Protecting Ohio's Families

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GUARDIANSHIP GUIDE

An overview of the guardianship process



MIKE DEWINE
★ OHIO ATTORNEY GENERAL ★

Dear Fellow Ohioan:

Protecting Ohio's families and vulnerable populations is the overarching mission of the Ohio Attorney General's Office, and something I take very seriously.

People placed in guardianship are especially vulnerable, and there is a great need for willing volunteers, family members, and attorneys to act on their behalf. In many cases, every decision affecting an individual's health, well-being, and finances is in another person's hands. That's why it is so important for guardians to carry out their duties responsibly.

Yet, the role of a guardian can be perplexing to those unfamiliar with the rules. We created this guide to reduce confusion surrounding guardianships in Ohio so that individuals are better equipped to serve as guardians or protect relatives under guardianship.

As you review this guide, you may find the glossary of common terms on Page 44 helpful. If you have additional questions about guardianships, please call my office's Help Center at **800-282-0515** or contact your local probate court.

Very respectfully yours,



Mike DeWine
Ohio Attorney General

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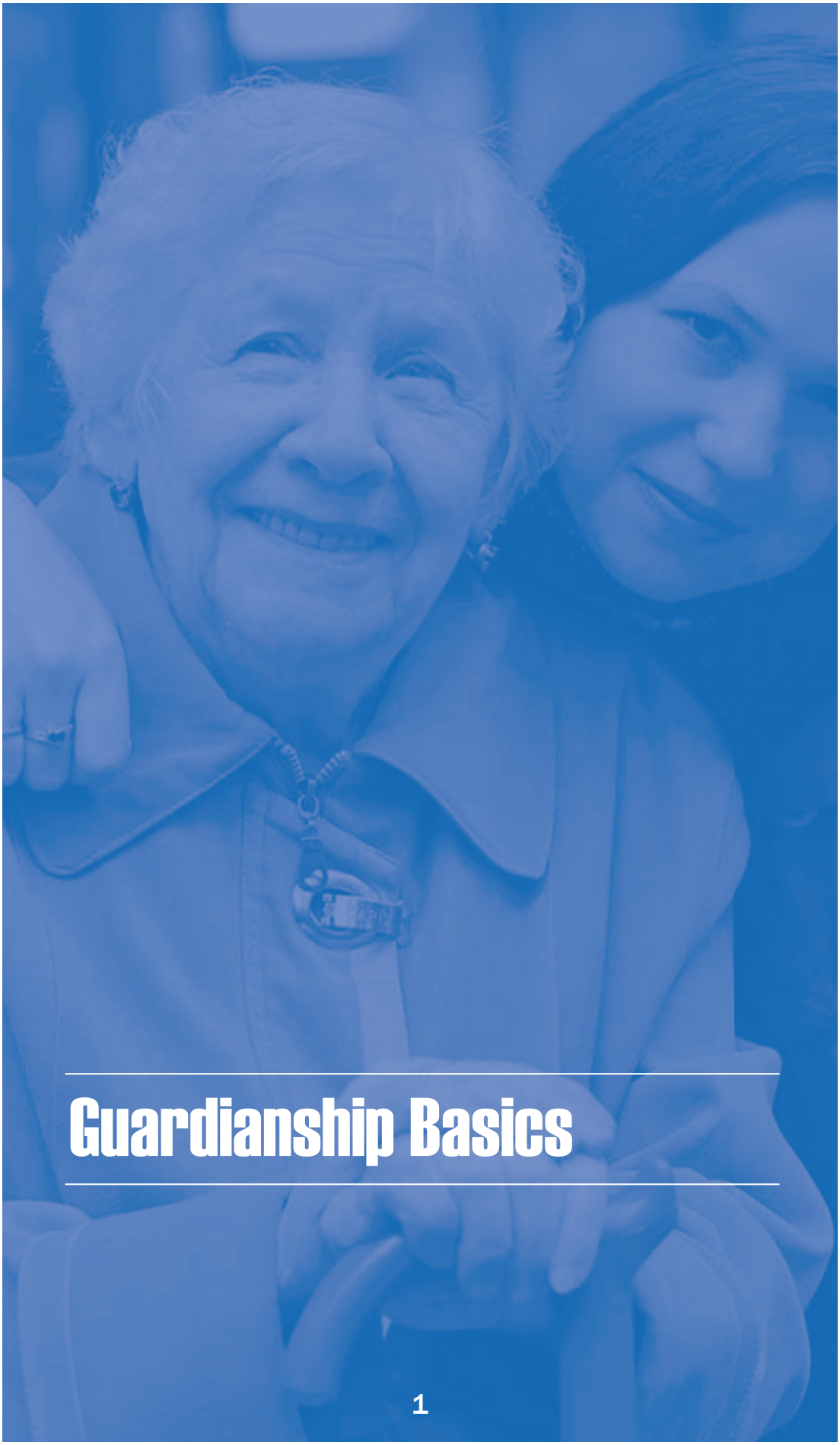
The Ohio Attorney General cannot provide legal advice to anyone other than state agencies, officers, and employees. Scenarios outlined in this guide are examples only and should not be construed as legal advice; you may need to consult with an attorney. In addition, consult with your local probate court to determine its guardianship policies and procedures. Also, sections of the Ohio Revised Code — the laws passed by the General Assembly — are referenced with the abbreviation "R.C." followed by the relevant code number. The Ohio Revised Code is available online and also may be found at law libraries and some public libraries. Citizens are encouraged to read the law and use this book as a guide.



