

GUARDIAN'S HANDBOOK

Judge Kathleen L. Giesler

OTTAWA COUNTY COURT OF COMMON PLEAS
PROBATE DIVISION
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November 2013

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INTRODUCTION

Welcome to CourtWise Guardianship Training! As a potential Guardian or Volunteer, you are important to the Probate Court because you are willing to give of yourself to help another person. You may be here because a loved one needs that help or you may want to share your time, talent and experience by helping another person in our community.

In this manual, you will learn that a guardianship is a legal relationship established by the Probate Court on behalf of an impaired person called the “ward”. The ward can no longer take care of himself or herself, his or her property, or anyone for whom he or she is responsible. In this event, the Probate Court may appoint another person as guardian for the purpose of making decisions in the best interest of the impaired person.

Basically, guardians take care of affairs that the wards can no longer do for themselves. This might be due to a mental impairment resulting from various causes, including but not limited to, substance abuse, developmental disability, and dementia.

A guardian will not only be well informed of the law, but will be well equipped with patience and care. In the following pages, each type of guardianship will be reviewed from the initial decision on needing a guardian, the application process, the steps to becoming a guardian, and the responsibilities of each type of guardianship.

For purposes of this manual, we will refer to the potential ward as “Aunt Alice”.

Let’s begin.....



ADULT GUARDIANSHIPS

THE APPLICATION PROCESS

As a person trying to decide whether Aunt Alice might need a guardian, it must be remembered that people live and act differently from one another. Just because an action may seem strange to you, it might not mean something is wrong.

As a potential guardian, it is extremely important not to rush to judgment or make hasty decisions. Evaluations may take some time in order to determine what is best for Aunt Alice. An assessment by the court investigator will help determine what is in the best interest of Aunt Alice.

Once Aunt Alice has been thoroughly evaluated and it is decided that it would be in her best interest to have a guardian, what is the procedure?



First, you must qualify to be a guardian. The qualifications are:

- **You must be at least 18 years of age**
- **You must be a resident of the State of Ohio**
- **You must be a law-abiding citizen**
- **Potential ward (Aunt Alice) must be a resident of Ottawa County**

If you match all of the legal qualifications to be a guardian, you can complete and application and other forms required by the Ottawa County Probate Court.

What forms must be filed?

Application for Appointment of Guardian of Alleged Incompetent (Form 17.0)

- General information
- Brief explanation why you think Aunt Alice needs a guardian
- The type of guardianship you are seeking
- The value of Aunt Alice's assets and amount of income

Statement of Expert Evaluation (Form 17.1)

- Completed by a licensed physician or clinical psychologist
- Indicates the expert's opinion as to Aunt Alice's condition
- Recommends whether or not a guardianship should be established



Next of Kin (Form 15.0)

- Lists spouse and immediate family
- Includes those persons who would inherit if Aunt Alice should pass away without a will

Waiver of Notice and Consent (Form 15.1)

- If willing, the next of kin waives service or receipt of the application and consents to the applicant being the guardian of Aunt Alice

Release for Record Check (Ottawa County Form 66.1)

- Completed by applicant at the time of filing

**Your application is complete.
Now what do you do?**

You must now file the application and other forms with the probate court in the county where Aunt Alice resides. At the Probate Court, you will:



- File the original and one copy of your application and other forms
- Pay the filing deposit. You can call the Probate Court or check the local rules on the website to determine the amount of the deposit.

What happens once the application is filed?

The Probate Court will review your application, assign a case number, and then schedule a hearing. At least seven (7) days prior to the hearing, the probate court must personally give notice to Aunt Alice and send notice to her spouse and next of kin that an application has been filed and a hearing has been scheduled.

The Probate Court will also send out a Court Investigator to see Aunt Alice. The Court Investigator will meet with her and let her know that you have filed an application to be her Guardian. The Investigator will also evaluate Aunt Alice's situation and advise her of her legal rights.

