

GUARDIANSHIP

What is a Guardianship?

A guardianship is an involuntary trust relationship in which one party, called the guardian, acts for an individual called a ward. The law regards the ward as incapable of managing his or her own person and/or affairs.

Types of Guardianships

Person and/or Estate: A guardian may be appointed either a guardian of the person, a guardian of the estate, or both. A guardian of the person has custody of, and protects the person of the ward. A guardian of the estate controls and protects the assets or property of the ward.

Limited: A guardian may be appointed with limited powers to make restricted or specific decisions of the ward. The ward retains all powers not granted to the guardian.

Emergency: In an emergency in which significant injury to a prospective ward may occur unless immediate action is taken, the Court may appoint an emergency guardian for 72 hours.

What is a Guardian?

A guardian is any adult person, association, or corporation appointed by the Probate Court to assume responsibility for the care and management of the person, the estate, or both, of an incompetent person or minor child. A corporation can only be guardian of the estate and person.

Who Needs a Guardian?

A guardian may be appointed for either an incompetent or minor, which are defined by statute as:

Incompetent: 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 he is incapable of taking proper care of himself or his property or fails to provide for his family or other persons for whom he is charged by law to provide, or any person confined to a penal institution within this state.

Minor: Any person under 18 years of age who has neither father nor mother or whose parents are unsuitable to have custody and tuition of such minor, or whose interests, in the opinion of the Court, will be promoted.

Minor Settlement: Natural parents do not have an inherent right to settle personal injury claims on behalf of a minor child. The Probate Court must authorize approval of such settlements. If the settlement exceeds \$25,000, the Court

may require a guardian be appointed to manage the settlement proceeds for the minor.

Who Chooses the Guardian?

The Court appoints the guardian. However, a minor over 14, or the parents by will, may suggest a guardian for a minor. In addition, an adult, while competent, may nominate a guardian to serve in the event of incapacity.

Appointment Procedure

- 1) Application for guardianship is filed in the Probate Court of the County of the ward's residence by an interested party, or on the Court's own motion.
- 2) Application must include a statement of the guardian's willingness to perform as guardian, a bond as required by law, and, in the case of a prospective incompetent ward, a statement of the ward's mental and physical condition from a treating physician, psychiatrist, or licensed psychologist.
- 3) The prospective ward, as well as the adult next of kin, are notified of impending guardianship and date and time of hearing as prescribed by law. In the case of an incompetent proceeding, the notice and a statement of rights will be served on the prospective ward by a Court Investigator.
- 4) An investigation is conducted, in the case of a prospective incompetent ward, by a Court Investigator, which includes an interview with the prospective ward in order to assist the Court in determining the advisability of guardianship
- 5) Formal hearing is conducted by the Judge or Magistrate to determine if a guardianship is necessary, the guardian is suitable, and the guardian understands his duties.

Rights of the Ward

The prospective ward has the right to be present at the hearing, to contest any application for guardianship, to have a record of the hearing taken, to have a friend or family member present at the hearing, and to be represented by an attorney. A prospective incompetent ward has the additional right to present evidence of a less restrictive alternative, and, if indigent and requested, to have an attorney and independent expert appointed at Court expense.

Court Supervision

The Probate Court is the Superior guardian, and all guardians must obey all orders of the Court. The Court exerts its supervisory authority through the following:

Accountings: A guardian of the estate must file a written account with the Court annually as to the income and expenses of the ward's estate.

Reports: A guardian of an incompetent ward must file a written report annually. The report concerns the status of, and continued need for, the guardianship.

Citations: If a guardian fails to timely file a report, inventory, or accounting, the Court may cite a guardian to appear, and may fine, reduce the guardian's fee, or remove the guardian.

Investigations: To determine if a guardianship is functioning properly, the Court may order an investigation by a Court Investigator, Law Enforcement Agency, Adult Protective Service, or other County Agency.

Prior Approval: The guardian must first obtain approval of the Probate Court before entering into contracts or leases, making improvement to real estate, mortgaging real estate, selling assets of the ward, or settling any personal injury claim for the ward.

Removal: The Court may, at any time, in the best interest of the ward, remove the guardian.

Fees

A guardian's compensation and attorney's fees are set by Court rule, and must be approved prior to fees being paid.

Termination

A court order will terminate a guardianship upon the death of a ward, upon the ward being adjudged competent, or, in the case of a minor, upon reaching the age of majority (18). A motion for termination of a guardianship of an incompetent may be filed 120 days after appointment of a guardian, and once every year thereafter.

CONSERVATORSHIP

What is a Conservatorship?

A conservatorship is a voluntary trust relationship using guardianship laws and procedures as its basis, in which one party, known as a conservator, acts with Court supervision

for a competent, physically infirmed adult, who is called the conservatee.

Who Chooses the Conservator?

A conservatorship is based on the consent of the person for whom the conservatorship is to benefit. Thus, the conservatee decides who will serve as conservator, and what property and powers of the conservatee will be included in the conservatorship. In addition the conservatee decides which of the guardianship duties and procedures the conservator follows and the Court enforces.

What is the Court's Role?

After a petition is filed, and the matter heard, the Court will determine if the petitioner is infirmed, the petition is voluntary, and the conservator is suitable. If the petition is granted, the Court, while the conservatorship exists, will apply the laws and procedures of Ohio pertaining to guardianship, except those excluded by the conservatee.

How is the Conservatorship Terminated?

A Conservatorship is terminated by judicial determination of incompetency, the death of the conservatee, the Order of the Probate Court, or the execution of a written termination notice by the conservatee.

ABOUT THIS PAMPHLET

This publication is designed as a service to the public to provide an understanding of the duties and procedures of the Probate Court in Ohio in reference to guardianships.

This pamphlet should not be considered as a legal reference. If you have an legal questions dealing with guardianship, an attorney should be consulted



Judge

Matthew L. Gilmore

**Mercer County Court of Common Pleas
Probate Division**

Hours

Monday 8:30 a.m. –12:00 p.m. / 1:00 p.m. – 5:00 p.m.
Tuesday-Friday 8:30 a.m. –12:00 p.m. / 1:00 p.m. – 4:00 p.m.

Marriage License Hours

Monday 8:30a.m. – 11:30a.m. / 1:00p.m. – 4:30 p.m.
Tuesday-Friday 8:30a.m. – 11:30a.m. / 1:00p.m. – 3:30 p.m.

Phone Numbers

Probate Court: 419-586-8779
Juvenile Court: 419-586-1249
Juv. Probation: 419-586-7238

GUARDIANSHIPS AND ALTERNATIVES