/>. Articles on Legal Issues that include *Choosing an Attorney to Help With Special Needs Planning*.
- **Washington Administrative Code (WAC).** Washington State Legislature: <http://app.leg.wa.gov/WAC/default.aspx?cite=388>. Most DSHS Regulations are found at WAC Title 388.

Community Developmental Disabilities Regulations found at WAC 388-820 to 388-853. Search regulations by keywords.

## Low-Cost and Volunteer Attorneys

- **Columbia Legal Services:** [www.columbialegal.org](http://www.columbialegal.org). Legal assistance for low-income and special needs people and organizations in Washington.
- **LAW Advocates:** [www.lawadvocates.org/](http://www.lawadvocates.org/). Legal assistance for those in need in Whatcom County.
- **NW Justice Project**<sup>3</sup>: <http://nwjustice.org/clear-online>. Justice for all low-income people in Washington. Call NJP's CLEAR Hotline at (888) 201-1014 or CLEAR\*Sr (age 60 and over) at (888) 387-7111.
- **Washington State Bar Association:** [www.wsba.org](http://www.wsba.org).

## Powers of Attorney

- **Nolo Press:** <http://www.nolo.com/>. Self-help legal press with books and articles on Powers of Attorney that include *Finalizing a Health Care Directive and Durable Power of Attorney for Health Care in Washington*.
- **Power of Attorney: Chapter 11.94 RCW.** Washington State Legislature Revised Code of Washington: <http://apps.leg.wa.gov/rcw/default.aspx?cite=11.94&full=true>.
- **Powers of Attorney and Health Care Directives.** Columbia Legal Services: <http://www.washingtonlawhelp.org/resource/questions-and-answers-on-powers-of-attorney?ref=x0ZzO>.

## Special Needs Trusts

- **Nolo Press:** <http://www.nolo.com/>. Self-help legal press with books and articles on Special Needs Trusts that include:  
*New Savings Accounts (ABLE) for Disabled People*  
*Special Needs Trusts: Protect Your Child's Financial Future*
- **Special Needs Trusts.** Christopher B. Johnson: <http://www.christopherbjohnson.com/special-needs-trusts/>.
- **SPOTLIGHT ON TRUSTS -- 2015 Edition.** Social Security Administration: [www.ssa.gov/ssi/spotlights/spot-trusts.htm](http://www.ssa.gov/ssi/spotlights/spot-trusts.htm).
- **The Voice Newsletter**, published by Special Needs Alliance: <http://www.specialneedsalliance.org/>. Articles on Special Needs Trusts that include:  
*A Reader's Question about Pooled Trusts*  
*A Short Primer on Trusts and Trust Taxation*  
*Alternatives to Litigation Special Needs Trusts*  
*An Introduction to "In-kind Support and Maintenance"*  
*Buying a House – More Questions*  
*Buying a House for a Special Needs Beneficiary: Proceed with Care!*  
*Developing an Estate Plan for Parents of Children with Disabilities: A 15-Step Approach*  
*Estate Planning for People with Disabilities*

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<sup>3</sup> To get access to attorneys through Northwest Justice Project, you must first be screened by CLEAR (Coordinated Legal Education, Advice and Referral).

