

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

Information Sheet  
Guardianship of Incompetent Adult

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**WARNING**

This Information Sheet is intended to provide you with an overview of the subject matter, effective as of the date noted in the upper left-hand corner. This Information Sheet is not intended to provide you with all legal information that may be necessary for you to decide upon a course of action, and the information provided may not be error-free, complete, or accurate. Moreover, this Information Sheet may not accurately describe the cited sections of the Ohio Revised Code or cited case law. Finally, this Information Sheet is not intended as a substitute for legal advice from a competent licensed attorney, who is familiar with all of the relevant facts of your case, and therefore the Help Center recommends that you seek legal advice from a competent licensed attorney that you select before taking any action. While the Help Center can provide you with a limited amount of general legal information, neither the Help Center staff nor any other Court employee can give you any legal advice.

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Background

R.C. Chapter 2111 authorizes the Court, on its own motion or the application of an interested person, to provide proper care for an adult who is legally incompetent. An incompetent adult is a person who (1) is so mentally impaired, as a result of a mental or physical illness or disability, as a result of intellectual disability, or as a result of chronic substance abuse, that the person is incapable of taking proper care of the person's self or property or fails to provide for the person's family or other persons for whom the person is charged by law to provide; or (2) is confined to a correctional institution within this state.<sup>1</sup> Proper care is provided by a person who is appointed by the Court and is called the guardian.<sup>2</sup>

The incompetent adult is called the ward.<sup>3</sup> While the Court will 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.<sup>4</sup> Essentially that means that the appointed guardian acts as an agent of the Court. The Guardian's powers are defined by the Court, the guardian must follow all court orders, and the guardian must routinely report to the Court.

Causes of an Incompetent Adult

The typical causes that result in an Incompetent Adult who may require a guardian include:

- Repeated use of alcohol or drugs;
- Traumatic injury to the brain by an external force, such as a car accident;

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<sup>1</sup> R.C. 2111.01(D)

<sup>2</sup> R.C. 2111.01(A) and Sup. R. 66.01(C)

<sup>3</sup> R.C. 2111.01(B) and Sup. R. 66.01(D)

<sup>4</sup> R.C. 2111.50

- A stroke causing the loss of blood to the brain;
- Temporary disturbances in the person's ability to make rational decisions, including a coma;
- Gradual loss of memory and cognitive ability, typically resulting from disease such as Alzheimer's disease;
- Mental illness or mental disorders that affect normal psychological functioning; or
- Developmental disabilities that result before age 18, typically at birth, and that continue through the person's lifetime, such as autism or down syndrome.

### Fundamental Characteristics of an Effective Guardian

The fundamental characteristics of an effective guardian include:

- understands that he or she is an agent of the appointing Court;
- understands legal requirements establishing a Guardian's duties and responsibilities;
- understands the various health and social agencies that can provide effective direct care for the ward;
- is able to effectively communicate with the ward;
- learns the ward's history, preferences, values, traditions; and
- has the time and ability to regularly have contact with the ward, family members, and direct service providers – e.g., doctors, nursing homes, residential facilities, etc.<sup>5</sup>

### Alternatives to Guardianship

A guiding guardianship principal is that the guardian must always act in the ward's best interest. "Best Interest" means a course of action that maximizes what is best for a ward, including consideration of the least intrusive, most normalizing, and least restrictive course of action possible given the ward's needs.<sup>6</sup> Compared to alternatives, guardianship is an extreme measure and should be considered as a last resort. Before applying to be appointed as a guardian for an incompetent adult, consider whether the following alternatives are available and in the ward's best interest:

- Financial Durable Power of Attorney (FPOA). Ohio law permits an adult to sign a financial power of attorney, provided that adult has the legal capacity to do so. Specifically, R.C. 1337.60 allows for a power of attorney that is effective even after the Principal (i.e. the person who created and signed the FPOA) is incompetent, and thus permits the Principal to grant to his or her agent broad powers to make personal and financial decisions for the Principal if that Principal later becomes an incompetent adult. Essentially, the agent can make decisions and provide for the proper care of the incompetent adult, including the management of his or her assets, without the formalities and expense of a guardianship. A power of attorney that does not comply with R.C. 1337.60 may also be an effective alternative. Note that the Principal can name his or her guardian in the FPOA, if a guardianship is required, although the Court is not mandated to appoint the person so nominated as Guardian.

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<sup>5</sup> "Direct services" means services typically provided by home and community-based care and institutionally-based care providers, including medical and nursing care, care or case management services, care coordination, speech therapy, occupational therapy, physical therapy, psychological services, counseling, residential, legal representation, job training, and any other similar services. See Sup. R. 66.01(B).

<sup>6</sup> Sup. R. 66.01(A)

- Advance Directives. Ohio law permits an adult to sign advance directives that permit an agent or that person's physician to make medical decisions for an incompetent adult, without the need of a guardianship. Three such documents are:
  - Durable Power of Attorney for Healthcare ("HCPOA").<sup>7</sup> The agent can be given broad powers to make a variety of healthcare decisions for the Principal when the Principal is incapable of doing so. Note that, similar to the FPOA, the Principal can name his or her guardian in the HCPOA, if a guardianship is required, although the Court is not mandated to appoint the person so nominated as Guardian.
  - Living Will Declaration.<sup>8</sup> An adult can sign a Living Will Declaration that empowers his or her physicians to make an "end-of-life" decision for that person, even if the person later becomes an incompetent adult, without the need of a guardianship or court order.
  - Declaration for Mental Health Treatment.<sup>9</sup> Ohio law permits an adult to sign a Declaration of Mental Health Treatment and name an agent to make decisions for the Principal regarding a variety of mental healthcare treatment when the Principal is incompetent.
- Payee or Authorized Representative. If the incompetent adult is eligible for, or is receiving certain federal benefits, namely (1) social security benefits, (2) supplemental security income, or (3) veteran benefits, then a person may be designated to receive those payments for the benefit of the incompetent adult, without the need of being appointed the guardian of that incompetent adult. The federal government will authorize the applicant to serve as a Payee or Authorized Representative based upon a court order that determines the beneficiary to be an incompetent adult or by the applicant providing to the applicable federal agency sufficient evidence to establish that the recipient is indeed an incompetent adult. This alternative is quite useful if the sole source of income for the incompetent adult are those federal benefits and the prospective ward has no other assets. In that situation, a guardian of the estate may not be needed. Assuming that the Payee is not appointed as guardian of the estate, the Payee is not required to report to the Court regarding the receipt of income or the payment of expenses, but the Payee is likely to have a reporting requirement to a governmental agency, which is not a concern of the Court.
- Trust. If the prospective ward is the beneficiary of a trust, and that person has no other assets or sources of income, then a guardian of the estate should not be needed. Under the trust agreement, the trustee should be able to manage the trust assets for the benefit of the ward and provide a source of income or directly pay expenses and debts.
- Conservatorship.<sup>10</sup> If an adult is not legally incompetent,<sup>11</sup> but suffers from significant impairment, then an Ohio law permits that adult (the "Conservatee") to enter into a voluntary relationship with another person known as the Conservator. The relationship is established and monitored by the Court. The conservatorship is initiated by that adult filing a petition in the Court. An alternative to a conservatorship is for the Conservatee to set up a trust agreement (assuming the Conservatee has the legal capacity to do so), and perhaps a financial power of attorney, and appropriate advanced directives. That impaired adult would be well served by seeking legal advice before deciding to establish a Conservatorship.

