

HANDBOOK FOR GUARDIANS

(Revised April 2019)



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INTRODUCTION FROM THE COURT

You have been appointed by the Probate Court as a guardian of or for another person. The person for whom you are guardian is referred to in the law and in this handbook as the ward. The proceedings in the Court, as well as the property over which you serve as guardian, are referred to as the guardianship.

This handbook has been designed as a helpful reference. It will briefly cover the general information about guardianships with which you are expected by the Court to become familiar. It will also provide certain information about the reporting requirements placed upon you by Florida law. It is prepared in what is hoped to be easily understood language, with as few “legal terms” as possible.

This handbook is not intended to be a complete or exhaustive restatement of the many laws governing guardianships in Florida, nor is it intended to take the place of legal advice from your attorney. It is also not intended as a substitute for the required training course. It is hoped that the information will provide you with the basic understanding necessary for you to comply with the legal requirements and limitations placed upon you, thereby avoiding problems or difficulties with the court. However, the court encourages you to confer with your attorney whenever you have questions or concerns about your obligations, responsibilities, duties, authority or liability, and, whenever possible, you should consult with your attorney before taking any action about which you are concerned.

It is important for you to understand the relationship between you and the court and its staff. Each judge of the probate court is an elected public official, a “public servant,” but one with specific responsibilities. The judge is not your legal advisor. The law requires the judge to remain impartial, and there is a specific rule against the judge discussing any aspect of any case which is or may become contested with any party to the case unless all interested parties are present. Therefore, you should not attempt to contact the judge to privately discuss your case, and you should not be offended if you are informed that the judge cannot discuss the matter with you outside a hearing.

The Judge’s staff members are employees of the Court who work for and at the direction of the Judge. It is their responsibility to process the volume of paperwork filed in the office and to attend to the administrative aspects of the operations of this office. However, they may not serve as your legal advisors, and you should not expect them to

perform legal or clerical services for you. It is not their responsibility or duty to complete any paperwork for you, and it is not their responsibility to make legal determinations or advise you on which proceeding may be the most appropriate or advisable for you or your circumstances.

You should understand that it is the responsibility of the judge and staff of the court to enforce all of the requirements of the guardianship laws and the rules of the court upon every guardian. You have taken an oath as guardian to fulfill certain responsibilities, including properly administering the guardianship and complying with all applicable laws and rules. The judge has also taken an oath to enforce the laws and to fulfill his/her responsibilities, and the judge will seek to do so. The judge did not and does not make the laws but has the duty to enforce and interpret them. The judge and court staff understand that serving as a guardian for another person is not always an easy task. Serving as a guardian is often a burden upon the guardian, and it is not the intent or desire of the court to make that burden any greater.

Finally, please understand that the Court monitors guardianships in addition to the many other Probate Court proceedings. The Judge and staff do try to maintain a certain familiarity with the Court files and they often become very familiar with some files. However, everyone is best served when there is certainty about the subject of discussion. It will always be best for you to clearly identify yourself, the ward and the file (by Case Number) in any conversation or correspondence with the Court. It may become necessary for the Judge or staff member to pull the particular file for review to properly and fully discuss the file, and you might be asked to provide some information to “refresh the memory” of the Judge or staff when referring to earlier conversations with or correspondence from the Court. The Court appreciates your willingness to serve in this capacity and looks forward to working with you for the benefit of the ward. Additionally, you may wish to visit the Circuit’s website at www.17th.flcourts.org for more information.

GENERAL INFORMATION AND INSTRUCTIONS

Guardianship is a legal relationship between the guardian and the ward, much like that of an agent or attorney-in-fact, which is created by order of a court with proper jurisdiction. In Florida, the probate courts have exclusive jurisdiction over the appointment of guardians for minors and incapacitated adults.

Guardianship may be created for the person of the ward, for the property of the ward or for both. Guardianship of the person of a minor child does differ from custody of a minor child. A probate court is without authority to grant guardianship of the person of a minor child with a living parent to anyone other than the parent(s) without the consent of or notice to each living parent. The guardian of the person need not be the same person as the guardian of the property, although one person may certainly serve as both. There may be two or more guardians, who would be referred to as co-guardians.

When an order has been issued appointing a guardian, letters of guardianship are issued by the court to the person appointed. The letters of guardianship serve as evidence that the guardian has authority over the person or property (or both) of the ward. Prior to letters of guardianship being issued, the guardian is required to take and sign an oath that the guardian will comply with all of the requirements of Florida law applicable to guardians.

In addition, every guardian of the property of another is required to post a surety bond with the court, in such amount as may be set by the court, to secure the faithful performance of the guardian's duties and responsibilities. The bond is, in effect, an insurance policy against any misappropriation or mismanagement of the ward's property by the guardian.

A guardian of the person or property of another owes a duty of undivided loyalty to the ward and must act in the best interests of the ward and the ward's property. Guardians should always avoid even the appearance of a conflict of interest in management of the ward's property and/or in decisions about the ward's person. Additionally, any expenditure that appears to or actually benefits another, especially the guardian, more than the ward, will be subject to scrutiny by the court.

GUARDIANS OF THE PERSON

A guardian of the person of another has those rights and powers reasonably necessary to provide adequately for the support, care, education and well-being of the ward. A guardian of the person is much like the parent of a child who has both the authority and the responsibility of making decisions for the child. This may mean that a guardian must make a decision which is considered to be in the ward's best interest even if the ward voices an objection, much like a parent requiring a child to attend school or receive

medical treatment. It is also the guardian's duty to assist the ward in improving and developing any talents, skills or abilities the ward may have, and to help the ward gain and maintain self-confidence and as much independence as may be appropriate to each circumstance. It is also the guardian's responsibility to preserve and protect the dignity of the ward.

A guardian of the person is entitled to custody of the ward and may establish the ward's residence, consistent with the terms of any order from the Court. The guardian is required to make arrangements, from funds available from the ward's estate or other sources, to support the ward in the least restrictive environment, according to the needs and resources of the ward. The guardian may also participate in legal proceedings in the name of the ward and for the ward's benefit. A guardian: (1) must be reasonably accessible to and maintain regular contact with the ward; (2) should be friendly, courteous and tactful toward the ward at all times; and (3) must respect and protect the individual rights and dignity of the ward. The Court's order may limit or remove from the ward certain rights or may reserve to the ward certain rights, and the authority of the guardian will be governed by the Court's order.

Guardians of the person are required to file with the court written reports on the ward's general condition, living circumstances, progress and development, and needs. These reports are called Annual Plans and are covered more fully under the section titled REPORTING REQUIREMENTS. It is also the guardian's responsibility to keep the court fully informed on the whereabouts of the guardian and the ward, and ***the guardian must immediately report to the Court (through his/her attorney) any change in the address and telephone number of the guardian and/or the ward.*** A guardian is not permitted to change the residence of the ward from Florida to another state, or from Broward County to a non-adjacent county, without prior Court approval. If a guardian changes the ward's residence from Broward County to an adjacent county (Miami-Dade, Palm Beach, Collier, Hendry), the guardian shall notify the Court within fifteen (15) days of such relocation.

GUARDIANS OF THE PROPERTY

A guardian of the property of another has the duty to exercise ordinary diligence in dealing with the ward's property and may be held liable for any loss resulting from a lack of diligence. A guardian of the property has the duty to collect and preserve the assets of the ward. Except as limited by law or the Court's order, a guardian of the

property has control and authority over all property (real, personal and intangible) of the ward.

All funds and property of the ward must be maintained, preserved, expended, and used for the benefit of the ward and those who may be legally dependent upon the ward. The ward's estate should be utilized to feed, clothe, house, educate and care for the ward and his or her lawful dependents in the standard to which the ward and his or her dependents are accustomed, to the extent of and as may be limited by the ward's resources. Utilization of the ward's estate for his or her dependents should be after taking into account all other income of or support for the dependents. Utilization of the ward's estate for his or her own benefit should take into account all income and support of the ward and the expected duration of the guardianship. While preservation of the ward's estate for his or her heirs at law should not be of primary concern for the guardian, preservation and utilization of the estate over the expected duration of the guardianship is important and should be given due consideration by the guardian. On the other hand, the guardian should not waste the assets of the estate or expend it exorbitantly or above the usual standard of the ward simply to avoid preservation for the heirs or those who may be beneficiaries of a will of the ward. It is the duty and responsibility of the guardian of the property to properly manage and invest the ward's estate, and all funds of the estate must be properly invested so as to earn reasonable income for the ward.