The Court Investigator will contact you by telephone to conduct a brief 15-20 minute interview.



What are Aunt Alice's legal rights?

Aunt Alice's legal rights include the right to attend the hearing, the right to an attorney, the right to an independent assessment, and the right to disagree with the application.

What will happen at the hearing?



At the hearing, the Probate Judge will hear evidence given by you and anyone else who has filed an application to be appointed Aunt Alice's Guardian. The Probate Judge will then determine from the testimony and other evidence whether or not Aunt Alice is incompetent and in need of a Guardian and who will be appointed as the Guardian.

HEARING

At least seven days after Aunt Alice has been notified of the hearing, the Probate Court will hold a hearing on the application. Remember.... Every person involved should be working towards a positive solution that is in Aunt Alice's best interest.

At the hearing, the Judge will explain the importance of the decision regarding a Guardian for Aunt Alice. The Judge will also explain that it is the applicant's responsibility to prove by clear and convincing evidence that Aunt Alice is incompetent and that a guardianship is the least restrictive alternative for her.

Sometimes there may be more than one applicant, and the Judge will need to decide which applicant is more suitable to be the Guardian.

The evidence that the Judge will review includes the *Statement of Expert Evaluation*, *Court Investigator's Report*, *Guardianship Application*, and testimony from the applicant, Aunt Alice and other interested parties.



In evaluating the applicant, the Judge will look for an appreciation of the responsibilities of guardianship, a willingness to serve, a relationship (if any) with Aunt Alice, and a thoughtful plan for her care.

The following are examples of some of the questions you may be asked at the hearing:

What is your occupation?

Have you ever been convicted of a crime?

What is your relationship to Aunt Alice?

Why did you apply for guardianship?

Can you give an example of Aunt Alice's inability to make appropriate decisions?

Are you aware of the responsibilities of a guardian of the person and/or estate for Aunt Alice?

Aunt Alice's attorney and the Judge may also ask you questions. There may be testimony from Aunt Alice's doctor or from other experts, as well as Aunt Alice's family or close friends who are interested in doing what is best for her. The Judge will ask them their opinions about Aunt Alice, if they think she needs help, and to what extent they feel help should be given. At the end of the hearing, after all the evidence and testimony has been reviewed, the Judge will decide whether or not Aunt Alice is legally incompetent, whether she is in need of a Guardian, and who will be appointed the Guardian.



What happens after the hearing?

After determining that a Guardianship is needed, official papers will be issued that legally appoint you as the Guardian. You will receive a copy of the *Judgment Entry*, which specifically appoints you as Guardian, and the *Letters of Guardianship*, which outlines your duties as Guardian.

When conducting Guardianship business it is important that you always have a certified copy of these documents with you in case your authority is ever questioned.

Can you tell me more about the Letters of Guardianship?

The Letters of Guardianship will also specify whether the guardianship is limited, interim, or an emergency guardianship.

LIMITED GUARDIANSHIP

The Letters of Guardianship may specify that the guardianship is limited to a certain task where Aunt Alice needs help. For example, Aunt Alice may need assistance in choosing a nursing home. As soon as you assist Aunt Alice in choosing a nursing home, your authority will end.

It is important for you to realize that your decision-making powers are limited to the area and time specified by the Probate Court. Aunt Alice is still allowed to make all other decisions on her own behalf.

INTERIM GUARDIANSHIP

An Interim Guardian is appointed when immediate action is needed to replace an existing Guardian because the Guardian resigns, is removed by the Probate Court, or is unable to continue for some other reason.

The Interim Guardianship will only be for a maximum of 15 days but may be extended for an additional 30 days. Aunt Alice must be notified of this appointment as soon as possible. If the 30-day extension is requested, the Court will notify Aunt Alice and her next of kin, and a hearing will be held on whether or not to extend the guardianship.