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<sup>7</sup> See R.C. 1337.17 for the statutory form of the Durable Power of Attorney for Healthcare.

<sup>8</sup> See R.C. Chapter 2133. See specifically R.C. 2133.02.

<sup>9</sup> See R.C. Chapter 2135.

<sup>10</sup> See R.C. 2111.021.

<sup>11</sup> As defined by R.C. 2111.01(D)

## Types of Guardians

There are different types of guardianship and the needs of the incompetent adult should guide the type of guardianship chosen. Again, a guiding principal is that decisions should result in the least intrusive, most normalizing, and least restrictive course of action. In all events, the Court has the power to limit the scope of the guardianship to meet the needs of the incompetent adult – the ward.

- 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, including what the ward would have decided.
- 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.<sup>12</sup> The guardian of the estate has authority to sign contracts for the ward's benefit and pay or collect certain debts, with the Court's approval.
- Guardian of the Person and 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 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.<sup>13</sup> 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.<sup>14</sup> Again, the best interest of the prospective ward requires that any action taken must maximize what is best for a ward, including consideration of the least intrusive, most normalizing, and least restrictive course of action possible given the needs of the ward. Depending upon those needs, a Court must 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, a Court may decide to significantly limit the Guardian's power as set forth in the Letters of Guardianship. A guardian whose powers are so limited is referred to as a Limited Guardian.
- Interim Guardian.<sup>15</sup> 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, then 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 prospective 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.

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<sup>12</sup> R.C. 2111.14(A)(5) and 2111.14(A)(6). See also R.C. 2111.17 and 2111.18.

<sup>13</sup> R.C. 2111.06

<sup>14</sup> R.C. 2111.02(B)(1) and Sup. R. 66.04(A)

<sup>15</sup> See R.C. 2111.02(B)(2)

- Emergency Guardian.<sup>16</sup> 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 incompetent adult or his or her assets, at any time after receiving notice of the emergency, the Court, without a hearing or notice to the prospective ward or interested parties, may issue any order that the judge considers necessary to prevent injury to the person or estate of the incompetent adult, and may appoint an emergency guardian for a maximum period of 72 hours. The Court shall promptly serve upon the prospective ward a written copy of any order issued. However, the failure to serve that order after its issuance or before taking of any action under its authority does not invalidate the order or the actions taken. The powers of an emergency guardian shall be specified in the Letters of Guardianship and shall be limited to those powers that are necessary to prevent injury to the person or estate of the prospective ward. For good cause shown, after notice to the prospective ward 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.

#### Jurisdiction (Adult Guardianship And Protective Proceedings Jurisdiction Act).

Ohio has adopted the Uniform Adult Guardianship And Protective Proceedings Jurisdiction Act, which is set forth in R.C. Chapter 2112. The key provisions for this purpose are R.C. 2112.21 and the definitions in R.C. 2112.01, particularly R.C. 2112.01(H). You need to determine whether Ohio has jurisdiction under R.C. Chapter 2112. If you apply to be appointed a guardian you must prepare and file the form titled “Adult Jurisdiction Affidavit” (GC PF 15.17). You should examine that form and read R.C. 2112.01(H) and R.C. 2112.21. The primary provision is that the ward “was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of an application for appointment of a guardian.”

#### Venue.

An application to be appointed guardian of an incompetent adult must be filed in the county where the prospective ward resides or has a legal settlement.<sup>17</sup>

#### Qualifications of Guardian.

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

- Residency.<sup>18</sup> 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 of an incompetent adult 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).
- Criminal Background Check.<sup>19</sup> Unless the applicant is an attorney, licensed in Ohio, this Court will require the applicant to submit to a criminal background check before being appointed as Guardian. In this Court, the criminal background check is performed by Geauga County Jobs and Family Services. Upon filing the Application for Appointment of Guardian of Alleged Incompetent (Form 17.0), the probate clerk will provide the applicant with an “Authorization Form – WebCheck Electronic Fingerprinting.” The applicant must deliver that form to Geauga County Jobs and Family

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<sup>16</sup> See R.C. 2111.02(B)(2)

<sup>17</sup> R.C. 2111.02(A)

<sup>18</sup> R.C. 2109.21(C)

<sup>19</sup> Sup. R. 66.05(A)(1))

Services, who will arrange for the webcheck. If the applicant is an Ohio attorney, then that attorney need only present to the Court a certificate of good standing.

- If the applicant has been a resident of Ohio for at least five years, then the applicant need only obtain a BCI background check.
- Otherwise, the applicant must obtain both a BCI and FBI background check.
- Affidavit of Guardian Applicant. Before being appointed a Guardian, each applicant (including an attorney), shall prepare and file Form 66.05 – Affidavit of Guardian Applicant.
- Education Requirements.<sup>20</sup> The Court will not appoint a person as guardian unless, at the time of appointment or within six months thereafter, the individual has successfully completed, at a minimum, a six-hour guardian fundamentals course provided by the Ohio Supreme Court or, with the prior approval of the Court, another entity. The individual must submit evidence of completion of the required course to the Court.<sup>21</sup> For good cause shown, the applicant or guardian may apply to the Court for a waiver of all or part of the education requirements by filing with the Court the form titled “Acknowledgment/Waiver Request of Guardianship Education Requirements” (GC PF 15.13).
- Bond Qualification.<sup>22</sup> 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.
- Suitability Requirement. Even if the applicant satisfies all of the qualifications, and even if the applicant was legally nominated as guardian by the incompetent adult (e.g., durable power of attorney), the Court may still determine the applicant to be unsuitable and refuse to appoint the applicant as guardian of the person or the estate.
- Spouse. The spouse of the incompetent adult does not automatically qualify to be appointed the Guardian. There are situations where the appointment of the spouse is not in the best interest of the incompetent adult.<sup>23</sup>

#### Ward’s Minor Children.

If (i) the prospective ward has one or more minor children, and (ii) you are appointed as the guardian of the person of the adult prospective ward, then the law automatically causes you to become the guardian of the person of the adult ward’s minor child(ren).<sup>24</sup> In that event, the Help Center recommends that you retain an attorney to assist you. There are several considerations:

- If those minor children have another parent, then that parent may have custody or parenting time rights.

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<sup>20</sup> Sup. R. 66.06

<sup>21</sup> See <<https://www.supremecourt.ohio.gov/Boards/judCollege/adultGuardianship/>> for online training.

<sup>22</sup> R.C. 2109.04(A)

<sup>23</sup> R.C. 2111.12

<sup>24</sup> R.C. 2111.02(A)

- Please review the probate information sheet titled “Guardianship of a Minor.” You will have a number of duties with respect to the minor children.
- You have the right to terminate your guardianship of the person of the minor children, but you will need a court order.
- If you need custodial rights regarding the minor children (e.g., as required to interact with schools, doctors, and hospitals), then you should consider seeking a juvenile court order granting you legal custody of the minor children rather than continuing as the guardian of the person of the ward’s minor child(ren). See the juvenile information sheet titled “Nonparent Rights.”

