



Guardianships

What is a guardian?

A guardian is a person, association or corporation appointed by a probate court to be legally responsible for an incompetent person and/or the person's property. Most commonly, individuals are appointed to serve as guardians. The person for whom a guardian has been appointed is called the *ward*.

How can I go about appointing a guardian if I become incompetent?

Only a court may *appoint* a guardian. You, however, may *nominate* in advance a guardian to act for you, or for your minor or adult incompetent children. A court will appoint the guardian you nominate unless that person is unsuitable for some reason or the person declines to serve as guardian. The nomination must be in writing and witnessed either by two disinterested individuals or be notarized.

Many people nominate a guardian in a last will and testament or in a financial power of attorney document. Effective March 20, 2014, it is also possible to nominate a guardian in a health care power of attorney document. In any of these documents, you may give the person you nominate the authority to nominate his or her successor, if needed. The document containing the nomination may be filed with the probate court for safekeeping.

Why are guardians appointed?

A court will appoint a guardian to manage the personal and/or financial affairs of a minor or of an adult who cannot do so because of legal or mental incapacity. Under Ohio law, family members are given preference, but anyone may ask the probate court to be appointed guardian. This is an involuntary proceeding, and must be supported by a "statement of expert evaluation," usually completed by a physician. If the court finds a person to be incompetent, the court can appoint a guardian for that person even if he or she does not want one. A so-called "voluntary guardianship" for an adult who is physically incapacitated, but otherwise competent, is more properly known as a *conservatorship*. Once appointed, a guardian must answer to the court for providing proper care and management of the ward's affairs in the ward's best interests. Parents are the natural guardians of their minor children and, so long as the parents are living, competent and providing for the minor children's needs, parents do not typically need to seek guardianship of their own children.

What are the general powers and duties of a guardian?

A guardian's control over a ward is limited to the authority granted by Ohio law, relevant Ohio court decisions and orders and rules of the probate court. All guardians must obey the orders and rules of the probate court that appointed them. The probate court typically gives a guardian unlimited authority to act, although spending the ward's funds requires prior court approval. The court may also restrict or deny any particular authority.

What are the types of guardianships available in Ohio?

A *guardian of the person* is appointed to make personal decisions for the ward, such as where the ward will live and how health care services will be provided. It can also include responsibility for a minor ward's education as required by law. A guardian of the person also serves as guardian of the ward's minor children, if no other guardian has been appointed for them.

A *guardian of the estate* is appointed to manage the ward's assets. Specifically, the guardian of the estate must:

- pay all debts owed by the ward;
- collect all money owed to the ward;
- settle and adjust any assets received by the ward from the executor or administrator of an estate;
- deposit all funds of the ward into an account in the name of the guardian as fiduciary;
- invest any of the ward's funds not needed for current obligations according to legal guidelines;
- file with the court an official inventory of the ward's assets and, on a regular basis, file accounts of how those assets are being used;
- sell assets for the ward as necessary; and file or defend lawsuits on behalf of the ward if necessary to protect his or her interests.

Before being appointed, an applicant for *guardian of the estate* must give the court a fiduciary bond equal to double the probable value of the ward's assets (other than real estate) and income. This means the applicant should generally have good credit.

(Note: Unless the court order appointing a guardian specifies otherwise, the same person is normally named as guardian of the person *and* the estate, if both are required.)

A *limited guardian* is a guardian whose powers the probate court is specifically limited to a particular purpose and/or for a definite time. If the court appoints a limited guardian for a ward, the ward retains all rights in all areas not covered by the Order of Limited Guardianship.

An *interim guardian* is a guardian appointed after a former guardian has been temporarily or permanently removed or resigns, if and when the probate court determines that immediate action is required for the ward's welfare.

An *emergency guardian* is a guardian the probate court appoints without a formal hearing when there is an emergency and a guardian must be named to prevent imminent injury to the person or estate of the ward.

A *conservator* is a person the probate court appoints at the request of a mentally competent adult who is physically incapacitated. The individual requesting a conservator identifies who that will be and can define the specific authorities the conservator can exercise. The appointment of a conservator is not considered as evidence of "mental impairment."

What is included in a guardian's inventory?

A *guardian of the estate* must file an inventory of the ward's assets within three months after appointment. The inventory must list all of the ward's real and personal property, the values of that property and the ward's annual income.

The probate court may require that the inventory be supported by evidence and that the guardian produce prior income tax returns, bank statements, the ward's Social Security records or any other relevant documents. In addition, the probate court may appoint an examiner or assign court employees to conduct an investigation to verify the accuracy of the inventory.

What is a guardian's account?

Every *guardian of the estate* must file an account with the probate court at least once every two years, or more often if local court rules require it. This account must include an itemized statement of all receipts, disbursements and distributions made from the ward's estate. All transactions must be verified by vouchers or proof, unless a corporate fiduciary is involved. The account must also contain an itemized statement of all funds, assets and investments in the guardian's hands at the end of the accounting period, and any changes in investments since the last account was filed. The guardian must give the probate court actual securities and passbooks or bank statements for examination, and the guardian must verify the account with his or her signature and oath. A final account must be filed within 30 days after the guardianship is terminated.

What is a guardian's report?

A *guardian of the person* must file a report with the probate court at least once every two years, or more often if local court rules require it. The guardian's report must be made on a court-prescribed form, and must contain a great deal of specific information, including a list of the number and nature of contacts with the ward over the period covered by the report, any major changes the guardian observes regarding the ward's physical or mental condition, the guardian's opinion as to the necessity for continuing the guardianship, the adequacy of the care that the ward is receiving and the date that the ward last saw a physician. This report assists the probate court in overseeing the ward's well-being and determining if the guardianship should be continued. The court may appoint an investigator to verify the report. Unless dispensed with by the court, an updated "statement of expert evaluation" must accompany the guardian's report, further advising as to the need for continuing the guardianship.

How can I be an effective guardian?

The key to being an effective guardian is to have as much knowledge about and direct contact with the ward as possible. As a guardian, you should make every attempt to have a positive relationship with the ward, visit and communicate with the ward often, and generally demonstrate personal concern for the ward's well-being. If managing the ward's financial affairs, you must act prudently, obtain pre-approval of expenditures and always act in the ward's best interests.

It is also important to establish and maintain a positive relationship with the ward's family members. You will find that you can avoid problems and complications by keeping everyone informed of what is going on with the guardianship, and actively inviting them to participate to the extent practical. Problems rarely arise in those guardianships where the guardian makes both the ward and his or her family feel that they are important members of a team.

If I am named as a guardian, what help should I seek?

No sensible person would engage "just anyone" to fill a loved one's tooth or remove an appendix. Likewise, a guardian should be careful in taking advice regarding his or her duties to the ward. A lawyer can help you understand and fulfill your legal duties as a guardian, and avoid mistakes or oversights that could result in serious harm to your ward or his or her family. Ohio's laws regarding the appointment and conduct of guardians are not simple. Understanding and complying with them calls for professional expertise.

Where can I get more information?

If you or someone close to you needs information on how to set up a legal guardianship, contact the probate court in your county and ask friends and family members for the name of an attorney who is knowledgeable about probate matters. You may also contact the lawyer referral service operated by your local bar association or one nearby. Check your telephone directory under "associations" or "attorney referral services."

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