

FREQUENTLY ASKED QUESTIONS
(revised July 2013)



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?

For all filing fees, please consult the [Broward County Clerk of Court webpage](#).

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.

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.

How do I eFile?

As of April 1, 2013, all attorneys are required to eFile. For information on registration, please visit the [Florida Courts ePortal](#). The Probate Court accepts eFilings for new and existing cases in Probate and Guardianship (excluding Civil Involuntary Commitment cases). Additional information can be found on the website for the [Broward County Clerk of Court](#).

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. 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 (see section IX, Guardianships)

*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 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 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 must be submitted electronically using an approved Livescan vendor. Please visit www.fdle.state.fl.us for more information. Professional guardians and employees who have previously submitted their prints electronically must resubmit after five (5) years.

- Court Monitor Investigatory Cost (\$50 made payable to the Clerk of Court)
- A 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)
- 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
- Clerk's Office Processing Fee (\$7.50 payable to the Clerk of Court)

Where can I get forms for the background investigation?

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

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 4 or 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. Please note this is not the 40 hour class required to be a

professional guardian. Currently, this course is offered through:

- (1) The Broward County Bar Association. You can contact The Broward County Bar Association at 954-764-8040 ext 201.
- (2) Rainy Day Disability Resources, Inc. offers an online course. To register, please visit: <http://www.rainydayfl.org/>
- (3) St. Petersburg College offers the online course Legal Guardian Family Training Online. To register, please visit their website: <http://www.spcollege.edu/>.

Can I close out a guardianship if my ward has died or turned 18 even though I am non-compliant in an 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. A hearing may be required.

C. AUDITING

Which auditing forms must I file?

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

Where can I get the Broward County accounting forms?

These forms are available online at the Circuit's [Probate and Guardianship Smart Form Page](#).

Two options are available at this time:

- A downloadable program that assists in creating a report that can be paper filed (non-attorneys only) is located at the [Guardianship Software Reporting Program](#) page.
- Updated "Smart Forms" that are completed online and converted to a PDF that can be paper filed or eFiled are available at the [Probate and Guardianship Smart Form](#) web page.

The following Guardianship Software Reporting Program forms (not Smart Forms) may be purchased at the Broward County Law Library: (1) The Initial Guardianship Inventory; (2) the Simplified Annual Accounting; (3) the Annual Accounting for Guardianship; and (4) the Guardianship Plan (Initial and Annual). The forms are available in hard copy (paper form) for \$20 or on a CD ROM for \$10. For an additional \$3.00, the forms can be ordered by mail from the county law library:

The Broward County Law Library
Broward County Courthouse
201 SE 6th Street, Room 1800 – North Wing
Fort Lauderdale, FL 33301

Telephone: 954-831-6226

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

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

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 and 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?

No. We need a statement or letter (on bank letterhead) that states what the balance was in the accounting 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 first day of the fourth 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 as 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 and increase in intangible assets. 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 as a capital transaction.

How do I report income?

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.

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.

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.

D. GUARDIANSHIP REPORTING SOFTWARE PROGRAM

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.

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.

When using the guardianship reporting software, 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.

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.

E. PROBATE AND GUARDIANSHIP SMART FORMS

What is the Smart Form and why can't I print and File it?

The Smart Form is a web form that you complete online to create a PDF document needed for eFiling. You must complete all steps outlined on the [Smart Form webpage](#) in order to create the PDF. The PDF document is what you will file through the ePortal. Please do not attempt to print and file the web form. It will be rejected by the Clerk.

How can I send an incomplete form to my accountant/attorney/client for that person to make changes or add information?

Use the "Save Draft" feature to save a link to the in-progress web form on your computer. This file can be emailed like a word document to anyone and they will be able to open the in-progress form and make changes. Keep in mind that they will need to use the "Save Draft" feature to save a new version of the form they have finished making their changes. The information can only be accessed from this link

saved on your local drive, the court and its personnel will not be able to retrieve this information.

I can't find my saved draft? Can the Court retrieve it for me?

No. The link saved on your hard drive is unique and the Court cannot retrieve that information.

My accounting balances but I keep getting an error message. What's wrong?

Please make sure to round numbers to the nearest dollar using a consistent rounding method. That should clear this error.

I made a mistake on the form and I didn't realize it until I printed the PDF. How can I fix it?

Please make a habit of using the "Save Draft" feature to save the most current draft of your Smart Form before creating the PDF. If you notice an error on the PDF, open up the last draft of the Smart Form and correct the error. Save it again ("Save Draft") and then create a new PDF ("Create PDF") with the changes. Do not make an inline notation in pen on the form as this will cause the Clerk's Office to reject the form.

How does my client sign the form?

You have two options:

- (1) Leave the signature field blank on the Smart Form, create the PDF, have the client sign it, scan it and upload that file to the portal. Please be aware that when scanning as an image, your document may no longer comply with Rules of Judicial Administration 2.525 and 2.526. For more information on accessibility rules, please visit the [Florida Supreme Court homepage](#).

- (2) You can leave the signature field blank on the Smart Form, create the PDF, have the client sign it and then return to your final saved version of the webform, enter '/s/ client name' on the signature along with the date signed and then create a new PDF. Save the "signed" version on your computer and upload that file to the portal.

My annual plan requires a physician's form. Where is it?

Once you complete all steps and create and print the PDF, the physician's form will print as page 11 along with the rest of the form.

I have more entries than are accepted in the form. What do I do now?

In the last entry available on the form, place the aggregate total of the remaining entries. Indicate “aggregate total” in the description field. Itemize these entries on an additional page and include that page with your filing.

I can't enter the phone number? What's the format?

Do not include dashes in a telephone number.

The correct formats are: (954) 555 5555 or (954) 5555555.

I keep entering the Judge's name for Division, but I keep getting an error??

Please enter the Division number. They are as follows:

Grossman: 60

Greene: 61

Speiser: 62