### 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 key legal documents signed by the prospective ward, such as a financial power of attorney, advance directives, a Will or Trust, and obtain copies of those documents.<sup>25</sup>
  - Determine whether Ohio has jurisdiction under R.C. Chapter 2112. If you apply to be appointed a guardian you must prepare and file the form titled “Adult Jurisdiction Affidavit” (GC PF 15.17). You should examine that form and read R.C. 2112.01(H) and R.C. 2112.21. The primary question is whether the ward was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of an application for appointment of a guardian, and thus whether Ohio is deemed to be the Home State. Even if Ohio is not the Home State, there are other provisions in R.C. 2112.21 that grant Ohio jurisdiction. If you are not certain about jurisdiction, you should retain an attorney and obtain legal advice on that issue.
  - Determine whether Geauga county is the appropriate county. The fundamental question is whether Geauga county is the ward’s residence.
  - Unless you are represented by an Ohio attorney, obtain (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, etc.).
  - Determine whether the prospective ward has a safe deposit box; provided, however, that no applicant for or guardian of the estate may take any action to cause the safe deposit box to be opened without first obtaining a court order authorizing access in the presence of a third party.
  - Make a list of the next-of-kin of the prospective ward (i.e., any person entitled to inherit from the prospective ward, whether by Will or intestacy), including names, addresses, relationship, and telephone numbers as needed to prepare the form titled “Next of Kin of Proposed Ward” (Form 15.0) and determine who is willing to waive notice and give consent to the appointment of the Guardian.

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<sup>25</sup> See Geauga Probate Local Rule 59.1(B).

- Determine the licensed physician or clinical psychologist who should examine the prospective ward. Make a reasonable attempt to explain to the prospective ward the need for the examination and to obtain the prospective ward's consent. If the prospective ward meets with the selected medical professional, then obtain a "Statement of Expert Valuation" (Form 17.1) from that medical professional.<sup>26</sup> If the prospective ward refuses an examination, then prepare a written statement explaining that refusal.
    - If the (i) prospective ward refuses to submit or (ii) agent of the prospective ward or other individual has refused to consent to an examination, then the applicant will prepare the form "Statement of Refusal to Submit" (Form GC PF 15.19).
  - Make a list of the assets of the prospective ward, and sources of income, including Social Security benefits and Veteran benefits.
  - Determine whether the prospective ward owns Digital Assets. See the probate information sheet titled "Digital Assets." If a guardian requires a court order to access Digital Assets pursuant to R.C. §2137.13, then the guardian shall prepare and file with the Court the form titled "Application for Authority Over Digital Assets" (GC PF 15.5C).
  - Determine whether the prospective ward is owed any unclaimed funds. Consider contacting the Ohio Division of Unclaimed Funds. The website is <https://www.com.ohio.gov/unfd/>. The website has a useful tool to search for unclaimed funds. The phone number is 877-644-6823.
  - Make a list of the prospective ward's creditors, including names and addresses.
  - Arrange for payment of the court cost deposit.
    - Determine if the ward is indigent.
  - Determine whether there are any legal proceedings concerning the prospective ward in any other court in or outside of Ohio.
  - Determine whether a surety bond is required - see Geauga Probate Local Rule 78.17.
  - 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.
  - Determine whether the prospective ward has any minor children. If so, obtain the name of the other parent, mailing address, and telephone number.
- Preparation and Filing of Documents
    - Review the Court's website checklist titled "Checklist – Guardianship-Incompetent Adult."
    - Prepare and file the form titled "Next of Kin of Proposed Ward" (Form 15.0).
    - Prepare and file the form titled "Application for Appointment of Guardian of Alleged Incompetent" (Form 17.0).

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<sup>26</sup> R.C. 2111.49 and Sup. R. 66(A)



- Obtain and file the completed “Statement of Expert Valuation” (Form 17.1).
  - If the (i) ward refused to submit or (ii) agent of the prospective ward or other individual has refused to consent after a reasonable attempt to obtain the ward’s consent, then prepare the form “Statement of Refusal to Submit” (Form GC PF 15.19)
  - The evaluation or examination shall be completed within three months prior to the date of the Statement of Expert Evaluation (See R.C. 2111.49). The Statement of Expert Evaluation must be filed with the Court within three months after its completion.
- Prepare and file the form titled “Waiver of Notice and Consent” (Form 15.1).
- Prepare and file the form titled “Fiduciary’s Acceptance Guardian (Form (15.2).
- Prepare and file the form titled “Adult Jurisdiction Affidavit” (GC PF 15.17).
- If the prospective ward has a minor child, then prepare and file the forms titled (i) “Affidavit” (Form 16.1) and (ii) “Parental Information” (GC PF 27.11)
- If applicable, prepare and file the form titled “Acknowledgment/Waiver Request of Guardianship Education Requirements” (GC PF 15.13).
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- Gather and copy any 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.
- Obtain surety bond if required - see Geauga Probate Local Rule 78.17. If a surety bond is required use the form titled “Guardian’s Bond” (GC PF 15.3), or if appropriate, prepare and file the form titled “Application to Dispense with Guardian’s Bond” (GC PF 15.18).
- Determine method the for paying the court cost deposit.
  - If applicable, prepare form titled “Motion to Waive Court Costs” (GC PF 66.1) and prepare and attach form titled “Affidavit of Indigent” (GC PF 15.14).
- 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, etc.)
- When filing the above documents, obtain from a probate deputy clerk the Authorization Form – WebCheck Electronic Fingerprinting.
- Actions After Filing of Application
  - Preparation for Appointment Hearing. Typically, it takes about 30 days after the filing of the Application for Appointment of Guardian of Alleged Incompetent before the Court will hold the Appointment Hearing. At the Appointment Hearing, the Court will determine:

- Whether the prospective ward is a Geauga County resident<sup>27</sup>
  - Whether the prospective ward is an incompetent adult
  - Whether there are less restrictive alternatives to Guardianship, such as Conservatorship, Power of Attorney, Durable Power of Attorney, Trust, Payee or Authorized Representative, Limited Guardianship
  - Whether guardian of the estate is necessary
  - Whether the Applicant is “suitable,” which includes:
    - Background Check results<sup>28</sup>
    - Satisfaction of education requirements<sup>29</sup>
  - Whether guardian education requirements are waived
  - Whether a surety bond is required and the amount of the surety bond<sup>30</sup>
- Background Check.<sup>31</sup> At your earliest convenience, contact Geauga County Job & Family Services to arrange for a meeting to complete the background check, complete the Authorization form, and complete the background check process.
  - Pre-appointment Meeting.<sup>32</sup> Unless the Court otherwise orders, the applicant must meet with the prospective ward at least one time before the Appointment Hearing to the extent possible. Ideally, the meeting will be in private, but the prospective ward certainly can request other persons be present. The applicant should maintain detailed notes regarding the efforts to meet with the prospective ward and the pre-appointment meeting.

