



## Questions About Guardianship?



### **Why Chose Guardianship?**

When your child turns 18 in the state of Ohio the natural guardianship (the parental rights and control) ends. At that point, parents no longer have the legal ability to make decisions and sign consent forms, and may be excluded from decisions the student makes. If you need to remain decision makers in your child's life, you must go to probate court, and fill out and submit an application for guardianship.

### **Who Needs a Guardian?**

In order for the court to appoint guardianship, two things must be in place:

- Can the person take care of themselves and their property, or are they at risk if left on their own? The person must be incompetent in at least one important area of their life.
- There must be a present need for the guardianship. A person may have significant deficits, but if the support network (family, friends, etc.) is strong enough, guardianship may not be needed. Guardianship can be sought at any point in a person's life.

### **What are the Main Types of Guardianship?**

- ***Guardianship of the Estate:*** This gives financial decisions to the guardian.
- ***Guardianship of the Person:*** Gives the authority to make day-to-day decisions (except financial) of a personal nature. Examples include, food, transportation, clothing, medical, etc.
- ***Guardianship of the Person or Estate (Plenary Guardianship):*** Gives the person nearly all decision-making authority. It also combines guardianship of person and guardianship of estate.
- ***Emergency Guardianship:*** Allows a court to intervene to appoint someone on short notice.
- ***Interim Guardianship:*** Allows a court to appoint a guardian on a temporary or interim basis because the former guardian is no longer available.
- ***Co-Guardianship:*** Two people can be appointed at the same time. They share the responsibilities.
- ***Limited Guardianship:*** This allows probate court to appoint someone as guardian only over the portion of a person's life (such as medical) where he or she is incompetent and has a need. This is the least restrictive form of guardianship.

### **If You Want to File for Guardianship, Where Do You Begin?**

In Butler and Hamilton counties, parents can file for guardianship through county probate court on their own and save attorney expenses. Guardianship is filed in the county the ward (person who needs a guardian) lives. Forms and complete directions can be downloaded at (Butler County) [www.butlercountyprobatecourt.org](http://www.butlercountyprobatecourt.org). (click on forms on the left hand side of page). Completed forms, including a statement of expert evaluation filed by a licensed physician or licensed clinical psychologist (it evaluates the alleged incompetence) must be filed through probate court before a hearing date is set. The ward and family members are notified of the impending guardianship and an investigator assists the court in determining whether a guardianship is needed. The court will hold a hearing to determine if guardianship is necessary, to find if the guardian is suitable and to ensure the guardian understands his or her duties once appointed. These duties include written accounts and reports that must be filed with the courts biennially. The ward has the right to be present at the hearing and to contest any application for guardianship. Guardianship cost varies from \$230 - \$260 (not including doctor/lawyer fees) and the judge can waive fees. Parents also have the option to seek an attorney's advice and have them complete the filing on their behalf. You may want to consider an attorney if you are seeking guardianship of the estate.

There are alternative ways to protect your son or daughter such as a representative payee (if SSI is the only significant income), power of attorney (if competent to make that decision), durable power of attorney for health care, and authorized representative for state and local entitlement programs such as Medicaid. Whether to seek guardianship or not is a personal decision and each families situation is unique. More detailed information is available at <http://ddc.ohio.gov/Pub/GuardianshipRevised.htm>. You may also request a copy of the booklet, Guardianship in Ohio, from the Parent Mentor Office at 420-4620.