

## **FREQUENTLY ASKED QUESTIONS**

### **A. ESTATES & TRUSTS**

#### ***Why is the Judge requiring the personal representative to post bond?***

According to § 733.403, Fla. Stat., the Court has the discretion to waive the requirement of filing a bond, require a personal representative to give bond, increase or decrease the bond, or require additional surety. The Court may determine to require bond based on the residency of the personal representative, size, nature and liquidity of estate assets. Even when the personal representative is the only beneficiary, the Court may still require the posting of bond because it views creditors as other interested persons. The Court has the discretion to require bond even when the will waives the requirement of bond or the other beneficiaries have signed waivers and consents.

#### ***What are the filing fees for the various estate administration proceedings?***

Disposition of Personal Property Without Administration: \$102

Summary Administration:

Probate Assets less than \$1,000: \$106

Probate Assets greater than \$1,000 and less than \$75,000: \$206

Formal Administration, Ancillary or Conservatorship: \$ 256

#### ***What is required to be filed when all the assets are in a Trust?***

§ 737.308, Fla. Stat., requires the trustee to file with the Probate Court a Notice of Trust for a trust described in §733.707(3), Fla. Stat. The filing fee is \$37.

#### ***My client is pursuing a lawsuit against the decedent for personal injuries. Do I need to open an estate? Who can be appointed the personal representative?***

You will need to open a Formal Administration proceeding and have a personal representative appointed by the Court. The personal representative will stand in the decedent's shoes for purposes of the civil lawsuit including serving the complaint on the personal representative. Normally, the Court prefers to appoint an independent personal representative to represent the decedent's estate if the decedent's relatives are unwilling. Generally, the Court would prefer not to appoint the person recommended by the Plaintiff's attorney due to the potential for a conflict of interest.

## **B. GUARDIANSHIPS**

### ***Why do I need an attorney?***

Florida Probate Rule 5.030 requires that every guardian must be represented by an attorney admitted to practice in Florida unless the guardian is an attorney admitted to practice in Florida.

### ***Who may be appointed Guardian?***

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.

### ***Who may not be appointed Guardian?***

No person who has been convicted of a felony or has a confirmed report of abuse, neglect, abandonment, or exploitation. In addition, no person who may be incapable to perform the duties of guardian due to incapacity or illness or is otherwise unsuitable. Reference should also be made to §§744.309, 744.446, Fla. Stat.

### ***What needs to be filed to open a guardianship?***

The following forms are required to open a guardianship file:

- Petition for Appointment
- Order on Petition for Appointment
- Letters of Guardianship
- Oath of Guardian
- Investigatory Package

If the guardianship being opened is for an incapacitated individual, an incapacity file must first be opened.

Minor guardianships where the parents are petitioning for guardianship are to be filed for the property only.

### ***Why must I be investigated every year?***

The 17th Circuit investigates guardians at least once a year as part of the Court's responsibility in ensuring that the best interests of the wards are being met.

***What is required to be filed for my background investigation?***

Nonprofessional Guardians being investigated for the first time must file the following:

Mandatory Checklist

Fingerprint Card

\$47 fingerprint card processing cost made payable to FDLE

Court Monitor Investigatory Cost \$50 made payable to the Clerk of Court

Application for Appointment

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

Application for Appointment

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

Mandatory Checklist

Fingerprint card - \$47 fingerprint card processing cost made payable to FDLE

Court Monitor Investigatory Cost \$50 made payable to the Clerk of Court

Clerk's Office Processing Fee \$7.50 payable to the Clerk of Court

Application for Appointment (Disclosure Statement if nonprofit corporate guardian)

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

Mandatory Checklist

Clerk's Office Processing Fee - \$7.50 payable to the Clerk of Court

***Where can I get an Application for Appointment?***

The Application for Appointment may be obtained from the Clerk's office or on the Circuit's website ([www.17th.flcourts.org](http://www.17th.flcourts.org)) on the Probate and Guardianship site. You will find the form under administrative orders (probate) IV-01-A-26 .

