

What Are the Residency Requirements for Ohio Guardians?

At some point in our lives, many of us will know a minor or an adult who may need a guardian because of age or disability. When considering who might serve as guardian, it is important to understand Ohio's residency requirements.

Q: If I want to serve as a guardian for an Ohio resident, must I also live in Ohio?

A: Generally, yes. This general rule recognizes that it is harder to be effective as a guardian if you live far from your ward (that is, the person being served through the guardianship).

Q: I live in New York, and my brother, who is an Ohio resident, wants to name me as guardian for his young children. Is this possible?

A: Yes. There are exceptions to the general rule for (1) parents who name guardians for their children (such as minor children or adult children who are incompetent), or (2) individuals who name guardians for themselves. Parents and individuals can nominate a guardian in a durable power of attorney document, or in another written document, including a will, that meets certain specific legal requirements.

Q: Why does Ohio law allow these exceptions?

A: Ohio law respects the right of parents to choose a guardian for their children who are unable to take care of themselves, no matter where the guardian lives. Ohio law also respects the right of a competent adult to choose his or her own guardian in the event that such care becomes necessary. In addition, the law allows a minor over the age of 14 to select his or her own guardian, even if that guardian lives in another county or state.

Q: Does Ohio law also have a general rule about requiring a guardian to live in the same county as the ward?

A: Yes. However, because our society is increasingly mobile, there are many exceptions to that rule. Courts are given much more freedom to appoint a guardian who is not a county resident as long as the guardian is a resident of the state.

Q: I agreed to serve as a guardian for an Ohio resident, but now I have to move out of the state. Will the court remove me as guardian and appoint an Ohio resident instead?

A: While the law does not require a court to remove a guardian who is no longer a resident of the state, the court may do so if such a change is determined to be in the ward's best interest.

Q: I am not an Ohio resident, but I would like to apply to be appointed as guardian of someone who lives in Ohio. Can I do this?

A: No, not unless you have been nominated under one of the exceptions described above.

Q: I live in Ohio, and would like to serve as a guardian for a friend who is also an Ohio

resident. Do I need some official authority to do this?

A: Yes. Parents are considered to be the natural guardians of their minor children, but all other guardians must be appointed by a probate court. Letters of Guardianship are the official badge of authority for the guardian.

Q: What can be done if a guardianship is challenged because a named guardian lives out of the state or county?

A: Parents of minors and aging individuals can name a local person to serve alternately as co-guardian with a named guardian who lives outside the jurisdiction of the local courts. If there are no local relatives, friends or support persons who qualify, the alternate co-guardian can be a local attorney.

5/4/2010

This "Law You Can Use" consumer legal information column was provided by the Ohio State Bar Association (OSBA). It was prepared by David A. Zwyer, an attorney currently serving of counsel with the Columbus firm of Kincaid, Randall & Craine.

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