

FREQUENTLY ASKED QUESTIONS
(revised September 2019)



A. ESTATES & TRUSTS

Why do I need an attorney?

Florida Probate Rule 5.030 requires that every personal representative be represented by an attorney admitted to practice in Florida unless the personal representative remains the sole interested person or the personal representative is an attorney admitted to practice in Florida.

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

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

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

For all filing fees, please consult the [Broward County Clerk of Courts - Probate and Guardianship](#).

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

Section 736.05055, Florida Statutes, requires the trustee, upon the death of a settlor of a trust described in section 733.707(3), Florida Statutes, to file a Notice of Trust with (1) the Probate Court having jurisdiction of the settlor's estate and (2) the Court of the county of the settlor's domicile.

Is there an approved form for my required Estate Inventory?

Yes. There is a Smart Form – Estate Inventory available on the Seventeenth Circuit's [Probate and Guardianship Smart Form Page](#).

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

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

How do I "eFile"?

As of April 1, 2013, all attorneys are required to electronically file all pleadings and other documents. For information on registration, please visit the [Florida Courts eFiling Portal](#). The Probate Court accepts electronic filings for new and existing cases in Probate and Guardianship (excluding Civil Involuntary Commitment cases). Additional information can be found on the website for the [Broward County Clerk of Courts](#) and the website for the [Seventeenth Judicial Circuit Court Probate eFiling](#). See also [Seventeenth Judicial Circuit Administrative Order Number 2011-26-PRC](#).

B. GUARDIANSHIPS

Why do I need an attorney?

Florida Probate Rule 5.030 requires that every guardian be represented by an attorney admitted to practice in Florida unless the guardian is an attorney admitted to practice in Florida. However, a guardian advocate is not required to be represented by an attorney unless otherwise required by law or by order from the Probate Court.

Who may be appointed Guardian?

Pursuant to section 744.309, Florida Statutes, (1) any Florida resident who is 18 years of age or older is qualified to act as guardian of a ward or (2) any nonresident of Florida that is:

- a) related by lineal consanguinity to the ward
- b) a legally adopted child of the ward or adoptive parent of the ward
- c) a spouse, brother, sister, uncle, aunt, niece, or nephew of the ward, or someone related by lineal consanguinity to any such person or
- d) the spouse of a person otherwise qualified.

Who may not be appointed Guardian?

No person who has been convicted of a felony. In addition, no person who may be incapable of performing the duties of guardian due to incapacity, illness, or who is otherwise unsuitable. *See* §§ 744.309 and 744.446, Fla. Stat.

What needs to be filed to open a guardianship?

The following forms are required to open a guardianship file:

- Petition for Appointment of Guardian/Guardian Advocate
- Order on Petition for Appointment of Guardian/Guardian Advocate
- Letters of Guardianship
- Oath of Guardian
- Investigatory Package (available through the Probate Division of the Broward County Clerk of Courts), which includes an Application for Appointment as Guardian/Guardian Advocate and Mandatory Guardianship Investigation Checklist are required as part of the proposed guardian's background investigation. Both of these forms can be found on the [Probate and Guardianship Smart Form Page](#).

NOTE:

*If the guardianship being opened is for an incapacitated individual, an incapacity (mental health) file must first be opened. An incapacity proceeding requires the filing of a Petition to Determine Incapacity. § 744.3201, Fla. Stat.

*Minor guardianships where the parents are petitioning for guardianship are to be filed for the property only. §§ 744.301 and 744.3021, Fla. Stat.

Why must I be investigated every year?

The Seventeenth Circuit performs background investigations on each guardian at least once a year as part of the Court's responsibility in ensuring that the best interests of the wards are being met. See § 744.3135, Fla. Stat.; [Seventeenth Judicial Circuit Administrative Order No. 2009-89-PRC](#); and [Seventeenth Judicial Circuit Administrative Order No. 2018-79-PRC](#).

What is required to be filed for my background investigation?

Nonprofessional Guardians subject to an initial background investigation must file the following:

- Mandatory Guardianship Investigation Checklist
- Electronic submission of fingerprints using an approved Livescan vendor. Please visit www.fdle.state.fl.us for more information on Livescan vendors.
- Court Monitor Investigatory Cost (\$50 made payable to Clerk of Court)
- Application for Appointment as Guardian/Guardian Advocate

Nonprofessional Guardians filing for their annual reinvestigation must file the following:

- Mandatory Checklist
- Court Monitor Investigatory Cost (\$50 per Guardian made payable to the Clerk of Court)
- No additional Court Monitor Investigatory fee is required to be paid for companion cases
- Application for Appointment

Professional Guardians filing for a new case prior to their required annual investigation must file:

- Mandatory Checklist for Additional Appointments
- Clerk's Office Processing Fee (\$7.50 payable to the Clerk of Court)

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

- Mandatory Checklist
- Electronic submission of fingerprints using an approved Livescan vendor. Please visit www.fdle.state.fl.us for more information on Livescan vendors.
- 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)

Where can I get forms for the background investigation?

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

When must I be reinvestigated?

For nonprofessional guardians, re-investigations are due at the time of the filing of your annual accounting and/or plan.

For professional guardians, annual investigations are due on or before January 15th of each year.

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

As not all guardianships have the same requirements, your attorney should provide you with all of your specific duties. In general, you may have to file an initial inventory and initial plan. Annually you may be required to file accountings and plans, as well as submit to re-investigations. If you are a nonprofessional guardian, you may also be required to attend a 4 or 8-hour guardianship course that will provide you with much of the information necessary to fulfill your fiduciary obligation. Please refer to the [Seventeenth Judicial Circuit's Handbook for Guardians](#) for additional information.