***Where can I get fingerprinted?***

As a courtesy, guardians may be fingerprinted in the main courthouse by Judge Grossman's Court Deputy, Terry Moore. Deputy Moore fingerprints in Room 826 Mondays -Thursdays from 2:00 p.m. to 4:00 p.m. , and on Fridays from 9:00 a.m. to noon and 2:00 p.m. to 4:00 p.m.

***When must I be reinvestigated?***

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. For professional guardians, annual investigations are due on or before every January 15th.

***I have received Letters of Guardianship, now what are my responsibilities?***

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. Annually you may be required to file annual accountings and annual plans as well as submit to annual re-investigations. 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.

***Where and when can I take the nonprofessional guardianship course?***

The nonprofessional guardianship course has been designed to provide nonprofessional guardians with the information necessary to ensure their ward's best interest are being met. Currently, this course is offered through The Broward County Bar Association. You can contact The Broward County Bar Association at (954) 765-8040. Please note, this is not the 40-hour class required to be a professional guardian.

***Where can I take the 40-hour class required to be a professional guardian?***

Currently, the 40-hour course is available through Broward Community College. Broward Community College can be contacted at (954) 201-2204. For other courses, please refer to the Statewide Public Guardianship Office Web site at <http://elderaffairs.state.fl.us/doea/english/public.html>.

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

These forms are available online at [www.17th.flcourts.org](http://www.17th.flcourts.org). CD ROM (\$10) and hard copy format (\$20) of these forms are available in the law library located in the courthouse. The phone number for the law library is (954) 831-6226.

***Can I close out a guardianship if my ward has died or turned 18 even though I am non compliant in some old filing?***

Maybe. A waiver from all interested persons must be filed with the Court. If waivers are not filed, a case must be in compliant status for an Order of Discharge to be considered by the Judge.

**C. GUARDIANSHIP AUDITING**

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

These forms are available online at [www.17th.flcourts.org](http://www.17th.flcourts.org). CD ROM (\$10) and hard copy format (\$20) of these forms are available in the law library located in the courthouse. The phone number for the law library is (954) 831-6226.

***Which forms must I file?***

Please consult your attorney regarding your duty as a guardian and the forms you are required to file.

***The guardianship software won't download from the Internet site to my computer or I can't get the link to the Broward County web site. What do I do?***

You must have the second edition (SE) of Windows 98 or higher. To check which Windows version you have installed on your computer, click on My Computer, click on Help in the tool bar and click on About Windows. You must have Windows 98 SE or second edition. The forms cannot be downloaded to an Apple Personal Computer.

***I cannot see the entire form on my monitor when I start the Guardianship Reports program.***

You must set your monitor to the industry standard of 800 x 600 pixels. To do this, right click on your desk top screen, then go to properties, then settings. Change your settings by moving the arrow to 800 x 600.

***Where can I get answers to questions about preparing the annual accounting, initial inventory, annual plan or initial inventory?***

In Broward County , you can call the guardianship audit division at (954) 831-5512.

***How do I save my work?***

To save your work, you must go into the report that you want to prepare and then you will see a save button on the top of the screen. There is no save button in the information worksheet.

***When I save the file, a screen appears (Validation Screen), that says THE FOLLOWING DATA FIELDS ARE MISSING OR ARE INCORRECT, what does this mean?***

That is a validation screen to remind you that you have not filled out those fields. The program is saving your work.

***Where do I get information for the Uniform Case Number?***

Contact your Clerk of the Court Probate division.

County Designator: Select the county where you file.

Year Designator: The year the case was opened

Sequential Number: This number is the case number.

Party/Defendant Identifier: If not assigned by the Clerk, leave blank.

Branch Location: If not assigned by the Clerk, leave blank.

***How much is the audit fee?***

It is based on the estate value as outlined in Chapter 744, Fla. Stat.

***When are my reports due?***

The reporting due dates are based on the day Guardianship Letters were issued. More specifically, the Initial Inventory and Plan are due sixty (60) days following the issuance of the Guardianship Letters. The Annual Accounting & Plan are due on the first day of the fourth month following the anniversary month (which is the month Guardianship Letters were issued).

