



## New Minor Guardianship Law Effective January 1, 2021 RCW 11.130 FAQs

*\*\*\*\*The Administrative Office of the Courts is **not** permitted to give legal advice. The information provided below is for informational purposes only. You are advised to consult with an attorney to assist you in determining your options. Please see the separate "Resources" document.*

*\*\*\*\*This new law is not effective until January 1, 2021. Information about local court procedures, such as case schedules or local rules and forms, is limited as of the date of this document.*

### Law

The information provided below describes the minor guardianship **statute in general**. To read the law, follow this link:

<https://app.leg.wa.gov/RCW/default.aspx?cite=11.130&full=true>

### Local Court Rules

Guardianships are established and maintained in superior court. In Washington, each county's court system has its own local rules about how to move forward with a case. The links to the superior courts websites can be found here:

[http://www.courts.wa.gov/court\\_dir/?fa=court\\_dir.county](http://www.courts.wa.gov/court_dir/?fa=court_dir.county)

### Forms

The Administrative Office of the Courts provides model forms for minor guardianship. The link for the model forms is here: <http://www.courts.wa.gov/forms/>.

However, the local superior court may require its own and/or additional forms to be filed. Check with the superior court for the county where the case will be filed for information about required forms. [http://www.courts.wa.gov/court\\_dir/?fa=court\\_dir.county](http://www.courts.wa.gov/court_dir/?fa=court_dir.county).



## GUARDIANSHIP

### ➤ What is guardianship?

Guardianship is a legal arrangement. A guardianship is created when a court appoints someone to make decisions for, and take actions for, someone else. The guardian has a legal duty to that person. The legal duty is called being a fiduciary. A fiduciary is required to act in the best interests of the person under guardianship.

## GUARDIANSHIP OF A MINOR - GENERAL

### ➤ What is the basis for creating a minor guardianship under RCW 11.130?

Under RCW 11.130 generally, a court can appoint a guardian for a minor who does not have a guardian under the following circumstances.

1. Appointing a guardian is in the best interests of a minor, **and**
2. One of the following:
  - ✓ Each parent of the minor agrees after being informed about what a guardianship means; or
  - ✓ All parental rights have been terminated; or
  - ✓ There is clear and convincing evidence that no parent of the minor is willing or able to exercise parenting functions as defined in RCW 26.09.004.

<https://app.leg.wa.gov/rcw/default.aspx?cite=26.09.004>

➤ Does the guardian get custody of the minor?

Under RCW 11.130 generally, the guardian of a minor gets custody. (There is an exception though, if conferring custody would be inconsistent with another court order that has effect in Washington.)

➤ Do the parent(s) have the right to visit with the minor?

This depends on what the guardianship court order says. When a guardian is appointed, a parent may have visitation rights. The law says that the court shall preserve the parent-child relationship by parent-child visitation, unless the court finds the relationship should be limited or restricted. The reasons why visits should be limited or restricted are in another law. That law is RCW 26.09.191. <https://app.leg.wa.gov/RCW/default.aspx?cite=26.09.191>

➤ Could the parents have other rights during the guardianship?

Yes, the parent(s) may have other rights, such as making decisions about education, for example, or access to records. The guardianship court order will say what these are.

➤ How does a guardian show what authority they have with respect to the minor?

The “Letters of Office” show that the guardian has been appointed. These documents, also called Letters of Guardianship, will say if the guardian has all authority for the child (“full guardianship”) or whether the parents have visitation, decision making, or other rights (“limited guardianship”.) In some cases, the minor may have some decision making rights if the court finds it is important for developing self-reliance of the minor. That would also be a limited guardianship.

➤ What responsibilities does a minor’s guardian have?

The guardian is a fiduciary. A fiduciary is required to act in the minor’s best interest. The guardian has the same responsibilities as a parent, unless the court limits the responsibilities. These responsibilities include: the minor's support, care, education, health, safety, and welfare.

➤ What powers does a minor's guardian have?

The guardian has the same powers as a parent concerning the minor's support, care, education, health, safety, and welfare, unless the court limits the guardian's powers. This includes things like consenting to health care and receiving benefits for the care of the minor.

➤ Can the court order child support from a parent?

Yes. The court may order either or both parents to pay child support.

➤ What if the guardian wants to move with the minor?

