



## Ohio Revised Code

### Section 2111.50 Probate court is superior guardian of wards.

Effective: August 17, 2021

Legislation: House Bill 7

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(A)(1) At all times, the probate court is the superior guardian of wards who are subject to its jurisdiction, and all guardians who are subject to the jurisdiction of the court shall obey all orders of the court that concern their wards or guardianships.

(2)(a) Subject to divisions (A)(2)(b) and (c) of this section, the control of a guardian over the person, the estate, or both of the guardian's ward is limited to the authority that is granted to the guardian by the Revised Code, relevant decisions of the courts of this state, and orders or rules of the probate court.

(b) Except for the powers specified in division (E) of this section and unless otherwise provided in or inconsistent with another section of the Revised Code, the probate court may confer upon a guardian any power that this section grants to the probate court in connection with wards. Nothing in this section is intended to create or imply a duty upon a guardian to apply for authority to exercise any power authorized in this section. No inference of impropriety or liability of the guardian or others associated with the guardian shall arise as a result of a guardian not applying for authority to exercise a power authorized in this section.

(c) For good cause shown, the probate court may limit or deny, by order or rule, any power that is granted to a guardian by a section of the Revised Code or relevant decisions of the courts of this state.

(B) In connection with any person whom the probate court has found to be an incompetent or a minor subject to guardianship and for whom the court has appointed a guardian, the court has, subject to divisions (C) to (E) of this section, all the powers that relate to the person and estate of the ward and that the ward could exercise if present and not a minor or under a disability, except the power to make or revoke a will. These powers include, but are not limited to, the power to do any of the following:



- (1) Convey, release, or disclaim the present, contingent, or expectant interests in real or personal property of the ward, including, but not limited to, dower and any right of survivorship incident to a transfer on death designation, payable on death designation, survivorship tenancy, joint tenancy, or tenancy by the entireties;
  - (2) Exercise, release, or disclaim powers as a trustee, personal representative, custodian for a minor, guardian, or donee of a power of appointment;
  - (3) Subject to division (B)(4) of this section, enter into contracts that may not extend beyond the minority, disability, or life of the ward;
  - (4) Create, amend, or revoke revocable trusts of property of the estate of the ward that may extend beyond the minority, disability, or life of the ward;
  - (5) Exercise options to purchase securities or other property;
  - (6) Exercise rights to elect options under annuities and insurance policies, including changing beneficiaries of insurance policies, retirement plans, individual retirement accounts, and annuities, and to surrender an annuity or insurance policy for its cash value;
  - (7) Exercise the right to an elective share in the estate of the deceased spouse of the ward pursuant to Chapter 2106. of the Revised Code;
  - (8) Make gifts, in trust or otherwise, to relatives of the ward and, consistent with any prior pattern of the ward of giving to charities or of providing support for friends, to charities and friends of the ward.
- (C) Except for the powers specified in division (D) of this section, all powers of the probate court that are specified in this chapter and that relate either to any person whom it has found to be an incompetent or a minor subject to guardianship and for whom it has appointed a guardian and all powers of a guardian that relate to the guardian's ward or guardianship as described in division (A)(2) of this section, shall be exercised in the best interest, as determined in the court's or guardian's judgment, of the following:



(1) The ward whom the probate court has found to be an incompetent or a minor subject to guardianship;

(2) The dependents of the ward;

(3) The members of the household of the ward.

(D) If the court is to exercise or direct the exercise, pursuant to division (B) of this section, of the power to make gifts in trust or otherwise, the following conditions shall apply:

(1) The exercise of the particular power shall not impair the financial ability of the estate of the ward whom the probate court has found to be an incompetent or a minor subject to guardianship and for whom the court has appointed a guardian, to provide for the ward's foreseeable needs for maintenance and care;

(2) If applicable, the court shall consider any of the following:

(a) The estate, income, and other tax advantages of the exercise of a particular power to the estate of a ward whom the probate court has found to be an incompetent or a minor subject to guardianship and for whom the court has appointed a guardian;

(b) Any pattern of giving of, or any pattern of support provided by, the ward prior to the ward's incompetence;

(c) The disposition of property made by the ward's will or revocable trust;

(d) If there is no knowledge of a will or revocable trust of the ward, the ward's prospective heirs;

(e) Any relevant and trustworthy statements of the ward, whether established by hearsay or other evidence.

(E)(1) The probate court shall cause notice as described in division (E)(2) of this section to be given



and a hearing to be conducted prior to its exercise or direction of the exercise of any of the following powers pursuant to division (B) of this section:

- (a) The exercise, release, or disclaimer of powers as a donee of a power of appointment;
  - (b) Unless the amount of the gift is no more than one thousand dollars, the making of a gift, in trust or otherwise;
  - (c) The power to create, amend, or revoke a revocable trust as described in division (B)(4) of this section;
  - (d) The power to exercise rights to elect options under annuities and insurance policies, including changing beneficiaries of insurance policies, retirement plans, individual retirement accounts, and annuities, and to surrender an annuity or insurance policy for its cash value, as described in division (B)(6) of this section.
- (2) The notice required by division (E)(1) of this section shall be given to the following persons:
- (a) Unless a guardian of a ward has applied for the exercise of a power specified in division (E)(1) of this section, to the guardian;
  - (b) To the ward whom the probate court has found to be an incompetent or a minor subject to guardianship;
  - (c) If known, to a guardian who applied for the exercise of a power specified in division (E)(1) of this section, to the prospective heirs of the ward whom the probate court has found to be an incompetent or a minor subject to guardianship under section 2105.06 of the Revised Code, to the beneficiaries under the last known will of the ward or under an existing revocable trust of the ward, and to any person who has a legal interest in property that may be divested or limited as the result of the exercise of a power specified in division (E)(1) of this section;
  - (d) To all of the following as applicable:



- (i) The heirs at law and next of kin of the ward;
  - (ii) The beneficiaries under an existing will or revocable trust of the ward;
  - (iii) The beneficiaries of any insurance policies, retirement plans, individual retirement accounts, and annuities owned by the ward;
  - (iv) The beneficiaries under any proposed revocable trust and the proposed beneficiaries under any changes in the designation of beneficiaries of any insurance policies, retirement plans, individual retirement accounts, or annuities as described in division (E)(2)(d)(iii) of this section.
  - (e) To any other persons the court orders.
- (F) When considering any question related to, and issuing orders for, medical or surgical care or treatment of incompetents or minors subject to guardianship, the probate court has full *parens patriae* powers unless otherwise provided by a section of the Revised Code.