EMERGENCY GUARDIANSHIP



An Emergency Guardianship is a bit different from other guardianships because immediate action is required. If it appears that an emergency exists, the Judge may appoint an Emergency Guardian without notice or hearing. However, written notice of the appointment must be given to Aunt Alice as soon as possible.

What is considered an emergency?

An Emergency Guardian is appointed if Aunt Alice is incompetent and in immediate danger of significant injury. An example would be if Aunt Alice is unconscious and another person is needed to make medical decisions on her behalf. A Guardian is appointed in this type of emergency for the sole purpose of consenting to medical treatment.

An emergency can also exist if Aunt Alice's assets are threatened. An Emergency Guardian may be put in place to protect her assets.

How long does it last?

The Emergency Guardianship is only for 72 hours. If necessary, however, the Court may extend the Emergency Guardianship for up to an additional 30 days after giving notice to Aunt Alice and holding a hearing.



Will Aunt Alice's family be involved?

Because of the necessity for the Probate Court to act quickly, Aunt Alice and her next of kin may not be contacted until after the appointment.

Does the Emergency Guardian get official papers from the Court?

Yes. The Emergency Guardian is given a Judgment Entry and Letters of Guardianship just like all other Guardians. However, the Letters of Guardianship only empower the Emergency Guardian to act to prevent further injury to Aunt Alice or her property.

DUTIES OF THE GUARDIAN OF THE PERSON

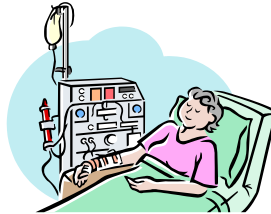
When you have your *Letters of Guardianship* of the Person for Aunt Alice, what will be your specific duties?

As Aunt Alice's Guardian of the Person, you will be responsible for taking care of her daily needs.

You will have to make sure that she is in a safe environment and that she has what she needs to take care of herself on a daily basis. If Aunt Alice chooses to live on her own, you will have to make sure that it is safe for her to do so and, if not, make arrangements to have her live at a facility capable of meeting her needs.

Food, clothing, medical care and transportation are examples of daily needs for which Aunt Alice may need your help. It sounds like a lot, and it is! That is why you should make a special Care Plan for Aunt Alice. This plan should outline what you need to do for her throughout the week to ensure she gets what she needs. It will also help to keep you organized. A Care Plan will help save both you and Aunt Alice a lot of stress!

What authority do you have if Aunt Alice needs medical care?



You will be authorized to approve medical, health, or other professional care for her. Your decisions should not conflict with any advance directive for health care previously signed by Aunt Alice.

One type of advanced directive is a Living Will. It is a document written and signed by Aunt Alice stating whether she wishes to be kept alive by artificial means and/or whether she wishes to be resuscitated if she were in a life-threatening medical state.

A second type of advanced directive is the Durable Power of Attorney. This is when Aunt Alice has appointed, in writing, another person to make medical decisions for her in case she cannot communicate them herself. If Aunt Alice has either of these, the Guardian should bring this to the attention of the Probate Court.

You will also need to establish whether or not Aunt Alice has health insurance.

Also, you may sign her up for Medicare and Medicaid if she is qualified. You can contact the local Department of Job and Family Services or Area Office on Aging for assistance.

Remember.... When conducting guardianship business, it is important that you always keep a certified copy of your *Letters of Guardianship* with you in case your authority is ever questioned. Some institutions may want a copy of the Letters for their files.

Can you use Aunt Alice's checkbook or charge card to get the things she may need?



No. You will need to go to the person responsible for taking care of Aunt Alice's finances. This would be Aunt Alice's Guardian of her Estate. You must let her Guardian of Estate know that you need money in order to purchase the things that Aunt Alice needs. The Guardian of the Estate will then seek court approval of your request. If approved, the Guardian will provide you with the funds to make the necessary purchases. Be sure to return to him/her all receipts from the purchases. This will enable the Guardian of Estate to account for Aunt Alice's expenses and protect her assets from inappropriate use. Also, the Guardian of the Estate will have to account to the Probate Court for these expenses. Sometimes the Probate Court will appoint the same person as the Guardian of the Person and Estate.

