

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/childsviiew/> 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://fconline-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.