Guardianship Basics

The Probate Court

Every county in Ohio has its own probate court, which handles wills, administration of estates and trusts, adoptions, marriage licenses, name changes, and appointments of guardians for minors and incompetent adults.
[Ohio Revised Code (R.C.) 2101.24]

The probate court is the superior guardian of those placed in guardianships and is responsible for monitoring guardians to make sure they fulfill their duties. [R.C. 2111.50]

When a Guardianship May Be Neccessary

Guardianship is one of the more restrictive protective services available under Ohio law and is only necessary when individuals are unable to care for their basic needs, finances, or medical issues and when a less-restrictive alternative is not feasible. There are many situations that may require you to consider guardianship of a loved one, such as:

- **Health:** This includes adults with serious health problems, heavy drug use, or physical disabilities, such as a coma or severe physical handicap.

- **Brain injury:** This includes traumatic brain injury, which is caused by an external force, or acquired brain injury, which occurs after birth.

- **Mental illness:** This includes adults with an incurable mental illness that makes it impossible to perform daily living activities.

  One scenario: Your father suffers from mental illness and is incapable of making choices about his personal care and finances. Under these circumstances, a guardian may be appointed if your father is in need of temporary or permanent care.

- **Developmental disabilities:** This includes adults with developmental disabilities, such as intellectual disabilities, autism, or Down's syndrome.

- **Children without parents:** This includes situations in which parents have abandoned their children, are not physically present in the same location, or have died.

  One scenario: The mother and father of an 8-year-old boy are moving to another state. For various reasons, the boy will not immediately move to the new state with his parents. Until the child can join his parents, an aunt and uncle may be appointed to serve as his guardians.

- **Neglected child:** This includes situations in which parents are not properly caring for their child's basic needs, including medical and educational needs. This situation might need to be addressed through your local juvenile court.

- **Financial awards to children:** This includes situations in which a minor inherits money or receives a legal settlement.

  One scenario: Your 16-year-old daughter receives a large legal settlement from a car accident. Because children are presumed

incompetent to handle finances, the court will appoint a guardian of the estate when a child receives a large sum of money through a settlement or inheritance. One of the parents is usually named guardian of the estate for the child.

The Guardian

A guardian is appointed by a probate court to manage and care for the affairs of a minor or incompetent adult, who is called a ward. The guardian can be a person and, under certain limited circumstances, an association or corporation. [R.C. 2111.01]

A limited guardian may be appointed for a short time or for a specific purpose, including as an emergency guardian. [R.C. 2111.02]

One scenario: Your brother, who was recently in an accident, is in a coma and confined to a hospital bed. He is unable to care for his basic needs. Medical decisions need to be made quickly, including whether to authorize surgery. Based on your brother's condition, you may be appointed as an emergency guardian for a specified time period in order to make medical decisions.

Types of Guardians

The probate court may appoint one of three types of guardians: guardian of the person, guardian of the estate, or guardian of the person and estate. [R.C. 2111.01, 2111.02]

Guardian of the person: A guardian of the person handles the personal affairs of the ward. This can include determining where the ward lives, making decisions about medical treatment, or choosing where a minor ward attends school.

Guardian of the estate: A guardian of the estate handles the finances of a ward. This can include using the ward's money to pay bills, buy items for the ward, or place money into trusts.

Guardian of the person and estate: A guardian of the person and estate handles both the personal affairs and finances of the ward.

One scenario: If your mother is showing signs of dementia — such as severe neglect of personal hygiene, inability to find her way home, and other memory loss, including forgetting how to write a check — you may consider applying for a guardianship of the person and estate so you can take care of her financial and personal needs.

The Guardian as a Fiduciary

A guardian is a fiduciary to the ward, meaning the guardian must act on behalf of the ward and take responsibility for protecting the ward's interests. [R.C. 2109.01]

General Responsibilities of a Guardian

Every guardian has certain responsibilities, regardless of who the ward is or what type of guardianship is involved. These include following the orders of the probate court, protecting the ward, and fulfilling fiduciary responsibilities. [R.C. 2111]

Guardians must act in the best interest of the ward when making decisions. These decisions should support the individual's wishes whenever feasible and not be harmful. [R.C. 2111.50]

Other responsibilities are determined by the type of guardianship and whether the ward is an adult or minor.

Guardian Background and Credit Checks, Trainings, and Bonds

In all counties, a potential guardian must undergo a criminal background check.
[Rule 66.05 of the Rules of Superintendence for the Courts of Ohio]

In addition, some counties may require a credit check as part of the application process. There is typically a fee associated with completing a background check. The local probate court can tell you the charge.

Potential guardians must complete a mandatory six-hour fundamentals course provided by the Supreme Court of Ohio, or with the prior approval of the appointing court, another entity.
[Rule 66.06 of the Rules of Superintendence for the Courts of Ohio]

Guardians are also required to complete three hours of continuing education annually and report their compliance to the local probate court by January 1st of each year. Guardians who fail to comply will not be eligible for new guardian appointments.
[Rule 66.07 of the Rules of Superintendence for the Courts of Ohio]

Charging to be a Guardian

In some cases, guardians can charge a fee. All fees must be reasonable and approved by the probate court before being paid.
[Rule 73 of the Rules of Superintendence for the Courts of Ohio]

One scenario: A guardian of the estate manages the ward's rental property, which involves a certain amount of business expertise. The guardian may be entitled to a fee of up to 10 percent of the gross rental income.

Conflicts of Interest and Undue Influence

A guardian cannot be a direct service provider to the ward. (Examples of service providers are nursing homes, transportation providers, nurses, home-health aides, and other caregiving personnel.) [Rule 66.01 and 66.04 of the Rules of Superintendence for the Courts of Ohio]

This is because the law assumes it would be impossible for a service provider to advocate for the ward if a problem occurs. For example, a nursing home cannot, as guardian, advocate that the ward needs certain services and then provide and bill for those services as the service provider. A guardian also may appear to have undue influence over the ward. It is up to the guardian to show the court that is not the case.

Irresponsible Guardians

If it seems guardians are not appropriately carrying out their duties, any interested party, including the ward, may ask the probate court to review the guardianship. The court is the superior guardian of the ward, meaning it is ultimately responsible for protecting the ward. The court may issue instructions to guardians or remove them if the circumstances require.

