

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 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.

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 who 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 In effect, the 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.

The Uniform Child Custody Jurisdiction and Enforcement Act.⁴ Ohio has adopted The Uniform Child Custody Jurisdiction and Enforcement Act (the "UCCJEA"). Generally, the UCCJEA prohibits an Ohio court from making a "Child custody determination"⁵ as the result of a child custody proceeding⁶ without complying with the UCCJEA. While an Ohio juvenile court has jurisdiction to determine child custody, a child custody proceeding includes a guardianship proceeding in an Ohio probate court. If effect, if a court in another state has made a child custody determination, then an Ohio probate court may not have jurisdiction to establish a guardian of the person for a minor. Additionally, if an Ohio court has issued a child custody

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

⁴ R.C. Chapter 3127.

⁵ R.C. 3127.01(B)(3)

⁶ R.C. 3127.01(B)(4)

order, for example in a divorce proceeding or a juvenile court custody proceeding, then a probate court may lack jurisdiction to establish a guardian of the person for a minor.⁷ As a result, the Supreme Court of Ohio requires that the applicant to be appointed guardian of the person for a minor must prepare and file the form titled "Affidavit" (Form 16.1) in order to comply with the statutory requirement in R.C. 3127.23. If there is an emergency situation where (i) the minor has been abandoned, or (ii) it is necessary to protect the minor because the minor, or a sibling or parent of the minor, is subjected to or threatened with mistreatment or abuse, then a probate court may be able to grant a temporary emergency guardianship as permitted by the UCCJEA, and as set forth in R.C. 3128.18.⁸

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.⁹ "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.¹⁰ Accordingly, with few exceptions, the Court will not appointment a nonparent as guardian of the person of a minor unless both parents are deceased.¹¹

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 both parents are unsuitable persons to have the custody of the minor and to provide for the education of the minor.¹²
- Best Interest. If the Court determines that the minor's interests will be promoted by the appointment of a guardian.¹³
- Waiver. The parents have waived their parental rights by contract, including consent to the guardianship.¹⁴

Note: The form titled "Waiver of Notice and Consent" (Form 15.1) must be prepared and filed if the parent's 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.

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

⁷ See *In the Matter of the Guardianship of N.P.*, 2011 WL 3367136, Court of Appeals of Ohio (6th App. Dist.)

⁸ A similar temporary emergency order for legal custody court be ordered by a juvenile court. See our Juvenile Information Sheet titled "Jurisdiction of Ohio Juvenile Courts."

⁹ 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).

¹⁰ R.C. 2111.01(G)

¹¹ R.C. 2111.06

¹² R.C. 2111.06

¹³ R.C. 2111.06

¹⁴ *Masitto v. Masitto*, 22 Ohio St. 3d 63 (1986).

do not acquire any legal or beneficial interest in their minor child's assets. The parents have a duty to support their minor children¹⁵ and cannot pay support expenses of their minor children using the assets of the minor children without a court order.¹⁶ 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.

Juvenile Court Alternative. If both parents are "unsuitable, then, rather than applying to the probate court to be appointed guardian of the person of a minor child, the applicant should consider filing a complaint or motion with the juvenile court to obtain legal custody of the minor child. Before making the decision, the applicant should obtain legal advice from an attorney of his or her choosing. Moreover, the applicant should read the juvenile information sheets titled "Nonparent Rights" and "Jurisdiction of Ohio Juvenile Courts."

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.¹⁷ The guardian of the estate has authority to sign contracts for the benefit of the ward and to pay or collect certain debts, with court order of approval. If the total value of the minor's assets is \$25,000 or less, then the Court may not appoint a Guardian of the Estate. Rather, the Court may authorize the assets to be deposit with or held by a suitable person until the minor attains age 18.¹⁸
- 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.¹⁹ 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.²⁰ 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

¹⁵ *Haskins v. Bronzetti*, 64 Ohio St.3d 202 (1992) and R.C. 3103.03.

¹⁶ See R.C. 2111.13(B)

¹⁷ R.C. 2111.14(5) and (6). See also R.C. 2111.17 and 2111.18.

¹⁸ See R.C. 2111.05 (4th paragraph)

¹⁹ R.C. 2111.06

²⁰ R.C. 2111.02(B)(1) and Sup. R. 66.04(A)

authority provided by law. Thus, the Court may decide to significantly limit the 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.²¹ If a guardian is temporarily or permanently removed or resigns, and if the ward's welfare 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.²² 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 minor's person or estate. 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.²³ 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).
- Criminal Background Check.²⁴ Unless the applicant is an attorney, licensed in Ohio, the Court requires the applicant to submit to a criminal background check before being appointed as guardian. In this Court, the criminal background check is performed by the Geauga County Jobs and Family Services. Upon filing the form titled Application for Appointment of Guardian of Minor (Form 16.0), 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 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.

