Understanding Your Role

As Guardian



Guardianship Guidebook

Guardianship

Reference Book

Hello, and welcome to the Butler County Probate Court. My name is Judge John M. Holcomb and I am the Probate Judge of Butler County. As the Probate Judge, it is my responsibility to assure that individuals who live in our county and who cannot care for themselves or their assets/monies are protected and have someone to care for them. The way that this happens is through a process called guardianship. This guidebook was created to educate you about the guardianship process in Ohio. It is my hope that you will be better informed about guardianships and what a valuable role they play in our community.

John M. Holcomb, Judge
Butler County Probate Court

DISCLAIMER: THIS GUIDE IS MEANT TO BE A HELPFUL TOOL IN UNDERSTANDING GUARDIANSHIP. IT DOES NOT CONTAIN A COMPLETE ACCOUNT OF GUARDIANSHIP LAW, DOES NOT CREATE ANY RIGHTS FOR A WARD, NOR RESPONSIBILITIES FOR A GUARDIAN.

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*** You will see the term SPF used throughout this guidebook. It means "Standard Probate From" and the number that follows is the number of the Standard Probate Form which can be obtained at your local Probate Court or by visiting:**

www.supremecourt.ohio.gov/legalresources/rules/superintendence/probate:forms

GLOSSARY OF TERMS DEFINED

The following list of terms and definitions may help you more fully understand the guardianship process.

1. **INCOMPETENT PERSON**: Any person who is so mentally impaired as a result of a mental or physical illness or disability, or mental retardation, or as a result of chronic substance abuse, that the person is incapable of taking proper care of the person's self or property, or fails to provide for the person's family or other persons when the person is charged by law to provide, or any person confined to a correctional institution within the state of Ohio.

2. **GUARDIAN**: Any person, association, or corporation appointed by the probate court who has the legal responsibility for the care and management of the person, the estate, or both, of an incompetent or minor. A guardian is appointed either as a guardian of the person or guardian of the estate or guardian of the person and estate.

3. **WARD**: Any person for whom a guardian is acting or for whom the probate court is acting, pursuant to Section 2111.50 of the Ohio Revised Code.

4. **Guardian of the Person**: One who is appointed for a ward 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.

5. **Guardian of the Estate**: One who is appointed to manage the ward's assets and monies. 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 the ward's interests. A guardian of the estate is generally NOT personally liable for any of the ward's debts except under a few rare exceptions.

6. **Guardian of the Person & Estate**: One who is appointed in both roles to make medical/living decisions for the ward along with managing the ward's assets/money.

7. **GUARDIANSHIP OF THE PERSON**: A formal legal fiduciary relationship created by Order of the probate court between a person, association, or corporation as guardian and an incompetent person, wherein the guardian takes legal custody of the incompetent person and is empowered to make decisions and act on behalf of the incompetent person to provide for the personal care of the incompetent person. Duties are set forth under R.C. 2111.13.

8. **GUARDIANSHIP OF THE ESTATE**: A formal legal fiduciary relationship created by Order of the probate court between a person, association, or corporation as guardian and an incompetent person, wherein the guardian is empowered to make decisions and act on behalf of the incompetent person to protect, preserve, and manage the estate (assets & monies) of the incompetent person. Basic duties are defined by R.C. 2111.14.

9. **GUARDIAN'S REPORT**: A formal report that all guardians of the person, or guardians of the estate, or both, must file with the court. The report is required to be filed on a standard probate form (SPF 17.7). See R.C. 2111.49 for more details. The Report must include an Expert Evaluation Report (SPF 17.1). A final report must be made to the Probate Court within 30 days after the minor attains the age of 18 years, or following the death of the ward, or other termination of the guardianship.

10. **GUARDIAN'S INVENTORY**: A full, written statement of the real and personal property of the Ward, its value, and the value of any yearly rentals of the real property required to be filed by all guardians of the estate within three months of the issuance of the guardian's Letters of Authority.

11. **GUARDIAN'S ACCOUNT**: An itemized statement of all receipts of the guardian and all disbursements made by the guardian of the ward's assets or income during the accounting period. The statement must include an itemized statement of all funds, assets, investments, and indebtedness of the ward's estate known to the guardian at the end of the accounting period. Itemized expenditures, disbursements, and changes of investments must be verified by vouchers or proof acceptable to the probate court. Accounts must be signed by the guardian and are typically due annually unless otherwise notified by the court.

12. **GUARDIANSHIP OF PERSON AND ESTATE**: A formal, legal fiduciary relationship created by Order of the probate court wherein a person, association, or corporation is appointed to have custody of an incompetent person, and to take charge of his or her estate. This type guardian has all of the duties and responsibilities required of guardian of the person and guardian of the estate.