National Standards of Practice for Guardians

The National Guardianship Association has adopted standards to guide guardians. Here are some helpful principles within the standards:

- **Informed consent:** A guardian should make decisions only after full disclosure of the facts. Decisions must be made voluntarily and under no coercion.

- **Decision-making:** A guardian should consult with the ward when possible to make decisions in the ward's best interest and based on what the guardian believes the ward would want.

- **Least-restrictive alternative:** A guardian must evaluate the placement of the ward and in each situation select the least-restrictive way to meet all of the ward's needs.

- **Confidentiality:** A guardian should keep the ward's personal affairs confidential and respect the ward's privacy and dignity. Disclosure of personal information should occur only when necessary to benefit the ward.

The Ward

Wards are the subject of the guardianship. They cannot care for their basic needs, and the guardian makes decisions for their protection and safety. [R.C. 2111.01]

Rights of the Ward

A ward is entitled to certain rights that the guardian cannot change. The ward continues to have these rights after a guardianship is established:

- To be treated with dignity and respect
- To privacy, which includes the right to privacy of the body and the right to private, uncensored communication with others by mail, telephone, or personal visits
- To exercise control over all aspects of life that the court has not delegated to the guardian
- To appropriate services suited to the ward's needs and conditions, including mental health services
- To have the guardian consider the ward's personal desires, preferences, and opinions

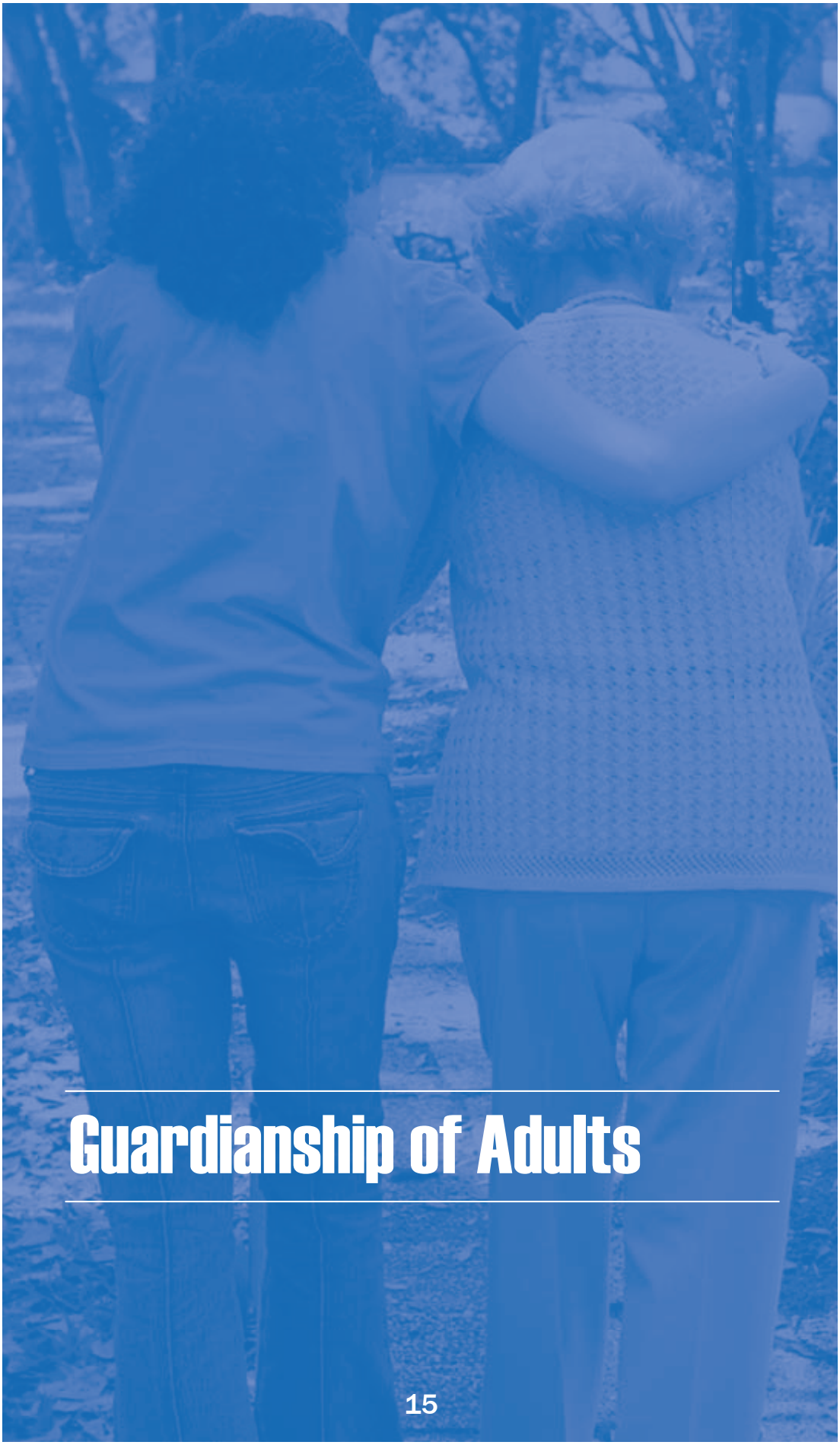
- To safe, sanitary, and humane living conditions within the least-restrictive environment that meets the ward's needs
- To marry, if legally able
- To procreate, or consent or object to sterilization
- To equal treatment under the law, regardless of race, religion, creed, sex, age, marital status, sexual orientation, or political affiliations
- To have explanations of any medical procedures or treatment
- To have personal information kept confidential
- To review personal records, including medical, financial, and treatment records
- To speak privately with an attorney, ombudsman, or other advocate
- To an attorney and independent expert evaluator, and to have these professionals paid by the court if the ward is indigent
- To petition the court to modify or terminate the guardianship

- To bring a grievance against the guardian, request the court review the guardian's actions, request removal and replacement of the guardian, or request that the court restore rights if it can be shown that the ward has regained capacity to make some or all decisions

- To request a hearing to review the continued need for the guardianship at least once per year [R.C. 2111.49(C)]

- To drive, if legally able

- To vote, if legally able



Guardianship of Adults

Becoming Guardian of an Adult

There are two ways to become a guardian of an adult: application followed by court appointment or appointment by the probate court on its own. This section describes how a person applies to be the guardian for an adult if the applicant believes there are no less-restrictive alternatives available to adequately protect the adult.