²¹ See R.C. 2111.02(B)(2)

²² See R.C. 2111.02(B)(2) and Local Rule 9(10)

²³ R.C. 2109.21(C)

²⁴ Sup. R. 66.05(A)(1))

- Bond Qualification.²⁵ 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 ward's personal property 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 \$10,000, 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 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.²⁶
- 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.²⁷ However, the Court may determine not to appoint the nominated person if the ward's best interest 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."²⁸ 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.²⁹
 - Selection by Surviving Parent in Valid Will.³⁰ 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).³¹ 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.

²⁵ R.C. 2109.04(A)(4)

²⁶ R.C. 2111.12(B)

²⁷ R.C. 2111.12(C) and R.C. 2111.121

²⁸ R.C. 2111.12(A)

²⁹ R.C. 2111.12(A)

³⁰ R.C. 2111.12(B)

³¹ R.C. R.C. 2111.02(D)(1)

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.

- 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 Ohio has jurisdiction to decide child custody as required by R.C. Chapter 3127, in order to prepare the form titled “Affidavit” (Form 16.1). A review of the juvenile information sheet titled “Jurisdiction of Ohio Juvenile Courts” will assist, in particular pages 5 and 6.
- Determine whether Geauga county is the appropriate county to file the application to be appointed guardian. The appropriate county is the county where the minor resides or has a legal settlement.³²
- Obtain the long-form birth certificate of the minor (including county and city of birth), and a translation of the birth certificate in English if the original birth certificate is not in English.
- 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),³³ 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.
- Make a list of the assets and sources of income of the minor.
 - If the total value of the minor’s assets is \$25,000 or less, then the Court may not appoint a Guardian of the Estate. Rather, the Court may authorize the assets to be deposit with or held by a suitable person until the minor attains age 18.³⁴
- Arrange for payment of the court cost deposit.
 - Determine if an indigency filing should be prepared. See the website checklist

³² R.C. R.C. 2111.02(A)

³³ See R.C. 2111.04(A)

³⁴ See R.C. 2111.05 (4th paragraph)

- 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 and Filing of Documents.
 - Again, review the website checklist titled “Checklist - Guardianship-Minor.”
 - Gather and file the long-form birth certificate of the minor.
 - 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 Minor” (Form 16.0).
 - Prepare and file the form titled “Waiver of Notice and Consent” (Form 15.1).
 - Prepare and file the form titled “Custody Affidavit” (Form 16.1)
 - Prepare and file the form titled “Fiduciary’s Acceptance Guardian (Form (15.2).
 - Prepare and file the form titled “Acknowledgment/Waiver Request of Guardian Education Requirements (Form 15.13) if applicable
 - Prepare and file the form titled “Affidavit of Guardian Applicant” (Form 66.05).
 - If applicable, prepare and file the forms titled “Motion to Waive Court Costs” (GC PF 66.1) and Affidavit of Indigent” (GC PF 15.14)
 - If applicable, prepare and file the form titled “Selection of Guardian” (Form 16.2)
 - Gather and file a 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 gather 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
 - If appropriate, prepare and file the form titled “Application to Dispense with Guardian’s Bond” (GC PF 15.18)
 - Arrange for pay of the court cost deposit, considering whether the ward or guardian are indigent.
 - Obtain from a probate deputy clerk, when filing the above documents, the Authorization Form – WebCheck Electronic Fingerprinting - see Geauga Probate Local Rule 66.1(E). Arrange for payment of all related fees.

○ 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 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;³⁵
 - if applicable and if the parent(s) are living, the evidence that 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 if required, then the amount of the surety bond.³⁶
- Probate Court Investigator.³⁷ The Court will 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.³⁸ 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.³⁹

- Attendance. Unless the Court orders otherwise for good cause shown, both the applicant and the minor shall attend the Application Hearing.⁴⁰ 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.⁴¹
- Jurisdiction; Ward's Residency.⁴² The Court must determine whether the prospective ward is a Geauga County resident and whether Ohio has jurisdiction to appoint a guardian for the minor as provided for in R.C. Chapter 3127.

³⁵ Sup. R. 66.04(B)

³⁶ R.C. 2109.04(A).

³⁷ R.C. 2111.042

³⁸ 2111.04(A)(2)(a)(i)

³⁹ See R.C. 2111.02(B) and (C) for a general description of how the Court will proceed during the Appointment Hearing.

