

IN THE COURT OF COMMON PLEAS, PROBATE DIVISION, GEauga COUNTY, OHIO
Judge Timothy J. Grendell

Information Sheet
Guardianship of a Minor

WARNING

This Information Sheet is intended to provide you with a brief overview of the subject matter. It may not provide you with all information that you require to be fully informed of the law that is applicable to your case. Additionally, the information may not accurately describe the pertinent sections of the Ohio Revised Code that are referenced in the footnotes. You should read those sections that are referenced. The Ohio Revised Code has a link on the Court's website. Additionally, you should consider reading those sections that are footnoted using "Page's Ohio Revised Code Annotated," which can be found at the Geauga County Law Library in the basement of the Courthouse at 100 Short Ct. Street, Chardon, Ohio 44024. Page's Ohio Revised Code Annotated also will provide you a summary of applicable court decisions (known as "case law"). While the Help Center can provide you with a limited amount of information, the Help Center staff cannot provide you with legal advice, and this Information Sheet is not intended to provide you with legal advice that is applicable to your case. You must decide how to best use the information provided. In the footnotes you will see a reference such as "R.C. 2111.02." That refers to Ohio Revised Code Section 2111.02, which is found in R.C. Title 1, and in R.C. Chapter 2111. Additionally, you will see a reference such as "Sup. R. 66.04(B)." That refers to subparagraph B of Rule 66.04 in the Rules of Superintendence for the Courts of Ohio.

Background

R.C. Chapter 2111 authorizes the Court, on its own motion or the application of an interested person, to provide proper care for a minor, which is a person under the age of 18 years. Unlike a guardianship of an incompetent adult, which requires substantial evidence of the adult's incompetency, a minor is presumed to be incompetent until attaining the age of 18 years. If both parents are deceased or determined "unsuitable," then proper care of the minor is provided by a person who is appointed by the Court, and is called the guardian.¹ The minor is called the ward.² While the Court may appoint a person or entity as the guardian of the ward, and the guardian is responsible to provide the proper care for the ward, in fact the Court is known as the "superior guardian" of the ward.³ If effect, the guardian acts as an agent of the Court. The guardian's powers are defined by the Court, the guardian must follow all orders of the Court, and the guardian must routinely report to the Court.

¹ R.C. 2111.01(A) and Sup. R. 66.01(C)

² R.C. 2111.01(B) and Sup. R. 66.01(D)

³ R.C. 2111.50

Parental Rights

Absent a court order to the contrary, the parents are the natural guardian of the person of their minor children, and are equally charged with their care, nurture, welfare, and education and the care and management of their estates.⁴ "Parent" means a natural parent or adoptive parent of a minor whose parental rights and responsibilities have not been terminated by a juvenile court or another court.⁵ Accordingly, with few exceptions, the Court will not appointment a nonparent as guardian of the person of a minor unless both parents are deceased.⁶

However, the Court may appoint a nonparent as guardian of the person of a minor, who has one or both parents living, under the following circumstances:

- Unsuitable Parent(s). If the Court determines that the parents are unsuitable persons to have the custody of the minor and to provide for the education of the minor.⁷
- Best Interest. If the Court determines that the minor's interests will be promoted by the appointment of a guardian.⁸
- Waiver. The parents have waived their parental rights by contract, including consent to the guardianship.⁹

Note: The form titled "Waiver of Notice and Consent" (Form 15.1) must be prepared and filed if the parents consent to the appointment of the guardian

As discussed more fully below, the Court may appoint a nonparent as the guardian of the minor's assets while allowing the parent to continue as the natural guardian of the person.

Note that if the parent or parents are "unsuitable," a nonparent may apply to the juvenile court and seek a custody order for the minor child(ren). For more information see the probate information sheet titled "Nonparent Rights." Depending upon the circumstances, seeking custody through the juvenile court may be more appropriate. A nonparent should obtain legal counsel to assist with that decision. For example, the juvenile court may award the nonparent a child support order in addition to child custody, while the Court cannot do so.

Sometimes a minor will acquire assets, typically the result of an inheritance or the receipt of a damages award, whether by a settlement or court order. Again, absent a court order to the contrary, the parents have the duty and authority to manage and care for the assets of their minor children. However, the parents do not acquire any legal or beneficial interest in their minor child's

⁴ R.C. 2111.08. Moreover, a parent has constitutional rights regarding a minor child. See *Troxel v. Granville*, 530 U.S. 57, 120 S. Ct.2054, 147 L.Ed.2d 49 (2000), where the Supreme Court of the United States has recognized that a parent has a "fundamental liberty right" that is guaranteed by the 14th Amendment to determine the custody, care, and nurturing of a child. See also *Harrold v. Collier*, 107 Ohio St.3d 44, 2005-Ohio-5334, 836 N.E.2d. 1165 regarding *Troxel*, and its applicability to R.C. 3109.11 and 3109.12 and *In re Hockstock*, 98 Ohio St.3d 238, 781 N.E.2d 971 (2002).

⁵ R.C. 2111.01(G)

⁶ R.C. 2111.06

⁷ R.C. 2111.06

⁸ R.C. 2111.06

⁹ *Masitto v. Masitto*, 22 Ohio St. 3d 63 (1986).

assets. The parents have a duty to support their minor children¹⁰ and cannot pay support expenses of their minor children using the assets of the minor children without a court order.¹¹ If a parent needs to be able to spend their minor child's assets, then the parent should make application to be appointed the guardian of the estate, as explained below.

