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# Ohio's Guardianship System

## Who Needs A Guardian?

Under Ohio law, if you are mentally impaired (from mental or physical illness or disability, mental retardation or chronic substance abuse) to the point that you cannot take proper care of yourself, your property or those for whom you are legally responsible, you may be determined incompetent and have a guardian appointed. Simply having physical handicaps or spending your money foolishly does not mean you are incompetent.

## What Types Of Guardianship Are There?

A guardian may be appointed over the person or the estate of the proposed ward, or both. A guardian of the person is usually responsible for the physical care of the person (known as the ward). A guardian of the estate is responsible for the ward's finances.

A limited guardian may be appointed if only certain matters need outside direction. An emergency guardian may be appointed for up to 72 hours if immediate action is needed to prevent significant injury to the proposed ward. An interim guardian may be appointed for up to 15 days when a prior guardian is removed or resigns, and something must be done immediately to protect the ward.

## What Is The Difference Between A Guardianship And A Conservatorship?

A competent person can create a conservatorship which is good for any length of time. The court decides if the person is making the conservatorship request willingly and that the proposed conservator is suitable.

Conservatorship ends when the court decides that the person is incompetent or when the person files a written notice of termination with the court within 14 days after signing it. On the other hand, a person must be determined to be incompetent for a guardianship to be established. An incompetent person cannot create a conservatorship.

## Who Can Be A Guardian?

The court may appoint a resident or a nonresident of Ohio as guardian of the person. For married persons, the spouse may be appointed and is often given preference for appointment as guardian of the person and the estate.

For guardian of the estate, any adult (or corporation) may be appointed, as long as the guardian is an Ohio resident. The only times a non-resident guardian is permitted is where a) the nonresident is named in a will by a parent of a minor; b) the nonresident is selected by a minor over the age of 14 years; or c) the nonresident is nominated within a durable financial power of attorney or a living will. If a resident guardian of the estate moves out of Ohio, he or she may be removed as guardian.

## How Do I Begin A Guardianship Proceeding?

If you want to become someone's guardian, you must file a petition with probate court in the county where the person lives. The petition must state:

a) The whole estate of the ward, its probable value and any probable annual rents;
b) Whether limited guardianship is sought and if so, the limited powers requested;
c) Whether you have ever been charged with or convicted of theft, physical violence or sexual, alcohol or substance abuse;
d) The name, age and residence of the proposed ward;
e) Why you think the proposed ward is incompetent; and
f) The name, relationship, age and address of the person's next-of-kin.

You may also have to set bond.

## What Determines The "Setting Of Bond" For A Guardianship?

A guardian of the person does not have to post bond unless the court requires it. A guardian of the estate must post a bond that is at least double the value of the ward's personal estate and annual rentals. This may be waived if the amount is less than $10,000. The court may reduce the bond in any guardianship at any time for good cause.

## What Does The Probate Court Do When It Receives A Petition?

The probate court investigator, in person, serves the proposed ward with notice of the guardian's application. It includes the time and place of the court hearing for the application. The notice must be served on the proposed ward at least seven days before the hearing date. After meeting with him or her, the court investigator reports back to the court with:

a) A brief description of the person's physical and mental condition;
b) Whether the person needs a guardianship or a less restrictive alternative; and
c) Whether the person needs an attorney appointed.

The court may also appoint a physician or other qualified professional to examine, investigate or represent the person to help the court decide if a guardianship is necessary. The probate court must set a hearing on all matters for and against the petition for guardianship. The court may deny a guardianship if it finds a less restrictive alternative exists.

## What Rights Does The Proposed Ward Have?

The proposed ward has the right to:

a) Be represented by an attorney of his or her choice;
b) Choose a friend or family member to be present at the hearing;
c) Introduce evidence from an independent expert evaluation;
d) If indigent and unable to afford the cost, have an attorney and an independent expert evaluator appointed at court expense; and
e) If indigent and the matter is appealed, have an attorney appointed and necessary paperwork for the appeal prepared at court expense.

## What Duties Does A Guardian Have?

Anyone appointed as guardian must act in the ward's best interests. If you are a guardian of the person, you must protect and control the incompetent person. You are responsible for the person's

daily maintenance. These expenses can be paid from the ward's estate, as approved by the court. You may also authorize health care, unless the ward or an interested party objects to the court.

If you are a guardian of the estate, you may transfer property, sign contracts and/or handle all of the ward's other financial matters. You must also file an inventory and reports with the probate court. A guardian may not open the ward's safety deposit box until the contents have been audited by the county auditor.

## What Must The Guardian File With The Court?

As the guardian of the estate, you must file an inventory of the incompetent's assets within three months of your appointment. At least every 2 years thereafter, you must file a report which itemizes every purchase you made on the incompetent's behalf. Include all receipts.

Every two years you must also file a report including:

a) The present address and residence of the ward;

b) The approximate number of times you have had contact with the ward, the nature of the contact, and the date you last saw the ward;

c) Major changes in the ward's physical or mental condition;

d) Whether you think it is necessary to continue the guardianship;

e) A statement from a licensed physician, clinical psychologist or clinical social worker who has evaluated the ward within three months of the report that states if the guardianship should be continued; and the date of the ward's last physical exam.

## How May A Guardianship Be Terminated?

The ward or anyone acting on their behalf may request that a guardianship be terminated. The court must end the guardianship unless there is clear and convincing evidence that the ward is not capable of caring for him or herself or managing his or her financial affairs. The guardianship may also be terminated if the ward's estate does not exceed $25,000, and termination of the guardianship is in the ward's best interest. Guardianship of the person is automatically terminated if the ward marries.

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