⁴⁰ Local Rule 9(1)

⁴¹ Local Rule 9(3)

⁴² Sup. R. 66.04(B)

- Nomination and Selection. If both parents are deceased, unsuitable, or have waived parental rights, then the Court will determine who will be the guardian of the person for the minor, and when appropriate, the guardian of the estate.
 - 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 Testament⁴³
 - Durable Power of Attorney⁴⁴
 - R.C. 2111.121 Document⁴⁵
 - A minor that is 14 years or younger 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, who is age 15 or older, may select the guardian of the person.⁴⁶ 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 unsuitable.⁴⁷
- Change of School District. The Court will not appoint a guardian of the person of a minor if the sole purpose is to have the minor attend a school district other than where the parent resides. 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. "In the absence of a showing that a parent is not a fit person, or has, by abandonment, forfeited his natural right of care, custody, and control of his minor child, no other person may be appointed guardian of the person of the minor child."⁴⁸
- 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.⁴⁹ Parents have a "fundamental and essential right to raise their child."⁵⁰ In fact, they have

⁴³ R.C. 2111.12(B)

⁴⁴ R.C. 2111.12(C) and R.C. 1337.24

⁴⁵ See R.C. 2111.121

⁴⁶ R.C. 2111.12(A)

⁴⁷ R.C. 2111.12

⁴⁸ *In re Minor of DiSalvo*, 227 N.E. 2d 441 (Ohio Misc 1967)

⁴⁹ R.C. 2111.06

⁵⁰ *In re Murray*, 52 Ohio St.3d 155, 556 N.E.2d 1169 (1990).

constitutional rights to have legal custody of their children.⁵¹ Nevertheless, if both parents are “unsuitable,” then the Court may appoint a guardian of the person for the minor. 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
- is otherwise unsuitable, which may include that the minor suffers from abuse, neglect, or is dependent.

Note that even if one or both parent are suitable, the Court may appoint a guardian of the person for the minor if the Court determines that the minor's interests are best served by appointment of a guardian of the person.⁵²

- 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.⁵³ If the Court concludes that the best interest of the ward requires a guardian of the estate, then that same person is likely to 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.⁵⁴ The duties of a guardian of the person include the following:⁵⁵

- 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 it “maximizes what is best for a Ward, including consideration of the least intrusive, most normalizing, and least restrictive course of action

⁵¹ 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).

⁵² R.C. 2111.06

⁵³ R.C. 2111.06

⁵⁴ R.C. 2111.13 and Sup. R.66.08

⁵⁵ For more detail, carefully review (i) the Sup.R. 66, and (ii) R.C. Chapter 2111.

possible given the needs of the Ward.” The fundamental duty of the guardian of the person is to protect and control the ward.

- Protect and Provide or Arrange for the Ward’s Needs.⁵⁶ 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,⁵⁷ the guardian should arrange for the ward’s basic needs, including shelter, food, clothing, health needs, spiritual needs, and social contact needs. In doing so, the guardian must select, hire, monitor, or terminate a variety of direct providers, including healthcare providers, home providers, etc.
- Report Abuse, Neglect, or Exploitation.⁵⁸ 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.⁵⁹ Again, the Court is the “superior” guardian of the ward and the guardian of the person is essentially the “agent” of the Court.⁶⁰ Thus, the guardian must obey all court orders.
- Change of Residence.⁶¹
 - 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.⁶² 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).⁶³ 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).

⁵⁶ R.C. 2111.13(A)(1) and (2)

⁵⁷ Sup. R. 66.09(D)

⁵⁸ Sup. R. 66.08(C)

⁵⁹ R.C. 2111.13(A)(4) and Sup. R. 66.08(A)

⁶⁰ R.C. 2111.50

⁶¹ Sup. R. 66.08(E)

⁶² R.C. 2111.13(C)

⁶³ Sup. R. 66.08(G)

- Education. To provide such maintenance and education (particularly public education as required under R.C. 3321.01) for the 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 a court order of approval;

Except as provided in R.C. 2111.131, the guardian may not use any part of the ward's estate for the support or maintenance of such ward without a court order of approval.⁶⁴

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.⁶⁵ 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.⁶⁶ The guardian of the estate shall manage the estate for the ward's best interest.
- Obey Court Orders.⁶⁷ To repeat, 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.⁶⁸ Within three months after the appointment date, the guardian of the estate shall prepare and file with the Court an 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 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, then the Court may remove the guardian of the estate 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.⁶⁹
 - 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

⁶⁴ See also Local Rules 9(2) and 9(6)

⁶⁵ R.C. 2111.14 and R.C. 2111.141

⁶⁶ R.C. 2111.14(A)(4)

⁶⁷ R.C. 2111.14(A)(4)

⁶⁸ R.C. 2111.14(A)(1)