What more will you have to do at the Probate Court after you are appointed Guardian?



It is very important to the Probate Court to monitor Aunt Alice's care. You will be required to file a yearly *Guardian's Report* and *Statement of Expert Evaluation* with the Court. These reports will let the Court know how Aunt Alice is doing.

The *Guardian's Report* informs the Probate Court of Aunt Alice's physical and mental wellbeing. The filing of this report also tells the Court if you are successfully meeting your responsibilities as Aunt Alice's Guardian.

The *Statement of Expert Evaluation* is a report that informs the Probate Court of the current status of Aunt Alice's physical and mental wellbeing as reported by a licensed physical or other qualified expert.

QUICK REVIEW: GUARDIANSHIP OF THE PERSON

Here is a quick review of what you will need to do as the Guardian of the Person for Aunt Alice.



You must determine if Aunt Alice needs a Guardian and then check to see if you meet the qualifications to be her Guardian.



To begin the guardianship process, you must file the following forms at the Probate Court in the county where Aunt Alice lives:

- *Application for Appointment of Guardian of Alleged Incompetent (17.0)*
- *Next of Kin Form (15.0)*
- *Waiver of Notice and Consent Form (15.1)*
- *Statement of Expert Evaluation (17.1)*
- *Statement of Permanent Address (Ottawa County form)*



At the hearing, the Probate Judge will determine if you can serve as Aunt Alice's Guardian. If you are appointed, you will be given the following documents:

- *Judgment Entry (17.5)*
- *Letters of Guardianship (15.4)*

These documents will briefly outline your duties as Aunt Alice's Guardian.



As her Guardian, you will take care of her daily needs including decisions on her medical care. You will not be responsible for her assets.



The two reports you will be required to file annually with the Court are:

- *Guardian's Report (17.7)*
- *Statement of Expert Evaluation (17.1)*

DUTIES OF THE GUARDIAN OF THE ESTATE



When you have your Letters of Guardianship of the Estate for Aunt Alice, what will be your specific duties?

As Aunt Alice's Guardian of the Estate, you will be in charge of managing Aunt Alice's assets. You will have to pay her debts and use her funds to buy those goods and services that are necessary for her care.

Aunt Alice or her Guardian of the Person will let you know what she needs. Sometimes one person will be appointed as both the Guardian of the Person and the Estate.

Why do you have to obtain a bond?

A bond protects Aunt Alice from any harm that may result from the mismanagement of her funds. Bonds are enforced only when a Guardian acts wrongfully or irresponsibly. If you act responsibly and carry out your duties as required by the Probate Court, you will not have to worry about the bond being enforced.



How does a bond work?

If you have a bond, you pay a bonding company a certain amount, periodically, to "bond" you. The cost of the bond is paid out of Aunt Alice's estate. If you would wrongly or irresponsibly mishandle Aunt Alice's assets, the bonding company would reimburse the amount of the loss to Aunt Alice's estate. The bonding company could then pursue you to recover the amount that they paid to Aunt Alice's estate. The amount of the bond is usually two times the amount of Aunt Alice's personal assets.

How do you get access to Aunt Alice's money?

You will need to file an **Application to Release Funds** with the Probate Court which, when approved, will enable you to transfer funds from Aunt Alice's bank account into a special bank account called a Guardianship Account. The Guardianship Account is used for the sole purpose of receiving funds and paying Aunt Alice's expenses.



Does the money you spend from the Guardianship Account have to be approved by the Probate Court?

Yes! You will need to fill out a form at the Probate Court called an **Application for Authority to Expend Funds**. On this form, you will list the needs of Aunt Alice and how much they will cost. If the Court approves the expenses, you will be allowed to write checks from that account in order to pay her bills.

