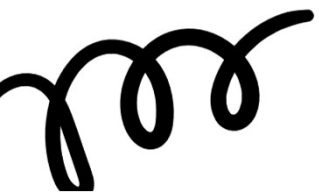




# **EMPOWER: AN EXPLORATION INTO ALTERNATIVE PROTECTIVE ARRANGEMENTS**

Every courtroom rests on balance and every voice is important

Presented by Attorney Liz Ann Johnson of  
Puget Sound Estate Law, PLLC



# ATTORNEY LIZ ANN JOHNSON



Attorney Liz Johnson has focused her practice on guardianship probates, wills, trusts, estates and long-term care planning. In addition, she is a Pierce County Court Visitor for RCW 11.130 guardianships.

Liz is one of the managing partners of Puget Sound Estate Law, PLLC. She has 6 children and one husband. She volunteers for Tacoma Pro Bono, Tacoma Pierce County Bar Association, was co-chair of the guardianship committee, a past board member of Health Care Providers Council of Pierce County, and spends time fundraising for organizations to improve the community including Rebuilding Hope, Oasis Youth Center, Tacoma Pro Bono, YWCA, Emergency Food Network, and other organizations that provide services to those in need.



# EDUCATIONAL PRESENTATION

## NOT LEGAL ADVICE -

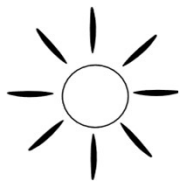


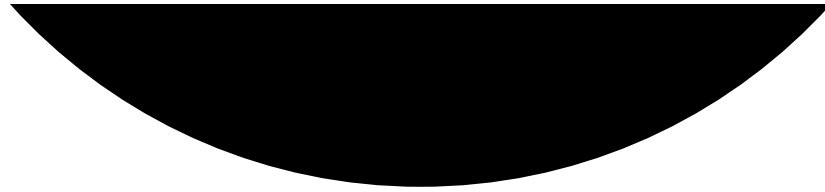
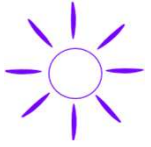
**THIS PRESENTATION DOES NOT MAKE YOU A CLIENT NOR MAKE ME YOUR ATTORNEY**

The information presented today is in general terms. Even if examples are used there is not enough time to thoroughly explore each issue and provide adequate legal advice.

In order to protect your privacy and privilege, presenter will discourage participants from providing too many details.

If you have specific questions about your case, please reach out for legal referrals after the presentation.





# TODAY'S MISSION:

To discuss alternatives (less restrictive alternatives (“LRAs”) to guardianship, conservatorship or other protective arrangements (“OPAs”)





# WHAT IS A LESS RESTRICTIVE ALTERNATIVE “LRA”

## Easy Answer

Meeting the individual’s needs in the way that gives them the most choice and decision making when appropriate.

## Legal Answer

RCW 11.130.010(15) "Less restrictive alternative" means 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 power of attorney for finances.





# WHAT IS A OTHER PROTECTIVE ARRANGEMENT “OPA”

## Easy Answer

Meeting the individual’s needs in the way that gives them the most choice and decision making when appropriate or limiting the arrangement to a single or few actions

## Legal Answer

RCW 11.130.010(29) "Protective arrangement instead of guardianship" means a court order entered under RCW [11.130.585](#) and RCW 11.130.010(30) "Protective arrangement under Article 5 of this chapter" means a court order entered under RCW [11.130.585](#) or [11.130.590](#).

The court, instead of appointing a guardian/conservator, may:

Authorize or direct a transaction necessary to meet the respondent's need for health, safety, or care, including:

A particular medical treatment or refusal of a particular medical treatment; or

Visitation or supervised visitation between the respondent and another person;

Restrict access to the respondent by a specified person whose access places the respondent at serious risk of physical, psychological, or financial harm; and

Reorder other arrangements on a limited basis that are appropriate.