Types of Guardians

There are different types of guardianship and the needs of the minor should guide the type of guardianship sought.

- Guardian of the Person. Subject to a court order limiting the guardian's powers, essentially a guardian of the person will make all decisions for the ward except for decisions regarding the ward's assets. R.C. 2111.13 sets forth the duties of a guardian of the person. The decisions to be made include medical decisions, social and personal services decisions, selecting and terminating direct providers, living arrangements, access to friends and family, education or training, etc. All decisions must be based upon due diligence, which should include, to the extent possible, seeking the ward's opinion, and should be in the ward's best interest.
- Guardian of the Estate. Subject to a court order limiting the guardian's powers, essentially a guardian of the estate will make all decisions for the ward regarding the ward's assets. R.C. 2111.14 sets forth the duties of a guardian of the estate. The guardian of the estate must make all decisions regarding the management of the ward's assets in the best interest of the ward. The duties and responsibilities include filing and defending lawsuits, and settling and compromising claims, typically with the Court's approval.¹² The guardian of the estate has authority to sign contracts for the benefit of the ward and pay or collect certain debts, with the Court's approval.
- Guardian of the Person and of the Estate – "Full Guardian". Assuming that the ward has sufficient assets, and thus a guardian of the estate is appropriate, typically the same person (or entity) will be appointed as the full guardian, or rather the guardian of the person and of the estate, unless the Court determines the prospective ward is better served to have one person as guardian of the person, and another person as guardian of the estate.¹³ In that event, the guardian of the person and the guardian of the estate must work together for the ward's best interest, communicating with each other and working together. Of course, a full guardian must perform the duties and has the responsibilities of both the guardian of the person and the guardian of the estate.
- Limited Guardian.¹⁴ Again, the best interest of the ward requires that any action taken must maximize what is best for a ward. Depending upon those needs, the Court may consider a limited guardianship rather than a guardian of the person or guardian of the estate, with all powers and authority provided by law. Thus, the Court may decide to significantly limit the

¹⁰ *Haskins v. Bronzetti*, 64 Ohio St.3d 202 (1992) and R.C. 3103.03.

¹¹ See R.C. 2111.13(B)

¹² R.C. 2111.14(5) and (6). See also R.C. 2111.17 and 2111.18.

¹³ R.C. 2111.06

¹⁴ R.C. 2111.02(B)(1) and Sup. R. 66.04(A)

power of the guardian, as set forth in the letters of guardianship. A guardian whose powers are so limited is referred to as a limited guardian.

- Interim Guardian.¹⁵ If a guardian is temporarily or permanently removed or resigns, and if the welfare of the ward requires immediate action, at any time after the removal or resignation, the Court may appoint, without a hearing and with or without notice to the ward or interested parties, an interim guardian for a maximum period of 15 days. In that case, the Court will promptly serve upon the ward a copy of the order appointing the interim guardian. For good cause shown, after notice to the prospective ward and interested parties and after a hearing, the Court may extend an interim guardianship for a specified period, but not to exceed an additional 30 days.
- Emergency Guardian.¹⁶ If (i) no guardian has been appointed, (ii) an emergency exists, and (iii) it is reasonably certain that immediate action is required to prevent significant injury to the minor or his or her assets, at any time after receiving notice of the emergency, the Court, without a hearing or notice to the ward or interested parties, may issue any order that the Court considers necessary to prevent injury to the person or estate of the minor, and may appoint an emergency guardian for a maximum period of 72 hours. The Court shall promptly serve upon the minor a written copy of any order issued. However, the failure to serve that order after its issuance or before taking any action under its authority does not invalidate the order or the actions taken. The powers of an emergency guardian will be specified in the letters of guardianship and will be limited to those powers that are necessary to prevent injury to the person or estate of the minor. For good cause shown, after notice to the minor and interested parties, and after a hearing, the Court may extend an emergency guardianship for a specified period, but not to exceed an additional 30 days.

Qualifications of Guardian. Ohio law has certain qualifications for a person to be appointed as guardian.

- Residency.¹⁷ The Court may appoint a resident or nonresident of Ohio as a guardian of the person. The Court shall only appoint a guardian of the estate who is a resident of Ohio, except that the Court may appoint a nonresident of Ohio as a guardian of the estate if the applicant is nominated in or pursuant to a durable power of attorney under R.C. 1337.24 or in a writing as described in R.C. 2111.121(A).
- Bond Qualification.¹⁸ If the applicant is appointed as the guardian of the estate, then after the Appointment Hearing, the applicant must arrange for a surety bond that is ordered by the Court at the Appointment Hearing, unless the Court waives the bond requirement. Typically, the amount of the surety bond will be twice the value of the personal assets of the ward and the annual rent of real property, but the Court will determine the amount of the surety bond if not waived. If the value of the ward's assets is less than \$25,000, then in many cases the Court will not require the surety bond and may not appoint a guardian of the estate.

¹⁵ See R.C. 2111.02(B)(2)

¹⁶ See R.C. 2111.02(B)(2) and Local Rule 9(10)

¹⁷ R.C. 2109.21(C)

¹⁸ R.C. 2109.04(A)

- Suitability Requirement. Even if the applicant satisfies all of the qualifications, and even if the applicant was legally nominated as guardian by the minor's parent(s), the Court may still determine the applicant to be unsuitable and refuse to appoint the applicant as guardian of the person or the estate.