Remember to consult with your attorney if you need assistance.



Is there an easy way of doing the expenses?

It would be wise to make a monthly budget of Aunt Alice's regular expenses and submit this to the Court on the *Application for Authority to Expend Funds* form. Don't forget! You will be accountable for all the expenses that you pay. So, it is extremely important to keep all receipt and copies of cancelled checks.

When on Guardianship business, it is important that you keep a certified copy of your *Letters of Guardianship* with you in case someone questions your authority. Some financial institutions may want a copy of the Letters for their files.



What reports will you have to file with the Court?

There are two important reports. You will have to file a **Guardian's Inventory** form of Aunt Alice's assets within three months of your appointment. On the Inventory, you will have to include such assets as all bank accounts, investment accounts, stocks, bonds, notes, life insurance policies, real estate, cash, vehicles, antiques and other real or personal property owned by Aunt Alice. You will also need to include an accounting of all incoming money to Aunt Alice's estate, such as pension checks and Social Security checks.

One year after your appointment, the Probate Court will also want to see your **Guardian's Report** and your **Guardian's Account**, and then yearly thereafter. The account will be similar to your checkbook ledger showing all receipts and disbursements.

What else will you have to do as Aunt Alice's Guardian of the Estate?

You will have to handle all of Aunt Alice's financial affairs, including but not limited to, investing her money, liquidating her assets, and filing her taxes.

QUICK REVIEW: GUARDIANSHIP OF THE ESTATE

Here is a quick review of what you need to do as the Guardian of the Estate for Aunt Alice.

✓ You must first determine if Aunt Alice needs a Guardian and then check to see if you meet the qualifications to be her Guardian.

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- *Judgment Entry (17.5)*
- *Letters of Guardianship (15.4)*

These documents will briefly outline your duties as Aunt Alice's Guardian. You will be in charge of overseeing Aunt Alice's assets as well as paying her debts and expenses. You will also need to obtain a bond to protect Aunt Alice's assets in case of the mismanagement of her funds.



The forms that you will need to submit to the Probate Court in order to access Aunt Alice's assets are:

- *Application to Release Funds (15.6)*
- *Application for Authority to Expend Funds (15.7)*



The reports you will be required to file with the Court are:

- *Guardian's Inventory (15.5)*
- an annual *Guardian's Report (17.7)*
- an annual *Guardian's Account (15.8)*



It may seem complicated, but it will get easier as you go along. Always remember that the Ottawa County Probate Court is not only there for Aunt Alice, but for you too!

DUTIES OF THE GUARDIAN OF THE PERSON AND ESTATE

When you have your *Letters of Guardianship* of the Person and Estate for Aunt Alice, what will be your specific duties?

As Guardian of Aunt Alice's person, you will be responsible for taking care of her daily needs. As Guardian of her estate, you will also be in charge of her financial affairs. Let us first answer some questions about the responsibilities as Aunt Alice's Guardian of the person.

What exactly does "taking care of Aunt Alice's daily needs" mean?

It means that you have to make sure that she is in a safe environment, and that she has what she needs to take care of herself on a daily basis. If Aunt Alice chooses to live on her own, you will have to make sure that it is safe for her to do so, and if not, make arrangements to have her live at a facility capable of meeting her needs.

Food, clothing, medical care and transportation are examples of daily needs for which Aunt Alice may need your help. It sounds like a lot, and it is! That is why you should make a special Care Plan for Aunt Alice. This plan should outline what you need to do for her throughout the week to ensure she gets what she needs and will help keep you organized. A Care Plan will help save you and Aunt Alice a lot of stress.

What authority do you have if Aunt Alice needs medical care?



You will be authorized to approve medical, health, or other professional care for her. Your decision should not conflict with any advance directive for health care previously signed by Aunt Alice.