Authorize or direct a transaction necessary to protect the financial interest or property of the respondent, including:

An action to establish eligibility for benefits;

Payment, delivery, deposit, or retention of funds or property;

Sale, mortgage, lease, or other transfer of property;

Purchase of an annuity;

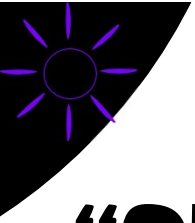
Entry into a contractual relationship, including a contract to provide for personal care, supportive services, education, training, or employment;

Addition to or establishment of a trust;

Ratification or invalidation of a contract, trust, will, or other transaction, including a transaction related to the property or business affairs of the respondent; or

Settlement of a claim; or

Restrict access to the respondent's property by a specified person whose access to the property places the respondent at serious risk of financial harm.



# RCW PROVIDES THE AUTHORITY FOR “OTHER PROTECTIVE ARRANGEMENTS.”

- Courts after receiving a petition for guardianship or conservatorship may order a protective arrangement instead as a less restrictive alternative to guardianship or conservatorship.
- A person interested in the adult’s welfare, a guardian, a conservator, a trustee, the individual themselves, a person with an interest in property or financial affairs that would be adversely affected by the lack of effective management
- Sample protective arrangements –
  - could be a limited order authorizing one or more of the duties under guardianship or conservatorship, but instead of appointing a guardian or conservator appointing a special agent which could include having a more relaxed reporting requirement rather than using the statutory forms for a guardian/conservator
  - Order one or more specific actions and then terminating the protective arrangement
  - Should not be used simply to circumvent the guardianship/conservatorship requirements
  - i.e. is there property to protect that would benefit from regular court reporting, a bond, or oversight?



*ell*



# PREVIOUS SLIDE SIMPLIFIED: OPA SIMPLE

- Courts after receiving a petition for guardianship or conservatorship may order a protective arrangement instead as a less restrictive alternative to guardianship or conservatorship.

- **Sample protective arrangements –**

Limit to order authorizing one or more of the duties under guardianship or conservatorship, **BUT** instead of appointing a guardian or conservator appointing a **special agent** which could include having a more relaxed reporting requirement rather than using the statutory forms for a guardian/conservator

- Order one or more specific actions and then terminating the protective arrangement



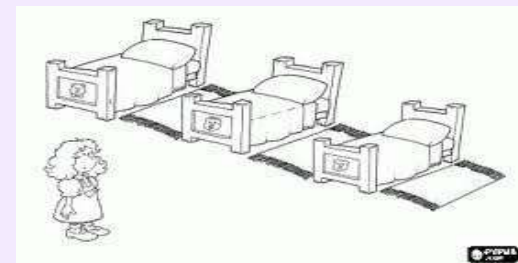
# LRA/OPA IS NOT ONE SIZE FITS ALL



A less restrictive alternative could be a power of attorney.

**BUT IF** there has been financial exploitation, multiple people acting in a short period of time, money that has gone missing, inappropriate gifting using the power of attorney, individuals influencing the individual, a less restrictive alternative may not be appropriate.

But maybe a power of attorney with a protection order would avoid guardianship, conservatorship, and an OPA.





# WHO SHOULD EXPLORE LRAS/OPAS AND WHEN: LEGAL LEASE



- Anyone considering petitioning
- RCW 11.130.265, .270, .310, .360, .365, .380, .420
- Anyone already appointed as a guardian or conservator
- RCW 11.130.355, RCW 11.130.570, RCW 11.130.355, RCW 11.130.505
- CPGCs, SOP 411
- Ethics Advisory Opinions: Opinion 2005-003 Preappointment Conduct
- Ethics Advisory Opinions Opinion 2005-001 Professional Guardian Petitioning for Appointment Rev. Jan 2010





# SIMPLIFIED VERSION OF PREVIOUS SLIDE

## WHO SHOULD ASK AND WHEN?



### Who?

- Petitioner
- Guardian
- Conservator
- Special Agent
- Individual/Respondent
- Friend/Family Member/Anyone

### When?

- Prepetition
- Initial Petition
- Order Appointing
- 90 Day Plan
- Annual Review
- At any time by motion

A stylized, handwritten signature in white ink, appearing to be 'ell'.