At this stage, the Help Center recommends that the applicant create and begin using a “Guardian’s Log” that will be useful throughout the guardianship, with each log entry documenting meetings, other communications, and actions taken by the applicant or guardian, indicating the day and time, and name of persons present or involved in any meeting or communication.

- Probate Court Investigator.<sup>33</sup> The Court will assign a Court investigator to investigate, prepare a written report for, and make a recommendation to, the Court regarding the need for Guardianship. The applicant shall cooperate with the Court investigator, including the provision of all contact information of the prospective ward, family members, and care providers (e.g., address, telephone number). Additionally, the Court investigator will serve the prospective ward with a “Notice to Prospective Ward of Application and Hearing,” which includes a “statement of rights.”<sup>34</sup>

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<sup>27</sup> Sup. R. 66.04(B)

<sup>28</sup> Sup. R. 66.05(A)(1)

<sup>29</sup> Sup. R. 66.05(A)(2)

<sup>30</sup> R.C. 2109.04(A).

<sup>31</sup> Sup. R. 66.05(A)(1)

<sup>32</sup> Sup. R. 66.08(B)

<sup>33</sup> R.C. 2101.11, 2111.41, and 2111.041

<sup>34</sup> 2111.04(A)(2)(a)(i)

- Notifying Next-of-Kin.<sup>35</sup> 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.
- Appointment of Guardian Ad Litem or Attorney for the Ward.<sup>36</sup> The Court may appoint for the prospective ward a “guardian ad litem” or an attorney if the prospective ward is indigent, especially if the prospective ward contests the appointment of the applicant as the guardian of the person or the estate, or both. If the applicant or guardian believes that a guardian ad litem should be appointed, then prepare and file with the Court the form titled “Application for Appointment of Guardian Ad Litem” (GCPF 4.34), which is on the Court’s website.
- Appointing Physician.<sup>37</sup> The Court may appoint a physician or other qualified healthcare provider to examine the prospective ward and provide the Court with a Statement of Expert Valuation (Form 17.1) despite the fact that one was delivered to the Court at the filing of the Application for Appointment of Guardian of Alleged Incompetent (Form 17.0).
- The Application Hearing.<sup>38</sup>
  - Best Interest of Ward.<sup>39</sup> The overriding principle that governs the Court at the Application Hearing is achieving an outcome that serves the prospective ward’s best interest,” which means the course of action that maximizes what is best for a ward, including consideration of the least intrusive, most normalizing, and least restrictive course of action possible given the needs of the prospective ward.
  - Ward’s Residency.<sup>40</sup> The Court must determine whether the Court has jurisdiction to appoint a guardian under R.C. 2112 and whether the prospective ward is a Geauga County resident. “ward’s county of residence” means the last county of residence in Ohio in which a ward resided before losing the cognitive ability to choose his or her residence. The ward’s county of residence is the county of residence for purposes of establishing a guardianship, unless determined otherwise by the Court. Note, however, that the Court has some latitude to determine the ward’s county of residence. The Court investigator’s report will assist the Court to determine residency.
  - Determination of Incompetency.<sup>41</sup> Before the Court can appoint a guardian, the Court must determine that the prospective ward is an Incompetent Adult. That means that either:
    - The prospective ward is so mentally impaired, as a result of a mental or physical illness or disability, as a result of intellectual disability, or as a result of chronic substance abuse, that the prospective ward is incapable of taking proper care of his or her self or property or fails to provide for that person’s family or other persons for whom the prospective ward is charged by law to provide; or
    - The prospective ward is confined to an Ohio correctional institution.

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<sup>35</sup> 2111.04(A)(2)(a)(i)

<sup>36</sup> R.C. 2111.23

<sup>37</sup> R.C. 2111.031

<sup>38</sup> See R.C. 2111.02(B) and (C) for a general description of how the probate judge will proceed during the Appointment Hearing.

<sup>39</sup> Sup. R. 66.01(A)

<sup>40</sup> Sup. R. 66.04(B)

<sup>41</sup> R.C. 2111.02(D)

- Attendance. Except as the Court may otherwise order, upon good cause shown, both the applicant and the prospective ward shall attend the Appointment Hearing.
- Clear and Convincing Evidence.<sup>42</sup> The Court cannot appoint a guardian until the Court determines that the prospective ward is an Incompetent Adult,” based upon “clear and convincing” evidence that leads to that determination. Such evidence will include (i) the “Statement of Expert Valuation” (Form 17.1), and (ii) the Court investigator’s report, and may include (iii) other medical evidence or testimony, and (iv) other witness testimony and other evidence.
- Least Restrictive Alternative.<sup>43</sup> Even if the Court determines that the prospective ward is an Incompetent Adult, the Court will consider and may conclude that a least restrictive alternative will meet the best interests of the ward, rather than a guardianship. Again, a least restrictive alternative could be a: (1) durable power of attorney either financial or healthcare, (2) payee or authorized representative, (3) trust, or (4) conservatorship.
- Limited Guardianship.<sup>44</sup> If the Court determines that the prospective ward is an Incompetent Adult, that a least restrictive alternative will not meet the needs of the ward, and that the best interest of the ward requires a guardianship, the Court will first decide whether a “limited guardianship” is appropriate.<sup>45</sup> The appointment of a guardian as a limited guardian is the same as a guardian of the person or estate, especially as to the duties and responsibilities, except that the Court will described the specific limited powers in the Letters of Guardianship that are issued following the appointment. The Court has wide latitude regarding the description of limited powers.
- 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 both the guardian of the person and estate.<sup>46</sup> 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.
  - The Court may decide to appoint the applicant as the guardian of the person, and not appoint any guardian of the estate.<sup>47</sup>
  - The Court may decide to appoint a person as guardian who is not related to the ward, such as an attorney.<sup>48</sup>
  - The guardian may be a corporation, but only as the guardian of the estate.<sup>49</sup>

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<sup>42</sup> R.C. 2111.02(C)(3)

<sup>43</sup> R.C. 2111.02(C)(5) and (6)

<sup>44</sup> R.C. 2111.02(B)(1)

<sup>45</sup> Sup. R. 66.04(A)

<sup>46</sup> R.C. 2111.06

<sup>47</sup> Sup. R. 66.04(C)

<sup>48</sup> Sup. R. 66.02(A). However, if the guardian is an attorney, then R.C. 2111.091 restricts the attorney.