⁶⁹ R.C. 2111.141

approved by court order. 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 a court order 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" (Form 15.7). The Court will not authorize the expenditure of funds before the filing of the Inventory.⁷⁰
- 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 a guardianship checking account. The guardian should use the guardianship 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 a guardianship checking account will assist the guardian when preparing and filing with the Court the annual accounts – 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), then 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.
- 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, VA benefits, or other such benefits; and
 - the right to any unclaimed funds
- Legal Proceedings.⁷¹
 - 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 the assets that the guardian receives in kind from an executor or administrator to the ward's greatest advantage. Before a settlement and adjustment is valid and binding, it must be approved by court order. Also, the guardian shall have a court order of approval to hold the assets as received from

⁷⁰ Sup. R. 66(B)

⁷¹ R.C. 2111.14(A)(5), R.C. 2114(A)(6), and Sup. R. 66.08(F)

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.⁷²
 - The guardian of the estate shall pay all just debts due from the ward out of the ward's property in the possession or under the control of that guardian after first obtaining a court order of 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.⁷³ 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.
- 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, but 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.⁷⁴ 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. Please carefully read R.C. 2109.302 and Geauga Probate Local Rule 64.3.
 - Annual Account. Unless the Court orders otherwise, the guardian of the estate must prepare and file with the Court an account at least once every two years, using the form titled "Guardian's Account" (Form 15.8).
 - The account must show every item of receipt 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.

⁷² R.C. 2111.14(A)(3)

⁷³ R.C. Chapter 2127

⁷⁴ R.C. 2111.33, 2111.34, 2111.35, and 2111.36

- 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” (Form 15.8).
- Notice Requirements.⁷⁵ 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.⁷⁶ The guardian shall prepare the notice using the form titled “Notice of Hearing on Account” (Form 15.11). 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” (Form 15.12).
 - 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” (Form 15.10) 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.

Guardian’s Compensation.⁷⁷

- 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 with 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.⁷⁸
- 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 the attorney files a motion and receives a court order of approval. Review Geauga Probate Local Rule 71.1.

⁷⁵ R.C. 2109.33

⁷⁶ See Ohio Civil Rule 73(E)

⁷⁷ Sup. R. 73, Sup. R. 66.08(J), and Local Rule 9(4) and 9(12)

⁷⁸ Sup. R. 66.08(J)

Termination.

- Value of Ward's Assets.⁷⁹
 - If the ward's estate does not exceed \$25,000 in value, then 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.⁸⁰
 - 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.⁸¹
- 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.
- 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"⁸² 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 age 17, 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" (Form 17.0), and the related documents as noted in that Information Sheet. Additionally, the guardian must meet the qualifications as noted in that Information Sheet.

Emergency Guardianship.⁸³ 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.⁸⁴
- Emergency Guardian Powers. The Court shall set forth the powers of the emergency guardian in the letters of guardianship.

⁷⁹ R.C. 2111.05

⁸⁰ Sup. R. 66.04(C)

⁸¹ Sup. R. 66.08(I)

⁸² See R.C. 2111.01(D)

⁸³ R.C. 2111.02(B)(3) and Local Rule 9(10)

⁸⁴ R.C. 2111.02(B)(3) and Local Rule 9(10)

- 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 Checklist – Emergency Guardian-Minor 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 Guardian of Minor” (Form 16.0).
 - Prepare and file with the Court the form titled “Affidavit” (Form 16.1).
 - 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 “Guardian’s Affidavit” (GC PF 15.20).
 - Prepare and file with the Court the form titled “Affidavit in Support of Application for Emergency Order” (Form 41.9)
 - Arrange for and pay the court cost deposit.
 - If applicable, prepare the form titled “Motion to Waive Court Costs” (GC PF 66.1) and prepare and attach the form titled “Affidavit of Indigent” (GC PF 15.14).
- 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 related documents, and perform the actions as described above.

Interim Guardianship.⁸⁵

- 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.

⁸⁵ R.C. 2111.02(B)

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; and
 - acting outside the powers given to the guardian.
- Improper Investment of Ward's Assets.⁸⁶ The guardian of the estate could have liability if that guardian fails to properly invest the ward's assets. Liability can arise from the guardian having a conflict of interest or failing to exercise due diligence when making an investment decision. The guardian of the estate should seek legal or financial advisor advice after receiving the Court's approval before taking action that could result in improper investing.
- Contract Liability.⁸⁷ 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.⁸⁸ 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;

⁸⁶ See Sup. R. 66.08(K) and 66.09(B)

⁸⁷ R.C. 2111.151

⁸⁸ R.C. 2111.151(B)

- 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.
- Direct Services.⁸⁹ 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.⁹⁰
 - Caretaker Child Support. The law permits a guardian of the person or estate of a minor to apply for child support payments. See the discussion regarding caretaker child support in the juvenile information sheet titled "Child Support," located at the end of that information sheet.

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

⁸⁹ Sup. R. 66.04(D).

⁹⁰ Sup. R. 66.01(F).

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.