AGENDA

12:00 PM  Introduction

12:10 PM  Presentation: ‘Legislative Updates Following the 2019 Regular Legislative Session’, by Katie Peterson, Northwest Elder Law Group, PLLC

1:15 PM  Adjourn

SPEAKER BIOGRAPHY

Katie Peterson, Northwest Elder Law Group, PLLC - Katie Peterson is an attorney at Northwest Elder Law Group. Katie is local to Washington and received both her Bachelor’s degree and law degree from the University of Washington. Her law practice provides services in the areas of estate planning, guardianship, probate, Medicaid and long term care planning. Katie volunteers for the Alzheimer’s Association, is a member of the Washington State Bar Association Elder Law Section, the King County Bar Association Guardianship and Elder Law Section, and the King County Bar Association Real Property, Probate and Trust Section.
HOW DO I EARN CREDIT FOR SELF-STUDY OR AUDIO/VISUAL (A/V) COURSES?

For pre-recorded A/V (self-study) programs, although the sponsor should apply for accreditation, **lawyers need to report the credits earned for taking the course.**

To add an approved course to your roster, follow the procedures below:

- Go to the "mywsba" website at [www.mywsba.org/](http://www.mywsba.org/).
- Log in.
- Click on the "Access MCLE" link in the "MCLE Info" box on your home profile page.
- Click on "Add Activity." Search to find the approved course in our system. (See search suggestions on the screen.)

### Adding a Recorded Course
Select Recorded Course from the Add New Activity screen.

This will prompt you to search for the activity in case the activity has already been accredited in the MCLE system.

You can search by Activity ID or by specific Activity Details. For the Activity Details search, you can use keywords for the title, sponsor name and date.

After entering your search criteria and selecting Search at the bottom of the screen, a list of possible activities will be provided.

You can select the correct one by clicking the Activity ID. This will take you to the specific activity. Entered the date(s) on which you began and ending viewing this recorded activity.

Then claim the correct credits for which you attended this activity in the Credits Claimed fields and click the Submit button at the bottom of the page.

You will receive a confirmation message at the top of your screen stating, “The activity has been added to your roster.”
Legislative Updates
66th Legislature
2019 Regular Session

- Informed Consent & Health Care Directives
- Disposition of Human Remains
- Long-Term Care Trust Act
- Uniform Guardianship Act
- Office of Public Guardian Expansion
Informed Consent & Health Care Directives

Signed April 30, 2019

Effective on July 28, 2019

- Amends RCW 7.20.065(1) to expand the list of individuals who may prove informed consent for medical care
  - In order of priority after adult siblings:
    - Adult grandchildren;
    - Adult nieces and nephews;
    - Adult aunts and uncles;
    - An adult who has exhibited special care and concern; familiar with patient’s personal values; reasonably available to make decisions; not a physician to the patient or employee of the health care facility (must provide declaration).
  - Allows health care directives to be witnessed or notarized

https://app.leg.wa.gov/billsummary?BillNumber=1175&Initiative=false&Year=2019
Disposition of Human Remains
Not yet signed
Available beginning May 1, 2020

- Lawful disposition of human remains to include alkaline hydrolysis and natural organic reduction (composting)

- **Alkaline hydrolysis**
  - “Reduction of human remains to bone fragments and essential elements in a licensed hydrolysis facility using heat, pressure, water, and base chemical agents”

- **Natural organic reduction**
  - “the contained, accelerated conversion of human remains to soil”

- Must be done at a licensed facility

https://app.leg.wa.gov/billsummary?BillNumber=5001&Initiative=false&Year=2019#documentSection
Long-Term Care Trust Act
Not yet signed
Benefits available beginning January 1, 2025

- Eligible adults can receive up to $36,500 during their lifetime to pay for long-term care services
- **Flexible supports and services**
  - Caregiving
  - Medical and mobility equipment
  - Training and pay for family members providing caregiver services
  - Meals on Wheels, transportation to the doctor, dementia education, care coordination, etc.
- Funded with payroll tax

https://app.leg.wa.gov/billsummary?BillNumber=1087&Initiative=false&Year=2019
Long-Term Care Trust Act

Not yet signed

**Benefits available beginning January 1, 2025**

- Eligible adults can receive up to $36,500 during their lifetime to pay for long-term care services

