



**State of Florida  
Counties of Brevard and Seminole  
Circuit Court Eighteenth Judicial Circuit**

2825 Judge Fran Jamieson Way  
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**GUARDIAN ADVOCATE CHECKLIST**

<b>PETITION:</b>			
<b>ITEM</b>	<b>Petition to Appoint Guardian Advocate</b>	<b>Florida Statute</b>	<b>Probate Rule</b>
1.	A petition to appoint a guardian advocate for a person with a developmental disability may be executed by an adult person who is a resident of this state. The petition must be verified by the petitioner and must state:	§744.3085 §393.12(3)	5.649(a)
2.	The name, age, and present address of the petitioner and the petitioner's relationship to the person with a developmental disability;	§393.12(3)(a)	5.649(a)(1)
3.	The name, age, county of residence, and present address of the person with a developmental disability;	§393.12(3)(b)	5.649.(a)(2)
4.	That the petitioner believes that the person needs a guardian advocate and the factual information on which such belief is based;	§393.12(3)(c)	5.649(a)(3)
5.	The exact areas in which the person lacks the ability to make informed decisions about the person's care and treatment services or to meet the essential requirements for the person's physical health or safety;	§393.12(3)(d)	5.649(a)(4)
6.	The legal disabilities to which the person is subject;	§393.12(3)(e)	5.649(a)(5)
7.	If authority is sought over any property of the person, a description of that property and the reason why management or control of that property should be placed with a guardian advocate;		5.649(a)(6)
8.	State the name of the proposed guardian advocate, the relationship of that person to the person with a developmental disability; the relationship that the proposed guardian advocate had or has with a provider of health care services, residential services, or other services to the person with a developmental disability; and the reason why this person should be appointed. If a willing and qualified guardian advocate cannot be located, the petition shall so state.	§393.12(3)(f)	5.649(a)(7)
9.	Whether the petitioner has knowledge, information, or belief that the person with a developmental disability has executed an advance directive under chapter 765, Florida Statutes, or a durable power of attorney under chapter 709, Florida Statutes.		5.649(a)(8)

<b>NOTICE:</b>			
<b>ITEM</b>	<b>Notice of Filing Petition to Appoint Guardian Advocate</b>	<b>Florida Statute</b>	<b>Probate Rule</b>
1.	The Notice of Filing of the Petition to Appoint Guardian Advocate along with a copy of the Petition to Appoint Guardian Advocate must be given to the person with developmentally disabilities verbally and in writing in English and in the language of the person. The notice must also be given to the next of kin, any designated health care surrogate, any attorney-in-fact designated in a power of attorney, and any other persons as the court directs.	§393.12(4)(a)	5.649(b)(1)
2.	The notice must state that a hearing will be held to inquire into the capacity of the person with a developmental disability to exercise the rights enumerated in the petition. The notice must also state the date of the hearing on the petition.	§393.12(4)(b)	5.649(b)(2)
3.	The notice shall state that the person with a developmental disability has the right to be represented by counsel of his or her own choice and the court shall initially	§393.12(4)(c)	5.649(b)(3)

	appoint counsel.		
4.	Proof of Service of the Notice of Filing		
<b>ITEM</b>	<b>Notice of Filing all relevant reports to the persons disability</b>	<b>Florida Statute</b>	<b>Probate Rule</b>
1.	At the hearing, the court shall receive and consider all reports relevant to the person's disability, including, but not limited to, the person's current individual family or individual support plan, the individual education plan, and other professional reports documenting the condition and needs of the person.	§393.12(6)(d)	
2.	The Florida Evidence Code, chapter 90, applies at the hearing. The burden of proof must be by clear and convincing evidence.	§393.12(6)(e)	

