

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.

Contents of the Local Procedures of Broward County – Probate Division

I.	Introduction to the Probate Court.....	5
II.	The Broward County Clerk of Court.....	6
A.	Hours and Location	6
B.	Obtaining Court Files.....	6
C.	Unavailable Court Files	6
D.	Obtaining Copies from the Broward County Clerk of Court	6
1.	How to Request Copies on the Portal for New & Existing Case Filings	6
2.	Mailing a Request for Copies	8
III.	<i>Ex Parte</i> Hearings	8
A.	Setting an <i>Ex Parte</i> Hearing.....	8
1.	Filing a Request for an <i>Ex Parte</i> Hearing.....	8
2.	Deadlines for <i>Ex Parte</i> Hearings.....	9
3.	Allowable <i>Ex Parte</i> matters.....	9
4.	Division procedures for <i>Ex Parte</i> hearings	9
IV.	Emergency Hearings	10
V.	Motion Calendar	10
A.	Setting a Hearing.....	10
B.	Canceling a Hearing.....	10
C.	Duration of a Hearing.....	10
E.	Copies at a hearing.....	10
VI.	Special Set Hearings	11
VII.	Matters Taken Under Advisement.....	11
VIII.	Opening/Reopening Files.....	11
A.	Filing Fees.....	11
B.	Documents Required for Opening New Files.....	11
1.	Formal Administration	11
2.	Summary Administration	12
3.	Disposition of Personal Property Without Administration	12
4.	Guardianships	13
C.	Reopening Estates.....	13
1.	Closed by Order of Discharge.....	13
2.	Closed by Court Order/Lack of Activity (<i>Sua Sponte</i>)	14
IX.	Exempt Property Determinations	14
A.	Homestead.....	14
1.	Stand-Alone Homestead Petition	14
2.	Summary Administration Proceedings	14
3.	Formal Administration Proceedings.....	14
B.	Other Exempt Property Determinations.....	14
X.	Closing Estates	14
XI.	Discretionary Determination of Security for Estates and Guardianships	15
A.	Types and Determination of Securities.....	15
B.	Depositories in Guardianships	15
XII.	Sale of Real Property in Estates and Guardianships	16
XIII.	Guardianships	16
A.	Emergency Temporary Guardianships.....	16
B.	Background Investigation	16

1.	Frequency of background checks.....	16
2.	Required Initial Paperwork for Professional and Nonprofessional Guardians	16
3.	Prospective Guardians	16
4.	Annual Renewal for Appointed Nonprofessional Guardians	17
5.	Annual Renewal for Professional Guardians.....	17
6.	Duties of a Guardian	18
7.	Education Requirement	18
8.	Auditing in Guardianships	18
C.	Settlements in Guardianships	19
D.	Guardian Ad Litem.....	19
E.	Fees	19
1.	Attorney and Guardian Fees	19
2.	Special Court Monitor Fees.....	20
F.	Reporting Requirements	20
G.	Show Cause Procedures.....	20
1.	Failure to File.....	20
2.	Non-Compliant Filing	21
H.	Closing Guardianships	21
XIV.	Mental Health	21
A.	Petition for Determination of Incapacity (Chapter 744)	21
B.	Baker Act (Chapter 394).....	21
C.	Marchman Act (Chapter 397).....	21
XV.	Common Probate Mistakes.....	22
XVI.	Probate and Guardianship Smart Forms.....	22

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)	<input type="text"/>
Certified Copies (# of Documents)	<input type="text"/>
Envelopes	<input type="text"/>

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)	<input type="text" value="3"/>
Certified Copies (# of Documents)	<input type="text" value="2"/>
Envelopes	<input type="text" value="1"/>
# Exemplified Copies	<input type="text"/>

#	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)	<input type="text" value="2"/>
Certified Copies (# of Documents)	<input type="text"/>
Envelopes	<input type="text" value="1"/>
# Exemplified Copies	<input type="text" value="1"/>

#	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.