

GUARDIANSHIP

The law on guardianship is found at O.R.C. 2111. Any person may apply to be a guardian by making application to the probate court. The applicant must usually be an Ohio resident. The person for whom guardianship is sought must be a county resident.

Although guardianships may be created for minors (O.R.C. 2111.01(A)) and to take care of someone's personal and/or estate affairs (O.R.C. 2111.021), the procedure outlined in this manual will concentrate on the establishment of a guardianship for an **incompetent adult (O.R.C. 2111.01(D))**.

A guardian is a person appointed by the probate court to have the care and management of the person, the estate, or both of an incompetent adult. (O.R.C. 2111.01(A).)

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I. WHAT'S GOING ON WITH THE PERSON?

The person sometimes takes his psychiatric medication and sometimes doesn't. Without the meds, he decompensates. Then, his illness becomes magnified. He doesn't mow his lawn or pay his bills. He shouts at passersby and causes them concern.

The person needs meds for her mental illness but does not meet the requirements of Ohio law for a court to sign an order that she be forced medication. Her family wants the medication forcibly injected. How can the defendant be better and more consistently treated for her illness?

II. ISSUES PRESENTED:

How can this person be better cared for/supervised?

Who can be a guardian?

When is a guardianship needed?

III. RELEVANT STATUTES:

O.R.C. 2111.01(A): The probate court appoints guardians for the purpose of managing the person, the estate, or both of an incompetent person or minor who is a resident in that court's county.

O.R.C. 2111.01(D): An "incompetent" adult is a person so mentally impaired as a result of physical or *mental illness* or disability or *mental retardation* that the person is:

- Incapable of proper care of him/herself or his/her property, or
- fails to provide for his/her family or others for which the person has a duty to provide, or
- is confined to a penal institution within the state.

O.R.C. 2111.03: *Any interested party* may apply to be a guardian.

IV. PROCEDURE TO APPLY FOR GUARDIANSHIP:

An interested party files an application and pays a filing fee with probate court asking to be appointed guardian. The application contains a list of the assets, income and real estate of the person over whom guardianship is sought.

The probate court provides notice of a hearing (O.R.C. 2111.04) and, in Cuyahoga County, a court investigator begins to work on the case. The investigator personally serves the notice to the alleged incompetent person and their next of kin, explains the process and the legal rights of the parties and assesses the incompetent person. The investigator also gathers available medical documentation and makes a recommendation to the court concerning the viability of a guardianship.

At the hearing, the court determines whether the evidence presented proves by *clear and convincing evidence* (O.R.C. 2111.02(C) (3)) that a guardianship is necessary and, if so, whether the applicant is a suitable person to be guardian. An independent medical evaluation may be court ordered (O.R.C. 2111.031).

If appointed, the guardian posts bond (O.R.C. 2109.01). The guardian must provide maintenance – food, clothing, shelter, medical care – for the ward (O.R.C. 2111.13). The guardian must also file periodic inventories with the court (O.R.C. 2111.14).

The guardian may make mental health decisions for the ward (O.R.C. 2111.12).

V. HOW DOES A GUARDIANSHIP OF AN INCOMPETENT PERSON END?

A guardianship may end due to the ward's:

- death
- evidence that an incompetent adult has been restored to competency. This requires medical certification and extensive court investigation before termination.