<sup>49</sup> R.C. 2111.10 and Sup. R. 66.02(B)

- The Court may appoint, but is not required to appoint, the spouse of the prospective ward as guardian of the ward.<sup>50</sup>
- If the applicant was nominated as guardian by the prospective ward in a manner authorized by law, such as a durable power of attorney,<sup>51</sup> the Court may decide to appoint the person so nominated. 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.
- Certain Rights of the Prospective Ward.<sup>52</sup> If the appointment hearing concerns the appointment of a guardian or limited guardian for an alleged incompetent, then the alleged incompetent has all of the following rights:
  - The right to be represented by an attorney of the alleged incompetent's choice, which is only provided by the Court is the alleged incompetent is indigent;
  - If the alleged incompetent is indigent, upon the alleged incompetent's request:
    - The right to have legal counsel and an independent expert evaluator appointed at the court's expense (except that the cost of the "second expert evaluation" can be paid by Medicaid if the ward is eligible);
    - If the guardianship, limited guardianship, or standby guardianship decision is appealed, the right to have legal counsel appointed and necessary transcripts for appeal prepared at the court's expense.
  - The right to have a friend or family member of the alleged incompetent's choice to be present;
  - The right to have evidence of an independent expert evaluation introduced;
- 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.
- Duties of Guardian of the Person.<sup>53</sup> The duties of a guardian of the person include the following:
  - Best Interest of Ward. The guiding principle for a guardian is that all actions and all decisions must be in the "best interest" of the ward – that is it "maximizes what is best for a ward, including consideration of the least intrusive, most normalizing, and least restrictive course of action possible given the needs of the ward." The fundamental duty of the guardian of the person is to protect and control the ward.

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<sup>50</sup> R.C. 2111.11

<sup>51</sup> R.C. 2111.121

<sup>52</sup> R.C. 2111.02(C)(7)

<sup>53</sup> R.C. 2111.13 and Sup. R.66.08

- Protect and Provide or Arrange for the Ward's Needs.<sup>54</sup> The primary duty of the guardian of the person is to take such action as is required to protect the ward and assure that the daily needs of the ward are met. Considering the best interest of the ward, including to the extent possible, the ward's desires,<sup>55</sup> the guardian should arrange for the basic needs of the ward, including shelter, food, clothing, health needs, spiritual needs, and social contact needs. In doing so, the guardian must select, hire, monitor, and terminate a variety of direct providers, including healthcare providers, home providers, etc.
- Report Abuse, Neglect, or Exploitation.<sup>56</sup> A guardian shall immediately report to the Court and, when applicable to adult protective services, any allegations of abuse, neglect, or exploitation of the ward. The report must be in writing, with as much detail as possible. The report should indicate any action taken by the guardian, and action the guardian will take in the future to stop any further occurrence of such harmful activity.
- Obey Court Orders.<sup>57</sup> The Court is the "superior" guardian of the ward and the guardian of the person is essentially the "agent" of the Court.<sup>58</sup> Thus, the guardian must obey all court orders.
- Change of Residence.<sup>59</sup>
  - A guardian shall notify the Court of any change of residence of the ward and the reason for the change using the form titled "Notice of Application for Change of Residence" (Form 27.3). Except if impracticable, the guardian shall notify the Court no later than 10 days before the proposed change.
  - The guardian may not allow a ward's change of residence to a more restrictive setting in or outside of the county of the guardian's appointment without first obtaining the Court's approval, unless a delay in authorizing such change to a more restrictive residence would adversely affect the health and safety of the ward.
- Medical Care.<sup>60</sup> 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.
- Annual Guardianship Plan (Personal Needs).<sup>61</sup> A guardian of the person shall file annually with the Court a guardianship plan regarding the ward's personal needs. That guardianship plan shall state the Guardian's goals for meeting the ward's personal needs. The guardianship plan is in addition to the "guardian report," which is described below, and must be prepared and filed using the form titled "Annual Guardianship Plan – Person" (Form 27.7).

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<sup>54</sup> R.C. 2111.13(A)(1) and (2)

<sup>55</sup> Sup. R. 66.09(D)

<sup>56</sup> Sup. R. 66.08(C)

<sup>57</sup> R.C. 2111.13(A)(4) and Sup. R. 66.08(A)

<sup>58</sup> R.C. 2111.50

<sup>59</sup> Sup. R. 66.08(E)

<sup>60</sup> R.C. 2111.13(C)

<sup>61</sup> Sup. R. 66.08(G)

- Guardian's Report.<sup>62</sup> In addition to the "Annual Guardianship Plan – Person" (Form 27.7), the guardian of the person shall annually prepare and file with the Court the form titled "Guardian's Report" (Form 17.7). The guardian of the person must file with the Court the first Guardian's Report no later than 12 months after the date that the Letters of Guardianship are issued and annually after that time unless the Court orders otherwise, including as may be required by the Geauga Probate Local Rules. Please note that if the Guardian's Report Addendum on the original Statement of Expert Evaluation was signed and dated, then the Guardian may prepare and file form titled "Application to Dispense with Subsequent Statement of Expert Evaluation" (GC PF 15.18A) to obtain a court order to dispense with a subsequent filing of a Statement of Expert Evaluation.
- Termination or Limitation of Guardianship.<sup>63</sup>
  - A guardian shall seek to limit or terminate the guardianship authority and promptly notify the Court if any of the following occurs: (1) the ward's ability to make decisions and function independently has improved; (2) less restrictive alternatives are available; (3) a guardianship of both the person and the estate is no longer in the ward's best interest; or (4) the ward has died. The guardian shall prepare and file the form titled "Application to Terminate Guardianship" (Form 27.9) to obtain a court order to terminate the guardianship.
  - When a ward dies, the general rule is that the guardianship terminates and the remaining duty of the guardian of the estate is to safely maintain the ward's assets and deliver those assets to the duly appointed Fiduciary of the ward's probate estate.<sup>64</sup> However, the Supreme Court of Ohio has held that even after the ward's death the guardian continues to have the power to make a proper accounting and settlement of and acts taken in regard to the ward's assets.<sup>65</sup> The guardian should promptly notify social security and Medicaid Estate Recovery at 150 E. Gay Street, 21st Floor Columbus, Ohio 43215.
  - If the ward marries, then a guardianship of the person terminates, but not a guardianship of the estate.<sup>66</sup>
  - Upon review of the form titled "Guardian's Report" (Form 17.7), the Court may decide to terminate the guardianship or modify the guardian's powers.<sup>67</sup>
  - Upon written request by the ward, the ward's attorney, or any other interested party made at any time after the expiration of 120 days from the date of the original appointment of the Guardian, the Court shall hold a hearing to evaluate the continued necessity of the guardianship. Upon written request, the Court shall conduct a minimum of one hearing in the calendar year in which the guardian was appointed, and upon written request, shall conduct a minimum of one hearing in each of the following calendar years.<sup>68</sup>

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<sup>62</sup> R.C. 2111.49(A)

<sup>63</sup> Sup. R. 66.08(D) and R.C. 2111.49(B) and 2111.49(C)

<sup>64</sup> *Simpon v. Holmes* (1922), 106 Ohio St. 437 and *In re Guardianship of Rose Mogul* (2002), 2002 WL 819164 (11<sup>th</sup> App. Dist.)

<sup>65</sup> *The State ex rel. Estate of Bertina Hards v. Klammer* (2006) 110 Ohio St. 3d 104.