13. **STATEMENT OF EXPERT EVALUATION**: A written statement by a licensed physician, licensed clinical psychologist, licensed independent social worker, licensed professional clinical counselor, or mental retardation team, that has examined the ward within three months prior to the date of the report. The evaluation and statement must address whether or not the evaluator believes there is a continued need for guardianship.

14. **LETTERS OF GUARDIANSHIP**: An Order of the probate court which vests the guardian with authority to act on the ward's behalf upon the authority defined in the Order or otherwise by applicable Ohio law. A guardian may take no action on behalf of the ward until Letters of Guardianship are issued.

Letters may not be issued until a hearing on the Guardianship Application, the guardian's filing of their acceptance and oath, and filing of such guardian's bond, if applicable, as the court may order.

15. **GUARDIAN'S BOND**: The financial surety bond issued by a duly licensed bonding agency securing the guardian's faithful and honest discharge of his or her duties as guardian of the estate. The amount of the bond is established by the court but shall be maintained by the guardian at all times in an amount not less than a sum equal to double the probable or appraised value of the personal property of the estate, plus annual real estate rentals, which will come into the estate during the bonding period.

16. **FIDUCIARY RELATIONSHIP**: A relationship wherein one who acts in a fiduciary capacity on behalf of another does so not for their own benefit but for the benefit of another person as to whom the guardian stands in a relation implying and necessitating great confidence and trust on the one part and a high degree of good faith on the other part. A guardian owes a fiduciary duty to a ward in all of the guardian's actions as guardian of the ward.

ROLE OF THE PROBATE COURT

Only the probate court where the ward resides can appoint a Guardian. Every county in Ohio has its own probate court or family court which handles the guardianship proceedings. The guardianship process is an important legal proceeding that can greatly reduce a person's rights. It is recommended that you utilize an attorney with experience in guardianships to guide you through this legal process. The next section will provide a general overview of the guardianship process.

ESTABLISHING A GUARDIANSHIP

The process of guardianship appointment begins with either an application filed by an interested party or on the probate court's own motion along with a "Statement of Expert Evaluation" completed by the proposed ward's physician. After the application is filed, the probate court will send a Court investigator to

give notice of the hearing to the proposed ward and to evaluate the proposed ward. The investigator files a report which the probate court will review before the hearing.

The court then holds a hearing on the necessity of the guardianship. Proper notice of the hearing is required on the proposed ward and in-state family members. The proposed guardian must appear at the hearing. If the prospective ward is an alleged incompetent adult, incompetence must be proved by clear and convincing evidence.

During the hearing, the court must answer two questions:

1. Is the proposed ward INCOMPETENT as defined by the Ohio Revised Code? *If yes,*
2. Who is the best suited person to be the guardian of the ward?

Evidence of a lesser restrictive alternative than a guardianship may be introduced, and if proven, may form the basis for a denial of the guardianship. If the court determines that a guardian is necessary, it will then appoint a guardian by judgment entry. The probate court then issues ***Letters of Guardianship***, which states whether the guardian is responsible for the ward's person, the ward's estate, or both. The guardian must take and sign an ***Oath of Guardian*** and ***Fiduciary Acceptance*** at the time of the appointment wherein they accept enumerated duties and responsibilities set forth on the forms.

WHAT CONSTITUTES A SUITABLE GUARDIAN?

In selecting the person to serve as guardian, the probate court must act in the best interest of the ward. The probate court has broad powers in appointing guardians. It is preferred that a guardian of an Ohio ward live in the state of Ohio, and ideally in the same county as the ward. However, a guardian of the person of an Ohio ward may live out of state.

A suitable applicant must submit to and pass a criminal background check. Attorney-applicants must provide a certificate of good standing from the Supreme Court of Ohio. A guardian of an estate must post a BOND to protect the ward's assets from misuse. The court must insure that no conflicts of interest exist between the applicant and the ward. In addition, guardians must now participate in

a training course within a short period of time before or after their appointment as guardian and additional training every year thereafter.

In Ohio, it is preferable that a person serve as guardian of both the person and estate of the ward, unless the Probate Court decides that the interests of the ward will be better served by appointing different persons as guardian of the person and of the estate.

ROLE OF A GUARDIAN

The probate court appoints a guardian to manage the care and affairs of a ward, not to personally take care of the ward and not to be financially responsible for the ward's debts. Guardians have the ultimate responsibility to assist the ward with decision-making. A guardian shall advocate for services focused on a ward's needs and in the ward's best interest. However, making a decision for a ward that is in the ward's best interest is not always easy, and conflicts can occur.