The Application

Guardianship applications are available at the local probate court or on its website. A potential guardian must file the completed application with the probate court in the county where the ward lives. There is normally a fee associated with filing the application. The local probate court will let you know the charge.

Typically, an applicant for guardianship is an individual, such as a family member, or a professional, such as a licensed attorney or agency. If potential guardians are applying to be guardian of the estate, they must be a resident of Ohio unless they are also nominated to serve as guardian through a power of attorney, will, or other legal document. Although there is no residency requirement for a potential guardian of a person, courts prefer the guardian and ward both live in Ohio because it can be difficult to work with a guardian who lives far away from the proposed ward. [R.C. 2109.21]

The application must include a list of relatives of the proposed ward, known as next of kin. This list may include the proposed ward's spouse, children, grandchildren, and siblings. The probate court will let those individuals know an application was filed and when the hearing is scheduled. [R.C. 2111.03; 2111.04]

The application process also includes an expert evaluation, which is needed for the court to determine if the proposed ward is incompetent.

Determination of Incompetence

Before a guardian can be appointed for an adult, the probate court must first determine that the proposed ward is "incompetent." The person who applied for guardianship is responsible for proving this. [R.C. 2111.02]

Definition of incompetent: Incompetent individuals may be people with mental impairment or illness, people with a developmental disabilitiy, or chronic substance abusers. They must be incapable of taking proper care of themselves, their property, or others under their care. In other words, they must be unable to care for their basic needs. [R.C. 2111.01]

One scenario: Your adult daughter is addicted to drugs and unable to function. She sleeps all day and only wakes to get high. As a result, she is not properly caring for herself or her finances. Based on this situation, the probate court may find that your daughter is incompetent and in need of guardianship.

Statement of Expert Evaluation: To determine if the adult is incompetent, the person applying for guardianship must have a medical professional prepare a report called a Statement of Expert Evaluation. The medical professional can be a medical doctor, psychologist, or psychiatrist. This doctor will talk to the proposed ward to evaluate his or her mental and physical condition and determine whether a guardian is necessary. The doctor will then complete the Statement of Expert Evaluation and submit it to the probate court. The probate court will consider the statement and other information to decide if the individual is incompetent and in need of a guardian. [Rule 66 of the Rules of Superintendence]

Probate court investigation: The probate court will have a court investigator visit the ward to determine if a guardian is necessary. The investigator will then submit a report to the probate court. [R.C. 2111.041]

The Hearing

After an application is filed, the probate court will set a hearing before a judge or magistrate. There will be an official record and, if necessary, translators. Both the applicant and proposed ward may be represented by attorneys during the hearing. The proposed ward has a right to have counsel appointed if he or she cannot afford one. [R.C. 2111.02(C)]

The probate court will let all next of kin know the time, date, and location of the hearing. When next of kin receive the notice, they can sign a paper consenting to the guardianship, attend the hearing, or sign a waiver giving up their right to attend the hearing. If the court receives no response from next of kin, it is assumed they do not contest the application. [R.C. 2111.02(C); 2111.04]

At the hearing, the court will determine if the individual is incompetent and in need of a guardian. The court will take testimony from the proposed ward, next of kin, or interested parties and review medical reports, investigations, and evidence of less-restrictive alternatives to guardianship. [R.C. 2111.02, 2111.041; Rule 66 of the Rules of Superintendence]

The Decision

Once the probate court has reviewed the testimony and reports, including any evidence of less-restrictive alternatives, it will make a determination as to whether the proposed ward is incompetent and if the person who applied to be guardian is suitable for the appointment as outlined under R.C. 2111.02.

The court will issue a written opinion or order. If a magistrate heard the case and writes a recommendation, the applicant or proposed ward may object if either disagrees. The magistrate's recommendations and any objections will then be given to the judge for final review and issuance of the order.

If the judge approves the magistrate's recommendation or decides the application on his or her own, that will be the final decision of the court. The decision can be appealed to the court of appeals.
[R.C. 2111.02; Ohio Rule of Civil Procedure 53]

Appointment of the Guardian

If the probate court determines that a guardian should be appointed, the name of the guardian will appear in the order. The guardian will then take a sworn oath, called the Oath of Guardian, on the court record. The guardian will also receive Letters of Guardianship from the court documenting the appointment. [R.C. 2109.02, 2111.02]

Guardian of the Person Responsibilities

Here are the duties of an individual appointed as guardian of the person for an adult as outlined under R.C. 2111.13:

- **Complete annual guardianship plan:** The guardian must file an annual guardianship plan with the local probate court. The guardianship plan must outline goals to meet the ward's personal and financial needs.
  [Rule 66.08 of the Rules of Superintendence for the Courts of Ohio]

- **Complete biannual guardian report:** The guardian is responsible to show the continued need for guardianship by filing a report about the ward's mental state every other year. The report is to include a Statement of Expert Evaluation completed by a doctor, psychologist, licensed independent social worker, clinical counselor, or mental retardation team as well as information about the ward, the guardian, the ward's living arrangements, number and type of contacts the guardian has with the ward, and the last date the guardian saw the ward. A guardian may ask the probate court to waive this requirement if the ward's condition is not likely to improve. In some counties, this report may be required yearly. [R.C. 2111.49]