Selection and Nomination of Guardian

- Appointment by Will. A surviving parent by a Will may nominate a guardian for any of the surviving parent's children, whether born at the time of making the Will or afterward, to continue during the minority of the child or for a lesser time.¹⁹
- Nomination by Power of Attorney. A parent, pursuant to a durable power of attorney under R.C. 1337.24 or a writing as described in R.C. 2111.121(A), may nominate a person to be a guardian for one or more of the parent's minor children, whether born at the time of the making of the nomination or afterward.²⁰ However, the Court may determine not to appoint the nominated person if the best interest of the ward requires that another person be appointed. A change in circumstances from the time of nomination to the time of appointment may require another person to serve as the guardian.
- Minor over age of 14 years. A minor over the age of 14 years may select a guardian who shall be appointed if the person is "suitable."²¹ If a minor over the age of 14 years fails to select a suitable person, then the Court may appointment a guardian without reference to the minor's wishes. A minor may not select one person to be the guardian of the minor's estate only and another to be the guardian of the person only, unless the Court that appoints the guardian is of the opinion that the interests of the minor will be promoted by that selection.²²
 - Selection by Surviving Parent in Valid Will.²³ If the surviving parent nominates a person as guardian of the estate for a minor in a Will admitted to probate, then that person has a preference to be appointed over any person selected by a minor over the age of 14 years. However, the Court need not give any preference to a person nominated in the Will as guardian of the person for a minor, and the selection of a guardian of the person by a minor over 14 years should be appointed by the Court if that person is suitable.
 - Selection by Surviving Parent in Power of Attorney (or other valid document).²⁴ If the surviving parent nominates a person as guardian of the person for a minor over the age of 14 years, the nominee does NOT have preference over a person selected by that minor. However, if the surviving parent nominates a person as guardian of the estate for a minor over the age of 14 years, then the nominee does have preference over a person selected by that minor.

¹⁹ R.C. 2111.12(B)

²⁰ R.C. 2111.12(C) and R.C. 2111.121

²¹ R.C. 2111.12(A)

²² R.C. 2111.12(A)

²³ R.C. 2111.12(B)

²⁴ R.C. R.C. 2111.02(D)(1)

Process for Establishing a Guardianship

If the applicant meets all of the qualifications described above, then the steps for being appointed as a guardian include the following:

- Preparation
 - Determine whether there are any, and obtain copies of, key legal documents signed by a parent, such as a financial power of attorney, advance directives, a Will or trust, which may nominate a guardian for the prospective ward.
 - Determine if there is more than one minor that needs a guardian. If that is the case, then the applicant must prepare the required documents to establish a separate guardianship for each minor although the same person may be appointed as the guardian for each minor.
 - Make a list of the next-of-kin of the minor (including each parent and each person currently having custody),²⁵ including names, addresses, relationship, and telephone numbers as needed to prepare the form titled “Next of Kin of Proposed Ward (15.0) and determine who is willing to waive notice and give consent to the appointment of the guardian.
 - Determine whether the Court will want to appoint a probate investigator as permitted by R.C. 2111.042.
 - Make a list of the assets and sources of income of the minor.
 - Arrange for payment of the court cost deposit.
 - Determine if an indigency filing should be prepared.
 - If applying as guardian of the estate, determine an insurance company for the surety bond in case the Court orders a surety bond at the Appointment Hearing.
- Preparation of Documents
 - Review the Court’s “Checklist - Guardianship-Minor, on the Court’s website.
 - Prepare the form titled “Next of Kin of Proposed Ward (Form 15.0).
 - Prepare the form titled “Application for Appointment of Guardian of Minor” (Form 16.0).
 - Prepare the form titled “Waiver of Notice and Consent” (Form 15.1).
 - Prepare the form titled “Custody Affidavit” (Form 16.1)
 - Prepare the form titled “Fiduciary’s Acceptance Guardian (Form (15.2).

²⁵ See R.C. 2111.04(A)

- Prepare the Motion of Indigency if the Ward is indigent.
- If applicable, prepare the form titled “Selection of Guardian” (Form 16.2)
- Copy the parent’s Will, financial powers of attorney, healthcare powers of attorney, advance directives, or similar documents and determine whether any such document nominates a guardian of the person or estate.
- If you are not represented by an Ohio Attorney, then prepare and file with the Court (1) a government-issued photographic identification (e.g. a current driver’s license or passport), and (2) evidence of current mailing address (e.g. recent utility bill, bank statement account, property tax bill, voter registration card)
- If appropriate, “Application to Dispense with Guardian’s Bond (GC PF 15.18)
- Determine method for paying court cost deposit (cash or credit card, no checks)
- Filing of Documents.
 - “Application for Appointment of Guardian of Minor” (Form 16.0).
 - “Next of Kin of Proposed Ward” (Form 15.0).
 - “Waiver of Notice and Consent” (Form 15.1)
 - “Custody Affidavit” (Form 16.1)
 - “Fiduciary’s Acceptance” (Form (15.2)
 - If applicable, the “Selection of Guardian” (Form 16.2)
 - If applicable, a “Affidavit of Indigency” (GC PF 15.14) - see Geauga Probate Local Rule 66.1(M).
 - If applicable, “Acknowledgment/Waiver Request of Guardianship Education Requirements (GC PF 15.13) - see Geauga Probate Local Rule 66.1(H)
 - Payment of court cost deposit
- Actions After Filing of Application
 - Preparation for Appointment Hearing. Typically, it takes about 30 days, from the filing of the Application for Appointment of Guardian of a Minor, before the Court will hold the Appointment Hearing. The Applicant should obtain evidence, including witness testimony (consider a subpoena if needed) and documents required to prove to the Court that:

- the minor is a Geauga County resident;²⁶
 - if applicable and if the parent(s) are living, the parent(s) are unsuitable (or have waived parental rights);
 - if applicable, a guardian of the estate is necessary;
 - the Applicant is qualified and suitable; and
 - a surety bond is not required or is required and the amount of the surety bond.²⁷
- Probate Court Investigator.²⁸ The Court may assign the Court investigator to investigate, and prepare and file a written report for, and make a recommendation to, the Court regarding the need for or circumstances of guardianship. The applicant shall cooperate with the Court investigator, including providing all contact information of the prospective ward, family members, and care providers (e.g. address, telephone number).
 - Notifying Next-of-Kin.²⁹ To those Next-of-Kin of the prospective ward who are Ohio residents and who have not signed the “Waiver of Notice and Consent” (Form 15.1), the Court will deliver a Notice of the Appointment Hearing to those Next-of-Kin at least seven days before the Appointment Hearing.

The Application Hearing.³⁰

- Attendance. Unless the Court orders otherwise for good cause shown, both the applicant and the minor shall attend the Application Hearing.³¹ Moreover, except for good cause shown, if a minor over the age of 14 years wants to select the guardian of the person as permitted by R.C. 2111.12, then that minor must appear at the Application Hearing and make the selection before the Court.³²
- Ward’s Residency.³³ The Court must determine whether the prospective ward is a Geauga County resident.
- Nomination and Selection. If both parents are deceased, then the Court will determine who will be the guardian of the person for the minor, and when appropriate, the guardian of the estate.

²⁶ Sup. R. 66.04(B)

²⁷ R.C. 2109.04(A).

²⁸ R.C. 2111.042

²⁹ 2111.04(A)(2)(a)(i)

³⁰ See R.C. 2111.02(B) and (C) for a general description of how the Court will proceed during the Appointment Hearing.

³¹ Local Rule 9(1)

³² Local Rule 9(3)

³³ Sup. R. 66.04(B)

- Review of Nomination Documents. The Court will examine any legal documents where a parent has nominated the guardian of the person or guardian of the estate. These documents include:
 - Last Will and Testament³⁴
 - Durable Power of Attorney³⁵
 - R.C. 2111.121 Document³⁶

A minor under the age of 15 years has no right to select the guardian of the person. Unless the person nominated by the parent does not qualify or is otherwise unsuitable, the Court is likely to appoint the nominee provided for in the parent's Will, durable power of attorney, or other valid written instrument.

A minor over the age of 14 years may select the guardian of the person.³⁷ The person selected by that minor takes precedence over the person nominated by the parent in his or her Will, durable power of attorney, or other valid written instrument. However, regarding the guardian of the estate, the nominee provided for in the parent's Will, durable power of attorney, or other valid written instrument takes precedence over the person selected by that minor.

In any case, the Court may appoint the guardian of the person or estate of any minor if the person nominated by the parent or selected by the minor is not suitable.³⁸

- Change of School District. The Court will not appoint a guardian of the person of a minor if the sole purpose is a change of school district.³⁹ A typical case would be if a parent is willing to consent to guardianship by another family member (e.g. grandparent, aunt, uncle, etc.) so that the minor can attend school within the guardian's school district.
- Unsuitable. If a parent of the minor is living and the parent (or parents) have not given consent to the guardianship, then the applicant must prove to the Court that the parent (or parents) is unsuitable to have custody and provide for the maintenance and education of the minor.⁴⁰ Parents have a "fundamental and essential right to raise their child."⁴¹ In fact, they have constitutional rights to have legal custody of their children.⁴² Nevertheless, if a parent is "unsuitable," then the Court may appoint a guardian of the person for the minor.

³⁴ R.C. 2111.12(B)

³⁵ R.C. 2111.12(C) and R.C. 1337.24

³⁶ See R.C. 2111.121

³⁷ R.C. 2111.12(A)

³⁸ R.C. 2111.12

³⁹ Local Rule 9(7)

⁴⁰ R.C. 2111.06

⁴¹ *In re Murray*, 52 Ohio St.3d 155, 556 N.E.2d 1169 (1990).

⁴² See *Troxel v. Granville*, 530 U.S. 57, 120 S. Ct.2054, 147 L.Ed.2d 49 (2000), where the Supreme Court of the United States has recognized that a parent has a "fundamental liberty right" that is guaranteed by the 14th Amendment to determine the custody, care, and nurturing of a child. See also *Harrold v. Collier*, 107 Ohio St.3d 44, 2005-Ohio-5334, 836 N.E.2d. 1165 regarding *Troxel*, and its applicability to R.C. 3109.11 and 3109.12 and *In re Hockstock*, 98 Ohio St.3d 238, 781 N.E.2d 971 (2002).

Unsuitability could be established by proving to the Court that the parent:

- has abandon the minor;
- has contractually relinquished custody of the minor;
- is totally incapable of supporting or caring for the minor; or
- or is otherwise unsuitable, which may include that the minor suffers from abuse, neglect, or is dependent.

