

THE 17th JUDICIAL CIRCUIT OF FLORIDA



LOCAL PROCEDURES PROBATE DIVISION

(portions updated December 2013)

Notice:

The Probate Court Judges of Broward County, Florida and their staff 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 guardianship administration. Legal advice should be obtained from your own attorney. Any person or entity who relies on any information obtained on the Web site does so at his or her own risk. While this is a Court Record as defined by Florida Rules of Judicial Administration 2.420 and best efforts are made to keep this document current, changes and/or new policies may not be reflected, it is always best to consult with your attorney.

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I. Introduction to the Probate Court.

The Circuit Courts in Florida are the trial courts of general jurisdiction. The Probate Division of the Circuit Court has jurisdiction of proceedings relating to the settlement of the estates of decedents and minors, granting of wills, guardianships, involuntary hospitalization, and the determination of competency. The Broward County Probate Division is located at:

The Broward County Courthouse
201 S.E. 6th Street
Fort Lauderdale, FL 33302

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

Judge Melvin Grossman (Division 60)
Room 826
(954) 831-7759

Judge Mark A. Speiser (Division 62)
Room 804-B
(954) 831-7805

Judge Charles M. Greene (Division 61)
Room 822-C
(954) 831-7700

General Magistrate Rita Sclafani Berry
Room 1000
(954) 831-7695

General Magistrate Claudette Vanni
Room 933
(954) 831-7572

II. The Broward County Clerk of Court

A. Hours and Location

The Broward County Clerk of Court is located in the Broward County Courthouse, Room 252.

Hours: Monday – Friday, 8:00 a.m. – 4: 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 on the website for the [17th 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.

Closed Files from 1981 – 2008: You must first order the file by calling (954) 831-7150. Files will be transferred to the Central Courthouse from storage 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 Filed from 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) 712-7899, ext. 7802.

C. Unavailable Court Files

If a file is checked out of the Clerk's Office to a Judge, General Magistrate, Deputy Clerk, Program Attorney, Staff Attorney, Court Monitor/Guardianship Investigator, Guardianship Audit, Administrative Assistant, or Case Manager, it will be made available to any attorney unless extraordinary circumstances exist. The Clerk's Office must be contacted to obtain the file for your review.

D. One Filing with Multiple Case Numbers

If a single pleading is filed with multiple case numbers, please eFile a copy in each case number. If submitting a paper copy in court, provide a copy for each case number and highlight the case number in which it should be filed.

E. Obtaining Copies from the Broward County Clerk of Court

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

In order to streamline processes, copies can be requested when filing documents electronically.

Steps:

On the portal, enter the case information and click search. Once the case style and status are pulled back in, the fields to enter counts for copies will appear. If it's for a new case, once the case type is selected, the fields will appear and the copy costs 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 since we will only mail the documents to one address.

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 was submitted is 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.

This is what your fields will look like:

Additional Fee Options

Non-Certified Copies (# of Pages)

Certified Copies (# of Documents)

Envelopes

Exemplified Copies

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

Example 2 – Exemplified Copy Request:

Let's say you are requesting Exemplified copies of the Letters of Administration from a case. The Letters of Administration that was submitted is 2 pages. Your fields should look like this:

Additional Fee Options

Non-Certified Copies (# of Pages)

Certified Copies (# of Documents)

Envelopes

Exemplified Copies

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

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

- Regular Copies:** \$1.00 per page
- Certified Copies:** \$2.00 per document
- Exemplified Copies:** \$7.00 per request

2. Mailing a Request for Copies

The preferable method for requesting copies is through the Florida Courts ePortal. If necessary to mail a request, please refer to the following:

Requesting copies by mail - Copies are available for \$1.00 per page and an additional \$2.00 to certify. Requests must be accompanied by a business check or money order made payable to the Clerk of Courts or a valid escrow account number and must include a self-addressed stamped envelope.

II. *Ex Parte* Hearings

A. Setting an *Ex Parte* Hearing

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

All *ex parte* requests must be eFiled through the [Florida Courts eFiling Portal](#). Each division has a separate *ex parte* request form. *Ex parte* request forms can be found on the [Probate and Guardianship home page](#) on the [17th Judicial Circuit website](#).

Ex parte hearings on petitions/motions previously filed: The *ex parte* request form should be submitted through the [Florida Courts eFiling Portal](#). On the *ex parte form*, indicate whether the subject petition/motion was paper filed prior to April 1, 2013 or eFiled. If the subject petition/motion was eFiled through the Florida Courts eFiling Portal and does not yet appear on the docket for the case, indicate the case number, reference number and date of filing.

