

# LawFacts

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What you should know about.....



## Guardianships

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### **What is a guardian?**

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

### **Why are guardians appointed?**

A guardian is appointed by the court to oversee the legal and financial affairs (and/or the personal care) of a minor, or of an adult who is not able to manage his or her own affairs because of advanced age or some other physical or mental disability. Under Ohio law, a guardianship is an involuntary proceeding when family members or others ask the probate court to protect someone who appears to be incompetent. A so-called "voluntary guardianship" for a physically infirm, but otherwise competent, adult is more properly known as a *conservatorship*. Once appointed, a guardian/conservator is answerable to the court for providing proper care and management of the ward's affairs in the ward's best interests.

### **What are the general powers and duties of a guardian?**

The control that a guardian has over a ward is limited to the authority granted by Ohio statutes, relevant decisions of Ohio courts, and orders and rules of the probate court. All guardians must obey the orders and judgments of the probate court by which they were appointed. The probate court may confer broad and far-reaching powers on a guardian, or it may limit or deny any power granted under Ohio statutes or Ohio case law. Ohio law provides for different types of guardianships (listed below).

### **What are the types of guardianships?**

A *guardian of the person* is appointed to protect a ward and to provide for the ward's day-to-day maintenance, to be paid from the ward's assets (see *guardian of the estate* below). Maintenance means providing food, shelter, clothing, health care and other necessities. It includes responsibility for the education of a minor ward as required by law, and making decisions about medical treatment and other professional services the ward may require. A guardian of the person also serves as guardian of an incompetent adult's minor children, if no other guardian has been appointed for them.

*A guardian of the estate* is appointed to manage the property and financial assets of the ward for the ward's best interests. 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 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 an official inventory and accounts of the ward's estate with the court on a regular basis;
- file or defend lawsuits on behalf of the ward if necessary to protect his or her interests.

Before to being appointed, an applicant for guardian of the estate must provide the court with a fiduciary bond equal to double the probable value of the personal estate and of the annual real estate rentals that will come into the hands of the guardian. This means that 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 are specifically limited by the probate court. A ward for whom a limited guardian has been appointed 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, and when the probate court determines that the welfare of the ward requires immediate action.

*An emergency guardian* is a guardian appointed by the probate court without a formal hearing when an emergency exists and a guardian is necessary to prevent injury to the person or estate of the ward.

*A conservator* is a person appointed by the probate court at the request of a mentally competent adult who is physically unable to manage certain aspects of his or her life. The person requesting the appointment of a conservator specifies the powers requested on the Petition for Conservatorship. 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 of a ward must file an inventory of the ward's assets within three months after appointment. The inventory must list all real and personal property of the ward and the annual value of the rental of any real estate.

The probate court may require that the inventory be supported by evidence and that the guardian produce prior income tax returns, bank statements, Social Security records of the ward 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, except a guardian of the person only, must file an account in the probate court at least once every two years, or more often if local court rules require it. A final account must be filed within 30 days after the termination of the guardianship. 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 accounting 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. Actual securities and passbooks or bank statements must be exhibited to the probate court for examination, and the account must be made on the signature and oath of the guardian.

A "guardian of the person only" also may be ordered to provide an accounting from time to time for good cause shown on the court's own motion or on motion by any interested party.

**What is a guardian's report?**

A guardian of the person of an incompetent must file a guardian's 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 in the ward's physical or mental condition observed by the guardian; the guardian's opinion as to the necessity for continuing the guardianship and the adequacy of the care that the ward is receiving; and the date that the ward last saw a physician. The purpose of the report is to assist the probate court in determining if the guardianship should be continued. The court may appoint an investigator to verify the report. An updated statement of expert evaluation must accompany the guardian's report, unless waived by local court rules, further advising the court 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. The guardian 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 and his or her well being.

It is also important to establish and maintain a positive relationship with all of the ward's family members. A guardian will find that he or she can avoid problems and complications by keeping all family members 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 members 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. If necessary, 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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