- **Protect and control the ward:** The guardian is responsible for protecting and controlling the ward. The guardian of the person is responsible for seeking services that will help the ward reach or maintain his or her highest degree of functionality in the least-restrictive environment possible. For example, the guardian decides where the ward will live and chooses appropriate service providers for the ward with court approval. [R.C. 2111.13(A)]

- **Provide support:** The guardian is responsible for purchasing items for the ward using the ward's money. A guardian may purchase everyday items, such as food or clothing, or larger items, such as TVs or cars, if the purchase is justifiable and approved by the probate court. [R.C. 2111.13(B)]

- **Make medical decisions:** The guardian is responsible for authorizing or approving medical care, including tests, counseling, or treatment. However, the ward, interested parties, or next of kin who are not guardians may file an objection with the probate court if they disagree with the medical decision. The court will make a final decision. [R.C. 2111.13(C)]

- **Authorize autopsy:** If the ward dies and no one has been assigned the legal responsibility to authorize an autopsy if one is required, the guardian may do so with court approval. [R.C. 2111.13(D)]

- **Arrange burial or cremation:** With court approval, the guardian of the person may authorize the burial or cremation of the ward if a person with the right of disposition, such as a next of kin or person listed in a will, has not already made that decision. [R.C. 2111.13(E)]

Guardian of the Estate Responsibilities

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

- **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.

- **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. [R.C. 2111.14]

- **Gaining 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 improve-

ments to real property, entering into settlements, or selling assets. [R.C. 2109.13; 2109.302; 2109.47; 2111.19; 2111.33; 2127.25; 2111.50]

- **Keep annual account of assets:** The guardian is responsible for keeping an annual account of the ward's assets. If assets are spent, the guardian must keep receipts and reflect deductions on the account. [R.C. 2109.30; 2109.302]

- **Manage the estate:** The guardian is responsible for managing the estate. This means the guardian must make decisions in the best interest of the ward. This includes paying all debts owed by the ward or bringing legal action on the ward's behalf. [R.C. 2111.14]

Ending the Guardianship

Guardianship of an adult may end in several ways, including:

- **Death of the ward:** After final arrangements and disposition of the estate, the guardianship of the person automatically terminates upon the death of the ward. The role of a guardian of the estate ends when the court approves the guardian's final account of the ward's finances.

- **Resignation, removal, or death of the guardian:** A guardian's appointment ends if the probate court approves his or her resignation, the probate court removes the guardian, or the guardian dies. The probate court then sets a hearing to appoint a new guardian. [R.C. 2111.47]

- **Ward gains competency:** When the probate court finds the ward competent, a guardianship is no longer needed. [R.C. 2111.47]

- **Marriage:** If the ward marries, any guardianship of the person terminates. However, marriage does not terminate the guardianship of the estate. [R.C. 2111.45]

- **Ward moves:** If the ward moves to another county, the probate court can transfer the matter to the probate court in the other county if the new court consents to the transfer. The original court can then terminate its guardianship case automatically or at the request of the guardian. [R.C. 2111.471]

- **Estate value too low:** If the value of an estate falls below $25,000, the guardian of the estate may ask the probate court to terminate the guardianship. If the guardianship is terminated, any funds will be deposited into a restricted account for the ward. [R.C. 2111.05]

What to Expect: A Guardianship of an Adult Scenario

Catherine is an 86-year-old Ohio woman. She is widowed and has three adult children, all of whom live in the same city as her.

She has begun showing signs of forgetfulness and short-term memory loss and has fallen significantly behind in paying her bills. Catherine also suffers from extremely high blood pressure and diabetes, and her doctor has prescribed daily medication for these conditions. However, it is clear that in recent months, Catherine has not taken her medicine. She recently had a fall, and her daughter, Sophie, took her to the local emergency room.

The physician who examined Catherine believed she might have a form of dementia and referred her to a specialist for further tests. The tests confirm Catherine is experiencing vascular dementia, and the specialist concludes that Catherine probably cannot handle her activities of daily living, such as personal hygiene, medication, doctor visits, and finances. Catherine does not have a Health Care or Durable Financial Power of Attorney, which are less-restrictive ways of assisting someone with health care or financial decisions, but Sophie does not believe they would allow her to meet all of her mother's needs.

Sophie decides to apply to be her mother's guardian and goes to the county probate court for an application. Before filing the application, she must get a Statement of Expert Evaluation, so she takes Catherine back to the specialist for another exam. The specialist concludes Catherine cannot handle her activities of daily living and fills out the evaluation to recommend a guardianship of the person and estate.

Sophie visits the clerk's office and files the Statement of Expert Evaluation and guardianship application, which lists all of Catherine's next of kin and other required information. She also applies to be bonded because she wants to be guardian of the estate as well as guardian of the person.

A few weeks later, Sophie receives notice that a hearing has been scheduled in two weeks. Before the hearing, Sophie submits her fingerprints for a criminal background check, and the probate court investigator visits Catherine's home to interview Catherine.

On the day of the hearing, the court has Sophie watch a training video about guardianships. When she arrives at the courtroom, most of the people she listed as next of kin are present.

A judge calls the court to order and swears in witnesses. The judge then asks Sophie to take the stand to explain why she is applying to serve as her mother's guardian. The judge follows up with specific questions about Catherine's health, mental state, and ability to manage her affairs. The judge reads the investigator's report and notes key parts of the Statement of Expert Evaluation. The judge then asks Catherine and other family members for their input.

Next, the judge asks if anyone present opposes the guardianship. No one comes forward. The judge then decides, based on clear and convincing evidence, that Catherine cannot manage her own affairs, there is no less-restrictive alternative, Catherine needs a guardian of both her person and estate, and Sophie is the most appropriate person to be guardian.

Sophie takes an oath on the record agreeing to serve as guardian. She later receives Letters of Guardianship officially making her the guardian. She can now make decisions about her mother's care and finances.