Sending the *ex parte* request form with a petition/motion: If sending an *ex parte* request form simultaneously with a Petition/Motion, the Petition/Motion should be lead document with the *ex parte* request form and other documents following. If the *ex parte* request form is sent as the lead document, the eFiling 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 *ex parte* request through the Florida Courts ePortal, please send an email to the Clerk of Court, Probate Division. The email should be addressed to exparterequests@browardclerk.org. The subject matter of the email should be *Ex Parte Request* and include the case number and 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 *ex parte* hearing that is being requested.

2. Deadlines for *Ex Parte* Hearings

Ex Parte dockets are heard on Tuesdays and Thursdays for Judges Grossman, Greene and Speiser.

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

Thursday hearings: A party should eFile any pleadings, motions, or petitions by 11:00 a.m. on the Tuesday immediately prior.

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 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.

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

4. Division procedures for *Ex Parte* hearings

Judge Grossman: Judge Grossman's *ex parte* calendar includes most matters, except: minor settlements and/or Orders of discharge. **Attorneys will need to bring courtesy copies of the petition/motion and proposed order with them to the hearing.** All filing MUST include a completed *ex parte* request form.

Judge Speiser: Judge Speiser's *ex parte* calendar includes most matters, except: settlements and/or Orders of discharge. **Attorneys will need to bring courtesy copies of the petition/motion and proposed order with them to the hearing.** All filing MUST include a completed *ex parte* request form.

Judge Greene: Judge Greene's *ex parte* include most matters, except: minor settlements and/or Orders of Discharge.

All Divisions: Please refer to the above-noted *ex parte* instructions and the *ex parte* form on the [Probate and Guardianship home page](#) for additional information. Please check the website as the forms are updated often.

5. *Ex Parte* hearings via Video Conferencing

Judge Grossman conducts video conferencing for *ex parte* dockets on Tuesday for ALL divisions. To appear via video at the North Regional Satellite, West Regional Satellite or South Regional Satellite use the *ex parte* request form. Be sure to mark your choice of Deerfield Beach, Plantation or Hollywood and to follow the above-noted *ex parte* procedure.

III. 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 eFiled 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 ePortal 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 paper 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.

IV. Motion Calendar

A. Setting a Hearing

Motion calendar hearings are held on Mondays and Wednesdays from 9:00 a.m. to 9:45 a.m. for all divisions. For Judges Grossman and Speiser, motion calendar hearings are scheduled via the [Online Scheduling System](#). For Judge Greene, please contact his Judicial Assistant to schedule a motion calendar hearing and for special instructions regarding courtesy copies and additional court requirements.

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 eFiled with the [Florida Courts ePortal](#).

Please refer to the following link for the procedures for each Division for setting a hearing: <http://www.17th.flcourts.org/index.php/judges/probate>. These instructions may be updated without notice and should be checked frequently.

Judge Speiser: Petitions for Approval of a Minor Settlement cannot be done on Motion calendar; rather they should be a Special Set hearing.

B. Canceling a Hearing

Judge Grossman and Judge Speiser: 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.

Judge Greene: If an attorney needs to cancel a hearing, the attorney who set the hearing must call the Judicial Assistant at (954) 831-7700, the day prior to the hearing, and must send a Notice of Cancellation via email to awerking@17th.flcourts.org.

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. Appearance Before the Court

Upon arriving at the appropriate courtroom, please check in with the Judge's Court Deputy. Let the Court Deputy know whether the matter is uncontested or contested and whether any other parties will be appearing. If a matter is contested, the Court will hear the petition/motion after all parties have arrived.

E. 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.

V. Special Set Hearings

A Special Set hearing is for any matter which will take longer than ten (10) minutes to be presented. 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 with the Judicial Assistant. After a date has been assigned, the attorney must send a Notice of Hearing, a copy of the motion and/or pleadings to all counsel to all interested persons with courtesy copies to the Court. All original pleadings/documents are to be eFiled through the [Florida Courts eFiling Portal](#).

VI. 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.

Attorneys should call the Clerk's Office at (954) 831-7154 to determine the status of the Order.

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.

VII. Opening/Reopening Files

To open a new file, the attorney must eFile through the [Florida Courts eFiling Portal](#).

A. Filing Fees

For Filing Fees, please refer to the website for the [Broward Clerk of Court](#) or call (954) 831-7154.

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

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.

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 qualifications need to be met: (1) probate assets are greater than \$1,000 and less than \$75,000 (excluding exempt property and homestead) or (2) decedent has been dead for more than two (2) years.

- Petition for Summary Administration
- Original Will (if applicable)
- Order Admitting Will (if applicable)
- Proof of Paid Funeral Expenses and Last Medical Expenses
- Proof of Payment for Nursing Home Expenses Incurred
- Death Certificate
- Order of Summary Administration

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. 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.

4. Guardianships

Chapter 744, Florida Statutes

- Petition to Appoint Guardian
- Letters of Guardianship
- Order Appointing Guardian
- Mandatory Checklist for Guardianship Applications (Must use Broward County Smart Form)
- Fingerprint Card (if applicable – must be provided by the Probate Clerk's Office)
- Investigatory Cost (If applicable - \$50 payable to the Clerk of Court)
- FDLE Cost (if applicable - \$54.25 payable to FDLE)

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

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*

eFile a Petition for Subsequent Administration and order for Subsequent Administration. The assets and beneficiaries should be described with specificity but comply with Florida Rule of Judicial Administration 2.425 or file with a Notice of Confidential Information Within Court Filing.

(b) *Letters to be Reinstated*

eFile 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 old 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)

File a Petition and order to Reopen File and closing papers necessary to complete administration.

VIII. Exempt Property Determinations

A. Homestead

1. Stand-Alone Homestead Petition

The Judges assigned to the Probate Division of the 17th 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. However, in the event that a Petition for Summary Administration has listed known creditors of the decedent, the Court will require the petitioner to schedule a hearing and provide the creditors with formal notice of same hearing. After the hearing, the Court will determine whether the petition should be granted or denied.

3. Formal Administration Proceedings

In a Formal Administration proceeding, the Court will not enter the Homestead Order until the expiration of the credit period, ninety (90) days from the times of publication. Reasonably ascertainable creditors, to the extent that 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 ninety (90) day creditor 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. 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. The total family allowance is \$18,000. See Section 732.403, Florida Statutes.

IX. Closing Estates

Pleadings/Documents Required to Close an Estate:

- Death Certificate;
- Inventory;
- Proof of Publication of Notice to Creditors (Notice of Administration will not substitute);
- Florida Tax Release or Affidavit of No Florida Estate Tax Due (if Final Certificate, Need Estate Tax Closing Letter)¹;
- Proof That Agency for Health Care Administration for individuals over the age of 55 (Section 733.2121(3)(d)), Florida Statutes) was served to:

Mail:

ACS Recovery Services
P.O. Box 12188
Tallahassee, FL 32317-2188

ACS Recovery Services
2308 Killlearn Center Blvd.
Tallahassee, FL 32309

E-mail service: FLTPLLEGAL@XEROX.COM

Toll Free Number: 1-877-357-3268

- 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

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

X. Discretionary Determination of Security for Estates and 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;
- 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.

XI. 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 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 claims 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.

XII. Guardianships

A. Emergency Temporary Guardianships

Prior to the appointment of a guardian but after a Petition for Determination of 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. 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 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 emergent 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 17th Judicial Circuit investigate guardians 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 administrative order, must be submitted with a mandatory checklist for guardianship applications (available via Smart Form on the [Smart Form web page](#)).

The Mandatory Checklist Smart Form accounts for the following items:

- Smart Form Application for Appointment (Disclosure Statement for Nonprofit Corporate Guardians);
- \$50 Court Monitor Investigatory Cost payable to the Clerk of court
- Fingerprints submitted electronically to the Clerk of Court using an approved Livescan vendor. Please visit www.fdle.state.fl.us for more information;
- Professional Guardians must pay an additional \$7.50 to the Clerk for processing each file.

3. Prospective Guardians

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

Prospective guardians must submit the mandatory checklist for guardianship applications along with an application for investigation, application for appointment and the \$50 investigatory cost directly to the Clerk's office. The investigatory cost is payable to the Clerk of Court. Prospective guardians must submit their fingerprints electronically to the Clerk of Court using an FDLE 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

The fee for most electronic fingerprinting vendors is \$58.25 and is paid at the time of fingerprinting. Some offer additional services for which a greater fee is charged.

Professional guardians (and their employees) will need to be reprinted electronically every five (5) years.

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 eFiling, 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)
- Application for Appointment

5. Annual Renewal for Professional Guardians

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

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 and employees of professional guardians who owe a fiduciary responsibility to a ward must submit their fingerprints electronically via an approved Livescan vendor and **must be reprinted electronically every five (5) years**.

Professional guardians and their employees should use the following ORI number: Professional guardians: FL006023Z

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 eFiling, on the [Probate and Guardianship Smart Form Page](#) .

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

- Mandatory Checklist Smart Form;
- 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);
- 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) ;
- 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)

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

There are two courses, the 4 hour and 8 hour. The 4 hour course is only for a guardian of the property of a minor. All other guardians must take the 8 hour course or petition the Court to take the 4 hour course. All petitions should include experience and/or circumstances that would support this request.

7. Education Requirement

Which course: 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.

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

Where to take the 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/>.

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 pleading 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

⇒ *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 www.17th.flcourts.org.

- “Smart Forms” that are completed online and converted to a PDF and eFiled are available at the [Probate and Guardianship Smart Form](#) web page.

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

⇒ *What is the Guardianship Inception Date?*

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

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

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. You must be appointed Guardian of the property;
2. All assets in the estate must be in a restricted or frozen account; and
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 stock and the investment account are intangible assets.

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

If an investment account is opened with cash assets and stocks are purchased through the account, this would be recorded as a decrease in cash assets 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 on the capital transaction section (Smart Form Section 5. Capital Adjustments). You do not list the \$40,000 received from the sale as income. You do not list the costs associated with the sale as a disbursement, this is taken into consideration when determining the loss.

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

In "Section 5. Capital Adjustments" of the Smart Form, write a full description of the personal property, the date the item was purchased and in the gain column list the purchase price. List the purchase price as a disbursement. List the computer as a remaining personal asset.

⇒ *On the annual accounting form there is only one section for income ("Section 1. Income" on Smart Form). Do I report each separate receipt?*

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

⇒ *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.

⇒ *On the annual accounting report, (Smart Form "Section 11. Sale of Real Property"), do I report the actual sale price of real property or the amount received after closing costs?*

Section 11. Sale of Real Property of the Smart Form lists the sale price of the real property. The amount of proceeds received after closing costs is listed as a capital gain in "Section 5. Capital Adjustments" of the Smart Form. 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 only the medications the ward is currently taking?*

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

C. Settlements in Guardianships

It is the policy of the probate division that all settlements arising out of an action filed in civil court must 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, 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 a detailed itemization of the task and the amount of time spent on said task 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.

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 30 days has passed, 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

Broward County uses Smart Forms, which are available free of charge on the 17th Judicial Circuit [Probate and Guardianship Smart Form](#) web page.

The following 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

As of April 1, 2013, attorneys are required to eFile. Smart Forms should be used in the eFiling process. To register to eFile 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 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.

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 approximately 15 to 30 days. If, after that time the file is still non-compliant, an Order to Show Cause will issue. The Show Cause hearing will be held before a General Magistrate 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.

H. Closing Guardianships

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

XIII. Mental Health

A. Petition for Determination of Incapacity (Chapter 744)

Petitions for 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, 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 or filed with a Notice of Confidential Information Within Court Filing.

B. Baker Act (Chapter 394)

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 §394.463, Fla. Stat. 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)

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.

XIV. Common Probate Mistakes

- Omitting the attorney's Florida Bar Number.
- Omitting the attorney's email address.
- 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, if 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 an amended death certificate cannot be obtained, please set a Motion Calendar or Special Set hearing.
- 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 eFiled through the [Florida Courts eFiling Portal](#).
- Incorrect filing fees.
- Omission of attorney or personal representative's signature on pleadings as required by Florida Statutes.
- Submitting paperwork with the incorrect case numbers.
- 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

XV. GUARDIANSHIP REPORTING SOFTWARE PROGRAM

The Probate Division of the 17th Judicial Circuit requires the use of “Smart Forms.” Please use the “Smart Forms” available at the [Probate and Guardianship Smart Form](#) page.

The following information is provided for those Circuits who may continue to use the 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 S.E. 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), which 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.

XVI. PROBATE AND GUARDIANSHIP SMART FORMS

For current information regarding Smart Forms, please visit the [Probate and Guardianship Smart Form Page](#).

The Probate Court Judges of Broward County, Florida and their staff 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 guardianship administration. Legal advice should be obtained from your own attorney. Any person or entity who relies on any information obtained on the Web site does so at his or her own risk. While this is a Court Record as defined by Florida Rules of Judicial Administration 2.420 and 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.