



Other Protective Arrangements

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The Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (the “Uniform Act”) became effective in Washington state on January 1, 2022. A section of the new law, called Other Protective Arrangements, is intended to reduce unnecessary guardianships and conservatorships.

While guardianship and conservatorship are also protective arrangements, in this article the term protective arrangement will be considered as a different, less-restrictive alternative to guardianship and conservatorship. It allows the court to enter an order of limited scope (and potentially, of limited duration) that is tailored to the individual’s needs. A protective arrangement may be appropriate where a limited order would meet the needs of an individual for whom guardianship or conservatorship would otherwise be warranted.

Other protective arrangements can help prevent an individual who needs some assistance from losing their rights. Unlike a guardianship or conservatorship, a protective arrangement does not involve the removal of the individual’s right to make decisions (such as the right to contract or to consent or refuse medical treatment).

The legal standard to obtain a protective arrangement is the same substantively as the standard to appoint a guardian or conservator; however, with the protective arrangement, the court can decide that a more limited order would be sufficient to meet the person’s needs. This could avoid a more restrictive, long-term guardianship or conservatorship, which are burdensome and, often, expensive. In fact, one of the goals of protective arrangements, as stated by the Uniform Law Commission drafters, is to reduce costs to the individual and costs to the court system.

The process to obtain a protective arrangement mirrors the process required to obtain a guardianship or conservatorship. It starts with filing a petition in the county where the individual (the “respondent”) resides. Upon receipt of the petition, the court appoints a

court visitor to perform an investigation. The respondent is entitled to an attorney. Unlike with a full or limited guardianship or conservatorship, however, the respondent is not entitled to a jury trial with respect to whether a protective arrangement is necessary or advisable.

While a protective arrangement is a less-restrictive alternative to guardianship or conservatorship, the court still prefers other options such as powers of attorney, trusts, or supported decision-making. However, if those options are not viable, the court must consider the availability of a protective arrangement before considering a limited or full guardianship or conservatorship.

A protective arrangement may be an option when the person's needs are more limited and capable of precise determination. The Uniform Act provides a non-exhaustive list of the transactions which may be appropriate for a protective arrangement. For example, a protective arrangement, instead of a guardianship, can authorize the consent or refusal of medical treatment or a move to a specified place, and a protective arrangement, instead of conservatorship, can authorize the establishment of a trust and can authorize a person to apply for government benefits on behalf of the respondent.

One section of the Uniform Act authorizes the court to enter certain protective arrangements without making the findings that would otherwise be required for other forms of protection. This section may be used to restrict certain access by a person to a respondent or the respondent's property even for a respondent who otherwise has full legal capacity to make decisions for himself or herself. In order to impose the restriction, the court must find that the person being restricted has used fraud, coercion, duress, or deception and control to either cause or attempt to cause some act that did or would have financially harmed the respondent or the respondent's property. The court must also find by clear and convincing evidence that the person currently poses a serious risk of substantial financial harm to the respondent or the respondent's property.

Other protective arrangements can also be tools to address visitation. An order requiring a third party to permit visitation with the respondent, and potentially setting forth a schedule for such visitation, may be appropriate where the respondent has been wrongfully denied the right to engage with others. Alternatively, the court may restrict visitation when appropriate. For example, the Washington statute allows the court to order an arrangement that restricts access "to the respondent by a specified person whose access places the respondent at serious risk of physical, psychological, or financial harm."

Because a protective arrangement is intended to be more limited in scope and, potentially, duration, such an arrangement would not be a viable option in a situation where the

individual's needs will require extensive, long-term assistance that is likely to change and evolve over time. For example, the authority needed to adequately assist a young adult with disabilities who is likely unable to manage their financial affairs for the foreseeable future is too expansive to put into a single court order. Additionally, if there are assets to manage unless the funds are in a trust, a protective arrangement would not be an option to allow a person to manage, for example, the income or resources of the individual subject to the arrangement.

Depending on what the arrangement authorizes, the court may appoint a special agent to assist in carrying out the terms of the protective arrangement. For example, a special agent may assist in funding a trust that either already exists or is being established by the order entering a protective arrangement.

Other protective arrangements are a new concept under the Uniform Act. Other than Washington, Maine is the only state that has enacted the Uniform Act; thus, the law itself is very much untested. It will take time, and opportunities for utilization, to understand the extent to which protective arrangements are helpful and the appropriate circumstances that justify their application.

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