*Fixing a Flawed Special Needs Estate Plan*  
*Funding a Special Needs Trust with Life Insurance*  
*Generational Planning: When the Caregiver Needs Help*  
*Is a Qualified Disability Trust Appropriate?*  
*Medicare Premium Rules Will Affect Some Large Trusts*  
*Moving a Special Needs Trust to a New State*  
*Naming a Special Needs Trust as Beneficiary of your IRA or Retirement Plan*  
*Non-Profit Organizations as Trustees of Special Needs Trusts*  
*Plan for the Future: Your Own and Your Son's or Daughter's*  
*Planning for Adult Children with Disabilities*  
*Planning for the Future of a Family Member with Disabilities*  
*Planning for the Future: How Does the First Party Special Needs Trust Fit in the Plan?*  
*Pooled Trusts for Individuals with Special Needs*  
*Special Needs Trusts And Home Ownership: A Trustee's Concerns*  
*Special Needs Trusts and Individual Retirement Accounts*  
*Special Needs Trusts and Individual Retirement Accounts*  
*Special Needs Trusts and the Purchase of a Vehicle*  
*Taxes and Special Needs Trusts*  
*The Impact of Special Needs Trusts on Eligibility for Subsidized Housing*  
*The Secret of When Less Is More*  
*Top Ten Tips When Planning For Special Needs*  
*Updating Your Special Needs Trust – Begin with a Self Review*  
*Using Pooled Trusts in Estate Planning*  
*Using Private Trustees to Administer Special Needs Trusts*  
*What Are You Waiting For?*  
*What Can a Special Needs Trust Pay For?*  
*What to Pay before Funding a Special Needs Trust*  
*When a Family Member Serves as Trustee – "Fair and Honest Is Not Enough"*  
*When a Family Member Serves As Trustee (Part II): The Devil Is In the Details*  
*Your Special Needs Trust ("SNT") Defined*

- **Washington State Life Opportunities Trust:** <http://www.ddlot.org/>. Developmental Disabilities Life Opportunities Trust (DDLLOT) or DD Endowment Trust.

## Special Needs General Information

- **The Arc of Whatcom County:** [www.arcwhatcom.org](http://www.arcwhatcom.org). Advocacy and education for people with intellectual and developmental disabilities in Whatcom County.
- **The Arc of Washington State:** [www.arcwa.org](http://www.arcwa.org). Advocacy and education for people with intellectual and developmental disabilities in Washington State.
- **The Arc of the United States:** [www.thearc.org](http://www.thearc.org). Advocacy and education for people with intellectual and developmental disabilities in the United States.
- **Center for Future Planning.** The Arc: <https://futureplanning.thearc.org/>
- **Center for Parent Information and Resources:** <http://www.parentcenterhub.org/>.
- **Children with Special Healthcare Needs.** Washington State Department of Health: <http://www.doh.wa.gov/YouandYourFamily/InfantsChildrenandTeens/HealthandSafety/ChildrenwithSpecialHealthCareNeeds.aspx>.

- **Developmental Disabilities Administration (DDA).** Department of Social and Health Services, Washington State: <http://www.dshs.wa.gov/dda>.
- **eP (Exceptional Parent) Magazine:** [www.eparent.com](http://www.eparent.com). The Special Needs Resource.
- **Internet Resources for Special Children (IRSC):** <http://www2.irsc.org/>.
- **NAMI Whatcom:** <http://www.namiwhatcom.org/>. Grassroots organization dedicated to improving the lives of people in Whatcom County with mental illness.
- **National Alliance on Mental Illness (NAMI):** [www.nami.org](http://www.nami.org). Grassroots mental health organization dedicated to building better lives for people affected by mental illness.
- **Tools and Technologies to Enhance Life: AbleData.** The National Institute on Disability and Rehabilitation Research: [www.abledata.com](http://www.abledata.com).
- **Transitions: from Birth to Adult. Whatcom County Transition Planning Resource Guide.** Whatcom County Health Department: <http://www.whatcomcounty.us/documentcenter/view/2116>.
- **The Voice Newsletter,** published by Special Needs Alliance: <http://www.specialneedsalliance.org/>. Articles on Special Needs General Information that include *Special Needs Information on the Internet: Proceed with Caution*.
- **Whatcom County Children and Youth with Special Health Care Needs.** Whatcom County Health Department: <http://www.whatcomcounty.us/659/Children-and-Youth-with-Special-Healthca>.
- **Whatcom County Developmental Disabilities Program.** Whatcom County Health Department: <http://www.whatcomcounty.us/670/Developmental-Disabilities-Program>.
- **Washington State Medical Home Partnership Project:** [www.medicalhome.org/](http://www.medicalhome.org/).
- **Whatcom Taking Action for Children with Special Healthcare Needs:** <http://whatcomtakingaction.org/>. Whatcom County resources for children with special healthcare needs.







This information is presented by:

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