

Guardianship Tool Kit

When your child turns 17 you may have providers or professionals suggest that you contact a lawyer to discuss guardianship and other options for your family and your child. When your child turns 18, he is considered his own guardian and able to make decisions and choices in all areas of his life (i.e. medical, financial).

This tool kit was written with assistance from Kevin Lipman, Spitz & Lipman; Allison M. McMeechan, Esq., Reminger Co., L.P.A.; and Andrew D. Pappert, Cuddy Law Firm, PLLC. It is intended to provide broad general information about the law. Before applying this information to a specific guardianship problem, readers are urged to seek advice from an attorney.

Milestones provides consultation services to all family members, professionals, and self-advocates. Services include connecting participants to resources and providing general information and assistance. We also offer a free Autism Helpdesk. If you have any questions or concerns, please contact us at (216) 464-7600.

What is Guardianship?

A **guardian** can be a person, corporation or an association appointed by a probate court to be legally responsible for another person and/or for another person's property. A guardianship is necessary when a person is unable to manage his or her personal needs or property due to incapacity. Guardianship is a legal process initiated when a doctor determines a person is unable to manage his person or finances due to incapacity. In that event, an applicant files an application with the probate court in the county that the person needing the guardianship resides. There is a cost for this process. The person for whom a guardian has been appointed is called the **ward**.

It may be helpful for you to do a Google search for "List of County Probate Courts in Ohio"
Website: <http://probate.cuyahogacounty.us/guardianship.aspx>

Responsibility of a Guardian

A **guardian's** responsibility for a **ward** is limited to the authority granted by Ohio Law and the county probate court. Every guardian has certain fiduciary obligations, which are determined by the type of guardianship sought (i.e. person or estate or both). Guardians must act in the best interest of the ward when making decisions. These decisions should support the individual's wishes whenever feasible, however, the guardian's ultimate responsibility is to ensure the protection of the ward.

Guardianship Process

Every county in Ohio has its own probate court. The probate court is the superior guardian of those placed under guardianship and is responsible for monitoring guardians to make sure they fulfill their duties. The judge can also remove a guardian who has engaged in misconduct, and another individual may be appointed to act as the person's guardian.

Each county probate court has its own set of application forms that must be completed to start the process. Included in those forms is a Statement of Expert Evaluation that must be filled out by a physician or a licensed clinical psychologist. The forms and fees vary somewhat from county to county. The application should be filed in the county in which the individual resides. It would not be unusual to have fees of \$150 to \$300 when filing a guardianship. If the applicant cannot pay the fees, the applicant can ask that the indigent guardianship fund be used to cover those expenses.

Reporting Requirements. The law requires a guardian to file a report with the probate court at least every two years, however, some courts require the guardian's report annually. If the guardian is managing money, the guardian must also file accounts with the probate court on an annual or biennial basis.

What are the types of guardianship?

Guardianship of the Estate gives the guardian the authority to make all financial decisions for the ward.

Guardianship of the Person gives the guardian the authority to make day-to-day decisions of a personal nature, except financial decisions on behalf of the ward. Such decisions would include such things as arrangements for medical needs, food, clothing and shelter.

Guardianship of the Person and Estate. The Court can appoint a guardianship of person and estate which gives the guardian the authority to make nearly all decisions for the individual, and combines the authority of guardianship of person and guardianship of estate.

Emergency Guardianship allows a probate court to issue any order that it considers necessary to prevent injury to the person or the person's estate or may appoint someone as guardian without prior notice to the person and without a formal hearing when: 1) an emergency exists, and 2) a guardian is necessary to prevent injury to the person or estate of the person who is incompetent. This initial appointment of an emergency guardian may last for a maximum of seventy-two hours. The court may extend an emergency guardianship for specified period of time, but not to exceed an additional thirty days.

Interim Guardianship is a guardian appointed after a former guardian has been removed or resigns when the welfare of the ward required immediate action.

Co-Guardianship is when two people are appointed to act as guardian for someone at the same time.

Limited Guardianship allows a probate court to appoint someone as guardian over only the portion of a person's life where he or she is both incompetent and has a need. Thus, there can be a limited guardian for medical purposes only (to provide consent for medical procedures), or for placement purposes only (admission to a group home), or for the limited purpose of approving behavior plans and/or psychotropic medications. This less restrictive form of guardianship should be used instead of full guardianship whenever possible. A ward for whom a limited guardian has been appointed retains all rights in all areas not covered by the court's order.

Do I need a Guardian?

For parents, the decision to seek guardianship can be difficult. You want to protect your child with autism and/or developmental disabilities, but there may be areas where your child can make sound decisions. It is possible for your child to retain important decision-making rights and maintain control of their own life.

How much independence should my child retain? Consider an assessment of areas of potential need such as: medical, finances, living arrangements, self-care, communication, legal, and safety.

Two prerequisites should exist before a court appoints a guardian:

1. The individual must lack capacity in at least one important area of his/her life. That decision is often easy to determine as a result of real-life experiences. Can they take care of themselves and their property, or are they at risk if left on their own?
2. There must also be a present need for the guardianship. A person may have significant deficits in life, but has a support network of families, friends, service providers, and others that may be so strong that guardianship is not necessary at that point in time. A guardianship may be implemented at any time the need is warranted.

Can the ward retain any rights?

There are several types of guardianship in Ohio. Rights retained depend upon the type of guardianship established by the probate court. There are some areas of a person's life which remain a fundamental right or right of privacy.

Voting is a fundamental right. Unless a court specifically rules, after a hearing, that a person is incompetent for purposes of voting, the person retains the right to vote even if the person has a guardian of the person and the estate.