- Flexible supports and services

- Funded with payroll tax

  - **Beginning January 1, 2022**
  - All Washington W-2 workers contribute $.58 per $100 of income
  - Self-employed workers may opt-in
  - A total of 10 years without interruption of 5 or more consecutive years, or 3 years within the last 6 years

https://app.leg.wa.gov/billsummary?BillNumber=1087&Initiative=false&Year=2019
Uniform Guardianship Act
Signed May 21, 2019
Effective January 1, 2021

- Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Pedersen, Padden, Conway, Kuderer, Keiser, Salomon, Bailey and Dhingra; by request of Uniform Law Commission)

- Summary: The Act, as adapted for Washington, repeals existing state guardianship laws and replaces them with the Act. The Act repeals existing law on nonparental actions for child custody. The Act covers guardianships, conservatorships, and protective arrangements for both minors and adults.

- Terminology changes: uses more person centered terminology

- Priority of appointment: prioritizes family over professional guardians


[https://app.leg.wa.gov/billsummary?BillNumber=5604&Year=2019&Initiative=false](https://app.leg.wa.gov/billsummary?BillNumber=5604&Year=2019&Initiative=false)
Uniform Guardianship Act
Signed May 21, 2019
Effective January 1, 2021

Senate Law and Justice Committee
Work session held on June 11, 2019

- Delayed effective date intentional given the complexity of the subject matter and inevitable adjustments that will need to be made
- Have already started working on a trailer bill for the 2020 session based on comments
- Documents can be found at: https://app.leg.wa.gov/committeeschedules/Home/Documents/25876
- TVW video and transcript of the hearing can be found at: https://www.tvw.org/watch/?clientID=9375922947&eventID=2019061015

https://app.leg.wa.gov/billsummary?BillNumber=5604&Year=2019&Initiative=false
Uniform Guardianship Act
Signed May 21, 2019
Effective January 1, 2021

- Amends RCW 11.125.080 - Guardian of principal’s estate or person
- New chapter to Title 11 RCW
- Repeals Chapter 11.88 RCW - Appointment, qualification, removal of guardians (with exception of RCW 11.88.115 - Notice to department of revenue)
- Repeals Chapter 11.92 - Powers and duties of guardian or limited guardian
- Repeals Chapter 26.10 RCW - Nonparental actions for child custody

https://app.leg.wa.gov/billsummary?BillNumber=5604&Year=2019&Initiative=false
Uniform Guardianship Act
Signed May 21, 2019
Effective January 1, 2021

Terminology Changes

► “Conservator:” a person appointed by a court to make decisions with respect to the property or financial affairs of an individual subject to conservatorship
  
  ▶ Conservatorship replaces Guardianship of the Estate

► “Guardian:” a person appointed by the court to make decisions with respect to the personal affairs of an individual
  
  ▶ Guardianship refers only to Guardianship of the Person

► “Letters of office:” a record issued by a court certifying a guardian’s or conservator’s authority to act
  
  ▶ Individually referred to as Letters of Guardianship and Letters of Conservatorship

https://app.leg.wa.gov/billsummary?BillNumber=5604&Year=2019&Initiative=false
Uniform Guardianship Act
Signed May 21, 2019
Effective January 1, 2021

Terminology Changes Continued

- “Respondent:” an individual for whom appointment of a guardian or conservator or a protective arrangement is sought
  - Respondent replaces Alleged Incapacitated Person
- “Minor/Adult/Individual subject to conservatorship:” an individual, either a minor or adult, for whom a conservator has been appointed
  - Replaces Incapacitated Person
- “Minor/Adult/Individual subject to guardianship:” an individual, either a minor or adult, for whom a guardian has been appointed
  - Replaces Incapacitated Person

https://app.leg.wa.gov/billsummary?BillNumber=5604&Year=2019&Initiative=false
Uniform Guardianship Act
Signed May 21, 2019
Effective January 1, 2021

Terminology Changes Continued

- “Visitor:” person appointed by the court to investigate petition for guardianship/conservatorship pre-appointment
  - Visitor replaces current role of Guardian ad Litem

- “Guardian ad Litem:” person appointed to inform the court about, and to represent, the needs and best interests of an individual post-appointment of a guardianship or conservatorship

- “Less restrictive alternative:” an approach to meeting an individual’s needs which restricts fewer rights of the individual than would the appointment of a guardian or conservator. The term includes supported decision making, appropriate technological assistance, appointment of a representative payee, and appointment of an agent by the individual, including appointment under a power of attorney for health care or finances

https://app.leg.wa.gov/billsummary?BillNumber=5604&Year=2019&Initiative=false
Uniform Guardianship Act
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Effective January 1, 2021