Non-cash assets of the ward must also be properly managed and protected for the benefit of the ward. If an asset is reasonably capable of earning income, it must be dedicated to that purpose unless there is a compelling reason otherwise. Non-income-producing assets should be preserved and protected or liquidated (after proper authority is granted), as may be appropriate under the circumstances.

A guardian of the property does not have authority to sell, convey, transfer, mortgage, pledge or give away property of the ward ***without an order*** from the Court. The Court may, upon the application of the guardian and after appropriate notice is given as required by law, grant the guardian such authority if the proposed transaction is considered by the Court to be appropriate and proper. Generally, the assets of the ward are to be preserved for the ward's use and benefit, and sales of property of the ward are usually permitted only when necessary to provide for the care and support of the ward (and/or those dependent upon the ward) or when preservation of the asset is burdensome to the guardianship. The Court may, as appropriate, grant authority to the

guardian to sell the asset at a public sale (a legal auction) or at a private sale under a specific contract.

All property of the ward titled or registered in the name of the guardian must be titled or registered in the *fiduciary capacity* of the guardian (i.e., as a guardian) and not in the guardian's name alone. Typically, the title, account or deed will be registered as "[Name of Guardian], as Guardian of the Property of Richard Roe," although any variation which clearly shows the fiduciary nature of the registration for the benefit of the named ward may be accepted and approved by the court. Bank accounts should be especially clearly designated, so as to avoid unintentional commingling of funds or attachment for debts of the guardian, and the ward's social security number should be provided to the bank for the reporting of interest income and other matters to the Internal Revenue Service. Tangible items and personal property of the ward should be maintained and protected by the guardian and not commingled with personalty of the guardian to lose its identity as the ward's property. A guardian has no authority, absent the court's approval, to use property of the ward in such a manner as to dissipate, depreciate, waste or consume it or otherwise use it for the guardian's own benefit or inconsistent with the ward's best interests.

A guardian of the property of another has the responsibility of filing, on behalf of the ward, all federal and state income tax returns which might be required from the ward.

Guardians of the property are required to file with the court reports regarding the ward's assets. These reports are called Annual Accountings and Inventories, and are covered more fully under the section titled REPORTING REQUIREMENTS. It is also the guardian's responsibility to keep the court fully informed on the whereabouts of the guardian and ward, and ***the guardian must immediately report to the Court (through his/her attorney) any change in the address and telephone number of the guardian and/or the ward.***

EMERGENCY TEMPORARY GUARDIANS

In situations or circumstances that pose an immediate danger to the ward or to the ward's assets, an emergency temporary guardian may be appointed by the Court. Emergency guardians may do only those things which may be reasonably necessary to protect the ward or the ward's assets from the described danger, and the powers and duties of the emergency guardian are generally specified in the Court's order. Unless an earlier termination date is set in the Court's order or unless the proceeding is converted

to permanent guardianship proceedings, the emergency guardianship terminates ninety (90) days from the date of the order. The emergency temporary guardianship may be extended upon a showing that emergency conditions continue to exist.

GUARDIANS OF INCAPACITATED ADULTS

In Florida, the Probate Court may grant guardianship of the person and/or property of an adult resident of the state (or one located in this state) who, because of physical or mental illness or disability, detention by a foreign power, or other just cause, lacks sufficient understanding or capacity to make significant responsible decisions concerning his or her person (or is incapable of communicating those decisions) AND/OR is incapable of managing his or her estate or property which is likely to be wasted or dissipated unless proper management is provided. This person is generally referred to as the “alleged incapacitated person” (AIP).

The petition seeking guardianship of the person or property of an AIP is filed by an individual having knowledge of the pertinent facts. The Court will appoint an attorney for the AIP. An evaluation of the proposed ward is performed by an examining committee (made up of 3 members). Each examining committee member is required to evaluate the AIP and file a written report of the evaluation with the Court. Unless the petition is earlier dismissed by the Court, a final hearing is held and a decision made on the petition.

The Probate Division of the Circuit Court has the authority, if the petition is granted, to restrict or revoke certain rights or powers of the incapacitated individual, including:

- to contract
- to marry (if the right to contract is removed, the right to marry is subject to court approval)
- to consent to medical treatment
- to establish a residence or place of abode
- to bring or defend any action at law or equity
- to buy, sell or otherwise dispose of real, personal, intangible, or trust property
- to enter into any business or commercial transaction.

Guardianship may be granted for the Person and/or over the Property of the AIP, and the guardian of the person need not be the same person as the guardian of the property. The respective responsibilities of the guardian of the person and the guardian

of the property were more fully explained under the section titled General Information and Instructions.

GUARDIANS OF PROPERTY OF MINORS

In Florida, the probate court may grant guardianship of the property of minors. No third person may be named as guardian of the property of a minor with a living mother or father without the written consent of the living parent(s).

A guardian of property of a minor has the same obligations with reference to management of the minor's estate as does a guardian of an adult. Guardians generally have authority to expend income in the guardianship for the benefit of the ward. However, if there is someone (a parent or parents) legally obligated to support the minor, the minor's guardianship may be used for the purpose of support and maintenance only after such obligation of support has been fully satisfied and to the extent of the inability of those so responsible to provide for all the necessities of the minor. In other words, **a guardian cannot use the principal or the income from the child's guardianship without prior Court approval/order.**

Guardianship of the property of a minor terminates by law upon the minor attaining the age of majority (presently age 18 in Florida). As soon as reasonably practicable after the child's 18th birthday, the guardian is required to turn over to the ward all property of the minor then remaining in the hands of or under the control of the guardian. The guardian must file a final return and a petition for discharge, to which will be attached the receipt from the former minor. **NOTE:** The guardian should reserve the funds to pay the costs of court in connection with the final filings as well as final attorney fees and costs.

Termination of the minor guardianship at the age of majority is required by law, even if the guardian believes the child is not sufficiently mature to properly manage the property to which he/she is entitled. Parents and other guardians are encouraged to use such guidance and influence as might be necessary or appropriate to aid the former minor in the proper investment and management of such property. If the former minor is incapacitated and considered by the guardian to be incapable of managing his/her estate after attaining the age of majority, the guardian may want to consider filing adult guardianship proceedings immediately after the child's 18th birthday and seek an order

from the Court having jurisdiction over those proceedings to hold the minor guardianship funds until the adult case may be heard.

GUARDIAN ADVOCATES

In Florida, probate courts may appoint a guardian advocate, without an adjudication of incapacity, for a person with a developmental disability (as defined by section 393.063(12), Florida Statutes), if the person lacks the capacity to do SOME, BUT NOT ALL, of the tasks necessary to care for his or her person, property, or estate, or if the person has voluntarily petitioned for the appointment of a guardian advocate. The appointment of a guardian advocate is typically considered a less restrictive form of guardianship, and one which courts may consider as opposed to guardianship with an incapacity determination. Generally, the process of becoming a guardian advocate does not require the hiring of an attorney. However, if the person with developmental disabilities has any property rights which will be delegated to the guardian advocate, other than the right to be the representative payee for social security benefits or other government benefits, the person seeking to become guardian advocate will be required to hire an attorney. If the guardian advocate does employ an attorney, the guardian advocate and attorney must refer to and comply with the FEES AND EXPENSES section of this Handbook. While the guardian advocate will not be required to have an attorney in all circumstances, the Court will appoint an attorney for the person with developmental disabilities to protect their best interests.

A guardian advocacy can be sought for a minor at any point after the minor reaches the age of 17 years and 6 months, in order to avoid the gap between an individual's 18th birthday and the appointment of a guardian advocate. Any individual who is a resident of the State of Florida, 18 years of age or older, and of sound mind, is qualified to act as a guardian advocate. Non-residents of the State of Florida may qualify as a guardian advocate if they are related to the person with a developmental disability by blood, adoption, or law. A person who has been convicted of a felony cannot be appointed as guardian advocate. Every person appointed as a guardian advocate must complete educational training as outlined in the GUARDIAN EDUCATION REQUIREMENTS section of this Handbook.