**ORDERS:**

<b>ITEM</b>	<b>Order Appointing Attorney</b>	<b>Florida Statute</b>	<b>Probate Rule</b>
1.	Within 3 days after a petition has been filed, the court shall appoint an attorney to represent a person with a developmental disability who is the subject of a petition to appoint a guardian advocate.	§393.12(5)	5.649(c)
2.	The alleged incapacitated person may substitute her or his own attorney for the attorney appointed by the court.	§393.12(5)	5.649(c)
3.	The court shall initially appoint a private attorney who shall be selected from the attorney registry compiled pursuant to s. 27.40.	§393.12(5)(a)	
4.	An attorney representing a person with a developmental disability may not also serve as the guardian advocate of the person, as counsel for the guardian advocate, or as counsel for the person petitioning for the appointment of a guardian advocate	§393.12(5)(b)	
<b>ITEM</b>	<b>Procedural Tips</b>		
1.	The Order Appointing Attorney and Elisor should be submitted at the time of filing the Petition to Appoint Guardian Advocate.		
2.	Please leave the Attorney information blank on the Order Appointing Attorney to allow the information to be completed by the Judicial Assistant once the Attorney is selected.		
3.	Please email the Order Appointing Attorney and Elisor to the Judge's Judicial Assistant.		
<b>ITEM</b>	<b>Order to Appoint Guardian Advocate</b>	<b>Florida Statute</b>	<b>Probate Rule</b>
1.	If the court finds the person with a developmental disability requires the appointment of a guardian advocate, the court shall enter a written order appointing the guardian advocate and containing the findings of facts and conclusions of law on which the court made its decision, including:	§393.12(8)	5.649(d)
2.	The nature and scope of the person's lack of decision making ability	§393.12(8)(a)	5.649(d)(1)
3.	The exact areas in which the individual lacks decision making ability to make informed decisions about care and treatment services or to meet the essential requirements for his or her physical health and safety;	§393.12(8)(b)	5.649(d)(2)
4.	If any property of the person is to be placed under the management or control of the guardian advocate, a description of that property, any limitations as to the extent of such management or control, and the reason why management or control by the guardian advocate of that property is in the best interest of the person;		5.649(d)(3)
5.	If the person has executed an advance directive or durable power of attorney, a determination as to whether the documents sufficiently address the needs of the person and a finding that the advance directive or durable power of attorney does not provide an alternative to the appointment of a guardian advocate that sufficiently addresses the needs of the person with a developmental disability;		5.649(d)(4)
6.	If a durable power of attorney exists, the powers of the attorney-in-fact, if any, that are suspended and granted to the guardian advocate;		5.649(d)(5)
7.	If an advance directive exists and the court determines that the appointment of a guardian advocate is necessary, the authority, if any, the guardian advocate shall exercise over the health care surrogate;		5.649(d)(6)

8.	The specific legal disabilities to which the person with a developmental disability is subject;	§393.12(8)(c)	5.649(d)(7)
9.	The name of the person selected as guardian advocate and the reasons for the court's selection; and	§393.12(8)(d)	5.649(d)(8)
10.	The powers, duties, and responsibilities of the guardian advocate, including bonding of the guardian advocate, as provided in s. <a href="#">744.351</a> .	§393.12(8)(e)	5.649(d)(9)
<b>ITEM</b>	<b>Letters of Guardian Advocate</b>	<b>Florida Statute</b>	<b>Probate Rule</b>
1.	Upon compliance with all of the foregoing, letters of guardian advocacy must be issued to the guardian advocate.		5.649(e)
2.	Shall specify whether the guardianship pertains to person or property or both. The Letters must state the powers and duties of the guardian.	§744.345	
<b>ITEM</b>	<b>Procedural Tips</b>		
1.	Effective July 1, 2018, all proposed orders <b>MUST</b> be submitted through the e-portal.		

<b>OTHER:</b>			
<b>ITEM</b>	<b>Application</b>	<b>Florida Statute</b>	<b>Probate Rule</b>
1.	Individual Applicants: <b>Every prospective guardian</b> must complete an application for appointment as guardian.	§744.3125(1),(2)	5.590(a)
<b>ITEM</b>	<b>Oaths</b>	<b>Florida Statute</b>	<b>Probate Rule</b>
1.	<b>Every</b> guardian shall take an oath that he or she will faithfully perform his or her duties as guardian.	§744.347	5.600
<b>ITEM</b>	<b>Bond</b>	<b>Florida Statute</b>	<b>Probate Rule</b>
1.	Before exercising his or her authority as guardian, every person appointed a guardian of the property of a ward in this state shall file a bond with surety as prescribed in s. 45.011 to be approved by the clerk. When the petitioner or guardian presents compelling reasons, the court may waive a bond or require the use of a designated financial institution as defined in s. 655.005(1).	§744.351(1)	
2.	Financial institutions as defined in s. <a href="#">744.309</a> (4) and public guardians authorized by law to be guardians shall not be required to file bonds	§744.351(5)	
<b>ITEM</b>	<b>Background Check</b>	<b>Florida Statute</b>	<b>Probate Rule</b>
1.	The court shall require all guardians seeking appointment by the court, and all employees of a professional guardian, other than corporate guardians, who have a fiduciary duty to a ward, to submit, at their own expense, a credit history investigation and to undergo level 2 background screening as required under §435.04.	§744.3135(1)	
2.	On petition by any interested person or on the court's own motion, the court may waive the requirement of a credit history investigation or a level 2 background screening, or both.	§744.3135(1)	
<b>ITEM</b>	<b>Representation and Hearing</b>	<b>Florida Statute</b>	<b>Probate Rule</b>
1.	An attorney is not required to represent a guardian advocate unless required by the court or if the guardian advocate is delegated any rights regarding property other than the right to be the representative payee for government benefits	§393.12(2)(b)	5.030(a)
2.	A hearing is required for the Petition to Appoint Guardian Advocate.	§393.12(6)	

Comments: \_\_\_\_\_