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

The nonprofessional guardianship course has been designed to provide nonprofessional guardians with the information necessary to ensure their ward's best

interests are being met. Please note this is not the 40-hour class required to be a professional guardian. Currently, this course is offered through:

- The Broward County Bar Association offers the required 8-hour family or 4-hour minor in-person guardian course. For registration information call: 954-832-3618.
- Guardianship Training & Support Services offers online 8 and 4-hour courses. Both offerings are a combination of self-directed and live instruction. For registration information visit <https://guardianshipeducation.com/> or call 561-451-7387.
- St. Petersburg College offers an online 8-hour family or 4-hour minor guardian course through their Lifelong Learning Department. For registration information visit <https://go.spcollege.edu/childsvie/> or call 727-341-3000.

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

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

C. AUDITING

Which auditing forms must I file?

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

Where can I get the Broward County approved accounting forms?

Currently, there are two sets of standardized forms accepted by the Broward County Clerk of Courts – Guardianship Audit Department.

One set is available online via the Seventeenth Circuit's [Probate and Guardianship Smart Form Page](#) and the other set is available from the Broward County Law Library. The library is located at:

Broward County Courthouse
201 SE 6th Street, Room 1800 – North Wing
Fort Lauderdale, FL 33301
Telephone: 954-831-6226

The following forms are currently available in each set:

- Initial Guardianship Inventory
- Initial Guardianship Plan
- Annual Accounting
- Annual Plan
- Simplified Annual Accounting

With the exception of Guardian Advocacies, all of the above listed standardized forms must be eFiled. Please note that ALL pages of each audit report must be submitted. Reports missing pages will be rejected by the Clerk of Courts.

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

You may call the Guardianship Audit Division of the Broward County Clerk of Court's Office at (954) 831-5512.

How much is the audit fee?

It is based on the estate value as outlined in Chapter 744, Fla. Stat. Pursuant to [Seventeenth Judicial Circuit Administrative Order No. 2017-43-PRC](#), failure to pay the required audit fee(s) will result in the Court entering an Order to Show Cause requiring mandatory appearance of the guardian's attorney and the guardian/guardian advocate.

When are my reports due?

The reporting due dates are based on the day Letters of Guardianship are issued. More specifically, the Initial Inventory and Plan are due sixty (60) days following the issuance of the Letters of Guardianship. The Annual Accounting and Plan are due within 90 days after the last day of the anniversary month (which is the month Letters of Guardianship were issued).

What is the Guardianship Inception Date?

The Guardianship Inception Date is the day Letters of Guardianship are signed by a Judge appointing an individual as guardian over a minor child, an incapacitated adult, or an individual with a developmental disability.

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 account balance was 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 the date your Letters of Guardianship were issued. All reports are due within 90 days after the last day of the anniversary month. For example, if your Letters of Guardianship 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 at the same time (October 1) but it covers July 1, 2020, through June 30, 2021, since the plan covers the coming year and your Initial Plan covers the previous year.

Can I file a simplified accounting?

You must meet the following criteria pursuant to § 744.3679, Fla. Stat.:

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

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

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

How do I record the transfer of cash assets in an investment account from which stock is purchased?

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

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

First, determine the gain or loss by subtracting the sale price from the value listed on the prior accounting or inventory, i.e. if the personal residence was valued at \$50,000 on the initial inventory or prior accounting and the residence was sold for \$40,000, there is a \$10,000 loss which is listed as a capital transaction.

How do I report income?

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

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

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

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

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

D. PROBATE AND GUARDIANSHIP SMART FORMS

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

The Smart Form is a web form that you download and save to create a PDF document used for eFiling. You must complete all steps outlined on the Seventeenth Circuit's [Probate and Guardianship Smart Form Page](#) to create the PDF. The PDF document is what you will file through the Florida Courts eFiling Portal. Please do not attempt to print and file the web form. It will be rejected by the Clerk. Do not complete the form in your web browser as information will not be saved, it must be saved locally to your computer.

***After completing the Smart Form, it must be saved in PDF/A format for electronic filing via the [Florida Courts eFiling Portal](#).

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

Use the “Save Draft” feature to save a link to the in-progress web form on your computer. This file can be emailed as an attachment to anyone and they will be able to open the in-progress form and make changes. Keep in mind that they will need to use the “Save Draft” feature to save a new version of the form after they have finished making their changes. The information can only be accessed from this link saved on your computer. The court and court personnel will not be able to retrieve this information.

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

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

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

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

How does my client sign the form?

You have two options:

1. Leave the signature field blank on the Smart Form, create the PDF, have the client sign it, scan it and upload that file to the portal. Please be aware that when scanning as an image, your document may no longer comply with Rules of Judicial Administration 2.525 and 2.526. For more information on accessibility rules, please visit the [Florida Supreme Court homepage](#).
2. You can leave the signature field blank on the Smart Form, create the PDF, have the client sign it and then return to your final saved version of the webform, enter ‘/s/ client name’ on the signature line along with the date signed and then create a new PDF. Save the “signed” version on your computer and upload that file to the portal.

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

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

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

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

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

Do not include dashes in a telephone number.

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

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

Please enter the Division number. They are as follows:

Judge Mily Rodriguez Powell: Division 60

Judge Charles M. Greene: Division 61

Judge Kenneth L. Gillespie: Division 62