



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

2825 Judge Fran Jamieson Way
Viera, Florida 32940-8006
(321) 637-5304 (Tel)
(321) 617-7225 (Fax)

GUARDIANSHIP OF AN INCAPACITATED PERSON CHECKLIST

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 the residence of a ward of a foreign guardian is moved to this state, the guardian shall, within 60 days after such change of residence, file the authenticated order of her or his appointment with the clerk of the court in the county where the ward resides. Such order shall be recognized and given full faith and credit in the courts of this state. The guardian and the ward are subject to this chapter.	§744.306(1)	
3.	The facts to establish venue.		5.560(a)(1)
4.	The petitioner's residence and post office address.		5.560(a)(2)
5.	The name, age, and residence and post office address of the alleged incapacitated person.		5.560(a)(3)
6.	The nature of the incapacity, the extent of guardianship, either limited or plenary, requested for the alleged incapacitated person, and the nature and value of property subject to the guardianship.		5.560(a)(4)
7.	The names and addresses of the next of kin of the alleged incapacitated person known to the petitioner.	§744.102(14)	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.		5.560(a)(6)
9.	The proposed guardian's relationship to and any previous association with the alleged incapacitated person, including listing any activities designated in section 744.446(3), Florida Statutes.		5.560(a)(7)
10.	The reasons why the proposed guardian should be appointed; and if the proposed guardian is a professional guardian.		5.560(a)(8)
11.	whether the petitioner has knowledge, information, or belief that there are possible alternatives to guardianship known to the petitioner, including, but not limited to, trust agreements, powers of attorney, designations of health care surrogates, guardian advocate under section 744.3085, Florida Statutes, or other advance directives, and if there are possible alternatives to guardianship, an explanation as to why the alternatives are insufficient to meet the needs of the alleged incapacitated person;		5.560(a)(9)
12.	Whether the petitioner has knowledge, information, or belief that the alleged incapacitated person has a preneed guardian designation.		5.560(a)(10)
13.	If the proposed guardian is a professional guardian, a statement that the proposed guardian has complied with the registration requirements of s. 744.2002, Florida Statutes.		5.560(a)(11)
14.	If the petitioner is a professional guardian, she or he may not petition for her or his own appointment unless the petitioner is a relative of the alleged incapacitated person or minor. This subsection does not apply to a public guardian appointed under s. 744.2006 who seeks appointment as a guardian of a person of limited financial means and whose compensation as guardian for such	§744.334(2)	

	person would be paid from the Office of Public and Professional Guardians or any local government.		
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.		5.648(a)(3)
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.		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.	If the petitioner requests appointment of the public guardian as emergency temporary guardian, a copy of the petition and notice shall be served on the public guardian.		5.648(c)
3.	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)
4.	If the petitioner requests appointment of the public guardian, a copy of the petition and the notice shall be served on the public guardian.		5.560(c)

APPLICATIONS:

ITEM	Description	Florida Statute	Probate Rule
1.	Individual Applicants:	§744.3125(1)	5.590(a)

	Every prospective guardian must complete an application for appointment as guardian.		
2.	No application for appointment shall be required of a nonprofit corporate guardian.		5.590(b)
3.	No application for appointment shall be required for any corporate guardians.		5.590(c)
4.	No application for appointment shall be required of a public guardian.		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 of appointment or when a guardian is appointed, whichever occurs first.	§744.3031(1) §744.3031(4)	5.648(d)
2.	Order Appointing Plenary or Limited Guardian	§744.2005(2) §744.2005(3) §744.2005(4)	
3.	Letters of Guardianship	§744.345	
ITEM	Procedural Tips		
1.	All proposed orders are required to be brought to the hearing. (Please do not eFile.)		

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), other than a trust company operating under chapter 662 which is not a licensed family trust company or foreign licensed family trust company, and public guardians authorized by law to be guardians are not required to file bonds.	§744.351(5)	
ITEM	Background Check	Florida Statute	Probate Rule
1.	The court shall require all guardians who are seeking appointment by the court, other than a corporate guardian as described in s. 744.309(4), and all employees of a professional guardian, other than a corporate guardian as described in s. 744.309(4), who have a fiduciary responsibility to a ward, to submit, at their own expense, to a credit history investigation and to undergo level 2 background screening as required under s. 435.04. 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.	A hearing is required for the Petition for Appointment of Guardian of an Incapacitated Person.	§744.3371(1)	5.560
	A hearing is required for the Petition for Appointment of Emergency Temporary Guardian.	§744.3031	5.648

REV 12/21/23