

POWER OF ATTORNEY

WHAT IS POWER OF ATTORNEY?

A Power of Attorney is written authorization for an agent to perform specified acts, either personal (health care) or estate (property) on behalf of a principal.

TYPES OF POWERS OF ATTORNEY

Durable: A power of Attorney in which the powers granted remain in effect in the event of the grantor's incapacity or on being adjudged incompetent.

Springing: A Power of Attorney in which the powers granted become effective when the grantor becomes incapacitated or is adjudged incompetent.

Health Care: A durable Power of Attorney that may be used to authorize health care decisions in the event of incapacity.

EXECUTION OF POWERS OF ATTORNEY

Certain Powers of Attorney, such as those involving transfer of real property, requiring recording, must be executed in a specific manner. It is recommended that legal advice be obtained before executing Powers of Attorney as an alternative to guardianship. In addition, there are few safeguards or protections from abuse or misuse of Powers of Attorney. For that reason, before execution, the agent of the Power of Attorney should be of good character, and very carefully chosen.

INTERVIVOS TRUST

An intervivos trust is a confidential relationship involving a trustee, usually a bank, who manages only the property of a living person for the benefit of that person or someone else. Banks often require a minimum trust amount.

REPRESENTATIVE -CUSTODIAL PAYEE

A Representative-Custodial Payee is an individual authorized to receive and expend Social Security, Supplemental Security Income, or Veteran's benefits on behalf of the recipient, based upon a Court finding of mental incompetence or on submission of evidence to the Social Security or Veteran's Administration of mental or physical incapacity which impairs management of the funds.



JUDGE KEVIN W. DUNN
MEDINA COUNTY PROBATE COURT
JUDGE

Dear Friend—

My policy is to fulfill the Probate Court duties efficiently and effectively. If you have any questions or you need more information on a Probation Court matter, please contact my office.

We are here to serve you. I hope your experience in my court is helpful and informative.

Judge Kevin W. Dunn
Medina County Probate Court



KEVIN W. DUNN

**MEDINA COUNTY
PROBATE COURT JUDGE**

**GUARDIANSHIPS
&
ALTERNATIVES**



Medina County Probate Court
93 Public Square, Room 104
Medina, OH 44256

Phone: (330) 725-9703

Monday—Friday
8:00 AM—4:30 PM

GUARDIANSHIPS

WHAT IS GUARDIANSHIP?

A guardianship is an involuntary trust relationship in which one party, called a guardian, acts for an individual called the ward. The law requires the ward be incapable of managing his own person and/or affairs.

WHAT IS A GUARDIAN?

A guardian is any adult person, association, or corporation appointed by the Probate Court to assume responsibility for the care and management of the person, the estate, or both, of an incompetent person or minor child. A corporation can only be guardian of the estate and not of a person.

WHO NEEDS A GUARDIAN?

A guardian may be appointed for either an incompetent or a minor, which is defined by statute as:

Incompetent: Any person who is mentally impaired as a result of a mental or physical illness or disability, or mental retardation, or as a result of chronic substance abuse, that he is incapable of taking proper care of himself or his property or fails to provide for his family.

APPOINTMENT PROCEDURE

1. Application for guardianship is filed in the Probate Court of the County of the ward's residence by an interested party, or on the Court's own motion.
2. Application must include a statement of the guardian's willingness to perform as guardian, a bond as required by law, and a statement of expert evaluation as to the ward's mental and physical condition from a treating physician, psychiatrist, or licensed psychologist.
3. The prospective ward, as well as the adult next of kin, are notified of impending guardianship and date and time of hearing as prescribed by law. In the case of an incompetent proceeding, the notice and statement of rights will be served on the prospective ward by a Court Investigator.
4. An investigation is conducted, by a Court Investigator, which includes an interview with the prospective ward in order to assist the Court in determining the advisability of guardianship.
5. A formal hearing is conducted by the Judge or Magistrate to determine if a guardianship is necessary, the guardian is suitable, and if the guardian understands his duties.

RIGHTS OF THE WARD

The prospective ward has the right to be present at the hearing, to contest any application for guardianship, to have a record of the hearing taken, to have a friend or family member present at the hearing, and to be represented by an attorney. A prospective incompetent ward has the additional right to present evidence of a less restrictive alternative, and, if indigent and requested, to have an attorney and independent expert appointed at Court expense.

COURT SUPERVISION

The Probate Court is the superior guardian, and all guardians must obey all orders of the Court. The Court exerts its supervisory authority through the following:

Accountings: A guardian of the estate must file a written account with the Court annually, as to the income and expenses of the ward's estate.

Reports: A guardian of an incompetent ward must file a written report biennially. The report concerns the status of, and continued need for the guardianship.

Citation: If a guardian fails to file a timely report, inventory, or accounting, the Court may cite a guardian to appear, and may fine, reduce the guardian's fee or remove the guardian.

Investigations: To determine if a guardianship is functioning properly, the Court may order an investigation by a Court Investigator, Law Enforcement Agency, Adult Protective Service, or other County Agency.

Prior Approval: The guardian must first obtain approval of the Probate Court before entering into contracts or leases, making improvement to real estate, mortgaging real estate, selling assets of the ward, or settling any personal injury claim for the ward.

Removal: The Court may, at any time, in the best interest of the ward, remove the guardian.

TYPES OF GUARDIANSHIPS

Person and/or Estate: A guardian may be appointed either a guardian of the person, a guardian of the estate, or both. A guardian of the person has custody of, controls, and protects, the person of the ward. A guardian of the estate controls and protects the assets or property of the ward.

Limited: A guardian may be appointed with limited powers to make restricted or specific decisions of the ward. The ward retains all powers not granted to the guardian.

Emergency: In an emergency in which significant injury to a prospective ward may occur unless immediate action is taken, the Court may appoint an emergency guardian for 72 hours. The nature of the harm to the ward must be **immediate and significant**.

FEES

A guardian's compensation and attorney's fees are set by Court rule, and must be approved prior to fees being paid.

TERMINATION

A Court order will terminate a guardianship upon the death of a ward, or upon the ward being judged competent.

CONSERVATORSHIP

WHAT IS CONSERVATORSHIP?

A conservatorship is a voluntary trust relationship using guardianship laws and procedures as its basis, in which one party, known as a conservator, acts with Court supervision for a competent, physically-infirm adult, who is called a conservatee.

WHO CHOOSES THE CONSERVATOR?

A conservatorship is based on the consent of the person for whom the conservatorship is to benefit. Thus, the conservatee decides who will serve as conservator, and what property and powers of the conservatee will be included in the conservatorship. In addition, the conservatee decides which of the guardianship duties and procedures the conservator follows and the Court enforces.

WHAT IS THE COURT'S ROLE?

After an application is filed, and the matter heard, the Court will determine if the applicant is infirmed, the application is voluntary and the conservator is suitable. If the application is granted, the Court, while the conservatorship exists, will apply the laws and procedures of Ohio pertaining to guardianship, except those excluded by the conservatee.

HOW IS THE CONSERVATORSHIP TERMINATED?

A Conservatorship is terminated by judicial determination of incompetency, the death of the conservatee, the Order of the Probate Court, or the execution of a written termination notice by the conservatee.

ABOUT THIS PAMPHLET

This publication is designed as service to the public to provide an understanding of the duties and procedures of the Probate Court in Ohio in reference to guardianship. This pamphlet should not be considered as a legal reference.