<sup>66</sup> R.C. 2111.45

<sup>67</sup> R.C. 2111.49(B)

<sup>68</sup> R.C. 2111.49(C)

- Upon its own motion or upon written request, the Court, in its discretion, may conduct a hearing within the first 120 days after appointment of the guardian or conduct more than one hearing in a calendar year. If the ward alleges competence, the burden of proving incompetence shall be upon the applicant for guardianship or the Guardian, by clear and convincing evidence.<sup>69</sup>
- Guardian's Compensation.<sup>70</sup>
  - The guardian's fees are governed by Geauga Probate Local Rules 73.1 through 73.4. The guardian shall not be paid compensation without first obtaining a court order. When applying for a court order to pay compensation or reimburse expenses, the guardian shall use the form titled "Application for Guardian Compensation" (GC PF 15.16) The Court may require that application be set for hearing, in which case the guardian shall give notice to all Interested Persons using the form titled "Notice of Hearing" (GC PF 4.18) no less than 10 Calendar Days before the hearing and provide the Court with proof of service. See the probate information sheet titled "Service of Notice, Subpoena, and Summons" and Geauga Probate Local Rules 78.13 and 78.14 for more details on service of notice and proof of service to the Court.
  - If the ward is indigent, then the Court may approve guardian fees in accordance with Geauga Probate Local Rule 73.5. In such case, the guardian must prepare and file with the Court the form titled "Application for Guardian's Fees for Indigent" (GC PF 15.16A ).
  - A guardian must report to the Court the receipt of any compensation or fees pertaining to the guardianship from any source other than from the ward's estate.<sup>71</sup>
  - 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. The calculation and payment of attorney's fees is governed by Geauga Probate Local Rules 71.1 and 71.2.
- Conflict of Interest.<sup>72</sup> A guardian shall avoid actual or apparent conflicts of interest regarding a ward's personal or business affairs. A guardian shall report to the Court all actual or apparent conflicts of interest for review and a determination as to whether a waiver of the conflict of interest is in the ward's best interest.
- Comments and Complaints.<sup>73</sup> The Court has a process for receiving, investigating, and acting upon any comments or complaints regarding the Guardian's performance. The Guardianship Program Director handles all such comments and complaints, and the guardian shall cooperate with the Director in all respects.

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<sup>69</sup> R.C. 2111.49(C)

<sup>70</sup> Sup. R. 73, Sup. R. 66.08(J)

<sup>71</sup> Sup. R. 66.08(J)

<sup>72</sup> Sup. R. 66.08(K)

<sup>73</sup> Sup. R. 66.03(B)



- Education.<sup>74</sup> The guardian must satisfy a continuing education requirement.
  - Unless the Court orders otherwise, each year following the issuance of the Letters of Guardianship, a guardian shall complete a continuing education course that meets all of the following requirements, which is: (1) at least three hours in length; (2) provided by the Supreme Court of Ohio or, with the prior approval of the appointing court, another entity; and (3) specifically designed for the continuing education needs of guardians and consists of advanced education relating to the topics listed in Sup. R. 66.06(A)(1) through (4).
  - Unless the Court orders otherwise, on or before January 1st of each year, a guardian shall report to the Court information documenting compliance with the continuing education requirement, including the title, date, location, and provider of the education or a certificate of completion.
- Filing Ward's Legal Papers.<sup>75</sup> Within three months after the Guardian's appointment, a guardian shall file with the Court a list of all of the ward's important legal papers, including but not limited to estate planning documents, advance directives, and powers of attorney, and the location of such legal papers, if known at the time of the filing. If the ward has one or more wills, then the guardian shall deposit the will(s) with the probate clerk - see Geauga Probate Local Rule 59.1(C).
- Maintain a Guardian's Log. While it is not required by law, the Help Center recommends that a guardian maintain a Guardian's Log, that reflects all actions taken, or information received, by the Guardian. Ideally that log will indicate on each entry the day and time of the event. Entries would include:
  - Communications such as face-to-face meetings, telephone, text, or email communications – including the subject matter and names of persons involved in the communication;
  - Complaints issued or received by the Guardian;
  - Medications or healthcare procedures;
  - Steps taken as due diligence before giving informed consent for a healthcare or social procedure or process; and
  - Relevant future deadlines or appointments, such as doctor visits, patient care planning meetings, court filings, etc.
- Duties of Guardian of the Estate.<sup>76</sup> If the applicant is appointed both guardian of the person and 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 of Ward.<sup>77</sup> The guardian of the estate shall manage the ward's assets in the best interest of the ward.

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<sup>74</sup> Sup. R. 66.07)

<sup>75</sup> Sup. R. 66.08(L)

<sup>76</sup> R.C. 2111.14 and R.C. 2111.141

<sup>77</sup> R.C. 2111.14(A)(2)

- Obey Court Orders.<sup>78</sup> Again, the Court is the “superior” guardian of the ward and the guardian of the estate is essentially the “agent” of the Court.<sup>79</sup> Thus, the guardian shall obey all court orders.
- Inventory.<sup>80</sup> Within three months after the appointment date, the guardian of the estate shall prepare and file with the Court a full inventory of the ward’s real and personal property, 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 fails to file the inventory within 30 days after being notified by the Court of the expiration of the filing date, the Court may remove the guardian and appoint a successor.
  - 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..<sup>81</sup> However, the guardian must redact all account numbers except for the last four digits.
- Digital Assets. A guardian of an estate shall file with the Court the form titled “Digital Asset Certification – Guardianship” (GC PF 15.5A) before or when filing the inventory. The Court may order that the guardian file the form titled “Supplemental Schedule of Assets” (GC PF 6.1A) to describe the Digital Assets.
- Tangible Personal Property. A guardian of an estate shall file with the Court the form titled Tangible Personal Property Certification - Guardianship (GC PF 15.5B) before or when filing the inventory. The Court may order that the guardian prepare and file the form Supplemental Schedule of Assets to describe the Tangible Personal Property.
- Authority to Expend Funds. The guardian of the estate cannot expend any funds of the ward’s estate without first receiving a court order that authorizes the expenditure. This requirement includes the payment of guardian fees and attorney 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” (Form 15.7). Generally, the Court will not authorize the expenditure of funds before the filing of the Inventory.<sup>82</sup>
- Annual Guardianship Plan (Financial Needs).<sup>83</sup> A guardian of the estate shall file annually with the Court a guardianship plan regarding the ward’s financial needs. That guardianship plan shall state the Guardian’s goals for meeting the ward’s financial needs and must be prepared and filed using the form titled “Annual Guardianship Plan – Estate” (Form 27.8).

Note: If the guardian is appointed as both guardian of the person and the estate, then that guardian must annually prepare and file both forms titled “Annual Guardianship Plan – Person” (Form 27.7) and “Annual Guardianship Plan – Estate” (Form 27.8).

