

# INSTRUCTIONS FOR EMERGENCY GUARDIANSHIP

These forms are being provided as a public service of the Tuscarawas County Probate Court, and are intended as a guideline only, not as a comprehensive list of duties. If you choose to represent yourself and use these forms, please be advised that state law prohibits the staff of Tuscarawas County Probate Court from providing legal advice.

If an allegedly incompetent person is not currently under guardianship and if an emergency exists, and if it is reasonably certain that immediate action is required to prevent significant injury to the person or estate of the allegedly incompetent person, then an interested person can apply to be appointed Emergency Guardian of the Person, Emergency Guardian of the Estate or Emergency Guardian of the Person and Estate of the alleged incompetent person.

The powers of an emergency guardian will be specified by the Court on the Order Granting Emergency Guardianship (Form 17.8 EM) and shall be limited to those powers that are necessary to prevent significant injury to the person or estate of the allegedly incompetent person. If the emergency guardian is appointed, the appointment is valid for **72** hours. At the emergency hearing, the Court will set a date and time within 72 hours to have a second hearing. At the second hearing, the Court will determine whether the emergency guardianship should continue for **30** more days.

In all cases, the **emergency guardian** must establish that he/she has given the ward a copy of his /her appointment as emergency guardian, indicating the guardian's authority, and any notice of hearing for determination whether the emergency guardianship is to continue. Documents should be handed to the ward personally unless the ward's condition prevents a receipt of the notice, in which case copies of the appointment and notice may be served by leaving them at bedside and/or with direct caretakers.

If the ward is hospitalized, notice of the action granting emergency guardianship and the hearing to continue the guardianship for **30** days (the second hearing) must be served upon the ward personally by the emergency guardian, his/her attorney, or hospital personnel. The Probate Court will serve notice to all interested parties prior to the second hearing. Therefore it is necessary for the attorney or applicant to complete the Instructions for Service (**Form TC-SVC**) and have it available at the time of the initial appointment of the Emergency Guardian.

If the guardianship will be needed for more than 30 days, the applicant must file for a full guardianship prior to the expiration of the emergency guardianship. This filing should be done as soon as possible because the emergency guardianship **cannot** be extended beyond the **30** day period.

A filing fee of **\$275** is required at the time of filing and can be paid by check, cash or money order. Please confirm the filing fee with the clerk at the time of filing as the filing fees can change. An exception applies in the case of indigency.

The forms may be obtained from the Probate Court in Room 103 on the 2<sup>nd</sup> floor of the Tuscarawas County Courthouse, 101 E. High Avenue, New Philadelphia, OH or by downloading forms from the website listed below:

<http://www.co.tuscarawas.oh.us/Probate/Forms.htm>

## PROCEDURAL STEPS

<b>STEP 1: Complete the following forms for the Initial Filing:</b>
<b>TC 17.0 EM – Application for Appointment of Emergency Guardianship</b> <input type="checkbox"/> Complete the form and make sure that the Present Location of the prospective ward is accurate in order to obtain service.
<b>17.1 – Statement of Expert Evaluation</b> <input type="checkbox"/> Form <b>must</b> be completed by a Licensed Physician or a Licensed Clinical Psychologist. <b>OR</b> <b>TC 17.2 – Notice of Ward’s Refusal</b> <input type="checkbox"/> Form, which notifies the Court that the prospective ward refuses to submit to an expert evaluation, must be completed and signed by the applicant. The Court will question the applicant about this refusal.
<b>17.1 A – Supplement for Emergency Guardian of Person</b> <input type="checkbox"/> Form <b>must</b> be completed by a Licensed Physician.
<b>TC-SVC – Instructions for Service</b> <input type="checkbox"/> Complete form with name and address of any parties that need to be served with notice of the hearing to extend the Emergency Guardianship. <input type="checkbox"/> Attorney or Applicant will serve notice on the prospective ward <b>before</b> the 72 hour hearing. <input type="checkbox"/> The probate court will serve notice on other designated people via the method requested.

**STEP 2: Filing of forms and setting of hearing date:**

When all forms have been completed, present them to them to the Probate Court – 101 E. High Avenue - Room 103, New Philadelphia, OH 44663, along with the filing fee of **\$275.00**. All forms (originals) will be reviewed by the guardianship clerk and the emergency hearing date will be set. If the attorney or applicant wants a copy of the documents for his/her records, a copy must be provided. Sometimes the emergency hearing is held the same day the applicant files.

**Step 3: The Initial Hearing:**

At the hearing, the Court, based on the documents filed and any additional testimony, will determine whether an emergency guardian should be appointed. If so, a second hearing will be scheduled within 72 hours so the Court can decide whether the Emergency Guardianship should continue for an additional 30 days.

The clerk will give the emergency guardian certified copies of the Order Granting the Emergency Guardianship (Form TC – 17.8 EM).

The attorney or applicant must provide a copy of this Order and a copy of the Notice of Hearing (Form TC – 18.0 EM) to the incompetent person before the 72-hour hearing.

**Step 4: Hearing to Extend Guardianship for 30 days:**

The Court will hold a second hearing to determine whether the Emergency Guardianship should continue for 30 more days. If so, the clerk will give the attorney and or applicant certified copies of Order Continuing Emergency Guardianship (Form TC – 17.9 EM).

The Emergency Guardianship cannot be extended beyond the 30 days, so the process for filing for a full guardianship should be started immediately if needed.