There are specific laws that apply to moving with a minor when a court order affects the child's custody. See: RCW 26.09.405--.560.

<https://apps.leg.wa.gov/rcw/default.aspx?cite=26.09>

➤ Who can be a guardian?

The guardian has to meet qualifications in the law. These include:

- ✓ Be at least 21 years old (unless the guardian is a parent)
- ✓ Not have criminal convictions involving dishonesty, neglect, or use of physical force or other crimes related to a guardian's responsibilities\*
- ✓ Be someone a court would not find to be unsuitable

\*A court might consider a relative qualified to be the guardian even if they have a conviction. It will depend on the facts of the situation.

➤ Does a guardian for a minor need to complete any training?

In general a guardian must complete the standardized training made available by the administrative office of the courts. The lay guardian training for minor guardianship will be available on January 1, 2021. The website link for the training will be:

<http://www.courts.wa.gov/guardianportal/index.cfm?fa=guardianportal.title11minor>

There is no cost for this training. The court may grant a waiver of this training.

The superior court where the petition is filed may have its own training requirements as well.

- What information does a guardian have to tell the court in writing to be appointed as a guardian?

A guardian must file papers with the court that disclose the following things about the guardian:

- ✓ Convictions for crimes that are felonies, or involve dishonesty, neglect, violence, or use of physical force, or are related to the guardian's responsibilities
  - ✓ Bankruptcies or other court findings about financial behavior described in the law
- Will the court review other information before appointing a guardian with custody rights?

The court will require information from the Department of Children, Youth and Families ("DCYF", sometimes called Child Protective Services, or "CPS") regarding investigations involving the minor, and any investigations about the petitioner or other adults in the household. The court must also require background checks of the petitioner from the Washington state patrol criminal identification system. These checks include other adults in the petitioner's household.

- Is the guardian's agreement needed to become a minor's guardian?

Yes. The guardian has to sign and file an Acceptance of Appointment with the court.

- Can the rights of the parents, the minor, and the guardian change during the guardianship?

Yes. The parents, the minor, the guardian, or someone else could ask the court to change parts of the guardianship. An example would be how often the parent has the right to visit with the minor.

➤ How long does a minor guardianship last?

In general, the minor guardianship lasts until the minor turns 18. The guardianship also ends if the minor is adopted, emancipates (gets legal independence) or dies.

Someone could petition (ask the court) for the minor guardianship to end. Petitioners can include a parent, the minor, the guardian, or someone else interested in the welfare of the minor.

The guardianship will end if the court finds that the reason for the guardianship no longer exists, unless the court makes two findings. The two findings are:

- ✓ Ending the guardianship would be harmful to the minor, and
- ✓ The minor's interest in the guardianship continuing outweighs the interest of any parent of the minor in restoration of the parent's right to make decisions for the minor.

➤ Can a guardian just stop being a minor's guardian?

No. The guardian has to get the court's approval to stop being the guardian.

➤ Does the guardian have to file reports with the court about the guardianship?

It depends. The court will decide if the guardian has to file reports about the guardianship. If reports are required, the court order will state how often the reports must be filed.

➤ What happens to a RCW 26.10 non-parent custody order under the RCW 11.30 minor guardianship law?

The RCW 11.130 minor guardianship law does not affect the validity of any court order issued under chapter 26.10 RCW prior to January 1, 2021.

➤ What if someone wants to modify a 26.10 non-parent custody order after January 1, 2021?

When court orders issued under chapter 26.10 RCW are modified, the modification is subject to the requirements of the minor guardianship law.

## MINOR GUARDIANSHIP CASES

### ➤ Are there different types of minor guardianship cases?

Yes. There are three types of minor guardianship cases:

- ✓ “Regular” Minor Guardianship
- ✓ Emergency Minor Guardianship
- ✓ Standby Minor Guardianship

Please see information about the three types of guardianship below under the separate headings.

### ➤ Are the procedures exactly the same for all three types of minor guardianship cases?

No. Some procedures are the same, but some are different.

### ➤ Where are minor guardianship cases filed?

The case must be filed in the county where the minor lives or is present when the case starts. The case can also be filed in the county where another case is going about the minor’s custody or parental rights of the minor. Other cases include, for example, a dependency case (CPS has become involved and has started a case.)

Minor guardianship cases are filed in the superior court of the county.