There may be specific **medical** procedures, such as those that implicate reproductive rights that should be decided by the person whenever possible, the law may require the guardian to ask the probate court to review the guardian's decision. Additionally, the ward has the right to:

- object to having a guardian appointed;
- have an attorney represent him or her, even if he or she cannot afford one;
- be present during the hearing;
- receive notice of the hearing;
- request a record of the hearing;
- have a friend or family member of his or her choice present;
- prevent his or her personal physician and certain other parties from testifying against him or her; and
- have an independent evaluation.

Speak to your attorney or Disability Rights Ohio: <http://www.disabilityrightsohio.org/> for more information.

What are some less restrictive alternatives to Guardianship?

Other options exist that can effectively address a person's needs without the appointment of a guardian. Below is a list of some general alternatives to guardianship. These alternatives can be used alone or in whatever combination is necessary to support the person to live as independently as possible.

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-infirm adult, who is called the conservatee. 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. 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.

Family guidance. If a family member is available to provide advice and help the individual with special needs make decisions voluntarily, there may be no need for a guardianship. However, if the person is too easily influenced, there is a potential for that person to be taken advantage of and guardianship may be appropriate.

Assistive or Supported living services. If there are only a few areas where the person needs assistance, there may be programs, providers, or professionals who can assist with just those tasks. For example, if transportation is an issue, there are services available to take the person to and from medical appointments. There are various levels of services available to meet varying levels of need. Usually a case manager can help coordinate services for the person.

Powers of Attorney. A power of attorney is a legal document that gives someone else authority to act on a person's behalf. A person must have capacity to sign a power of attorney. An example of one type of a power of attorney would be when a competent person gives someone else the power to make health care decisions for him or her at a later time through a *durable power of attorney for health care*.

Special Needs Trusts. A Special Needs Trust can be very helpful in managing finances for an adult with special needs, an attorney would set up this trust.

Financial Representative. Representative payees or joint ownership of bank accounts to help the person manage his or her finances.

Representative Payeeship or Authorized Representative. If the person's only significant income comes from government benefits, it may not be necessary for the person to have a guardian of the estate or a plenary guardian. A representative payee may be able to manage all of the person's financial needs.

Long-term Care Ombudsman. If the person lives in a nursing home or adult care facility and has unmet needs or problems with care, the long-term care ombudsman can help. Ombudsmen take complaints about long-term care services, and voice the person's needs and concerns to nursing homes, home health agencies, and other providers of long-term care.

Circle of Support, Volunteer Advocate, and Good Programs and Services. An alternative to guardianship is to make sure the person has a support system that meets all of the person's needs and advocates in the person's behalf.

Maintaining Guardianship (or terminate). Sometimes it becomes apparent that a guardianship should have never been granted for the person with a disability. Also, that person may no longer need a guardian and has regained the ability to make some or all life decisions. In these cases, it may be appropriate to approach the probate court with a motion to terminate, or reduce a guardianship to a limited guardianship. There are also provisions in the law stating a ward may file a motion requesting the guardianship be ended. The ward can request a court appointed attorney for representation.

**The marriage of a ward terminates the guardianship of the person, but not the estate.

Where do I go for assistance?

In Ohio, there is a lawyer referral service in each metropolitan area, operated by the local bar association. (For a Web listing of lawyer referral services in Ohio, refer to Find A Lawyer on the Ohio State Bar Association Web site <http://www.ohiobar.org>). Also, you may refer to the Yellow Pages of your local telephone directory. Check the Yellow Pages under "associations" or "attorney referral services".

You may also contact your local legal aid office to see if you qualify for free legal services. You can get a list of organizations in Ohio that provide free or low cost legal services or referrals in your county. To access your local legal services program, call Ohio Legal Aid at 1-866-529-6446.

Additional Resources

People with disabilities: For more information about the legal rights of people with disabilities in guardianship matters, contact Disabilities Rights Ohio (DRO) for help (<http://www.disabilityrightsohio.org/>). See also DRO's publication Take Charge of Your Life: Know About Guardianship: <http://www.disabilityrightsohio.org/take-charge-your-life-guardianship>

Long-term Care Ombudsman:

Contact your county Long-Term Care Ombudsman Program: <https://aging.ohio.gov/Ombudsman>

Adult Protective Services for Adults with Developmental Disabilities: Contact your county board of Developmental Disabilities: <http://dodd.ohio.gov/CountyBoards/CNT/Pages/default.aspx>

Mental Health Services and Supports:

Contact your county mental health board: <http://www.oacbha.org/mappage.php>

Guardianship Agency for People Who Have Developmental Disabilities: The Ohio Department of DD (<http://dodd.ohio.gov/Pages/default.aspx>) provides the services of a nonprofit agency to act as guardian for those who need it and have no one else available in their lives. For more information, contact Advocacy and Protective Services, Inc. (APSI) at 1-800-282-9363.

Social Security Representative Payeeships: Refer to the Representative Payee Program of the Social Security Administration (<https://www.ssa.gov/payee/index.htm>) or contact your local Social Security Office (<https://www.ssa.gov/org/dco.htm#sb=2>).

References

Understanding Your Role as a Guardian:

<http://www.ohiojudges.org/Document.ashx?DocGuid=327bbb3d-cd51-4f26-9e96-f71a6c49e081>

When Your Child Turns 18: A Guide to Special Needs Guardianship:

www.friendshipcircle.org/blog/2012/10/16/when-your-child-turns-18-a-guide-to-special-needs-guardianship/

“Guardianships” - Ohio State Bar Association: <https://www.ohioabar.org/public-resources/commonly-asked-law-questions-results/law-facts/law-facts-guardianships/>

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