Again, as noted above, as an alternative the applicant should consider filing a complaint or motion with the juvenile court to obtain custody of the minor if the parent(s) is/are unsuitable – see the Information Sheet titled “Nonparent Rights” and consider obtaining legal advice from an attorney.

- Appointment of Guardian (unlimited guardianship). If the Court appoints the applicant as guardian of the ward, without any limitation of power in the letters of guardianship, and without specifying in the letters of guardianship whether the appointment is as guardian of the person or guardian of the estate, then the appointed guardian shall serve as the guardian of the person and estate.⁴³ If the Court concludes that the best interest of the ward requires a guardian of the estate, then the same person should be appointed the guardian of the person and guardian of the estate unless the Court determines that the best interests of the ward require separate persons as guardian of the person and guardian of the estate. In that case, the letters of guardianship will clearly note whether the appointment is for guardian of the person or guardian of the estate.
- Letters of Guardianship. Following the appointment of the guardian, the Court shall deliver to the guardian certified copies of the letters of guardianship. The letters of guardianship are evidence to any third party that the guardian is in fact the guardian of the ward. The guardian shall not take any action, as guardian, without receiving the letters of guardianship. In all events, all actions by the guardian must be within the powers granted by the letters of guardianship. The guardian should keep several copies of the letters of guardianship on hand.

Powers of Guardian of the Person and Estate. Each person appointed guardian of the person and estate of a minor has: (1) custody of the ward, (2) the obligation to provide for the education of the ward as required under R.C. 3321.01, and (3) the management of the ward's estate during minority, unless the guardian is removed or discharged or the guardianship terminates for any of the causes specified in R.C. Chapters 2101 to 2131.

Duties of Guardian of the Person.⁴⁴ The duties of a guardian of the person of a minor include the following:

- To protect and control the ward;
- To provide suitable maintenance for the ward when necessary, which shall be paid out of

⁴³ R.C. 2111.06

⁴⁴ R.C. 2111.13 and Sup. R.66.08

the ward's estate upon the order of the guardian of the person and the approval of the Court;

- To report
- To provide such maintenance and education (particularly public education as required under R.C. 3321.01) for such ward as the amount of the ward's estate justifies when the ward is a minor and has no father or mother, or has a father or mother who fails to maintain or educate the ward, which shall be paid out of such ward's estate upon the order of the guardian of the person and the approval of the Court;
- To obey all the orders and judgments of the Court touching the guardianship.⁴⁵ The Court is the "superior" guardian of the ward and the guardian of the person is essentially the "agent" of the Court. Thus, the guardian shall obey all court orders.

Except as provided in R.C. 2111.131, the guardian may not use any part of the ward's estate for the support, maintenance, or education of such ward unless ordered and approved by the court.⁴⁶

A guardian of the person may authorize or approve the provision to the ward of medical, health, or other professional care, counsel, treatment, or services unless the ward or an interested party files objections with the Court, or the Court, by rule or order, provides otherwise.

Duties of Guardian of the Estate.⁴⁷ If the applicant is appointed both guardian of the person and of the estate, or merely the guardian of the estate, then the guardian has the following duties in addition to those duties described above for the guardian of the person.

- Best Interest.⁴⁸ The guardian of the estate shall manage the estate for the best interest of the ward.
- Obey Court Orders.⁴⁹ Again, the Court is the "superior" guardian of the ward and the guardian of the estate is essentially the "agent" of the Court. Thus, the guardian shall obey all court orders.
- Inventory.⁵⁰ Within three months after the appointment date, the guardian of the estate shall prepare and file with the Court a full inventory of the real and personal property of the ward, its value, and the value of the yearly rent of the real property using the form titled "Guardian's Inventory" (Form 15.5).
 - If the guardian of the estate fails to file the inventory for 30 days after having been notified by the Court of the expiration of the filing date, the Court may remove the guardian of the estate and appoint a successor.

⁴⁵ R.C. 2111.14(A)(4)

⁴⁶ See also Local Rules 9(2) and 9(6)

⁴⁷ R.C. 2111.14 and R.C. 2111.141

⁴⁸ R.C. 2111.14(A)(4)

⁴⁹ R.C. 2111.14(A)(4)

⁵⁰ R.C. 2111.14(A)(1)