Probate courts often prefer to appoint family members as guardians. The best interest of the ward must form the basis for every decision that the guardian makes, not the best interest of the family guardian. Decision-making can prove difficult when the guardian's opinion on best interest differs from the ward's opinion.

A guardian must be able to make difficult decisions for the ward and communicate the basis for the decisions with the ward and the ward's other family members. Communication is a key element in any guardianship.

Where multiple family members are pursuing appointment as guardian for the same proposed ward, it is recommended that the applicants take a moment and review what is in the best interest of the proposed ward. Often, it will be in the proposed ward's best interest for family members to not engage in confrontations and determine a way to cooperate and communicate.

A guardian is not a doctor for the ward. As such, the guardian should rely on medical experts when making health care decisions for a ward. If a guardian has questions or doubts regarding medical conditions and treatments, it is the guardian's duty to seek a second medical opinion, not research the medical issue on their own. Remember, a guardian is not a care giver, but a guardian must ensure a ward receives proper care.

RESPONSIBILITIES OF A GUARDIAN

All guardians have responsibilities and must follow the orders of the probate court that appointed them. Remember, the probate court is the superior guardian of the ward; however, the guardian is the "eyes and ears" of the court and will have more interaction with the ward than the court.

All guardians must act in the best interest of the ward when making decisions and those decisions should support the ward's wishes whenever feasible but not harm the ward. The guardian's other responsibilities are determined by the type of guardianship.

Guardian of the Person Responsibilities

a. Filing an annual *Guardian's Report* which informs the probate court where the ward is residing, how they are doing, if changes need to be made, and if the guardianship should continue or be terminated. This report is Standard Probate Form 17.7 that can be obtained from the court or the *Ohio Supreme Court* website.

b. Filing an annual Guardian's Plan along with the annual Guardian's Report (SPF 17.7) which will inform the probate court what the goals of the guardian for the ward will be for the upcoming year and how the guardian plans on attaining those goals.

c. To protect the ward. The guardian is responsible for seeking services that will help the ward reach or maintain their highest degree of functionality in the least restrictive environment possible.

d. To make medical decisions in the best interest of the ward. If a family member or other interested party objects *disagrees with* to the guardian's medical decision making for the ward, then the court will make the final decision on the ward's medical care.

Guardian of the Estate Responsibilities

a. Establish a bank account for the ward's funds with the prior approval of the probate court.

b. Inventory the estate. The guardian must list all of the assets and monies that the ward owns within three months of being appointed guardian of the estate.

c. Obtain prior court approval before: *i.* spending any of the ward's money, *ii.* entering into any contracts for the ward, *iii.* making improvements to the ward's assets or *iv.* selling the ward's assets.

d. Providing an Annual Guardian's Account showing all of the assets and income that you received on behalf of the ward in a given time period and then showing how you as guardian spent those assets/money. This is done on a Standard Probate Form (SPF 15.8).

DUTIES AND RESPONSIBILITIES OF A GUARDIAN OF THE PERSON

1) Advocate for the Ward

- **Visit Regularly**
  - At least once every three months.

- **Meet the Ward's Needs**
  - Make all decisions for the ward (residential & medical).
  - Ensure that the ward is safe and free from abuse or neglect.
  - As a guardian, you cannot delegate your responsibilities to others.

2) Submit Reports

- File an annual Guardian's Report which informs the probate court where the ward is residing, how they are doing, if changes need to be made, and if the guardianship should continue or be terminated. This report is Standard Probate Form 17.7 that can be obtained from the court or the Ohio Supreme Court website.

- File an annual Guardian's Plan along with the annual Guardian's Report (SPF 17.7) which will inform the probate court what the goals of the guardian for the ward will be for the upcoming year and how the guardian plans on attaining those goals.

  - The Guardian's Report and a Guardian's Plan are REQUIRED BY LAW
  - Failure to file these documents can result in your removal as guardian and other court sanctions.
  - Provide as many details as possible. Must be accompanied by report of ward's doctor re: ward's general state of health and if continuation of guardianship is necessary.
  - Complete and mail to the probate court.

3) Protect the ward. The guardian is responsible for seeking services that will help the ward reach or maintain their highest degree of functionality in the least restrictive environment possible.

4) Make medical decisions in the best interest of the ward. If a family member or other interested party disagrees with the guardian's medical decision for the ward, then the court will make the final decision on the ward's medical care.

5) Report Change of Address

- The Court needs the current address and phone number for both the ward and the guardian.

- If the ward or guardian's address or telephone number changes:
  - Advise the court of the ward's new address and phone number in writing immediately.

6) Submit Final Report

- To be filed if a minor ward turns 18 years old.
- To be filed if the ward dies.
- Include a copy of the death certificate.
- Complete and mail to the probate court.