Standard for Appointment of Guardian (of an adult)

- Respondent lacks the ability to meet essential requirements for physical health, safety, or self care

- Because the respondent is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance, or supported decision making; and

- The respondent’s identified needs cannot be met by a protective arrangement instead of guardianship or other less restrictive alternative

https://app.leg.wa.gov/billsummary?BillNumber=5604&Year=2019&Initiative=false
Uniform Guardianship Act
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Standard for Appointment of Guardian (of a minor)

Appointment is in the minor’s best interest, and:

- The parents consent, after being fully informed of the nature and consequences of guardianship;
- All parental rights have been terminated; or
- The court finds by clear and convincing evidence the parents are unwilling or unable to exercise their parental rights

https://app.leg.wa.gov/billsummary?BillNumber=5604&Year=2019&Initiative=false
Uniform Guardianship Act
Signed May 21, 2019
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Standard for Appointment of Conservator (of an adult)

- The respondent is unable to manage property or financial affairs because of a limitation in the respondent’s ability to receive and evaluate information or make or communicate decisions, even with the use of appropriate supportive services, technological assistance, or supported decision making; or the respondent is missing, detained, or unable to return to the United States;

- Appointment is necessary to avoid harm to the respondent or significant dissipation of the property of the respondent; or obtain or provide funds or other property needed for the support, care, education, health, or welfare of the respondent or of an individual entitled to the adult’s support

- The respondent’s identified needs cannot be met by a protective arrangement instead of conservatorship or other less restrictive alternatives

https://app.leg.wa.gov/billsummary?BillNumber=5604&Year=2019&Initiative=false
Uniform Guardianship Act
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Qualifications to serve as Guardian or Conservator

- At least 21 (or at least 18 if parent)
- Found to be “suitable” by the court
- Not a corporation not authorized to act as a fiduciary, guardian or conservator in the state
- A resident of this state or a person who has appointed a resident agent
- If a lay guardian, must complete training
- no crime involving dishonesty, neglect or physical force or other relevant crime

  ▶ No moral turpitude standard

https://app.leg.wa.gov/billsummary?BillNumber=5604&Year=2019&Initiative=false
Uniform Guardianship Act
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Priority for Guardian Appointment (for adults)

- A guardian currently acting for the respondent in another jurisdiction;
- A person most recently nominated by the respondent in a power of attorney;
- An agent appointed by the respondent in a power of attorney for health care;
- A spouse or domestic partner;
- A relative or other individual who has shown special care and concern for the respondent;
- A certified professional guardian or conservator; or
- A person in the best interest of the adult if a person with a higher priority is not in the best interest of the adult.

https://app.leg.wa.gov/billsummary?BillNumber=5604&Year=2019&Initiative=false
Uniform Guardianship Act
Signed May 21, 2019
Effective January 1, 2021

Priority for Guardian Appointment (for minors)

- A person nominated by a parent in a will;
- The nominee in the best interest of the child if multiple parents have nominated different persons;
- A person nominated by the minor who is 12 years or older; or
- A person whose appointment is in the best interest of the minor if a person with a higher priority is not in the best interest of the minor

https://app.leg.wa.gov/billsummary?BillNumber=5604&Year=2019&Initiative=false
Uniform Guardianship Act
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Duties of a Guardian (for adults)

- The guardian must make decisions regarding the support, care, education, health, and welfare of the adult subject to guardianship to the extent necessitated by the adult’s limitations. A guardian’s duty includes promoting the self determination of the adult, and encouraging the adult to participate in decisions, act on the adult’s own behalf, and regain the capacity to manage the adult’s personal affairs.

- The guardian owes a duty of good faith and care to the person under a guardianship and must not substitute their values, opinions or beliefs.

https://app.leg.wa.gov/billsummary?BillNumber=5604&Year=2019&Initiative=false
Uniform Guardianship Act
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Duties of a Guardian (for minors)

- The guardian has the duties and responsibilities of a parent regarding the minor’s support, care, education, health, safety, and welfare. Among other listed duties, a guardian must act in the minor’s best interest and exercise reasonable care, diligence, and prudence. When determining what is in the minor’s best interest, the guardian must take into account the minor’s preferences to the extent actually known or reasonably ascertainable by the guardian.

https://app.leg.wa.gov/billsummary?BillNumber=5604&Year=2019&Initiative=false
Uniform Guardianship Act
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Effective January 1, 2021