- The Court, by order or local rule, may require that any inventory be supported by evidence that the inventory is a true and accurate inventory of the ward's estate, which includes the latest statement of financial accounts, copies of stocks and bonds, life insurance policies or annuities, real estate deeds, etc.⁵¹
- Prepare and file with the Court the form titled "Digital Asset Certification - Guardianship" (GC PF 15.5A)
- Prepare and file with the Court the form titled "Tangible Personal Property Certification - Guardianship" (GC PF 15.5B)
- Estate Matters. The guardian of the estate may settle and adjust, when necessary or desirable, the assets that the guardian receives in kind from an executor or administrator to the greatest advantage of the ward. Before a settlement and adjustment is valid and binding, it shall be approved by the Court and the approval shall be entered on its journal. The guardian of the estate also shall have the approval of the Court to hold the assets as received from the executor or administrator or to hold what may be received in the settlement and adjustment of those assets.
- Authority to Expend Funds. The guardian of the estate cannot expend any funds of the ward's estate without first receiving an order of the Court that authorizes the expenditure. This requirement includes the payment of guardian fees and attorney's fees for the guardian. The guardian of the estate can obtain such order by preparing and filing with the Court the form titled "Application for Authority to Expend Funds" (Probate Form 15.7). The Court will not authorize the expenditure of funds before the filing of the Inventory.⁵²
- Guardianship Checking Account. To better account for any payments received by the guardian of the estate (e.g. uncashed checks, last wages, deposit refunds, tax refunds, etc.), and any payments made by the guardian of the estate, which must be authorized by the Court, the Court requires that the guardian of the estate establish an estate checking account. The guardian should use the estate checking account solely for receiving and making payments related to the ward. The guardian should consider hiring an accountant or an attorney to advise as to the best use of a guardianship checking account and to account for all receipts and disbursements. The proper use of an estate checking account will assist the guardian when preparing and filing the annual Accounts with the Court – see below.
- Authority to Release Funds. Even after letters of guardianship are issued, if the ward has funds in a financial institution that should be closed and transferred to the guardianship checking account (and then perhaps to a guardianship savings account), the financial institution may require a court order that authorizes that action. In such event the guardian of the estate should prepare and file with the Court the form titled "Application for Authority to Release ward's Funds" (Form 15.6). Upon receipt of the "Order Authorizing Release of Funds," the guardian should obtain a sufficient number of certified copies of such orders and present the order to each such financial institution.

⁵¹ R.C. 2111.141

⁵² Sup. R. 66(B)

- Other Matters. The guardian of the estate should determine whether the ward has:
 - a safe deposit box (however the guardian may not cause that safe deposit box to be open without a court order)
 - the right to social security benefits or other such benefits
 - the right to any unclaimed funds
- Legal Proceedings.⁵³
 - The guardian of the estate may file a lawsuit on behalf of the ward if such action is in the ward's best interests, but only after receiving the approval of the Court.
 - The guardian of the estate may settle and adjust the assets that the guardian receives in kind from an executor or administrator to the greatest advantage of the ward. Before a settlement and adjustment is valid and binding, it must be approved by the Court. The guardian also shall have the approval of the Court to hold the assets as received from the executor or administrator or to hold what may be received in the settlement and adjustment of those assets.
- Medicaid Planning. If the ward requires significant healthcare, then the guardian of the estate should consider obtaining legal advice regarding asset planning that may be needed to qualify the ward for public assistance.
- Debts and Claims.⁵⁴
 - The guardian of the estate shall pay all just debts due from the ward out of the ward's estate in the possession or under the control of that guardian after first obtaining Court approval.
 - The guardian of the estate shall collect all debts due to the ward, compound doubtful debts, and appear for and defend, or cause to be defended, all suits against the ward after first obtaining Court approval.
- Sale of Real Property.⁵⁵ If the ward owns an interest in real property, and the guardian of the estate wants or needs to sell the real property, then that guardian must comply with the requirements of R.C. Chapter 2127. The guardian should consider hiring an attorney to assist with that process. See probate information sheet titled "Land Sale." The Guardian may be able to sell the ward's real property under R.C. 2127.012 by preparing and filing with the Court the form titled "Consent of Power to Sell Real Estate" (GC PF 11.1). Again, it is highly recommended that the Guardian obtain legal advice.

⁵³ R.C. 2111.14(A)(5), R.C. 2114(A)(6), and Sup. R. 66.08(F)

⁵⁴ R.C. 2111.14(A)(3)

⁵⁵ R.C. Chapter 2127

- Improvement of Real Property.⁵⁶ The guardian of the estate’s duties includes preserving the value of the ward’s real property. If the guardian of the estate determines that improvements to such real property are appropriate, then the guardian of the estate must file with the Court an application to use the ward’s funds to improve such real property – see R.C. 2111.33.
- Account.⁵⁷
 - Annual Account. Unless the Court orders otherwise, the guardian of the estate must prepare and file with the Court an account at least annually. That guardian shall use the form titled “Guardian’s Account” (Probate Form 15.8).
 - The account must show every item of income and disbursement (or distribution), with a voucher or other evidence (e.g. cancelled check or bank statements for the applicable timeframe) for each disbursement or distribution.
 - Additionally, the account must show each item of real or personal property as of the last day of the accounting period, with evidence of the property as the Court (or deputy clerk directs) requires, such as bank statements or stocks or bonds.
 - Final Account. Unless the Court orders otherwise, upon the termination of the guardianship of the estate, the guardian of the estate shall file a final account within 30 days after the termination date, again using the form titled “Guardian’s Account” (Probate Form 15.8).
 - Notice Requirements.⁵⁸ Except to the extent that notice is waived, the guardian of the estate must deliver a written notice to each interested party, including creditors as the Court directs.⁵⁹ That guardian shall prepare the notice using the form titled “Notice of Hearing on Account” (Probate Form PP8G). The guardian shall deliver the notice by certified mail, return receipt requested, at least 15 days before the date of the Hearing on Account.
 - Waiver. Rather than delivery of the Notice of Hearing on Account, the guardian of the estate may obtain a waiver from any interested person using the form titled “Waiver of Notice of Hearing on Account” (Probate Form PP9G).
 - Proof of Service. Before the Hearing date, the guardian of the estate shall prepare and file with the Court the form titled “Proof of Service of Notice of Hearing on Account” (Probate Form PP7G) together with a copy of each “Notice of Hearing on Account,” with each “green card” attached and the “Waiver of Notice of Hearing on Account” if applicable.