Guardian advocates are required to file an Initial Plan and Annual Plans which include a statement as to the medical, mental, or personal care services, treatment and rehabilitations needs, and the social condition of the person with a developmental

disability. Initial Plans and Annual Plans are covered more fully under the section on REPORTING REQUIREMENTS. It is also the guardian advocate's responsibility to keep the Court fully informed on the whereabouts of the guardian advocate and developmentally disabled person, and ***the guardian advocate must immediately report to the Court (through his/her attorney, if applicable) any change in the address and telephone number of the guardian and/or the ward.*** A guardian advocate is not permitted to change the residence of the developmentally disabled individual from Florida to another state, or from Broward County to a non-adjacent county, without prior Court approval. If a guardian advocate changes the individual's residence from Broward County to an adjacent county (Miami-Dade, Palm Beach, Collier, Hendry), the guardian advocate shall notify the Court within fifteen (15) days of such relocation.

Guardian advocates may be required to file an Initial Inventory and Annual Accountings depending on what the property is subject to the guardian advocacy. Initial Inventories and Annual Accountings are covered more fully under the section on REPORTING REQUIREMENTS.

INVESTIGATION REQUIREMENTS

Guardians are required to submit to an initial as well as an annual background and credit investigation. Each application package, per local administrative order must be submitted with a Mandatory Checklist for Guardianship Application. The Mandatory Checklist accounts for the following items:

- 1) Application for Appointment (Disclosure Statement for Nonprofit Corporate Guardians)
- 2) \$50 Investigatory Cost payable to Clerk of Court
- 3) Submission of Electronic Fingerprints via approved Livescan Vendor

Information on Livescan vendors can be found online at www.fdle.state.fl.us.

The following ORI numbers must be used:

- Professional guardians: FL006023Z
 - Non-professional guardians: FL006024Z
- 4) Professional Guardians Only - \$7.50 Clerk's Processing Cost

All of the necessary forms are contained in the "Background Investigation Package," which is available in the Probate Division of the Clerk's Office, Room WW03160 (3rd Floor) of the Broward County Courthouse-West Wing located at 201 SE 6th Street, Fort

Lauderdale, Florida 33301. The background investigation forms for paper filing may also be obtained from the Circuit's Probate and Guardianship web page or, for e-filing, on the Probate and Guardianship Smart Form Page.

PROSPECTIVE GUARDIANS

Prospective guardians must submit the Mandatory Checklist along with an Application for Appointment, and the \$50 investigatory cost directly to the Clerk's Office. The fee for electronic fingerprinting is due and payable to the vendor at the time of fingerprinting.

APPOINTED GUARDIANS

Appointed guardians must submit the Mandatory Checklist along with an Application for Appointment and the \$50 investigatory cost every year with the filing of their annual accounting. If an extension of time has been granted for the filing of the annual accounting only, the above referenced documents must be filed at the time the annual plan is due.

GUARDIAN EDUCATION REQUIREMENTS

In accordance with section 744.3145(2), Florida Statutes, "[e]ach person appointed by the court to be a guardian, other than a parent who is the guardian of the property of a minor child, must receive a minimum of 8 hours of instruction and training[.]" Additionally, in accordance with section 744.3145(3), Florida Statutes, , "[e]ach person appointed by the court to be the guardian of the property of his or her minor child must receive a minimum of 4 hours of instruction and training[.]" To satisfy either of the foregoing requirements, each guardian must, within four (4) months of his or her appointment, complete the appropriate guardianship instruction and training course. Expenses incurred by the guardian to satisfy the education requirement may be paid from the ward's estate, unless the court directs that such expenses be paid by the guardian individually.

The Broward County Bar Association offers the required 8-hour family or 4-hour minor in-person guardian course. For registration call 954-832-3618.

The St. Petersburg College online 8-hour family or 4-hour minor guardian course is offered by the college's Lifelong Learning department. For registration visit <https://go.spcollege.edu/childsview/> or call 727-341-3000.

Guardianship Training & Support Services offers online 8 and 4 hour courses as well. Both offerings are a combination of self-directed and live instruction. For registration visit <https://guardianshipeducation.com/> or call 561-451-7387.

*For Guardian Advocates: the Department of Children and Families offers the required Guardian Advocacy Course. For the **free** training course, visit <http://fcbonline-ed.mrooms3.net/course/index.php?categoryid=18>.

REPORTING REQUIREMENTS

Guardians are required to file certain periodic reports with the Court. The reports shall be filed in the official court file with the Clerk of Courts. These reports are intended to provide information for the Court to properly supervise the affairs of the ward and to supervise and monitor the guardian's performance of the lawful duties and responsibilities. Failure to comply with any of the reporting requirements can subject the guardian being ordered to appear before the Court. The Court may assess costs against the guardian, may fine the guardian, may remove the guardian, or may take such other actions as may be appropriate to the circumstances of the case. At the termination of the guardianship, guardians are also required to file a Final Report.

PLANS

Guardians of the person are required to file reports with the Court which discloses the status, condition, needs and circumstances of the ward. The reports, called "Annual Plans," inform the Court where the ward is located, how the ward is doing generally, how the ward's needs are being met, and whether there has been any change in the condition or status of the ward which might warrant the Court's intervention or a change in the *guardianship order*. The Initial Plan is due from the guardian *within sixty (60) days* of the date of appointment of the guardian. Thereafter, plans are filed annually.

INVENTORIES

Guardians who have been delegated property rights are required to file with the Court, *within sixty (60) days* from the date of appointment, an inventory of all assets in the estate of the ward. The Inventory must sufficiently itemize the assets and set forth a reasonable value thereof to fully disclose of record the property of the ward over which

the guardian has control or authority. Inventories are designed to disclose to the Court, and anyone interested in the guardianship, the full value of the guardianship, which is often not known or only estimated at the time the proceedings are filed. The guardian is given sixty (60) days to make a complete and more accurate determination. Inventories also allow the Court to determine the sufficiency of the bond posted by the guardian.

ANNUAL ACCOUNTINGS

Guardians who have been delegated property rights are also required to file annual accountings with the court. These annual reports render an accounting to the court of the actions of the guardian by itemizing all receipts and expenditures in the guardianship. The court is required by law to audit the returns of guardians, and guardians are required to maintain complete and accurate records of all of their actions as guardians. Guardians are required to maintain the records for a period of three (3) years after the date of discharge. Upon the termination of the guardianship or upon the appointment of a successor guardian, the first guardian will be required to file a final accounting, which will evidence final disposition of the remaining property as required by law.

*Guardians of the Person and Property are required to file an Annual Plan which consists of both an Annual Plan and Annual Accounting.

TAX RETURNS

Although not filed with the Probate Court, a guardian of the property has the legal responsibility of filing all required tax returns for the ward. The Internal Revenue Code contains provisions for the assessment of certain penalties against the guardian personally for failure to file returns under certain circumstances. In addition, there are usually penalties and/or interest payable for delinquent returns (including ad valorem and intangibles returns), and such penalties or interest may be assessed by a court against the guardian personally if same result from unexcused or inexcusable neglect of the guardian.

FEES AND EXPENSES

Under no circumstances may a guardian or anyone associated with a guardian remove or use assets of the guardianship without prior authorization and Court order.

Guardians may petition the Court for an order to recover and reimburse themselves for

certain expenses incurred in connection with their services as guardians. Guardians are also entitled to receive from the guardianship certain compensation for the guardian's service. Fees for guardians are controlled by section 744.108, Florida Statutes.

Out-of-pocket expenses reasonably incurred by a guardian in the performance of the guardian's duties are reimbursable to the guardian from the guardianship. To be reimbursable, the expenses must be reasonable in amount (i.e., not excessive) and must have been incurred by the guardian as a consequence of performance of some duty the guardian owes to the ward (i.e., related specifically to the guardian's duties and responsibilities to the ward as guardian, as opposed to some other relationship). Reimbursable expenses do not include expenses incurred by a guardian in carrying out other duties or matters related to natural affection (e.g., a son who is also his mother's guardian is not entitled to reimbursement of expenses incurred in a familial visit or for presents given to his mother; i.e., those things for which there was no reimbursement before the guardianship do not become reimbursable under guardianship, unless done specifically in connection with the guardianship petition itself). Reimbursable expenses can include transportation costs, lodging and meals during out-of-town travel (when appropriate), and other costs, losses, and expenses actually incurred by the guardian.