Duties of a Conservator

- A conservator is a fiduciary and has duties of prudence and loyalty to the individual subject to conservatorship
- A conservator shall promote the self-determination of the individual subject to conservatorship and, to the extent feasible, encourage the individual to participate in decisions, act on the individual’s own behalf, and develop or regain the capacity to manage the individual’s personal affairs
- In making a decision for an individual subject to conservatorship, the conservator shall make the decision the conservator reasonably believes the individual would make if able, unless doing so would fail to preserve the resources needed to maintain the individual’s well-being and lifestyle or otherwise unreasonably harm or endanger the welfare or personal or financial interests of the individual

https://app.leg.wa.gov/billsummary?BillNumber=5604&Year=2019&Initiative=false
Uniform Guardianship Act
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Effective January 1, 2021

Appointment of Visitor

- The court **shall** appoint a visitor when a petition for appointment of a guardian/conservatorship for an adult, or a petition for a protective arrangement instead of a guardianship/conservatorship for an adult is filed.

- The court **shall** appoint a visitor if a petitioner for guardianship of a minor is unable to serve notice on a parent of a minor or alleges that the parent waived the right to notice.

- The court **may** appoint a visitor when a petition for appointment of a conservatorship for a minor, or a petition for a protective arrangement instead of a conservatorship for a minor is filed.

https://app.leg.wa.gov/billsummary?BillNumber=5604&Year=2019&Initiative=false
Uniform Guardianship Act
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Role of Visitor

- The visitor must be an individual with training or experience in the type of abilities, limitations, and needs alleged in the petition
- The visitor will interview the respondent and explain the petition and the respondent’s rights, interview the petitioner and proposed guardian, visit the respondent’s dwelling and proposed dwelling, obtain medical information, investigate allegations in the petition, and file a report

https://app.leg.wa.gov/billsummary?BillNumber=5604&Year=2019&Initiative=false
Uniform Guardianship Act
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Report of Visitor

- Summary of self-care and independent living tasks the respondent can manage without assistance or with existing supports, could manage with the assistance of appropriate supportive services, technological assistance, or supported decision making, and cannot manage;

- A recommendation regarding appropriateness of guardianship/conservatorship including whether a less restrictive alternative is available

- If recommended, should guardianship/conservatorship be full or limited, if limited, what powers, amount of bond if conservatorship

https://app.leg.wa.gov/billsummary?BillNumber=5604&Year=2019&Initiative=false
Uniform Guardianship Act
Signed May 21, 2019
Effective January 1, 2021

Report of Visitor Continued...

- Statement of qualifications of proposed guardian/conservator, approval or disapproval
- Statement regarding whether proposed dwelling meets respondent’s needs and whether respondent has expressed a preference as to residence
- Statement whether a professional evaluation is necessary
- Statement whether responded is able to attend/participate in hearing and what form of support would enhance participation

https://app.leg.wa.gov/billsummary?BillNumber=5604&Year=2019&Initiative=false
Professional Evaluation

- Where there is a petition for a guardianship/conservatorship for an adult, or a petition for a protective arrangement instead of a guardianship for an adult, or a petition for a protective arrangement instead of a conservatorship for an individual:
  - The court shall order a professional evaluation of a respondent if the respondent requests the evaluation or unless the court finds that it has sufficient information to determine the respondent’s needs and abilities without the evaluation.
  - Examination must be performed by a physician, psychologist, or advanced registered nurse practitioner.
  - Respondent may decline to participate in an evaluation ordered.
  - No 30-day rule.

https://app.leg.wa.gov/billsummary?BillNumber=5604&Year=2019&Initiative=false
Appointment and Role of Guardian ad Litem

- Guardian ad Litem has no role before appointment of guardian or conservator

- The court may at any time, after the appointment of a guardian or conservator, appoint a guardian ad litem for an individual subject to guardianship and/or conservatorship if the court determines the individual’s interest otherwise would not be adequately represented

- May not be the attorney representing the respondent

https://app.leg.wa.gov/billsummary?BillNumber=5604&Year=2019&Initiative=false
Uniform Guardianship Act
Signed May 21, 2019
Effective January 1, 2021

Less Restrictive Alternatives

- Supported decision making
- Court Ordered Protective Arrangements
- Emergency Guardianship/Conservatorship- 60 days
- Temporary Substitute Guardian/Conservator- not to exceed 6 months

https://app.leg.wa.gov/billsummary?BillNumber=5604&Year=2019&Initiative=false
Uniform Guardianship Act
Signed May 21, 2019
Effective January 1, 2021

Less Restrictive Alternatives

Supported decision making

- Assistance from one or more persons of an individual’s choosing in understanding the nature and consequences of potential personal and financial decisions, which enables the individual to make the decisions, and in communicating a decision once made if consistent with the individual’s wishes

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Uniform Guardianship Act
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Less Restrictive Alternatives

Court Ordered Protective Arrangements

- On receiving a petition for a guardianship or conservatorship, a court may order a protective arrangement instead as a less restrictive alternative.