***What is the Guardianship Inception Date?***

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

***I attached a copy of the renewal notice for the CD, is that sufficient?***

It is not. We need a statement or letter (on bank letterhead) that states what the balance was in the account as of the period ending date, so we can verify the amount stated on your Accounting or Inventory.

***When is my next report due and what period should it cover?***

That depends on your Letters of Guardianship date. All reports are due the 1st day of the 4th month after your anniversary month. For example, if your Letters were issued June 15, 1999, your first Annual Accounting would be due October 1, 2000, for the period of June 15, 1999, through June 30, 2000. The first Annual Plan will be due the same time, October 1st but it covers July 1, 2000, through June 30, 2001, since the plan covers the coming year and your Initial Plan covered June 15, 1999, through June 30, 2000.

***Can I file a simplified accounting?***

You must meet the following criteria:

- 1) Guardian of the property
- 2) All assets in the estate are in restricted or frozen accounts
- 3) The only transactions that occur are interest accrual, deposits pursuant to settlement or financial institution service charges.

***The ward has individual stocks that I will place into an investment account. Do I record each individual stock or the total of the investment account on the annual accounting?***

If you have a consolidated statement from the broker for one investment account and the statement shows each individual stock by number of shares and value, you may use the total of the investment account on the annual accounting. The transfer of the stock to the investment account is recorded on Schedule E (Bank Transfer Schedule). The stock and the investment account are intangible assets.

***How do I record the transfer of cash assets in an investment account and stock is subsequently purchased?***

If an investment account is opened with cash assets and stocks are purchased through the account, this would be recorded as a decrease in cash assets (Schedule D-1) and increase in intangible assets (Schedule D-2). Again, if you have a consolidated statement from the broker for one investment account and the statement shows each individual stock by number of shares and value, you may use the total of the investment account on the annual accounting.

***How do I report the sale of real estate or personal property?***

First, determine the gain or loss by subtracting the sale price from the value listed on the prior accounting or inventory, i.e. if the personal residence was valued at \$50,000 on the initial inventory or prior accounting and the residence was sold for \$40,000, there is a \$10,000 loss which is listed on the capital transaction page, Schedule C. You do not list the \$40,000 received from the sale as income on Schedule A. You do not list the costs associated with the sale as a disbursement on Schedule B this is taken into consideration when determining the loss.

***How do I report the purchase of personal property, such as a computer?***

On Schedule C, write a full description of the personal property, the date the item was purchased and in the gain column list the purchase price. List the purchase price as a disbursement on Schedule B-3 or B-4. List the computer as a remaining personal asset on Schedule D-2.

***On the annual accounting form there is only one Schedule A page for income. Do I report each separate receipt?***

Report income that is received on a regular basis and in the same amount, such as social security income as 12 X \$400, in the description column. The total \$4,800 is listed in the total column. To report income that changes with each receipt, such as interest and dividends, provide the yearly amount and indicate in the description the number of times the interest or dividend was received during that year. For example, interest from a savings account received 12 times for a total of \$200.

***Can I attach a form that lists income and disbursements and place the total in the schedules?***

No. Each receipt of income and disbursement must be input in the guardianship software program. The form automatically calculates each page and places the total in the summary page.

***Why can't I type any information in the summary page?***

The summary page is completed from the information you input in the forms. Please make sure that line 9 equals line 13. This shows that the account is balanced.

***Is a money market investment account a cash asset or an intangible asset?***

If the account is an investment consider it as an intangible asset. Certificates of Deposit are intangible assets, too.

***Where do I report the type of account on the report?***

Until the forms are revised, please report the type of account on the same line as the bank name.

***On the annual accounting report, Schedule F-1, do I report the actual sale price of real property or the amount received after closing costs?***

On Schedule F-1 lists the sale price of the real property. The amount of proceeds received after closing costs is listed as a capital gain on Schedule C. You also list the loss of the property and an increase in the bank account in which the proceeds were deposited.

***In the annual plan, does the guardian list all medications taken by the ward during the year or the only the medications the ward is currently taking?***

The guardian must list all types of medications taken by the ward in the preceding year.