⁵⁶ R.C. 2111.33, 2111.34, 2111.35, and 2111.36

⁵⁷ R.C. 2109.30, 2109.302, 2109.32, and 2109.33

⁵⁸ R.C. 2109.33

⁵⁹ See Ohio Civil Rule 73(E)

Guardian's Compensation.⁶⁰

- In the Geauga County Probate Court, the guardian's fees are governed by Geauga Probate Local Rule 73.1. The guardian may not pay any guardian fees or other compensation without filing an application to the Court for approval. The Court may approve a motion for fees for extraordinary services when just and reasonable.
- If the ward is indigent, then the Court may approve guardian fees in accordance with Geauga Probate Local Rule 73.5.
- A guardian must report to the Court the receipt of any compensation or fees from any source other than from the ward's estate.⁶¹
- In all events, a guardian may not accept any incentives or compensation offered by a direct service provider that provides services to the ward.

Attorney's Fees. The guardian may pay attorney's fees for legal services rendered from the ward's estate, after filing an application or motion and receiving written approval from the Court.

Termination.

- Value of Ward's Assets.⁶²
 - When the ward's estate does not exceed \$25,000 in value, the guardian of the estate may apply to the Court for an order to terminate the guardianship of the estate.
 - The Court may terminate the guardianship of the estate if the assets and principal income of the ward do not support a guardianship of the estate.⁶³
 - The guardian of the estate shall inform the Court and apply to close the guardianship of the estate if: (1) the ward's only income is from governmental entities, such as social security, (2) a payee for that income is identified, and (3) no other significant assets or income exist.⁶⁴
- Death. The guardianship terminates upon the ward's death. In such event, the guardian must promptly notify the Court and file a copy of the death certificate. If there is a guardian of the estate, then that guardian must file a final account within 30 days after termination – see above.

⁶⁰ Sup. R. 73, Sup. R. 66.08(J), and Local Rule 9(4) and 9(12)

⁶¹ Sup. R. 66.08(J)

⁶² R.C. 2111.05

⁶³ Sup. R. 66.04(C)

⁶⁴ Sup. R. 66.08(I)

- Attaining Age 18. The guardianship terminates upon the ward attaining the age of 18 years. In such event, the guardian must promptly notify the Court. If there is a guardian of the estate, then that guardian must file a final account within 30 days after termination – see above.
- Conversion. If the ward is developmentally disabled or otherwise meets the definition of “incompetent”⁶⁵ and is over the age of 17 years, then the guardian should consider taking the steps necessary, in a timely manner, to continue the guardianship of the person and the estate (if applicable) beyond the age of 18 years, when the ward becomes an incompetent adult. The guardian should review the Information Sheet titled “Guardianship of Incompetent Adult” and consider preparing and filing the form titled “Application for Appointment of Guardian of Alleged Incompetent” (Probate Form 17.0), and the related documents as noted in that Information Sheet. Additionally, the guardian must meet the qualifications as noted in the Information Sheet.

Emergency Guardianship.⁶⁶ The Court may appoint an emergency guardian of the person or a guardian of the estate without a Hearing and without notice to the prospective ward if: (1) the Court is notified that an emergency exists, and (2) the Court is reasonably certain that immediate action is required to prevent significant injury to the prospective ward’s person or property.

- Notice to Prospective Ward. Except as otherwise ordered by the Court for good cause shown, the Court investigator will prepare and deliver to the ward a notice of the appointment of the emergency guardian as soon as possible.⁶⁷
- Emergency Guardian Powers. The Court shall set forth the powers of the emergency guardian in the letters of guardianship.
- Time Period. Unless extended by the Court, the emergency guardianship may not exceed 72 hours. However, after (1) the ward is notified and (2) a hearing is held, the Court may extend the emergency guardianship for an additional 30 days.
- Process for Establishing an Emergency Guardianship. An applicant for appointment of emergency guardian must do the following:
 - Review the Court’s Instructions for emergency guardianship on the Court’s website.
 - Prepare and file with the Court the form titled “Next of Kin of Proposed Ward” (Form 15.0).
 - Prepare and file with the Court the form titled “Application for Appointment of Emergency Guardian of Alleged Incompetent,” which includes the required Affidavit, attached as Exhibit A (Form 17.0E).
 - Obtain and file with the Court a completed “Statement of Expert Valuation” (Form 17.1).

⁶⁵ See R.C. 2111.01(D)

⁶⁶ R.C. 2111.02(B)(3) and Local Rule 9(10)

⁶⁷ R.C. 2111.02(B)(3) and Local Rule 9(10)

- Obtain and file with the Court a completed “Supplement for Emergency Guardian of Person” (Form 17.1A).
- Prepare and file with the Court the form titled “Fiduciary’s Acceptance Guardian” (Form (15.2).
- Arrange for and pay the court cost deposit.
- Prepare and file a Motion of Indigency (if applicable).
- Process Following Expiration of Emergency Guardianship. A guardianship of the person and estate may only continue after the expiration of the emergency guardianship by filing an “Application for Appointment of Guardian of Minor” (Form 16.0), together with all the all related documents, and perform the actions as described above.