- Who can petition for a protective arrangement:
  - Guardianship: a petitioner can be any person interested in an adult’s welfare, including the adult or a conservator for the adult.
  - Conservatorship: a petitioner can be the individual for whom the protective arrangement is sought, a person interested in the property, financial affairs, or welfare of the individual, including a person that would be affected adversely by lack of effective management of property or financial affairs of the individual; and the guardian for the individual.

https://app.leg.wa.gov/billsummary?BillNumber=5604&Year=2019&Initiative=false
Uniform Guardianship Act
Signed May 21, 2019
Effective January 1, 2021

Less Restrictive Alternatives

Emergency Guardianship

- Court may appoint an emergency guardian if:
  - Appointment of an emergency guardian is likely to prevent substantial harm to the adult’s physical health, safety, or welfare;
  - No other person appears to have authority and willingness to act;
  - There is reason to believe that a basis for appointment of a guardian exists

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Uniform Guardianship Act
Signed May 21, 2019
Effective January 1, 2021

Less Restrictive Alternatives

Emergency Guardianship

► Court shall appoint an attorney to represent the respondent in the proceeding.
► Court may appoint an emergency guardian without notice to the respondent and any attorney for the respondent only if the court finds from an affidavit or testimony that the respondent’s physical health, safety, or welfare will be substantially harmed before a hearing with notice on the appointment can be held.
► Duration may not exceed 60 days.
► Powers specified in the order of appointment.
► Appointment of emergency guardian is not a determination that basis exists.

https://app.leg.wa.gov/billsummary?BillNumber=5604&Year=2019&Initiative=false
Uniform Guardianship Act
Signed May 21, 2019
Effective January 1, 2021

Less Restrictive Alternatives

Emergency Conservatorship

- Court may appoint an emergency conservator if:
  - Appointment of an emergency conservator is likely to prevent substantial and irreparable harm to the individual’s property or financial interests;
  - No other person appears to have authority and willingness to act;
  - There is reason to believe that a basis for appointment of a guardian exists

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Uniform Guardianship Act
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Less Restrictive Alternatives

Emergency Conservatorship

- Court shall appoint an attorney to represent the respondent in the proceeding
- Court may appoint an emergency conservator without notice to the respondent and any attorney for the respondent only if the court finds from an affidavit or testimony that the respondent’s property or financial interests will be substantially and irreparably harmed before a hearing with notice on the appointment can be held
- Duration may not exceed 60 days
- Powers specified in the order of appointment
- Appointment of emergency guardian/conservator is not a determination that basis exists

https://app.leg.wa.gov/billsummary?BillNumber=5604&Year=2019& Initiative=false
Uniform Guardianship Act
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Effective January 1, 2021

Less Restrictive Alternatives

Temporary Substitute Guardian/Conservator

- The court may appoint a temporary substitute guardian/conservator for an individual subject to guardianship/conservatorship for a period not exceeding six months if:
  - A proceeding to remove a guardian/conservator for the individual is pending; or
  - The court finds a guardian/conservator is not effectively performing the guardian/conservator’s duties and the welfare of the individual or the conservatorship estate requires immediate action

https://app.leg.wa.gov/billsummary?BillNumber=5604&Year=2019&Initiative=false
Office of Public Guardian Expansion

Signed April 30, 2019
Effective July 28, 2019

- Expands scope of the Office of Public Guardianship to include:
  - Supported decision-making services
    - For a fee to adults when there is no one else qualified who is willing and able to serve
  - Estate administration
    - For a fee to the estate of an individual who died as an adult, in circumstances where a service provider under contract with the office of public guardianship is granted letters

- Terminology change:
  - “Incapacitated person” now referred to as individual with diminished decision-making ability

https://app.leg.wa.gov/billsummary?BillNumber=1329&Initiative=false&Year=2019
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