### ➤ Is there a filing fee to start the case?

No filing fee will be charged if the proposed guardian in the case is a relative. A relative is someone who is related by blood or marriage.

\*(The filing fee still applies if the relative is a professional guardian.)

## “REGULAR” MINOR GUARDIANSHIP CASES

### ➤ Who can start a case?

Persons who can start the case (file a petition) include:

- ✓ The person who wants to be the guardian
- ✓ Someone interested in the welfare of the minor
- ✓ The minor

### ➤ What rules apply to the case?

Except as otherwise provided in RCW 11.130, the rules of evidence and civil procedure apply to the case.

### ➤ What is a petition?

A petition is a document that is filed with the court that tells the court what the petitioner (person filing the document) is asking the court to do. For example, this document will tell the court why the person thinks a minor needs a guardian, and who the person thinks should be the guardian.

### ➤ What is a “declaration explaining the reasons for minor guardianship”?

A “declaration explaining the reasons for minor guardianship” is a document used in regular and standby minor guardianship cases. This declaration tells the specific facts and details about why a minor guardianship is being requested.

### ➤ What is a notice of hearing?

A notice of hearing is a document that says when a hearing has been scheduled in the guardianship case. It also gives information about what may happen at a hearing, and information about the rights of the minor and the parents.

### ➤ What is a summons?

A summons is a document that tells a person about a court case. The summons has information about when the person receiving the summons must respond.

➤ What does RCW 11.130 say about how notice must be given?

Some people must be served notice. See RCW 11.130.195 1(a).

<https://app.leg.wa.gov/RCW/default.aspx?cite=11.130.195> . (Information about how to serve process is beyond the scope of this information in this document.)

Other people may be given notice by mail or other action reasonably calculated to give notice under RCW 11.130.065. <https://app.leg.wa.gov/RCW/default.aspx?cite=11.130.065>  
In general, notice must be given as required by the local superior court's rules of civil procedure at least fourteen days before the hearing.

➤ Who has to get notice by service?

The following must get notice by service: the minor if they are 12 or older, the parents of the minor, and the person nearest in kinship if there are no parents. The list also includes someone with non-parent custody of the child or a guardian. The court can also say someone else needs notice by service.

➤ Are there special rules about what information is served on (given to) a minor?

Yes. The person filing the case can ask the court to not have to serve (give) the “declaration explaining the reasons for minor guardianship” (the document with the detailed facts) to the minor. The minor can ask to get this information.

➤ Who else has to get notice by mail or other means that will give them reasonable notice?

The people who may receive notice by mail or other reasonable means include:

- ✓ any adult with primary care and custody of the minor who is not a parent, guardian or person with non-parental custody under RCW 26.10
- ✓ each person that had primary care or custody of the minor for at least sixty days during the two years immediately before the filing of the petition or for at least seven hundred thirty days during the five years immediately before the filing of the petition,
- ✓ grandparents,
- ✓ adult siblings, etc.

The full list is at <https://app.leg.wa.gov/RCW/default.aspx?cite=11.130.195>.

The petitioner can ask the court to waive notice to someone in this category for a good reason.

- Are there special requirements about the notice of hearing form that has to be given under the statute?

Yes. The minor guardianship law says that notice of a hearing under this chapter must be in at least sixteen-point font and in plain language. Sixteen point font is larger than average size. As much as possible, the notice has to be in a language that the person understands.

- Are there other requirements if the minor is Native American?

A law called the Indian Child Welfare Act applies to minor guardianships. That law requires that the minor's tribe be given notice about the case.

- Can the minor be involved in the case?

Yes. In general the court shall allow a minor to attend and participate in the hearing. However, the court can decide that the minor shouldn't attend if it would be harmful to the minor. Also, the court can decide that the minor doesn't have the ability or maturity to participate in a way that is meaningful.

- Does the court appoint an attorney for the person filing the case?

No. The person filing the case (petitioner) has to hire their own attorney.

- Does the court appoint an attorney for a minor?

It depends. Minors 12 and older can ask for an attorney. There may be other circumstances where the court might appoint an attorney for the minor, such as if the court determines that the minor needs an attorney or a guardian ad litem recommends one. The court will decide.

➤ Does the court appoint an attorney for the parent(s)?