DUTIES AND RESPONSIBILITIES OF GUARDIAN OF THE ESTATE

Here are the duties of an individual appointed guardian of the estate for a minor as outlined under R.C. 2111.14:

1) Establish a bank account

- The guardian is responsible for establishing a bank account for the ward at a bank approved by the Probate court and subject to the court's rules and oversight.

2) Inventory the estate:

- The guardian is responsible for creating a list of all real and personal property and assets belonging to the ward.
- The guardian has three months from the appointment date to file the inventory with the court.

3) Obtain prior court approval:

- The guardian is responsible for getting prior approval from the Probate court before:
  - spending the ward's funds,
  - entering into contracts,
  - making improvements to real property,
  - entering into settlements, or
  - selling assets.

4) File an annual Guardian's account…

- The guardian is responsible for filing an annual account showing all of the assets and income received on behalf of the ward in a given time period and then listing how the assets/monies have been expended by the guardian. The guardian will use a standard probate form (SPF 15.8).

MEETING THE WARD'S NEEDS

The following outline is intended to assist the guardian in meeting the ward's needs, but is not intended to include all duties of a guardian.

Assess the ward's immediate and continuing medical, residential, financial, dietary, social and supervision needs.

Determine what resources are available to allocate toward satisfaction of the ward's needs.

In the event you are not guardian of the ward's estate, then communicate with those persons or agencies to obtain the necessary resources to satisfy the ward's needs.

Maintain frequent contact with the ward, his or her doctors, counselors, ward's family (if cooperative), and all other care providers to assure quality of care and any change of the ward's needs.

Make regular and timely reports to the court and cooperate with court visitors, your legal counsel, and all court personnel as directed.

Anticipate and consider the future needs of the ward including the following:

a) Pre-planned funeral arrangements if none were previously made.

b) Access to any advanced health care directives previously made by the ward, such as a Living Will.

c) Medical directives for terminally ill wards such as "DNR" (Do Not Resuscitate) orders if advised by the ward's treating doctor.

These decisions are often difficult, and they call for the highest degree of prudence and consideration by the guardian. To the extent it is possible or practical, the guardian should take into account each of the following before making these important decisions:

a) The best interests of the ward.

b) The medical opinions of the ward's doctors and any independent assessors.

c) The expressed desire of the ward, to the extent the ward has the ability to comprehend and participate in the decision.

d) Any prior expression of an incapacitated ward's desire made prior to his or her incapacity.

e) The moral, ethical and religious values of the ward currently or prior to incapacity and how they would influence the ward's own decision if he or she were competent to make the decision.

f) The degree of practical necessity or desirability for the advanced planning.

g) The feelings and opinions of the ward's family members and any other intimate friends.

MAKING MEDICAL DECISIONS

It is the guardian's responsibility to make decisions based on the ward's needs. Medical decisions can be very hard to make. The well-being and comfort of your ward, and perhaps your ward's life, depends on making the right choice.

TAKE TIME TO RESEARCH ALL THE OPTIONS

Often medical decisions are made under pressure. It is important for the guardian to know that, although convenient for the schedule of the doctor, making immediate decisions may be inappropriate. Unless it is an emergency, the guardian should take care to take whatever time is necessary to be fully informed and consider medical options.

It may be safe to postpone the decision for a few days or longer in order to weigh all the options. When a doctor (or anyone else) insists on a quick decision, ask if your ward's life is in jeopardy if the decision is delayed a few days. If not, use the time to become more familiar with the situation and the options so that the best medical decision can be made. You may also consider seeking a second opinion.

ALWAYS REMEMBER

It is the DUTY and RESPONSIBILITY of the guardian to make a final decision that is appropriate and in the best interests of the ward, even if the ward disagrees with the decision.

AREAS YOU MAY FIND YOURSELF ADVOCATING FOR THE WARD

Freedom from Abuse or Neglect

Quality of Personal Care

Quality of Medical Care

Accessibility

Transportation

Access to Community Services

In-Home Care

Least Restrictive Placement

Educational and Vocational Services

Mental Health Services

Financial Benefits

Application or Termination of Life Sustaining Medical Treatment

If you find yourself in any of these situations and are unsure of what to do or would like some assistance, contact an attorney or feel free to contact the court for other appropriate referral.

NOTE: THE COURT STAFF IS NOT PERMITTED BY LAW TO PROVIDE LEGAL ADVICE. QUESTIONS REQUIRING LEGAL ADVICE MUST BE REFERRED TO AN ATTORNEY OF YOUR CHOOSING. THE STAFF IS NOT PERMITTED TO MAKE ATTORNEY REFERRALS.

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