Guardianship Application Process

This process applies to guardianships involving adults and minors:

Application and evaluation of ward
- Proposed guardian seeks application from probate court
- Proposed guardian completes and files application with probate court
- When guardianship of an adult is sought, the proposed guardian seeks medical evaluation(s) of the ward

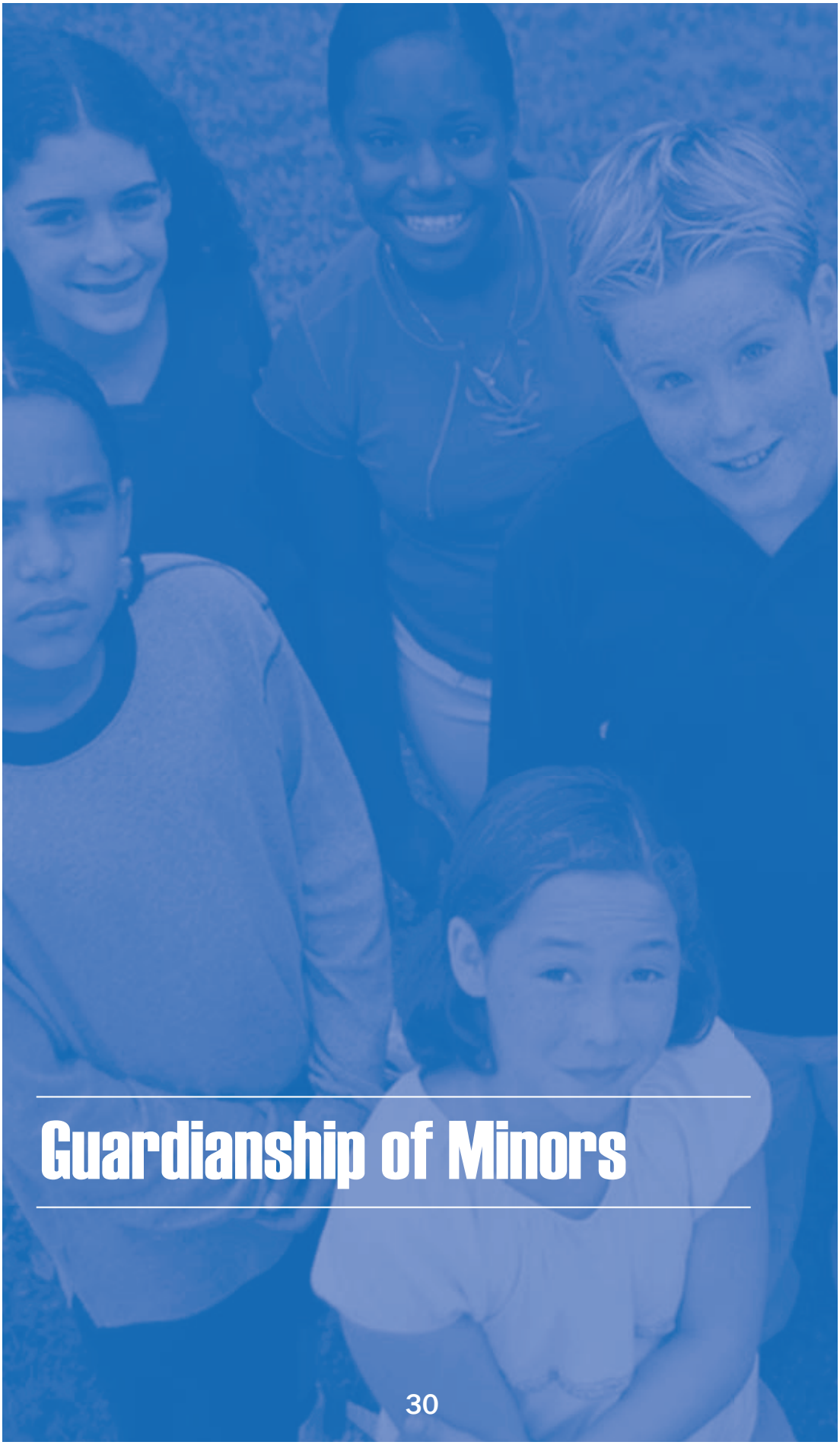
Guardian training/background and credit checks
- Court provides proposed guardian with training on responsibilities (in some counties)
- Proposed guardian undergoes criminal background and credit checks (in some counties)

Court investigation
- Court conducts investigation

Probate court hearing
- Interested parties give testimony
- Court reviews any medical evaluations and court investigations

Probate court decision
- Court issues decision on whether guardianship is necessary
- Interested parties may file objections

Appointment of guardian
- Probate court appoints guardian
- Guardian receives Letters of Guardianship or other printed documentation of appointment



Guardianship of Minors

Becoming Guardian of a Minor

A minor is a person under the age of 18. A probate court can appoint a guardian of a minor through a guardianship application or when a natural parent names a person as guardian in a will or other legal document. [R.C. 2111.12]

The Application

Just as with adults, guardianship applications can be found at the local probate court or on its website. A potential guardian must file the completed application with the probate court in the county where the ward lives. There is normally a fee associated with filing the application. The local probate court will let you know the charge.

In some counties, the application may also require a copy of the minor's birth certificate and a statement about whether the parents have been notified of and consent to the guardianship.

Typically, an applicant for guardianship will be an individual, such as a family member, or a professional, such as a licensed attorney. If the potential guardian is applying to be guardian of the estate, the guardian must be a resident of Ohio unless he is also nominated to serve as guardian through a power of attorney, will, or other legal document.