It is reasonable and customary in the Seventeenth Judicial Circuit for professional guardians to bill at an hourly rate up to \$85.00 an hour for services contemplated to be performed by a professional guardian, and up to \$25.00 an hour for clerical and ministerial services provided by the guardian's staff or an independent individual/entity hired to perform such services. Any non-clerical or non-ministerial services shall be compensated at a "reasonable" rate commensurate with the service provided and experience or expertise of the provider. Guardians may bill services provided by independent contractors as an itemized cost in a fee petition or may file a separate petition for payment of independent contractor services. ***Please note, each task submitted is scrutinized and any billing deemed to be excessive in nature will be reduced or even eliminated in accordance with applicable law.*** Guardians who fail or refuse, without just cause, to satisfy all necessary reporting requirements within the time set by law, may forfeit the right to fees and expenses for the period covered by the return. Guardians and their attorneys will not be compensated for any services rendered while there are delinquent and/or non-compliant Annual Reports outstanding. In addition, guardians who are removed by the Court for waste or gross mismanagement may not be entitled to receive fees and may be personally subject to surcharge and other sanctions.

Guardians are required by statute to retain counsel. Attorneys for guardians are also entitled to be compensated for legal services rendered to guardians and wards. Guardians should retain counsel who bill at an hourly rate. The Seventeenth Judicial Circuit has determined that \$350.00 and \$125.00 per hour are reasonable and customary fees for rendering legal services to guardians for attorneys and paralegals, respectively. However, these hourly fees are not exclusive, and appropriate fees for guardians and attorneys alike always rests within the discretion of the presiding judge and consideration of all statutorily required factors.

In the event a guardian seeks reimbursement of pre-paid attorney's fees, the Court will only approve such reimbursement in accordance with the above rates. Such reimbursement shall occur only after the Court's review and approval of the required itemized schedule of services and expenses by the attorney for which the guardian seeks reimbursement.

It is the Court's duty to make sure assets of the Guardianship are evaluated prior to expenditure, absent extraordinary and exigent circumstances. The Court will make a final determination on compensation, fees, and expenses requested by guardians and attorneys for guardians after reviewing the itemized schedule of services and expenses, which is required to be attached to a petition for order authorizing payment of compensation and can be found at Probate and Guardianship Smart Form Page. Petitions for compensation and fees are reviewed on a case-by-case basis pursuant to §744.108, Fla. Stat., including services provided by professional guardians' staff and by non-professional (family) guardians. Attorneys for guardians should have integrity in their billing process and shall provide prompt and timely petitions for payment of fees (as detailed below). Attorneys for guardians may only bill for "legal services" (Section 744.108, Florida Statutes and Rule 4-1.5, Rules Regulating the Florida Bar). Generally, absent extraordinary circumstances, non-legal services such as setting up client files, organization of client files, etc., are not compensable. However, discretion to award fees for any matter remains with the presiding judge. Attorneys for guardians and guardians should avoid using block billing. Fees will only be permitted and approved for the actual time expended for the benefit of the ward and otherwise consistent with applicable law.

Petitions for order authorizing payment of compensation and fees should be submitted timely and should be for a period not to exceed three (3) months and no less than one

(1) month, absent extraordinary circumstances. Under no circumstances shall an agreed order be submitted to the Court via the agreed order portal or any other manner. It is the Court's exclusive obligation to determine the reasonableness of the fee requested.

The Probate Division of the Seventeenth Judicial Circuit for Broward County, Florida, gratefully acknowledges Judge William J. Self, II of the Probate Court of Bibb County, Macon, Georgia, for allowing modification of his work to reflect Florida law and local procedures.

** Council of Probate Court Judges of Georgia Administrative Office of the Courts, Suite 550, 244 Washington Street, Atlanta, GA 30334-5900 (1998)*

Notice – This guide does not constitute legal advice and is intended merely to serve as a resource. Please consult with your attorney for legal advice. Please be aware that the law within this handbook may change and you should consult with your attorney for assistance.

SEVENTEENTH JUDICIAL CIRCUIT OF FLORIDA



LOCAL PROCEDURES PROBATE DIVISION

(updated October 2019)

Notice:

The Judges assigned to the Probate Division of the Seventeenth Judicial Circuit in and for Broward County, Florida are pleased to present this handbook. The handbook is a basic outline; it is not a "do-it-yourself" guide and cannot be used as a substitute for attorneys, accountants, trust officers and other professional advisors necessary for proper probate and guardianship administration. This handbook does not constitute legal advice. Legal advice should be obtained from your own attorney. Any person or entity who relies on any information obtained on the Circuit's website does so at his or her own risk. While best efforts are made to keep this document current, changes and/or new policies may not be reflected. It is always best to consult with your attorney.

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I. Introduction to the Probate Court

The Circuit Courts in Florida are trial courts of general jurisdiction. The Probate Division of the Seventeenth Judicial Circuit has jurisdiction over proceedings such as: the settlement of estates of decedents and minors; granting of wills; guardianships; involuntary hospitalization; and competency determinations. The Seventeenth Judicial Circuit Court is located at:

**Broward County Courthouse
201 S.E. 6th Street
Fort Lauderdale, FL 33301**

The following Circuit Court Judges and General Magistrates are assigned to the Probate Division:

**Judge Charles M. Greene, Administrative Judge (Division 61)
Courtroom WW12168; Chambers WW12125
(954) 831-7700**

**Judge Mily Rodriguez Powell (Division 60)
Courtroom WW12178; Chambers WW15131
(954) 831-7785**

**Judge Kenneth L. Gillespie (Division 61)
Courtroom WW14160; Chambers WW14133
(954) 831-7565**

**General Magistrate Yves Laventure
Courtroom WW3146; Chambers WW3127
(954) 831-7695**

**General Magistrate Claudette Vanni
Courtroom WW3142; Chambers WW3123
(954) 831-7572**

II. The Broward County Clerk of Court

A. Hours and Location

The Broward County Clerk of Court (Probate Division) is located in the Broward County Courthouse, Room 3150.

Hours: Monday – Friday, 8:00 a.m. – 3:30 p.m.

To obtain a current list of holiday closings, please refer to the website for the Broward County Clerk of Court or the website for the Seventeenth Judicial Circuit of Florida.

B. Obtaining Court Files

Open Files: To review any open file or request copies of documents from open files, regardless of the year, you may appear in person at the office of the Broward County Clerk of Court. Certain files may also be available electronically using the Seventeenth Judicial Circuit Court Management System (CMS) or by visiting the Clerk's website at www.browardclerk.org.

Closed Files (1981 – 2008): You must first order the file by calling (954) 831-5645. Files will be transferred to the Central Courthouse from archives within two to three business days after the request. Upon receipt of the file requested, the Clerk of Court will notify the requestor by telephone that the file is available for review at the Central Courthouse.

Closed Files (1915 – 1980): These files are available on microfilm. Please contact the Archives and Records Library of the Broward County Clerk of Court. For additional information, please call: (954) 831-7856.

C. Unavailable Court Files

A file that is checked out from the Clerk's Office to a Judge, General Magistrate, Deputy Clerk, Staff Attorney, Court Monitor/Guardianship Investigator, Guardianship Audit, or Administrative Assistant, will be made available to any attorney upon request, unless extraordinary circumstances exist.

D. Obtaining Copies from the Broward County Clerk of Court

1. How to Request Copies on the Portal for New & Existing Case Filings

To streamline the process, you may request copies when you file documents electronically.

In addition to the process below, you may request and obtain certified copies by visiting the Clerk's website:

<https://www.browardclerk.org/OnlineServices/ElectronicCertifiedDocuments#Overview>

Steps:

On the portal, enter the case information and click search. Once the case style and status are retrieved, the fields to enter the number of copies will appear. If the copies requested are for a new case, once the case type is selected, the fields for the number of copies will appear and the cost for obtaining the copies will be added to the filing fees.

Enter the quantity in each field.

Additional Fee Options

Non-Certified Copies (# of Pages)

Certified Copies (# of Documents)

Envelopes

Non-Certified Copies (True Copies) – Enter the total number of pages for all documents that will be copied.

Certified Copies – Enter the total number of certified copies you are requesting.

Envelopes - Enter 1 because the Broward County Clerk of Court will mail all the documents at the same time.

Go to the Documents tab and click "add" to upload your request for copies.

Select the Document Type "Memo for eFiled Copy Request(s)" and upload your memo from your computer that clearly specifies which documents you would like to be copied and the type of copies (true and certified).

Example 1:

A new Petition for Administration case is opened. The Letters of Administration that were submitted are 1 page and the Order Appointing Personal Representative is 1 page. When the documents have been issued by the Judge, you would like to request 2 certified copies of the Letters and 1 True Copy of the Order Appointing Personal Representative.

