

WHAT IS GUARDIANSHIP?

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.

FOR FURTHER 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."

MONTGOMERY COUNTY PROBATE COURT
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Dayton, OH 45402
(937)-225-4640

www.mcohio.org/probate

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AT A TIME.**

GUARDIANSHIP

MIKE FOLEY

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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.

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.