Although there is no residency requirement for a potential guardian of a person, courts prefer the guardian and ward both live in Ohio because it can be difficult to work with a guardian who lives far away from the ward. [R.C. 2109.21]

The application must include a list of adult relatives of the ward, known as next of kin. This list may include the proposed ward's parents, siblings, grandparents, aunts, and uncles. The probate court will let those individuals know an application was filed and when the hearing is scheduled. [R.C. 2111.03; 2111.04]

The Hearing

After an application is filed, the probate court will set a hearing before a judge or magistrate. There will be an official record and, if necessary, translators. Both the applicant and proposed ward may be represented by attorneys during the hearing. The proposed ward has a right to counsel. [R.C. 2111.02(C)]

The probate court will let all next of kin know the time, date, and location of the hearing. When the next of kin receive notice of the hearing, they can sign a paper consenting to the guardianship, attend the hearing, or sign a waiver giving up their

right to attend the hearing. If the court receives no response from next of kin, it is assumed they do not contest the application.
[R.C. 2111.02(C); 2111.04]

At the hearing, the court will take testimony from interested parties. If minors are old enough, the court will give them the opportunity to voice their opinions to the court. The court will also review any investigations that have been completed.
[R.C. 2111.02, 2111.041; Superintendence Rule 66]

The Decision

Once the probate court has reviewed the testimony and reports, including any evidence of less-restrictive alternatives, it will make a determination if the guardianship is necessary and if the person who applied to be guardian is suitable for the appointment as outlined under R.C. 2111.02.

The court will issue a written opinion or order. If a magistrate heard the case and writes a recommendation, the applicant or proposed ward may object if either disagrees. The magistrate's recommendation and any objections will then be given to the judge for final review and issuance of the order.

If the judge approves the magistrate's recommendation or decides the application on his or her own, that will be the final decision of the court. The decision can be appealed to the court of appeals. [R.C. 2111.02; Ohio Rule of Civil Procedure 53]

Appointment of the Guardian

If the probate court determines that a guardian should be appointed, the name of the guardian will appear in the order. The guardian will then take a sworn oath, called the Oath of Guardian, on the court record. The guardian will also receive Letters of Guardianship from the court documenting the appointment. [R.C. 2109.02, 2111.02]

Guardian of the Person Responsibilities

Here are the duties of an individual appointed as guardian of the person for a minor under R.C. 2111.

- **Maintain custody:** The guardian has custody of the minor and may determine where the minor lives.

- **Make education decisions:** The guardian is responsible for making decisions for the minor's education. This includes deciding where

the minor enrolls in school, paying for educational expenses from the ward's money, and making sure the minor attends. [R.C. 2111.06]

- **Protect and control the ward:** The guardian is responsible for protecting and controlling the ward. [R.C. 2111.13]

  One scenario: If you are the guardian for your grandchildren, you are responsible for determining where they live and ensuring that their basic needs — such as proper feeding, schooling, and medical care — are met.

- **Provide support:** The guardian is responsible for purchasing items for the ward using the ward's money. A guardian can purchase everyday items for the ward's benefit and maintenance if the purchase is justifiable and approved by the court.

- **Make medical decisions:** The guardian is responsible for authorizing or approving medical care, including tests, counseling, or treatment. However, the ward, interested parties, or next of kin who are not the guardian may file an objection with the probate court if they disagree with the medical decision. The court will then make a final decision. [R.C. 2111.13(C)]

Guardian of the Estate Responsibilities

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

- **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.

- **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. [R.C. 2111.14]

- **Gain 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. [R.C. 2109.13; 2109.302; 2109.47; 2111.19; 2111.33; 2127.25; 2111.50]

- **Keep an annual account of assets:** The guardian is responsible for keeping an annual account of the ward's assets. If assets are spent, the guardian must keep receipts and reflect deductions on the account. [R.C. 2109.30; 2109.302]

- **Manage the estate:** The guardian is responsible for managing the estate. This means the guardian must make decisions in the best interest of the ward. This includes paying all debts owed by the ward or bringing legal action on the ward's behalf. [R.C. 2111.14]

Ending the Guardianship

Guardianship of a minor may end in several ways, including:

- **Minor turns 18:** When the minor turns 18, the guardianship will automatically end after a final accounting of the minor's assets and with the court's approval. [R.C. 2111.46]

- **Natural parent is granted termination:** The guardianship may terminate after a natural parent files a request with the probate court to end the guardianship. The court will make the final determination.

- **Death of the ward:** After final arrangements and disposition of the estate, the guardianship of the person automatically terminates upon the death of the ward. The role of a guardian of the estate ends when the court approves the guardian's final account of the ward's finances.

- **Resignation, removal, or death of the guardian:** A guardian's appointment ends if the probate court approves his or her resignation, the probate court removes the guardian, or the guardian dies. The probate court then sets a hearing to appoint a new guardian. [R.C. 2111.46]

- **Marriage:** A minor must meet all legal requirements in order to marry. Such a marriage would terminate a guardianship of the person, but not a guardianship of the estate. [R.C. 2111.45]

- **Ward moves:** If the ward moves to another county, the probate court can transfer the matter to the probate court in the other county if the new court consents to the transfer. The original court can then terminate its guardianship case automatically or at the request of the guardian. [R.C. 2111.471]

- **Estate value too low:** If the value of an estate falls below $25,000, the guardian of the estate may ask the probate court to terminate the guardianship. If the guardianship is terminated,

any funds will be deposited into a restricted account for the minor. The minor may have access to the account upon turning 18. [R.C. 2111.05]

What to Expect: A Guardianship of a Minor Scenario

Joanne has a 12-year-old grandson and 14-year-old granddaughter. They live with their mother Martina in Franklin County.

Martina is addicted to drugs and often is not available to properly care for the children. She recently missed an appointment with her son's teacher and did not show up to take her daughter to a doctor's appointment. On many days, Joanne has to take the kids to school, feed them, and make sure they do their chores.

Joanne persuades Martina to undergo detoxification treatment and extensive counseling. She will be unavailable to be with her children for several months while she gets her life in order.

Joanne is interested in serving as the children's guardian and goes to the Franklin County Probate Court for help. She fills out an application and submits fingerprints for a criminal background check.

