



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

LISA DAVIDSON
 Circuit Judge

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GUARDIANSHIP OF AN INCAPACITATED PERSON CHECKLIST
 The following documents are to be filed within the Guardianship case

| PETITIONS: | | | |
|------------|---|-----------------|--------------|
| ITEM | Petition for Appointment of Guardian | Florida Statute | Probate Rule |
| 1. | The petition shall be verified by the petitioner and shall state: | §744.334(1) | 5.560(a) |
| 2. | Foreign Guardianship: When a guardianship has been established in another state prior to initiating guardianship proceedings here in this state. Authenticated copies of the Order Appointing Guardian, Letters of Guardianship, and Order Determining Incapacity if any are required to be attached to the Petition for Appointment of Guardian. | §744.306(1)* | |
| 3. | The facts to establish venue: | §744.334(1) | 5.560(a)(1) |
| 4. | The petitioner's residence and post office address; | §744.334(1) | 5.560(a)(2) |
| 5. | The name, age, and residence and post office address of the alleged incapacitated person; | §744.334(1) | 5.560(a)(3) |
| 6. | The nature of the incapacity, the extent of guardianship, either limited or plenary, and the nature and value of property subject to the guardianship; | §744.334(1) | 5.560(a)(4) |
| 7. | The names and addresses of the next of kin of the alleged incapacitated person known to the petitioner; | §744.334(1) | 5.560(a)(5) |
| 8. | The name and residence and post office address of the proposed guardian, and that the proposed guardian is qualified to serve, or that a willing and qualified guardian has not been located; | §744.334(1) | 5.560(a)(6) |
| 9. | The proposed guardian's relationship to and any previous association with the alleged incapacitated person; | §744.334(1) | 5.560(a)(7) |
| 10. | The reasons why the proposed guardian should be appointed; | §744.334(1) | 5.560(a)(8) |
| 11. | Whether there are alternatives to guardianship known to the petitioner that may sufficiently address the problems of the alleged incapacitated person in whole or in part; and | | 5.560(a)(9) |
| 12. | If the proposed guardian is a professional guardian, a statement that the proposed guardian has complied with the registration requirements of section 744.2002, Florida Statutes. | §744.334(2) | 5.560(a)(10) |
| ITEM | Petition for Appointment of Emergency Temporary Guardian (Optional) | Florida Statute | Probate Rule |
| 1. | Prior to appointment of a guardian but after a Petition for Determination of Incapacity has been filed, the alleged incapacitated person or any adult interested in the welfare of that person may petition for the appointment of an emergency temporary guardian of the person or property. The petition shall be verified and shall state: | §744.3031(1) | 5.648(a) |
| 2. | The petitioner's residence and post office address; | | 5.648(a)(1) |
| 3. | The name, age, and residence and post office address of the alleged incapacitated person; | | 5.648(a)(2) |
| 4. | That there appears to be imminent danger that the physical or mental health or safety of the alleged incapacitated person will be seriously impaired or that the alleged incapacitated person's property is in danger of being wasted, misappropriated, or lost unless immediate action is taken; | §744.3031(1) | 5.648(a)(3) |

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| 5. | The nature of the emergency and the reason immediate action must be taken; | | 5.648(a)(4) |
| 6. | The extent of the emergency temporary guardianship, either limited or plenary, requested for the alleged incapacitated person, and, if known, the nature and value of the property to be subject to the emergency temporary guardianship | | 5.648(a)(5) |
| 7. | The names and addresses of the next of kin of the alleged incapacitated person known to the petitioner; | | 5.648(a)(6) |
| 8. | The name and residence and post office address of the proposed emergency temporary guardian, and that the proposed emergency temporary guardian is qualified to serve, or that a willing and qualified emergency temporary guardian has not been located; and | | 5.648(a)(7) |
| 9. | The proposed emergency temporary guardian's relationship to or any previous association with the alleged incapacitated person. | | 5.648(a)(8) |

NOTICES:

| ITEM | Description | Florida Statute | Probate Rule |
|------|--|-----------------|--------------|
| 1. | Notice of filing of the petition for appointment of an emergency temporary guardian and a hearing on the petition must be served on the alleged incapacitated person and on the alleged incapacitated person's attorney at least 24 hours before the hearing on the petition is commenced, unless the petitioner demonstrates that substantial harm to the alleged incapacitated person would occur if the 24-hour notice is given | §744.3031(2) | 5.648(b) |
| 2. | Notice of Filing the Petition for Appointment of Guardian may be served as a part of the Notice of Filing the Petition to Determine Incapacity, but shall be served a reasonable time before the hearing on the petition or other pleading seeking appointment of a guardian. | | 5.560(b) |
| 3. | When the Petition for Appointment of a Guardian for an Incapacitated Person is heard upon the conclusion of the hearing in which the person is determined to be incapacitated, the court shall hear the petition without further notice | §744.3371(1) | |
| 4. | If the Petition for Appointment of a Guardian for an Incapacitated Person is heard on a later date, reasonable notice of the hearing must be served on the incapacitated person, the person's attorney, if any, any guardian then serving, the person's next of kin, and such other interested persons as the court may direct. | §744.3371(1) | |