Your fields should look like this:

Additional Fee Options

Non-Certified Copies (# of Pages)

Certified Copies (# of Documents)

Envelopes

Exemplified Copies

#	Description	Amount
1	Filing fee	\$0.00
2	Additional Fee	\$8.00

Example 2 – Exemplified Copy Request:

If you are requesting exemplified copies from a case in which the Letter of Administration submitted is 2 pages, your fields should look like this:

Additional Fee Options

Non-Certified Copies (# of Pages)

Certified Copies (# of Documents)

Envelopes

Exemplified Copies

#	Description	Amount
1	Filing fee	\$0.00
2	Additional Fee	\$10.00

NOTE: The above fees are based on the current copy fees which are the following:

Regular Copies: \$1.00 per page of document

Certified Copies: \$2.00 per certified document + \$1.00 per page of document

Exemplified Copies: \$7.00 per exemplified document + \$1.00 per page of document

2. Mailing a Request for Copies

The preferable method for requesting copies is through the Florida Courts eFiling Portal. If you have to mail a request, please include a self-addressed and stamped envelope, a business check payable to the Broward County Clerk of Court, a money order, or a valid escrow account number. Please ensure that the check or money order cover the cost of the number and type of copies requested (refer to the previous page for the cost of regular copies, certified copies, and exemplified copies).

III. Ex Parte Hearings

A. Setting an *Ex Parte* Hearing

1. Filing a Request for an *Ex Parte* Hearing

All *ex parte* requests must be electronically filed through the [Florida Courts eFiling Portal](#). The Uniform *Ex Parte* Request Form can be found on the [Probate and Guardianship home page](#) on the [Seventeenth Judicial Circuit website](#).

Ex parte hearings on petitions/motions previously filed: On the uniform *ex parte* request form, indicate whether the subject petition/motion was electronically filed through the Florida Courts eFiling Portal and does not yet appear on the docket for the case. If this is the case, indicate the case number, e-filing reference number (located at the top left of the e-filed document), and date of filing.

Sending the *ex parte* request form with a petition/motion: If electronically filing a uniform *ex parte* request form simultaneously with a petition/motion, the petition/motion should be the lead document with the uniform *ex parte* request form and other documents following. If the uniform *ex parte* request form is electronically filed as the lead document, the filing may be rejected by the Clerk of Court.

IMPORTANT STEPS AFTER FILING WITH THE FLORIDA COURTS ePORTAL:

Given the need to address these filings immediately, after filing the uniform *ex parte* request through the Florida Courts eFiling Portal, please send an email to the Broward County Clerk of Court, Probate Division: exparterequests@browardclerk.org. The subject line of the email should be *Ex Parte Request*, the case number and e-filing reference number provided by the Florida Courts eFiling Portal. The body of the email should contain the following information: the case number, the division, and the date of the requested *ex parte* hearing.

2. Deadlines for *Ex Parte* Hearings

Ex Parte dockets are heard on Tuesdays and Thursdays for Judges Greene, Powell, and Gillespie.

For Tuesday hearings: A party should electronically file through the [Florida Courts eFiling Portal](#) any pleadings, motions, or petitions by 11:00 a.m. on the preceding Thursday.

For Thursday hearings: A party should electronically, file through the [Florida Courts eFiling Portal](#) any pleadings, motions, or petitions by 11:00 a.m. on the preceding Tuesday.

3. Allowable *Ex Parte* matters

Ex Parte hearings are matters which are uncontested and take no more than five to ten (5-10) minutes.

No application for fees (attorney and/or guardian) will be deemed an urgent matter appropriate for an *ex parte* hearing. If you believe that you have an emergency that is not one of the delineated *ex parte* matters, you must obtain prior approval, in writing, from the respective judge's office prior to scheduling the matter on the *ex parte* docket.

Letters of Administration will not be entered at an *ex parte* hearing if the Court determines that the Personal Representative will need to post a bond. Additionally, Letters of Administration will not be entered when the court file reflects that a caveat has been filed by a beneficiary or other interested person (not a creditor) entitled to formal notice of the administration of the decedent's estate.

Letters of Guardianship will not be entered at an *ex parte* hearing until the proposed guardian's background check has been successfully completed.

4. Division procedures for *Ex Parte* hearings

All Divisions: Please refer to the above-noted *ex parte* instructions and the uniform *ex parte* calendar request form on the [Probate and Guardianship home page](#) for additional information. Please check the website as the forms may be updated without notice. Additionally, please refer to each judge's specific division policies and procedures.

5. Certified Copies

In order to expedite receipt of *ex parte* orders (whether entered with or without a hearing), parties are encouraged to pre-pay the Clerk of the Court for any certified or true copies at the time of eFiling.

IV. Emergency Hearings

If an attorney files a pleading and/or document seeking emergency relief, the following procedures shall apply:

- The pleading and/or document must be first electronically filed via the Florida Courts eFiling Portal;
- Immediately after filing the pleading and/or document for which emergency relief is sought, an email shall be sent to the Clerk of Court, Probate Division, at exparterequest@browardclerk.org. The subject matter of the email should be **Emergency Request** and include the e-filing reference number and the case number. The body of the email should contain the following information: the case number, the division, and within what time frame the matter needs to be heard;
- A courtesy copy of the pleading and/or document seeking emergency relief with the printed receipt from the Florida Courts eFiling Portal shall be provided to the division judge.

V. Motion Calendar

A. Setting a Hearing

Motion calendar hearings are held on Mondays and Wednesdays for Judges Greene, Gillespie, and Powell. All divisions require motion calendar hearings be scheduled via the Online Scheduling System. Please refer to each judge's specific policies and procedures for additional requirements regarding motion calendar hearings, using the following link: <http://www.17th.flcourts.org/07-probate-and-guardianship/>. These policies and procedures may be updated without notice and should be checked frequently.

Courtesy Copies: Copies of the notice of hearing, the subject motion, and any necessary documentation shall be delivered to the Judicial Assistant in advance of the hearing. The original notice shall be electronically filed through the Florida Courts eFiling Portal.

B. Canceling a Hearing

For a cancellation, please use the Online Scheduling System. The scheduling party is responsible for advising all interested parties that the hearing has been canceled. For hearings scheduled by the judge's judicial assistant, the party seeking to cancel the hearing must telephone the judge's judicial assistant advising of the cancellation and file a notice of cancellation.

C. Duration of a Hearing

Matters heard on motion calendar should be able to be conducted in a total of ten (10) minutes, equally divided among the parties. No motions requiring the presentation of evidence shall be set on motion calendar.

D. Copies at a hearing

True copies and certified copies can be provided at the time of the hearing. Payment is accepted in the form of cash or check. Exact fees can be provided by the Clerk of Court, (954) 831-7154. For additional copies, please also contact the Clerk of Court.

VI. Special Set Hearings

A Special Set hearing is for any matter which will take longer than ten (10) minutes to be presented and/or require the submission of evidence. Special Set hearings are set depending on the availability of the time in each Judge's division. You must indicate whether the hearing is evidentiary in nature.

A specially set hearing must be scheduled via the Online Scheduling System. Please refer to each judge's specific policies and procedures for additional requirements regarding motion calendar hearings, using the following link: <http://www.17th.flcourts.org/07-probate-and-guardianship/>. These instructions may be updated without notice and should be checked frequently. All original pleadings/documents are to be electronically filed through the Florida Courts eFiling Portal.

VII. Matters Taken Under Advisement

When a matter is taken under consideration by the Court after a hearing, attorneys are directed not to call and/or disturb the Judge or his Judicial Assistant until a reasonable amount of time has passed from the time all requested pleading and/or memoranda has been submitted.

When a matter has been submitted to the Court for at least thirty (30) days and no response has been received (via an Order or otherwise), a letter of inquiry may be sent to the Judge.

VIII. Opening/Reopening Files

To open a new file, the attorney must electronically file through the Florida Courts eFiling Portal.

A. Filing Fees

Please refer to the website for the Broward Clerk of Court or call (954) 831-7154 for questions pertaining to filing fees.

B. Documents Required for Opening New Files

1. Formal Administration

Chapter 733, Florida Statutes

TESTATE (WITH A WILL)

- Petition to Admit Will
- Order Admitting Will and Appointing Personal Representative
- Oath of Personal Representative and Designation of Resident Agent
- Letters of Administration
- Death Certificate
- **Mandatory Checklist:** <http://www.17th.flcourts.org/probate-and-guardianship-smart-forms-home-page/>

INTESTATE (WITHOUT A WILL)

- Petition to Appoint Personal Representative
- Order Appointing Personal Representative
- Oath of Personal Representative and Designation of Resident Agent
- Letters of Administration
- Any necessary consents to the appointment of the Personal Representative
- Death Certificate

- **Mandatory Checklist:** <http://www.17th.flcourts.org/probate-and-guardianship-smart-forms-home-page/>

Bonds: Presently, as a uniform policy among the Judges assigned to the Probate Division for the Seventeenth Judicial Circuit, all non-residents of the State of Florida are required to post a bond prior to being appointed as a Personal Representative of an estate. A bond to the extent of the value of the assets can be posted at the time of the initial filing. In the alternative, an attorney should wait until the Court enters the Order Admitting Will and Appointing Personal Representative setting the amount of the bond. According to Florida Statutes, the decision to require a bond, even if waived in the will or the proposed Personal Representative is the only beneficiary, is within the discretion of the Court.

2. Summary Administration

To qualify for a Summary Administration, as per sections 735.201-735.202, Florida Statutes, the following need to be met: (1) probate assets are less than \$75,000 (excluding the value of property exempt from claims of creditors) or (2) decedent has been dead for more than two (2) years. The following documents must be filed in a Summary Administration:

- Petition for Summary Administration
- Original Will (if applicable)
- Order Admitting Will (if applicable)
- Proof of Paid Funeral Expenses and Last Medical Expenses
- Death Certificate
- Order of Summary Administration
- **Mandatory Checklist:** <http://www.17th.flcourts.org/probate-and-guardianship-smart-forms-home-page/>

Effective January 1, 2000, for **small estates only**, the Department of Revenue will no longer require the filing of a tax return and the Personal Representative may execute an affidavit attesting that the estate is not taxable. The form of the affidavit is prescribed by the Department of Revenue. In the case of a nontaxable estate, the court may consider the affidavit prepared pursuant to section 198.32(2), Florida Statutes, as evidence of the non-liability for tax. Contact the Department of Revenue for further information.

3. Disposition of Personal Property Without Administration

Section 735.301, Florida Statutes

Decedent must have been a Broward County resident or maintained property located in Broward County. Disposition forms are available at the Probate Clerk's Office. This process allows for reimbursement for reasonable funeral expenses and medical expenses incurred within the last sixty (60) days of decedent's death to the extent not covered by insurance and allows for the applicant to claim \$1,000.00 of exempt personal property or exempt assets under section 732.402, Florida Statutes. A mandatory checklist is required for this proceeding and can be found at <http://www.17th.flcourts.org/probate-and-guardianship-smart-forms-home-page/>.

4. Guardianships

Chapter 744, Florida Statutes

- Petition for Appointment of Guardian
- Letters of Guardianship
- Order Appointing Guardian
- Mandatory Checklist for Guardianship Applications (Must use Broward County Smart Form <http://www.17th.flcourts.org/probate-and-guardianship-smart-forms-home-page/>)
- Investigatory Cost (If applicable - \$50 payable to the Clerk of Court)
- FDLE Cost (if applicable approximately \$54.25 payable to FDLE)

All investigation forms, are available in the Background Investigation Package that may be obtained in the Probate Clerk's Office or on the [Probate homepage](#).

***Note:** A Petition to Determine Incapacity pursuant to Section 744.3201, Florida Statutes must also be filed in connection with a Petition for Appointment of Guardian.

C. Reopening Estates

The following procedures must be complied with to reopen a closed estate. A \$50 filing fee is required to reopen a closed estate.

1. Closed by Order of Discharge

(a) No Letters Needed

Electronically file a Petition for Subsequent Administration and Order for Subsequent Administration. The assets and beneficiaries should be described with specificity and in compliance with Florida Rule of Judicial Administration 2.425. The filing of a Notice of Confidential Information Within Court Filing as required by Florida Rules of Judicial Administration may be required.

(b) Letters to be Reinstated

Electronically file a Petition to Reopen Estate for Further Administration and Order to Reopen Estate for Further Administration. Pertinent language in the Petition to Reopen must be included to revoke the orders of discharge and reinstate the previous letters. As long as the personal representative remains the same, the Clerk's office will use the previously issued Letters in the file with a new certification. If the personal representative is a different individual, the successor personal representative will need to submit an Amended Petition, an Oath of Personal Representative and Designation of Resident Agent, and proposed Letters of Administration. To re-close the estate, a petition and Order for Discharge must be filed.

(c) Newly Discovered Assets in Context of Summary Administration

When a new asset is discovered and an order has already been entered by the Court, the petitioner can file an Amended Petition for Summary Administration, provided the newly discovered asset, when added to the existing probate, does not exceed the statutory threshold for that type of estate administration. A proposed Order of summary Administration should be provided to the Court for entry.

2. Closed by Court Order/Lack of Activity (Sua Sponte)
Electronically file a Petition and Order to Reopen File and closing papers necessary to complete administration.

IX. Exempt Property Determinations

A. Homestead

1. Stand-Alone Homestead Petition

The Judges assigned to the Probate Division of the Seventeenth Judicial Circuit will not entertain stand-alone homestead petitions.

2. Summary Administration Proceedings

Generally, when a petitioner files a Homestead Petition in a Summary Administration proceeding, the Court will not require Notice to Creditors prior to the issuance of the Homestead Order and Order of Summary Administration. The petitioner must make a diligent search and reasonable inquiry for any known or reasonably ascertainable creditors and serve a copy of the petition on those creditors, and make provision for payment of those creditors to the extent that assets are available. See Section 735.206, Florida Statutes. The petitioner is required to sign the Petition for Summary Administration which must contain a penalty of perjury statement.

3. Formal Administration Proceedings

In a Formal Administration proceeding, the Court will not enter the Homestead Order until the expiration of the creditor's period (three months from the date of the first publication of the notice to creditors). Reasonably ascertainable creditors, to the extent their claims are not barred, should be served with formal notice of the homestead proceeding. Prior publication is not necessary if two (2) years have passed since the decedent's death. In the event there is a pending sale of property prior to the creditor period having expired, the Court will state in the order to sell that the proceeds are to be placed in either the attorney's trust account or a designated depository until further order of the court. After the expiration of the three-month creditor's period, the Court may enter the Homestead Order.

B. Other Exempt Property Determinations

Interested person(s) must receive Formal Notice of a Petition to Determine Exempt property. See Section 732.402, Florida Statutes. If an estate is insolvent or the effect of granting a Petition to Determine Exempt Property is that some creditors will be paid (partially or wholly), creditors may be interested persons entitled to notice. For purposes of a petition for family allowance (to allow for the maintenance of a surviving spouse and lineal heirs, if any, when they were supported by the decedent or the decedent was obligated to support them), the total amount of family allowance allowed is \$18,000. See Section 732.403, Florida Statutes.

X. Closing Estates

Pleadings/Documents Required to Close an Estate:

- **Death Certificate;**
- **Inventory;**
- **Proof of Publication of Notice to Creditors (Notice of Administration is not a substitute);**

- Florida Tax Release or Affidavit of No Florida Estate Tax Due (if Final Certificate, Need Estate Tax Closing Letter)¹;
- Proof that the Agency for Health Care Administration for individuals over the age of 55 (Section 733.2121(3)(d)), Florida Statutes) was served with a copy of notice to creditors, unless the agency has already filed a statement of claim in the estate proceedings and said claim has been satisfied or otherwise disposed of;
- Receipt of Beneficiaries
- Verified Statement Regarding Creditors
- Resolution or Satisfaction of any/all claims filed against the Estate
- Final Accounting or Waivers of same by all Beneficiaries
- Petition for Discharge
- Schedule of Distribution (unless waived)
- Report of Distribution (unless waived)
- Order of Discharge

XI. Discretionary Determination of Security for Estates & Guardianships

A. Types and Determination of Securities

Security for estates and guardianships, as determined by the Court, shall be by bond or depository for probate estates and guardianships. Security is mandatory in all estates when a personal representative is not a resident of the State of Florida. Some factors in determining securities by the Court are:

- Residence of the personal representative;
- The fiduciary qualifications of the personal representative;
- The size of the estate;
- The liquidity of the estate;
- Nature of assets in the estate;
- The number of beneficiaries;
- Whether the decedent has been dead for more than two (2) years;
- Types of beneficiaries (minors, incapacitated, etc.);
- The interest the personal representative has in the estate;
- The role the attorney plays in the estate; and
- Meeting time standards promulgated by the Supreme Court.

B. Depositories in Guardianships

All depositories must be designated financial institutions under the same conditions and limitations contained in section 69.031, Florida Statutes. A designated financial institution shall also include a dealer, as defined in section 517.021(6), Florida Statutes, if the dealer is a member of the Security Investment Protection Corporation and is doing business in the state.

¹ Please visit the website for the Department of Revenue for more information regarding Florida's Estate Tax: http://dor.myflorida.com/dor/taxes/estate_tax.html

XII. Sale of Real Property in Estates and Guardianships

All Judges assigned to the Probate Division of the 17th Judicial Circuit require the following terms included in a Petition for an Order to Sell Real Property and the proposed Order authorizing the sale:

- 1. Contract price in the petition and order;**
- 2. Statement that the contract price is the fair market value price for the real property and how that conclusion was reached, i.e. an appraisal, comparables or affidavit from a real estate agent as to the price;**
- 3. Statement that the transaction is an arm's length transaction;**
- 4. The legal description and the street address of the property;**
- 5. The scheduled closing date (if known);**
- 6. The order stating that it applies only to the specific sale that is the subject of the petition; and**
- 7. If the sale transaction is for property sought to be identified as "homestead" property, and if the creditor's period has not expired, then the order needs to state that the sale proceeds will be held in either the attorney's trust account or the estate or guardianship restricted depository account until further order of the court.**

XIII. Guardianships

A. Emergency Temporary Guardianships

Prior to the appointment of a guardian but after a Petition to Determine Incapacity has been filed, the Court may appoint an Emergency Temporary Guardian (ETG). The Court must specifically find that there appears to be imminent danger that the physical or mental health or safety of the person will be seriously impaired or that the person's property is in danger of being wasted, misappropriated, or lost unless immediate action is taken.

ETG hearings are heard by a General Magistrate, unless objection is made by a party. The petitioning attorney must file the appropriate paperwork with the Florida Courts ePortal. The Clerk's office will then process the filing so that an attorney is appointed to represent the Respondent (alleged incapacitated person) in the proceedings. The petitioning attorney should immediately contact the court appointed attorney or the Mental Health Division of the Clerk of Court. Although the General Magistrate has specific days and times set aside to conduct ETG hearings, due to their inherent emergency nature, the General Magistrate will hear ETGs most anytime.

B. Background Investigation

1. Frequency of background checks

Each guardian must do an initial background followed by an annual background check. The Seventeenth Judicial Circuit conducts background investigations at least once a year as part of the Court's responsibility in ensuring that the best interests of the ward are being met.

2. Required Initial Paperwork for Professional and Nonprofessional Guardians

Guardians are required to submit to an initial as well as annual background investigation. Each application package, per local administrative order, must be submitted with a mandatory checklist for guardianship applications (available via Smart Form on the [Smart Form web page](#)).

***FOR ADDITIONAL INFORMATION, PLEASE REFER TO THE [HANDBOOK FOR GUARDIANS](#)**

3. Prospective Guardians

Florida Probate Rule 5.030 requires every guardian be represented by an attorney admitted to

practice in Florida unless the guardian is an attorney admitted to practice law in Florida. A guardian advocate is not required to be represented by counsel.

A guardian may be any Florida resident who is 18 years of age or older or any nonresident of Florida that is:

1. related by lineal consanguinity to the ward;
2. a legally adopted child of the ward or adoptive parent of the ward;
3. a spouse, brother, sister, uncle, aunt, niece, or nephew of the ward, or someone related by lineal consanguinity to any such person; or
4. the spouse of a person otherwise qualified.

Some individuals may not qualify to be a guardian. The reasons to exclude an individual may be based upon statutes, rules or upon hearing for issues that arise during the prospective guardian's background check. No person who has been convicted of a felony or has a confirmed report of abuse, neglect, abandonment, or exploitation may serve as a guardian. In addition, no person who may be incapable to perform the duties of guardian due to incapacity or illness or is otherwise unsuitable may be appointed as a guardian. Reference should also be made to sections 744.309 and 744.446, Florida Statutes.

4. Annual Renewal for Appointed Nonprofessional Guardians

For nonprofessional guardians, re-investigations are due at the time of the filing of your annual accounting. If you do not file an annual accounting or if the time to file the annual accounting has been extended then you must file with your annual plan.

Appointed nonprofessional guardians must submit the mandatory checklist for guardianship application along with an application for investigation, application for appointment and the \$50 investigatory cost every year with the filing of their annual accounting. If an extension of time has been granted for the filing of the annual accounting only, the above referenced documents must be filed at the time the annual plan is due.

The background investigation forms for paper filing may be obtained from the Clerk's office or on the Circuit's [Probate and Guardianship](#) web page or, for electronically filing purposes, on the [Probate and Guardianship Smart Form Page](#).

Nonprofessional Guardians filing for their annual reinvestigation must file the following:

- Mandatory Checklist;
- Court Monitor Investigatory Cost (\$50 made payable to the Clerk of Court); and
- Application for Appointment

5. Annual Renewal for Professional Guardians

Professional guardians and employees of professional guardians who owe a fiduciary responsibility to a ward must submit on or before **January 15th** of every year, a mandatory checklist, application for appointment (disclosure statement for nonprofit corporate guardians and, for each employee a statement), \$50 investigatory cost and the \$7.50 clerk's processing fee (can be submitted as one check for \$57.50 made payable to the Clerk of Court). Applications for appointment that fall within the year of a completed investigation must still be accompanied by a mandatory checklist.

Professional Guardians filing for their annual investigation must file the following:

- Mandatory Checklist Smart Form;
- Fingerprints must be submitted electronically using an approved Livescan vendor. Please visit www.fdle.state.fl.us for more information;
- Court Monitor Investigatory Cost (\$50 made payable to the Clerk of Court);
- An Employee Statement with a Fiduciary Obligation to a Ward (for each employee with a mandatory checklist);
- Application for Appointment (Disclosure Statement if nonprofit corporate guardian); and
- Clerk's Office Processing Fee (\$7.50 payable to the Clerk of Court)

Professional Guardians filing for a new case within the year of their annual investigation must file:

- Mandatory Checklist; and
- Clerk's Office Processing Fee (\$7.50 payable to the Clerk of Court)

6. Duties of a Guardian

As not all guardianships have the same requirements, your attorney should provide you with all of your specific duties. In general, you may have to file an initial inventory and initial plan. You may be required to file annual accountings and annual plans as well as submit to annual re-investigations. You will also be required to complete certain educational courses, as discussed below.

7. Education Requirement

Which course: If you are a nonprofessional guardian, you may also be required to attend a four (4) or eight (8) hour guardianship course that will provide you with much of the information necessary to fulfill your fiduciary obligation. The four (4) hour course is only for a guardian of the property of a minor. All other guardians must complete the eight (8) hour course or petition the Court to complete the four (4) hour course. All petitions should include experience and/or circumstances that would support this request.

Timing: Guardians must take the course within the four months after the letters are signed by the Judge.

Waiver: The Court will always entertain a Motion/Petition to Waive the Education Requirement. However, it should be noted that this is a very important course and the Court strongly suggests attendance. If the guardian has specific training or expertise, that information should be included in the motion to waive the requirement. A hearing may be required and waiver of the requirement is guided by section 744.3145, Florida Statutes.

8. Auditing in Guardianships

➡ **Where can I get the Broward County accounting forms?**

"Smart Forms" that are completed online and converted to a PDF to be electronically filed are available on the [Probate and Guardianship Smart Form](#) web page. Please consult your attorney regarding your duty as a guardian and the forms you are required to file.

⇒ *How much is the audit fee?*

It is based on the estate value as outlined in Chapter 744, Florida Statutes.

⇒ *When are my reports due?*

The Report consists of the Annual Accounting & Plan. The reporting due dates are based on the date Letters of Guardianship were issued. More specifically, the Initial Inventory and Plan are due sixty (60) days following the issuance of the Letters of Guardianship. For subsequent years, the Report is due on the first day of the fourth month following the anniversary month (which is the month Letters of Guardianship were issued). For example, if your Letters were issued June 15, 2019, your first Annual Accounting would be due October 1, 2020, for the period of June 15, 2019, through June 30, 2020. The first Annual Plan will be due the same time, October 1st but it covers July 1, 2020, through June 30, 2021, since the plan covers the coming year and your Initial Plan covered June 15, 2019, through June 30, 2020.