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<sup>78</sup> R.C. 2111.14(A)(4)

<sup>79</sup> R.C. 2111.50

<sup>80</sup> R.C. 2111.14(A)(1)

<sup>81</sup> R.C. 2111.141

<sup>82</sup> Sup. R. 66(B)

<sup>83</sup> Sup. R. 66.08(G)

- Guardianship Checking Account.<sup>84</sup> 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, the guardian of the estate shall establish a guardian checking account. The guardian shall use that guardian 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 guardian checking account and to account for receipts and disbursements. The proper use of a guardian checking account will assist the guardian when preparing and filing the annual Accounts with the Court.
- 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 that order to each such financial institution.
- Other Matters. The guardian of the estate should determine whether the Ward has:
  - a safe deposit box; provided, however, that no applicant for or guardian of the estate may take any action to cause the safe deposit box to be opened without first obtaining a court order authorizing access in the presence of a third party;
  - the right to social security benefits or other such benefits;
  - the right to Veteran’s benefits;
  - the right to any unclaimed funds, as noted above;
  - Digital Assets, as noted above - see the probate information sheet titled “Digital Assets.”
- Legal Proceedings.<sup>85</sup>
  - 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 a court order of approval.
  - 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 must be approved by the Court. The guardian also shall have obtained 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.
  - The guardian shall use the form titled “Application to Settle a Claim of an Adult Ward” (GC PF 22.6) to settle claims of an adult ward under R.C. 2111.18 and Sup.R. 69.

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<sup>84</sup> See Geauga Probate Local Rule 66.1(M)

<sup>85</sup> R.C. 2111.14(A)(5), R.C. 2114(A)(6), and Sup. R. 66.08(F)

Following the resolution and receipt of payment of such claim, and distribution of funds, the guardian shall prepare and file with the Court the form titled Report of Distribution (GC PF 22.7).

- Debts and Claims.<sup>86</sup>
  - 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 the guardian after first obtaining Court approval.
  - The guardian of the estate shall collect all debts due to the ward, resolve doubtful debts, and appear for and defend, or cause to be defended, all suits against the ward after first obtaining a court order of approval.
- Sale of Real Property.<sup>87</sup> If the ward owns an interest in real property, and the guardian of the estate wants or needs to sell the real property, then the guardian must comply with the requirements of R.C. Chapter 2127. The guardian should consider hiring an attorney to assist with that process. See the 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.
- Sale of Personal Property. If a guardian of the estate wants to sell any of the ward's personal property and if that guardian has filed an Inventory that identifies such personal property, then that guardian may sell any of the ward's personal property only after obtaining a court order authorizing such sale, which court order shall be obtained by preparing and filing the form titled "Guardian's Application to Sell Personal Property" (GC PF 15.5A).
- Improvement of Real Property.<sup>88</sup> The guardian of the estate's duties include 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.<sup>89</sup>
  - Annual Account.<sup>90</sup> 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" (Form 15.8).
    - The Account will show every item of income and disbursement (or distribution), with a voucher or other evidence (e.g., cancelled check or bank statements during the applicable timeframe) for each disbursement or distribution.
    - Sale of Real Property. If real property is sold during the accounting period, then attach a copy of the closing statement to the Account.

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<sup>86</sup> R.C. 2111.14(A)(3)

<sup>87</sup> R.C. Chapter 2127

<sup>88</sup> R.C. 2111.33, 2111.34, 2111.35, and 2111.36

<sup>89</sup> R.C. 2109.30, 2109.302, 2109.32, and 2109.33

<sup>90</sup> See Geauga Probate Local Form 64.3.

- Vehicle Transfer. If a vehicle is sold during the accounting period, then attach a copy of the transferee's Certificate of Title to the Account.
- Evidence of Remaining Assets. On the form titled Assets Remaining in Fiduciary's Hands (Form 13.2), describe each Probate Property remaining at the end of the accounting period. Attach to the Account evidence of ownership of the Assets Remaining in Fiduciary's Hands that are intangible personal property - such as bank and financial statements, but redact the account numbers except for the last four digits.
- 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 date of termination, again using the form Guardian's Account (Form 15.8).
- Notice Requirements.<sup>91</sup> Except to the extent that notice is waived (see below), the guardian of the estate must deliver a written notice to each interested party, including creditors as the Court directs.<sup>92</sup> The guardian shall prepare the notice using the form titled "Notice of Hearing on Account" (GC 15.11). The guardian shall deliver that notice no less than 10 days before the date of the hearing on Account. See probate information sheet titled "Service of Notice, Subpoena, or Summons" and Geauga Probate Local Rules 78.13 and 78.14 for more details on service of notice and proof of service to the Court.
  - Waiver. Rather than delivery of the Notice of Hearing on Account, the guardian may obtain a waiver from any interested person using the form titled "Waiver of Notice of Hearing on Account" (GC PF 15.12).
- Termination.<sup>93</sup>
  - When the value of the ward's property does not exceed \$25,000, the guardian 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 ward's property and income do not support a guardianship of the estate.<sup>94</sup>
  - Moreover, a guardian 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.<sup>95</sup>

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<sup>91</sup> R.C. 2109.33. See Geauga Probate Local Rule 64.3(D).

<sup>92</sup> See Ohio Civil Rule 73(E). See Geauga Probate Local Rule 64.3(D) for definition of "interested party."

<sup>93</sup> R.C. 2111.05

<sup>94</sup> Sup. R. 66.04(C)

<sup>95</sup> Sup. R. 66.08(I)

- Responsibilities of Guardians to Ward.<sup>96</sup>

- Professionalism. A guardian shall act in a manner above reproach, including avoiding financial exploitation, sexual exploitation, and any other activity that is not in the ward's best interest.
- Due Diligence. A guardian shall exercise due diligence in making decisions that are in the ward's best interest, including communicating with the ward and being fully informed about the implications of the decisions.
- Least Restrictive Alternative. Unless otherwise approved by the Court, a guardian shall make a choice or decision for a ward that best meets the ward's needs while imposing the least restrictions upon the ward's rights, freedom, or ability to control the ward's environment. To determine the least restrictive alternative, a guardian may seek and consider an independent assessment of the ward's functional ability, health status, and care needs.
- Person-centered planning. A guardian shall advocate for services focused on a ward's wishes and needs to reach the ward's full potential. A guardian shall strive to balance a ward's maximum independence and self-reliance with the ward's best interest.
- Ward's support system. A guardian shall strive to foster and preserve positive relationships in the ward's life unless such relationships are substantially harmful to the ward. A guardian shall be prepared to explain the reasons that a particular relationship is severed and not in the ward's best interest.
- Communication with Ward.
  - A guardian shall strive to know the ward's preferences and belief system by seeking information from the ward and the ward's family and friends.
  - A guardian shall do the following:
    - meet with the ward as needed, but not less than once quarterly or as otherwise determined by the Court;
    - communicate privately with the ward;
    - assess the ward's physical and mental conditions and limitations;
    - assess the appropriateness of the ward's current living arrangements;
    - assess the needs for additional services;
    - notify the Court if the ward's level of care is not being met; and
    - document all complaints made by the ward and assess the need to report the complaints to the Court.
- Monitor and Coordinate. A guardian shall monitor and coordinate all services and benefits provided to the ward, including doing all of the following as necessary to perform those duties:
  - having regular contact with all service providers;