It depends. The court must appoint an attorney for a parent if the parent is indigent (cannot afford an attorney,) appears in the case, and one of the following applies:

- ✓ The parent objects to the guardianship,
- ✓ The parent needs an attorney to make sure they understand their agreement to the guardianship (informed consent), or
- ✓ The court determines the parent needs an attorney

The court may, but is not required to, appoint an attorney for a parent even if the parent isn't indigent (can afford an attorney) for the same reasons.

➤ What is a guardian ad litem?

A guardian ad litem is someone that the court appoints to represent the needs and best interests of an individual. In a minor guardianship, a court may appoint a guardian ad litem for the minor to find out information for the court and report back to the court about the minor or other issues in the case.

➤ What is a court visitor?

A court visitor is someone who is appointed in minor guardianship to find out information for the court and report back to the court about the minor or other issues in the case.

➤ Can the court grant temporary custody in a regular minor guardianship case?

No. A regular minor guardianship case doesn't have any temporary custody orders. If someone wants to ask the court for custody of a minor as soon as possible, the person must file an emergency guardianship petition.

➤ How long does a regular minor guardianship case take?

It depends. The law doesn't have specific timelines. The local superior court may have case schedules.

➤ What does a petitioner have to prove to have a guardian appointed for a minor?

Appointing a guardian has to be in the best interests of the minor.

The petitioner also has to show one of the following:

- ✓ The parents agree after being informed about what a guardianship is about
- ✓ All parents rights have been ended, or
- ✓ No parent of the minor is willing or able to exercise parenting functions as defined in RCW 26.09.004

➤ What does the law say about who becomes the guardian?

The law says that the court shall appoint guardian according to the following priorities.

- ✓ The person nominated by the parent in a will or other record unless it's not in the minor's best interests
- ✓ If the parents have named different people, the guardian who would be in the minor's best interest, unless none are in the minor's best interests
- ✓ If none of the people nominated by the parents are in the minor's best interests, then the person nominated by a minor 12 and older, unless not in the minor's best interests
- ✓ If none of the people nominated by the parents of the minor are in the minor's best interests, the person whose appointment would be in the minor's best interests

## EMERGENCY GUARDIANSHIPS

### ➤ What is an emergency minor guardianship?

An emergency minor guardianship is when someone is appointed as a guardian for a minor on a temporary basis.

### ➤ What does a petitioner have to prove to have an emergency guardian appointed?

An emergency guardian may be appointed if the person asking for the emergency guardianship can show two things.

- ✓ Appointing the emergency guardian is likely to prevent substantial harm to the minor's health, safety, or welfare, and
- ✓ No other person appears to have authority and willingness to act in the circumstances

### ➤ Who has to get notice in an emergency guardianship?

Notice has to be given to the minor if 12 or older, each parent, anyone else with care or custody of the minor, any appointed attorneys, and anyone else the court determines.

### ➤ What kind of notice does the law require for an emergency guardianship hearing?

The petitioner has to give “reasonable notice of the date, time, and place of a hearing on a petition for appointment of an emergency guardian”.

➤ Can a petitioner ask for an immediate order?

If someone petitions for an emergency guardianship, they may also ask the court for an immediate order. The petitioner can ask the court to sign an *Immediate Minor Guardianship Order (Ex Parte) and Hearing Notice*. For this to happen the court has to find from an affidavit or testimony that the minor's health, safety, or welfare will be substantially harmed before a hearing with notice can be held. Notice of the emergency guardianship has to be given within 48 hours and the hearing has to be held within 5 days.

➤ How long does an emergency guardianship last?

Generally, an emergency guardianships can last up to 60 days. The court can be asked to extend it for up to another 60 days.

➤ Can the court extend an emergency guardianship longer?

Only if a regular guardianship case or a standby guardianship case is filed. The court may extend the emergency guardianship until the full hearing happens in that case.

➤ What authority does an emergency guardian have?

The emergency guardian has only the authority stated in the court order.

## STANDBY GUARDIANSHIP FOR A MINOR

➤ What is standby guardianship?

A court can appoint a standby guardian for a minor if the parent or someone the parent wants to be the guardian petitions (asks) the court. The court must find that within two years no parent will be able or willing to perform parenting functions.

➤ Are there specific procedures for a standby guardianship case?

Yes. RCW 11.130.220 is the section of the law about standby guardianship.  
<https://app.leg.wa.gov/RCW/default.aspx?cite=11.130.220>