



## Florida Minor Guardianship Procedures... by Michael W. Porter, Esquire



Florida law defines "Minor" as a person under 18 years of age whose disabilities have not been removed by marriage or otherwise.

Under Florida law, F.S. §744.301(2), the appointment by the court of a guardian for a minor is required whenever a minor child has a claim or cause of action for damages to their person or property, to collect, receive, manage, and dispose of the proceeds of any settlement thereon, and to collect, receive, manage, and dispose of any property distributed from an estate or trust or proceeds from a life insurance policy to the child during minority, when the amount involved **exceeds \$15,000**.

Amounts which do not exceed \$15,000 may be received by the minor's parents without appointment by the court. Once appointed, the guardian of a minor child may not pay expenses of the ward's support,

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health, maintenance, or education, if the ward's parents, or either of them, are alive, without a prior court order.

The proposed guardian must be over the age of 18, have no felony convictions, and either be a resident of Florida or a relative of the minor child.

The proceeding begins with the filing of a Petition for Appointment of Guardian; an Application and either a bond, or documents to designate a financial institution as depository for assets (to "freeze" the assets). These documents must be filed with the Court in the County where the minor resides, along with a \$400.00 filing fee.

The Court also requires a check payable to the Clerk of Court in the amount of \$27.50 as an Investigation Fee, a signed release for the Florida Department of Children and Families, and a completed checklist. All Guardians must submit their fingerprints electronically to the Florida Department of Law Enforcement for a criminal background check, for which the cost of \$58.50 must be paid at the time the fingerprints are taken.

If the minor's natural mother

and father are alive, both must either sign consents to the guardian's appointment or be serviced with a Formal Notice of the petition requiring them to respond in writing within twenty (20) days.

Under normal circumstances the Court will enter an order appointing guardian within approximately two weeks from the date on which the petition is filed with the Court, if both parents consent.

The financial institution which the court would designate as a depository for assets must be either a bank, trust company or savings and loan association doing business in the State of Florida, or a "dealer" who is a member of the Security Investment Protection Corporation and who is doing business in the State of Florida.

If all of the guardianship assets are held by a designated depository, Florida law states that the guardian may submit "simplified accountings" to the Court consisting of the original year-end bank statement and a sworn statement by the guardian.

If a family member is appointed by the Court to serve as guardian, said family member will be required to attend an eight (8)

hour educational course for guardians, within four (4) months of their appointment, proof of which must be filed with the Court. A parent of the minor child who is appointed as Guardian must attend a four (4) hour educational course for guardians, within four (4) months of their appointment, proof of which must be filed with the Court. It may be possible for non Florida residents to "attend" the educational course online. The fee for this course may not be paid from the minor's assets.

With proper planning, the need for a minor guardianship may be eliminated through estate planning by the creation of trusts for any assets to be distributed to a minor, and through proper beneficiary designations on life insurance policies. However, it may be beyond your control in situations where a minor child is injured, and the proceeds of settlement must be paid to the legal guardian for the minor.

The approximate cost to appoint a Guardian for a minor child from approximately \$1,000.00 to \$1,800.00 or more. Thereafter, the guardianship fees and costs can range from \$300.00 to over \$2,500.00 per year. Our rate for guardianship matters is \$300.00 per hour.

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**Michael W. Porter, Esquire**, has been engaged in the practice of law primarily in the areas of Guardianship, Probate & Estate Administration, Trusts, Estate Planning, and Real Estate Law since his admission to the Florida Bar in 1986. He maintains strong community ties, and is committed to the pursuit of excellence.

You will find that all members of our staff will communicate effectively and demonstrate the strictest personal and professional ethics as well as the utmost concern for our clients.