*PRO TIP: Petitioner or Guardian/Conservator/Special Agent should file something letting the court KNOW and specifically REQUEST/SUGGEST an OPA/LRA*



# POPULAR LRAS



**Power of Attorney –**  
Medical, Financial or  
other limited  
authority

**Representative  
payee**

**Protective  
Payee**

**Trusts –**

Revocable or Irrevocable  
D4A special needs trust  
D4C Pooled Trust

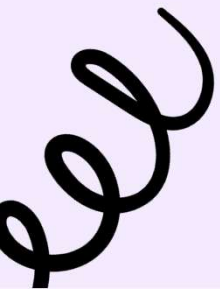


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# EMERGING LRAS/OPAS

- Supportive Decision Making
- Protective Order
- Combination of LRA and Limited Guardianship, Conservatorship or Other Protective Arrangement

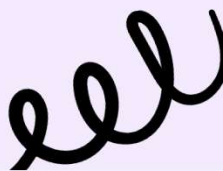




# SUPPORTED DECISION MAKING



- Requirements: Adult with a disability
- Must be voluntary
- Provide supported decision making for assistance in understanding options, responsibilities, consequences of adult's life decisions – does not allow someone to make decisions for the adult
- Assist the adult in accessing, collecting or obtaining relevant information
- Assist the adult in communicating that information
- The document should outline the terms and authority
- A supported decision-making agreement must be in writing, dated, and signed voluntarily



# THREE HELPFUL FORMS -



- GDN ALL 045 - Motion to Terminate or Change/Modify Guardianship/Conservatorship
- GDN ALL 034 - Motion and Declaration for Instructions
- OPA 100 and 101 - Motion and Order re: Supported Decision Making

Available at

<https://www.courts.wa.gov/forms/?fa=forms.contribute&formID=139>

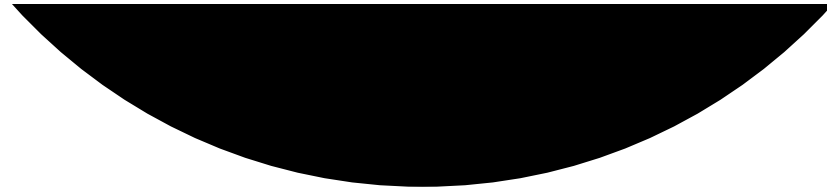
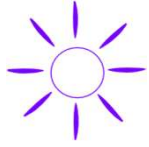


# ORDER APPOINTING



- The limitations and restrictions placed on Respondent are as follows:
- To vote or hold an elected office.
- To marry, divorce, or enter into or end a state registered domestic partnership.
- To consent to or refuse medical treatment.
- To decide who shall provide care and assistance.
- To make decisions regarding social aspects of their life.
- To possess a license to drive.
- To make or revoke a will.
- To enter into a contract.
- To appoint someone to act on their behalf.
- To sue and be sued, other than through a guardian and/or conservator.
- To buy, sell, own, mortgage, or lease property.
- To manage their money.
- Other limitations and restrictions:





**BE THOUGHTFUL, CAUTIOUS  
AND CREATIVE!**





**THANK YOU TO ALL OUR CPGCS, LAY  
GUARDIAN/CONSERVATORS, SPECIAL AGENTS,  
FAMILY MEMBERS, FRIENDS AND THOSE WHO DO  
THIS WORK.**

You do so much and do not get the  
recognition you deserve

You make the world a better place

**Let's give them a round of applause!**

# TO CONTACT PRESENTER

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