Interim Guardianship.⁶⁸

- If a guardian is temporarily or permanently removed or resigns (or dies), and if the ward’s welfare requires immediate action, at any time after the removal or resignation (or death), the Court may appoint an interim guardian, without a hearing, and with or without notice to the ward or interested parties, for a maximum period of 15 days. If the Court appoints the interim guardian without a hearing or without notice to the ward, then the Court, at its first opportunity, shall serve upon the ward a copy of the order appointing the interim guardian.
- For good cause shown, after notice to the ward and interested parties and after hearing, the Court may extend an interim guardianship for a specified period, but not to exceed an additional 30 days.

Other Matters to Consider.

- Guardian Liability.
 - Background. Generally, if a guardian performs his or her duties in a fiduciary and non-negligent manner, then a guardian should not be liable for the ward’s acts.
 - Breach of Fiduciary Duty/Negligence. The guardian of the person has a fiduciary duty to ensure the ward’s safety and well-being. The guardian’s failure to perform the fiduciary duty could result in the guardian being liable. Examples could include:
 - failure to file for benefits
 - failure to ensure that direct service providers meet the needs of the ward
 - failure to notify third parties when required
 - failure to protect and control the ward
 - acting outside the powers given to the guardian

⁶⁸ R.C. 2111.02(B)

- Improper Investment of Ward's Assets.⁶⁹ The guardian of the estate could have liability if that guardian fails to properly invest the ward's assets. Liability can arise from that guardian having a conflict of interest or failing to exercise due diligence when making an investment decision. The guardian of the estate might consider seeking legal or financial advisor advice after receiving the Court's approval before taking action that could result in improper investing.
- Contract Liability.⁷⁰ From time to time, it may be in the ward's best interest for the guardian to enter into a contract on behalf of the ward after obtaining a court order. Examples are a real estate or equipment lease, or a direct service provider contract. The guardian should consider obtaining legal advice before signing any such contract. In any event, the guardian should consider the following:
 - The terms of the contract should make it clear to the other contracting party that the guardian is only entering into the contract for the sole benefit of the ward. For example, the guardian should consider signing the contract, provided that words are included above or below the signature to the effect that the signor is acting as guardian, such as – "John Smith, as guardian of the estate (or guardian of the person and Estate) for Joe Jones, the ward."
 - Even if the guardian disclosed the guardianship, the guardian could be contractually liable if the terms of the contract state that the signor is personally liable, perhaps with language of indemnity or guarantee. Of course, the guardian should carefully read the contract, and should consider having an attorney read the contract and advise the ward.
- Liability for Ward's Debts.⁷¹ Generally, the guardian is not liable for the ward's debts, but could be liable under the following circumstances:
 - The guardian agreed to be personally responsible for the ward's debt;
 - The debt was incurred for the ward's support and the guardian is liable for that debt because of another legal relationship that gives rise to or results in a duty of support relative to the ward;
 - The guardian's negligence gave rise to or resulted in the debt; or
 - The guardian's act that was beyond the guardian's authority gave rise to or resulted in the debt.

Criminal Matters. It is possible that a ward may commit a crime and be found delinquent or charged as an adult.

- Notify the Probate Court. As soon as possible after becoming aware that the ward was arrested or is being charged or investigated regarding the commission of a crime, the guardian of the person must notify the Court.

⁶⁹ See Sup. R. 66.08(K) and 66.09(B)

⁷⁰ R.C. 2111.151

⁷¹ R.C. 2111.151(B)

- Obtain an Attorney for the Ward. The guardian of the person should consider obtaining the Court's approval to hire an attorney for the ward (or have an attorney appointed - typically a public defender if the ward is indigent).
- Community Supervision Restrictions. If the ward is convicted or pleads guilty, that court may impose certain restrictions upon the ward. The guardian of the person must become informed of those restrictions, inform the Court of those restrictions, and take those restrictions into account when making decisions or acting on the ward's behalf.
- Medication. The guardian of the person should inform the appropriate law enforcement agency of all medication requirements and assist in ensuring that the ward is provided with those medications.
- Change of Residence. The guardian of the person must promptly notify the Court as the residence of the ward changes, which could include jail, prison, a group home, etc. or release from the penal system.
- Sex Offender. In particular, if the ward is registered as a sex offender, the guardian of the person must be informed of all restrictions and registration requirements. The guardian should inform the direct service providers and reconsider whether the ward requires an addition or change in direct service providers, with the approval of the Court.

LEGAL PRACTICE IN THE PROBATE COURT IS RESTRICTED BY LAW TO ATTORNEYS WHO ARE LICENSED BY THE SUPREME COURT OF OHIO AND INDIVIDUALS WHO ARE HANDLING THEIR OWN LEGAL MATTERS. IF AN INDIVIDUAL WISHES TO HANDLE HIS OR HER OWN CASE, THAT PERSON MAY ATTEMPT TO DO SO, HOWEVER DUE TO THE COMPLEXITY OF THE LAW AND THE DESIRE TO AVOID COSTLY ERRORS, MANY PERSONS WHO HAVE MATTERS BEFORE THE COURT ARE REPRESENTED BY AN ATTORNEY.

IF YOU CHOOSE TO REPRESENT YOURSELF AND USE THE COURT'S FORMS, BE AWARE THAT STATE LAW PROHIBITS THE JUDGE, MAGISTRATE, AND EMPLOYEES OF THE GEAUGA COUNTY PROBATE COURT, INCLUDING THE HELP CENTER STAFF, FROM PROVIDING YOU WITH LEGAL ADVICE. IF YOU NEED LEGAL ADVICE, THEN YOU SHOULD CONTACT AN ATTORNEY OF YOUR CHOOSING.