One type of advanced directive is a Living Will. It would state, in writing by Aunt Alice, if she wished to be kept alive by artificial means and/or whether she wishes to be resuscitated if she were in a life-threatening medical state.

A second type of advanced directive is the Durable Power of Attorney. This is when Aunt Alice has appointed, in writing, another person to make medical decisions for her in case she cannot communicate them herself. If Aunt Alice has either of these, the Guardian should bring this to the attention of the Probate Court.

You will also need to establish whether or not Aunt Alice has health insurance. If she is qualified, you will want to sign her up for Medicare or Medicaid. You can contact the Ottawa County Department of Job and Family Services or the Area Office on Aging of Northwestern Ohio for assistance.

Remember! When conducting Guardianship business, it is important that you keep a certified copy of your *Letters of Guardianship* with you in case your authority is ever questioned. Some institutions may even want a copy of the Letters for their files.

**Aunt Alice would like to go to church.
Should you take her?**

If you cannot take her yourself, it would be nice if you would try to make arrangements for someone else to do so. The Ottawa County Probate Court is in the process of creating a Volunteer Guardian Program that may be able to help you. Please call Jennifer Simpson, Coordinator, at 419-734-6830 for further information.



**Now let us answer questions about responsibilities as
Aunt Alice's Guardian of the estate.**

As the Guardian of her estate, you will have the added responsibility of taking care of Aunt Alice's financial affairs such as paying her legitimate debts and using her funds to buy what is necessary for her care. You will also have to file her taxes, and you may need to invest her money and liquidate her assets.

Why do you have to obtain a bond?

A bond protects Aunt Alice from any harm that may result from the mismanagement of her funds. Bonds are enforced only when a Guardian acts wrongfully or irresponsibly. If you act responsibly and carry out your duties as required by the Probate Court, you will not have to worry about the bond being enforced.



How does a bond work?

If you have a bond, you periodically pay a bonding company a certain amount to “bond” you. The cost of the bond is paid out of Aunt Alice’s estate. If you would wrongly or irresponsibly mishandle Aunt Alice’s assets, the bonding company would reimburse the amount of the loss to Aunt Alice’s estate. The bonding company could then pursue you to recover the amount that they paid to Aunt Alice’s estate. The amount of the bond is usually two times the amount of Aunt Alice’s personal assets.

How do you get access to Aunt Alice’s money?

You will need to file an **Application to Release Funds** with the Probate Court which, when approved, will enable you to transfer funds from Aunt Alice’s bank account into a special bank account called a Guardianship Account. The Guardianship Account is used for the sole purpose of receiving funds and paying Aunt Alice’s expenses.



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Is there an easy way of doing the expenses?

It would be wise to make a monthly budget of Aunt Alice's regular expenses and submit this to the Court on the *Application for Authority to Expend Funds* form. Don't forget! You will be accountable for all the expenses that you pay. So, it is extremely important to keep all receipts and copies of cancelled checks as well as bank statements.

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What reports will you have to file with the Court?

There are four important reports. You will have to file a **Guardian's Inventory** form of Aunt Alice's assets within three months of your appointment. On the Inventory, you will have to include all of her real estate and personal property, as well as an accounting of all incoming money to Aunt Alice's estate, such as pension checks and Social Security checks.

One year after your appointment, the Probate Court will also want to see your **Guardian's Account**, and then yearly thereafter. The account will be similar to your checkbook ledger showing all receipts and disbursements.

You will also be required to file a yearly **Guardian's Report** and **Statement of Expert Evaluation**. The *Guardian's Report* informs the Probate Court of Aunt Alice's physical and mental well-being. The filing of this report also tells the Court if you are successfully meeting your responsibilities as Aunt Alice's Guardian. The *Statement of Expert Evaluation* is a report that informs the Court of the current status of Aunt Alice's physical and mental well-being as reported by a licensed physician or other qualified expert.

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