Joanne also provides the names of the children's next of kin, including their father, George, who has not attempted to see them in five years.

The court schedules a hearing. At the hearing, the judge asks Joanne why she wants to be guardian. She gives a brief statement explaining the situation with her daughter and why she thinks she would make a good guardian. The judge follows up with a few questions, including whether Joanne has ever been in trouble for elder or youth abuse.

The judge also asks if Joanne received the notarized guardian consent form from the parents. Joanne gives the judge a signed form from Martina consenting to the guardianship. Martina also comes to the hearing and testifies that she has no objection to the guardianship.

Because she is 14, Joanne's granddaughter is asked what she thinks of staying with her grandmother for a while. She says it would be OK.

The judge considers everything and decides to appoint Joanne to be guardian. He administers the guardian's oath to Joanne, who receives a copy of the decision and Letters of Guardianship for each child.



Resources

Other Legal Relationships

A guardianship can be confused with other legal relationships that you may be familiar with, such as a power of attorney, conservator, or civil commitment.

Guardianships always involve a probate court and are initiated by someone other than the proposed ward, unlike conservatorships and powers of attorney, in which individuals are seeking help for themselves. Civil commitment, on the other hand, is one of the most restrictive legal relationships and involves a court ordering individuals with mental illness into treatment. While all are legal relationships, each has different limitations and levels of court involvement. A court may determine that one of these relationships is better for the ward than a guardianship.

Power of attorney

A power of attorney is a document in which a competent adult, known as the principal, authorizes another person, known as the attorney in fact, to act on his or her behalf when the principal is physically away or becomes incompetent. An attorney of fact can make all decisions about the principal or have limited decision-making authority, such as for medical decisions.

The principal stays in control of the relationship and can end it at any time. The probate court has no control over a power of attorney. However, if a guardian is appointed, the guardian or the court may revoke the power of attorney.

Conservatorship

A conservatorship allows a mentally competent adult who is physically disabled, known as the petitioner, to voluntarily petition the probate court to allow another, known as the conservator, to handle his affairs.

A petitioner or court can specify the powers of a conservator. The petitioner may terminate the conservatorship at any time. A court may terminate a conservatorship if it determines the petitioner is incompetent.

Civil commitment

A civil commitment involves a probate court ordering individuals with mental illness to be hospitalized or receive community-based treatment against their will for a limited time to prevent them from harming themselves or others. Evidence must demonstrate they are unable to provide for their basic needs due to mental illness, that treatment in the community is not available, and that treatment in the hospital is beneficial. [R.C. 5122.01(B)]

Glossary of Common Terms

Adult Protective Services: Adult Protective Services (APS), part of the Ohio Department of Job and Family Services, helps vulnerable adults age 60 and older who are in danger of harm, are unable to protect themselves, and may have no one to assist them. Ohio counties' APS staff members receive and investigate reports of abuse, neglect, and exploitation of vulnerable adults and evaluate the need for protective services.

Bond: An insurance policy that protects the ward from any misuse of assets. The bond amount is set at the time of the guardianship hearing. The law requires that the bond amount be at least double the amount of the ward's personal property and income. Real property (land and structures) is not subject to bonding.

Guardian: An individual appointed by the probate court to protect, make decisions for, and act on behalf of an individual in need of a guardian.

Guardianship of the estate: A guardian of the estate handles the finances of a ward. This can include using the ward's funds to pay bills, buy items for the ward, or place money into trusts.

Guardianship of the person: A guardian of the person only makes decisions of a personal nature and provides for the personal needs of a ward. Decisions such as food, clothing, living arrangements, and medical treatment are examples.

Guardianship, limited: A limited guardian may be appointed to perform specific duties for a definite or indefinite period of time. In such cases, the guardian's authority is limited to those duties only, and the ward retains full control over all other aspects of his life.

One scenario: A guardian may be appointed only for the purpose of handling health care decisions or may be appointed for a specific period of time. When the need for the guardian ends, the ward will be able to make decisions for himself.

Incompetent individual: Incompetent individuals are people who are mentally impaired and incapable of taking proper care of themselves, their property, family, or other people they are required by law to provide for. This term also applies to individuals confined to a correctional institution.

Letters of guardianship: Issued by the probate court upon the appointment of a guardian, these serve as proof of an individual's authority as guardian and spell out the powers granted to the guardian by the court.

Service provider: A person or company paid to provide care or service to an individual. Examples include nursing homes, transportation providers, nurses, home-health aides, and other caregiving personnel.

Ward: An individual in need of a guardian to control and manage certain aspects of the individual's life.

Additional Resources

Ohio Attorney General's Office
www.OhioAttorneyGeneral.gov
800-282-0515

Ohio Attorney General's Elder Abuse Commission
www.OhioAttorneyGeneral.gov/ElderAbuse
800-582-2877

Ohio Probate Court Contacts
www.probatect.org/ohioprobatecourts/courtlinks.htm

Ohio Judicial Conference
www.ohiojudges.org

Ohio Department of Aging
www.aging.ohio.gov
800-266-4346

Ohio Area Agencies on Aging
www.aging.ohio.gov/resources/areaagenciesonaging
866-243-5678

Ohio Department of Developmental Disabilities
www.dodd.ohio.gov
800-617-6733

Disability Rights Ohio
www.disabilityrightsohio.org
800-282-9181

National Guardianship Association Inc.
www.guardianship.org
877-326-5992

Ohio Revised Code
http://codes.ohio.gov

Rules of Superintendence for the Courts of Ohio
www.sconet.state.oh.us/legalresources/rules/superintendence/superintendence.pdf

Ohio Rules of Civil Procedure
www.supremecourt.ohio.gov/legalresources/rules/civil/civilprocedure.pdf



MIKE DEWINE

★ OHIO ATTORNEY GENERAL ★

O · H · I · O
GUARDIANSHIP GUIDE

An overview of the guardianship process

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