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<sup>96</sup> Sup. R. 66.09

- assessing services to determine whether they are appropriate and continue to be in the ward's best interest;
  - maintaining eligibility for all benefits; and
  - where the guardian of the person and guardian of the estate are different individuals, consulting regularly with each other.
- Electronic Monitoring. Ohio law<sup>97</sup> allows a guardian of the person, whose ward resides in a long-term care facility, to cause the installation of an electronic monitoring device in the ward's room, which may provide some assurance that the ward does not suffer from abuse or neglect. However, Geauga Probate Local Rule 66.1(Q) requires the guardian to first obtain a court order that authorizes such device, which may be obtained by filing the form titled "Application for Electronic Monitoring" (GC PF 27.11A).
  - Extraordinary Medical Issues. A guardian shall seek ethical, legal, and medical advice, as appropriate, to facilitate decisions involving extraordinary medical issues. A guardian shall strive to honor the ward's preferences and belief system concerning extraordinary medical issues.
  - End of Life Decisions. A guardian shall make every effort to be informed about the ward's preferences and belief system in making end-of-life decisions on behalf of the ward.
  - Caseload. A guardian shall appropriately manage the Guardian's caseload to ensure the guardian is adequately supporting and providing for the ward's best interest in the Guardian's care.
  - Duty of Confidentiality. A guardian shall keep the ward's personal and financial information confidential, except when disclosure is in the ward's best interest or upon court order.
  - Direct Services.<sup>98</sup> Except for a family member, a guardian shall not provide any direct services to a ward without notifying the Court. In all cases, a guardian providing direct services to a ward shall comply with all licensing, training, and accreditation required by paid providers by any applicable state agency. A "family member" means a parent, stepparent, spouse, sibling, stepsibling, grandparent, grandchild, aunt, uncle, nephew, niece, cousin, child, stepchild, or any other individual related by blood or marriage.<sup>99</sup>
- Emergency Guardianship.<sup>100</sup> The Court has the authority to appoint an Emergency guardian of the person or a guardian of the estate, for a period of 72 hours, 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 prospective ward a Notice of

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<sup>97</sup> R.C. 3721.61

<sup>98</sup> Sup. R. 66.04(D).

<sup>99</sup> Sup. R. 66.01(F).

<sup>100</sup> R.C. 2111.02(B)(3) and Geauga Probate Local Rule 66.2

an Application for Guardianship and appointment of the Emergency Guardian as soon as possible.<sup>101</sup>

- Emergency Guardian Powers. The Court will describe 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.<sup>102</sup>
- Process for Establishing an Emergency Guardianship.<sup>103</sup> An applicant for appointment of Emergency Guardian must do the following:
  - 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” (Form 17.0E), which includes the required Affidavit, attached as Exhibit A.
  - Obtain and file with the Court a completed “Statement of Expert Valuation” (Form 17.1).
  - 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).
  - Prepare and file with the Court the form titled “Adult Jurisdiction” Affidavit (GC PF 15.17)
  - Arrange for and pay the court cost deposit.
    - If applicable, prepare and file form titled “Motion to Waive Court Cost”s (GC PF 66.1) and prepare and attach the form titled Affidavit of Indigent (GC PF 15.14).
  - Note that an applicant to be appointed Emergency Guardian need not obtain a WebCheck unless the Court otherwise orders a WebCheck, or unless a permanent guardianship is sought as described in the next paragraph.
  - If you are not represented by an attorney, then obtain and file (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).

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<sup>101</sup> R.C. 2111.02(B)(3) and Local Rule 66.2

<sup>102</sup> R.C. 2111.02(B)(3)

<sup>103</sup> Review the Court’s checklist on its website titled “Checklist - Emergency Guardianship



- The 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 the form titled “Application for Appointment of Guardian of Alleged Incompetent” (Form 17.0), all the related documents, and perform the actions as described above on pages 10, 11, and 12 and on the Court’s checklist on its website titled “Checklist - Guardianship-Incompetent Adult.”
- Interim Guardianship.<sup>104</sup>
  - If a guardian is temporarily or permanently removed or resigns (or dies), and if the welfare of the ward 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 a 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 as a fiduciary in a non-negligent manner, then a guardian should not be liable for acts of the ward.
    - Breach of Fiduciary Duty/Negligence. The guardian of the person has a fiduciary duty to ensure the safety and well-being of the ward. The 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; or
      - acting outside the powers given to the Guardian.
    - Improper Investment of Ward’s Property.<sup>105</sup> 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 obtaining legal or financial advice after receiving a court order of approval before taking action that could result from improper investing.
    - Contract Liability.<sup>106</sup> 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. Examples are a real estate lease, an equipment lease, or a direct service provider contract. The guardian

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<sup>104</sup> R.C. 2111.02(B)

<sup>105</sup> See Sup. R. 66.08(K) and 66.09(B)

<sup>106</sup> R.C. 2111.151

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 and advise on the contract.
- Liability for Ward’s Debts.<sup>107</sup> 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. For example, if the guardian is the parent or spouse of the ward, the guardian may have a legal duty to support 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.
- Dealing with Direct Service Providers. Often the ward requires ongoing services from a professional service provider, whether in a home setting or a residential or health facility. It is not enough for the guardian to select the direct service provider(s) and then take no further action. The guardian has a duty to monitor direct service providers.<sup>108</sup>
  - Selection. The guardian must exercise due diligence in selecting a direct service provider.<sup>109</sup> Additionally, the guardian cannot provide the direct services without a court order of approval.<sup>110</sup>
  - Be Informed. The guardian must keep informed of the services performed by the direct service provider. That could include medical and care charts, the care plan, and requiring notice from the direct service provider of proposed changes. Be aware that federal law, which prohibits healthcare providers from disclosing healthcare information (known as “HIPAA”), DOES NOT apply to a guardian of the person.

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<sup>107</sup> R.C. 2111.151(B)

<sup>108</sup> Sup. R. 66.09(H)

<sup>109</sup> Sup. R. 66.09(B)

<sup>110</sup> Sup. R. 66.09(G)

- Care Plans and Conferences. The guardian should consider being notified of and attending any Care Plan conferences conducted by a direct service provider.
- Complaints Regarding Care. If the guardian is concerned that a staff member or members of a direct service provider may not be providing the necessary care to a ward, then the guardian should not hesitate to meet with a supervisor or compliance officer of the provider, seek the assistance of an ombudsman if available, or file a complaint with the state regulatory authority.
- Duty to Notify the Court. In all events, the guardian must notify the Court if the ward's level of care is not being met.<sup>111</sup>
- Estate Planning for the Ward.<sup>112</sup> If an adult ward has property of significant value, then the guardian of the estate may want to provide some estate planning for the ward to deal with the disposition of that property during the ward's lifetime or on the ward's death. Such action by the guardian includes a gifting program, creation, amending, or terminating trusts, or naming beneficiaries of life insurance policies. However, the guardian must not take any such action without first obtaining a court order from this Court. For more details, the guardian should carefully review R.C. 2111.50. We recommend that the guardian seek legal advice from an experienced attorney before taking any such action.
- Criminal Matters. It is possible that a ward, who has been determined by the Court to be an "incompetent adult," may still commit a crime and be found guilty of the crime. The criminal law standards regarding competency to commit a crime are different from those standards in a Court to make a finding of "incompetent adult."
  - Notify the 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.
  - 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.

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<sup>111</sup> Sup. R. 66.09(F)(2)(f)

<sup>112</sup> R.C. 2111.50

- 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 a court order of approval

**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 CUYAHOGA 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.**