⇒ *What is the Guardianship Inception Date?*

The Guardianship Inception Date is the date Letters of Guardianship are signed by a Judge appointing an individual guardian over a minor child or someone declared incapacitated.

⇒ *Can I file a simplified accounting?*

To do so, you must meet the following criteria pursuant to § 744.3679, Fla. Stat.:

1. You must be appointed Guardian of the property;
2. All assets in the guardianship estate must be in a restricted or frozen account; and
3. The only transactions that occur are interest accrual, deposits pursuant to a settlement, or service charges imposed by the financial institution.

C. Settlements in Guardianships

It is the policy of the probate division that all settlements arising out of an action filed in civil court be approved by the civil court judge having jurisdiction over the action.

Settlements reached prior to the filing of an action in civil court must comply with the relevant statutes and rules of the Florida Probate Code. (Including but not limited to Settlement of Minors' Claims, Rule 5.636).

D. Guardian Ad Litem

In accordance with section 744.301, Florida Statutes, in cases involving a minor in which the gross settlement is an amount that is equal to or exceeds \$15,000, the Court may appoint a guardian ad litem to represent the minor's interests. In cases involving a minor in which the gross settlement is equal to or exceeds \$50,000 the Court shall, prior to approval of the settlement, appoint a guardian ad litem. In cases requiring the appointment of a guardian ad litem be sure to submit a Petition and Order for Appointment of Guardian Ad Litem. **Please do not place a name in the space provided for the appointment.** The Court will appoint an individual they deem best suited to address the issue(s).

E. Fees

1. Attorney and Guardian Fees

Petitions for Guardian's and Attorney's fees must be accompanied by an itemized description of the task/service performed and the amount of time spent on said task/service in addition to all other requirements of section 744.108, Florida Statutes. All petitions for fees must include the

total amount of prior fees awarded. In addition, all fee petitions must contain the following certification clause:

I hereby certify that the Annual Application for Investigation, court appointed attorney fees, and examining committee member fees, if applicable, have been filed and paid and I have not received notification that any filing(s) are non-compliant. The guardian has completed and filed with the court proof of completion of the guardian education requirement.

***PLEASE REFER TO THE HANDBOOK FOR GUARDIANS FOR ADDITIONAL INFORMATION REGARDING FEES**

2. Special Court Monitor Fees

Special Court Monitors shall serve a copy of their fee petition on the guardian and guardian's attorney. There will be a 30-day period in which a party may file an objection. If, after the expiration of the 30-day period, no objection has been filed, the petition and order will be sent to the Judge for consideration. If an objection is timely filed, the file will be referred to a General Magistrate for a hearing.

F. Reporting Requirements

The Broward County Clerk of Court uses Smart Forms, which are available free of charge on the Seventeenth Judicial Circuit Probate and Guardianship Smart Form web page.

As of April 1, 2013, attorneys are required to electronically file pleadings, motions, and other documents. Smart Forms should be used in the electronic filing process. To register to e-File and for more information, please visit the Florida Courts ePortal.

When filing an accounting, plan or inventory, please remember the following:

- All audit fees are due at the time of filing.
- Statements from financial institutions verifying amounts for inventories as well as for the **period ending** for accountings must be attached to the report.
- Period ending dates on the annual accounting and annual plan should be the end of the anniversary month of the Guardian's appointment date.
- The inventory must be valued as of the date the Letters of Guardianship are signed by the Judge.
- All reports that are submitted for filing must contain the original signatures of all guardians and attorneys.
- The physician's report for the annual plan must contain the date of the exam as well as the date the physician signed the report.

G. Show Cause Procedures

1. Failure to File

Failure to file an inventory, plan, accounting or any other pleading or pay any fee or cost will result in the issuance of an Order to Show Cause. The Show Cause hearing will be held before a General Magistrate, unless an objection is made, and appearance is mandatory even if you should file or pay prior to the hearing date as you will be required to show good cause for the delay. Fees will not be granted for time attending a show cause hearing unless exceptional circumstances are

presented to the General Magistrate or judge, as appropriate.

2. Non-Compliant Filing

If the Guardianship Audit division of the Clerk's Office finds any inventory, plan, or accounting to be non-compliant they will provide the attorney and guardian with the information and request compliance within 15 to 30 days. If, after that time the file is still non-compliant, the Clerk's Office may request a hearing to Show Cause by filing an affidavit as to the non-compliance. If the Court grants the Order to Show Cause, the Show Cause hearing will be held before a General Magistrate, unless an objection is made or unless otherwise noted, and appearance is mandatory even if you should file prior to the hearing date as you will be required to show good cause for the delay. Fees will not be granted for time attending a show cause hearing unless exceptional circumstances are presented to the General Magistrate or judge, as appropriate.

H. Closing Guardianships

A Petition for Discharge will not be considered if the file is non-compliant.

XIV. Mental Health

A. Petition for Determination of Incapacity (Chapter 744, Florida Statutes)

Petitions to Determine Incapacity must be completely and accurately filled out before filed. The alleged incapacitated person's (AIP) address must be his/her present address. Not providing the most current address delays the examining committee. If an AIP is moved from the address provided in the petition, please notify the Clerk's office, members of the examining committee, and the court appointed attorney immediately. In addition, ALL next of kin should be listed in the petition and must be provided with notice and copies of the petition. The filing should be compliant with Florida Rule of Judicial Administration 2.425. The filing of a Notice of Confidential Information Within Court Filing may need required. It is the party's obligation to ensure the filing complies with applicable rules of judicial administration.

B. Baker Act (Chapter 394, Florida Statutes)

A Petition for Involuntary Examination for mental illness may be obtained in the Mental Health Division of the Probate Clerk's office. The Petition shall be filed in accordance with section 394.463, Florida Statutes. The Petition must contain sworn testimony. If a Judge grants the petition and enters an *ex parte* order for involuntary examination, Henderson Mental Health Mobile Unit will go to the individual and assess the situation. If the Mobile Unit finds that further treatment is needed, the individual will be brought to a receiving facility.

C. Marchman Act (Chapter 397, Florida Statutes)

A Marchman Act Petition is for involuntary assessment and/or treatment for substance abuse. A Petition to Marchman Act may be obtained in the Mental Health Division of the Probate Clerk's Office. A hearing will be set before a General Magistrate and the petitioner must be present at that hearing. In addition, the alleged substance abuser must be served the Notice of Hearing or there must be proof that service was attempted.

XV. Common Probate Mistakes

- Omitting the date of death on Petition for Administration.
- Omitting consents from both parents if he/she is not petitioning to be appointed guardian(s) in minor guardianships. If the location of one parent is unknown, a Motion Calendar or Special Set hearing must be set with the presence of the petitioning parent.
- Improper venue (please note, the death certificate of a decedent MUST reflect that he/she was a resident of Broward County. If the death certificate reflects improper residence, please obtain an amended death certificate. If venue is based upon the decedent owning property in Broward County, the petition must specifically state what property is in Broward County.
- Requesting to waive the investigatory cost in cases where the ward is indigent (the investigatory cost is to be borne by the guardian).
- Sending original pleadings to the Judge's office. All original pleadings must be electronically filed through the [Florida Courts eFiling Portal](#).
- Incorrect filing fees.
- Failing to file a Notice of Confidential Information Within Court Filing.
- Failing to comply with Florida Rule of Judicial Administration 2.425.
- Failing to file Inventories with the Department of Revenue. Any inventory filed by a fiduciary in an estate proceeding with the Court, must be sent to the Department of Revenue at:

Florida Department of Revenue, General Tax Administration Center
Tallahassee Central Service Center
P.O. Box 6417
Tallahassee, Florida 32314-6417

XVI. Probate and Guardianship Smart Forms

The Probate Division of the Seventeenth Judicial Circuit requires the use of "Smart Forms". For more information regarding Smart Forms, please visit the [Probate and Guardianship Smart Form Page](#).

The Judges assigned to the Probate Division of the Seventeenth Judicial Circuit in and for Broward County, Florida are pleased to present this handbook. The handbook is a basic outline; it is not a "do-it-yourself" guide and cannot be used as a substitute for attorneys, accountants, trust officers and other professional advisors necessary for proper probate and guardianship administration. This handbook does not constitute legal advice. Legal advice should be obtained from your own attorney. Any person or entity who relies on any information obtained on the Circuit's website does so at his or her own risk. While best efforts are made to keep this document current, changes and/or new policies may not be reflected, it is always best to consult with your attorney.