APPLICATIONS:

| ITEM | Description | Florida Statute | Probate Rule |
|------|---|-----------------|--------------|
| 1. | Individual Applicants: Every prospective guardian must complete an application for appointment as guardian. | §744.3125(1) | 5.590(a) |
| 2. | Nonprofit Corporate Guardians: No application for appointment shall be required of a nonprofit corporate guardian. However Nonprofit corporate guardians must file quarterly with the Clerk of Court disclosure statements that contain the information required under §744.3125 (1) and (2), rather than filing a guardianship application with each petition to be appointed guardian. | §744.3125(4) | 5.590(b) |
| 3. | For Profit Corporations and Associations: No application for appointment or disclosure statement shall be required for any corporate guardians. | §744.3125(3) | 5.590(c) |
| 4. | No application for appointment or disclosure statement shall be required of a public guardian. | §744.3125(3) | 5.590(d) |

ORDERS:

| ITEM | Description | Florida Statute | Probate Rule |
|------|---|------------------------------|--------------|
| 1. | Order Appointing the Emergency Temporary Guardian shall specify the powers and duties of the emergency temporary guardian. The authority of an emergency temporary guardian expires 90 days after the date | §744.3031(1) §744.3031(4) | 5.648(d) |

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| | of appointment or when a guardian is appointed, whichever occurs first. | | |
| 2. | <p>Order Appointing Plenary Guardian</p> <p>_State nature of guardianship Plenary or Limited, if limited the order must state that the guardian may exercise only those delegable rights which have been removed from the incapacitated person and specifically delegated to the guardian.</p> <p>_ The order shall state the specific powers and duties of the guardian.</p> <p>_ The order must be consistent with the incapacitated person's welfare and safety, must be the least restrictive appropriate alternative, and must reserve to the incapacitated person the right to make decisions in all matters commensurate with the person's ability to do so.</p> <p>_ If a petition for appointment of a guardian has been filed, an order appointing a guardian must be issued contemporaneously with the order adjudicating the person incapacitated. The order must specify the amount of the bond to be given by the guardian and must state specifically whether the guardian must place all, or part, of the property of the ward in a restricted account in a financial institution designated pursuant to s. 69.031.</p> | <p>§744.2005(2)</p> <p>744.2005(3)</p> <p>744.2005(4)</p> | |
| 3. | <p>Letters of Guardianship</p> <p>_Shall specify whether the guardianship pertains to person or property or both.</p> <p>_Must state whether the guardianship is plenary or limited.</p> <p>If limited:</p> <p>_The letters must state the powers and duties of the guardian.</p> <p>_The letters shall state whether or not and to what extent the guardian is authorized to act on behalf of the ward with regard to any advance directive previously executed by the ward.</p> | §744.345 | |
| ITEM | Procedural Tips | | |
| 1. | Proposed orders cannot be submitted through the e-portal at this time. All proposed orders should be submitted via mail directed to the Guardianship/Probate case specialist located at 2825 Judge Fran Jamieson Way, Viera, FL 32940-8006. Please submit all proposed orders prior to the hearing. | | |

| OTHER: | | | |
|---------------|---|------------------------|---------------------|
| ITEM | Oaths | Florida Statute | Probate Rule |
| 1. | Every guardian shall take an oath that he or she will faithfully perform his or her duties as guardian. | §744.347 | 5.600 |
| 2. | The emergency temporary guardian shall take an oath to faithfully perform the duties of a guardian before letters of emergency temporary guardianship are issued | §744.3031(6) | 5.600 |
| ITEM | Bond | Florida Statute | Probate Rule |
| 1. | Before exercising authority as guardian, the emergency temporary guardian of the property may be required to file a bond in accordance with s. 744.351 | §744.3031(7) | |
| 2. | 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) | |
| 3. | Financial institutions as defined in s. 744.309 (4) and public guardians authorized by law to be guardians shall not be required to file bonds | §744.351(5) | |
| ITEM | Background Check | Florida Statute | Probate Rule |
| 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) | |

| ITEM | Hearing | Florida Statute | Probate Rule |
|------|--|---|--------------|
| 1. | <p>A Hearing is required for the Petition for Appointment of Guardian of an Incapacitated Person.</p> <p>A Hearing is required for the Petition for Appointment of Emergency Temporary Guardian.</p> | <p>§744.3371(1)</p> <p>§744.3031(1)</p> | |

Comments:
