

Motor Vehicle Procedure Manual

Vessel and Title

Transfer of Certificate of Title Involving Guardianship

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Legal Authority

[Chapter 744](#), Florida Statutes, provides for the guardianship of incompetents. The law does not authorize guardians to purchase, sell or record a lien against a vessel for incompetents unless ordered by the court. Likewise, guardians are not authorized to transfer certificates of title registered in the name of an incompetent, unless ordered by the court.

Description and Use

This procedure is provided to assist employees of the Tax Collector and the Florida Department of Highway Safety and Motor Vehicles in establishing requirements for the transfer of certificates of title for a vessel held by a guardian.

Documentation Required and Special Instructions

After the provisions of Chapter 744, Florida Statutes, have been met by the applicant, the following documentation must be submitted **to a local tax collector’s office to be screened for completeness and accuracy:**

- A. If the vessel is titled in Florida and the Certificate of Title is available, submit the following:
 - 1. The Florida Certificate of Title accurately completed for transfer to the applicant(s).

2. A form [HSMV 82040](#), Application for Certificate of Title with/without Registration or [HSMV 82041](#), Application for Vehicle/Vessel Certificate of Title and Registration, accurately completed by the applicant.

3. One of the following documents must also be submitted:

- a. The letter of guardianship of a person or property.
- b. A court order appointing the guardian ad litem.
- c. An order appointing the successor guardian.
- d. An appointment of a conservator (guardian) of the Estate of the person.

In most cases, Plenary Guardianship papers provide the guardian with complete authority to exercise all rights and powers for the incompetent, which would include the purchase, sell or the recording of a lien against a vessel for the incompetent person. If complete authority is granted in the Plenary Guardianship papers, a separate court order is not required.

4. A copy of the court order authorizing the purchase, sale or the recording of a lien against the vessel.

When the court order authorizing the purchase, sale or recording of a lien, includes the name of the guardian, the order would be acceptable without any of the items listed in **Documentation Required and Special Instructions, A,3.**

5. Florida sales tax or specify the sales tax exemption information on an accurately completed form [HSMV 82040](#), Application for Certificate of Title with/without Registration, or form [HSMV 82041](#), Application for Vehicle/Vessel Certificate of Title and/or Registration.

6. The Florida registration number transferred to or issued for the vessel, or a nonuse affidavit

7. Title fees.

B. If the vessel is titled in Florida and the Certificate of Title is not available, submit the following:

1. A form [HSMV 82101](#), Application for Duplicate or Lost in Transit/Reassignment for a Motor Vehicle, Mobile Home or Vessel Title Certificate, accurately completed in the name of the registered owner and signed by the guardian. (Refer to DMS Procedure [VSTL-05](#) for address verification).

The guardian completing the application for a duplicate certificate of title, should show their address on the application so that the duplicate certificate of title **will be** mailed to the guardian and not the owner. The court order awarding guardianship serves as address verification for the guardian; however, the guardian must provide proof of identification.

2. One of the following documents must also be submitted:

- a. The letters of guardianship of a person or property.
- b. A court order appointing the guardian ad litem.
- c. An order appointing the successor guardian.
- d. An appointment of a conservator (guardian) of the estate of the person.

C. If the vessel is titled out of state, submit the following:

1. The out-of-state proof of ownership accurately completed for transfer to the applicant(s).

or,

If the out-of-state proof of ownership is not available, submit verification of ownership and lien status information from the motor vehicle division of the state of previous registration. Verification may be one of the following:

- a. A computer-generated printout from the out-of-state motor vehicle division.
 - b. A letter on original letterhead stationery from the out-of-state motor vehicle division.
 - c. A copy of a teletype printout or a statement which shows the ownership information, the name of the law enforcement agency and the official's name who provided the verification information.
 - d. A photocopy of the out-of-state certificate of title, or registration if not a title state.
2. A form HSMV 82040, Application for Certificate of Title with/without Registration or HSMV 82041, Application for Vehicle/Vessel Certificate of Title and/or Registration, accurately completed by the applicant.

3. One of the following documents must accompany the application:
 - a. The letter or guardianship of a person or property.
 - b. A court order appointing the guardian ad litem.
 - c. An order appointing the successor guardian.
 - d. An Appointment of a Conservator (guardian) of the estate of the person.

In most cases, Plenary Guardianship papers provide the guardian with complete authority to exercise all rights and powers for the incompetent, which would include the purchase, sell or the recording of a lien against a vessel for the incompetent person. If complete authority is granted in the Plenary Guardianship papers, a separate court order is not required.

4. A copy of the court order authorizing the purchase, sale or the recording of a lien against the vessel, unless the guardianship papers are plenary.

When the court order authorizing the purchase, sale or the recording of a lien, includes the name of the guardian, the order would be acceptable without any of the items listed in **3**, above.

5. **Florida sales tax or specify the sales tax exemption information on an accurately completed form HSMV 82040, Application for Certificate of Title with/without Registration, or form HSMV 82041, Application for Vehicle/Vessel Certificate of Title and/or Registration.**
6. The Florida registration number transferred to or issued for the vessel, or a nonuse affidavit
7. Title fees.

Miscellaneous Information

- A. **In most cases, Plenary Guardianship papers provide the guardian with complete authority to exercise all rights and powers for the incompetent, which would include the purchase, transfer, sell or recording of a lien against a vessel for the incompetent person. If complete authority is granted in the Plenary guardianship papers, a separate court order is not required.**
- B. A documentation check list is attached to this procedure as Exhibit A.
- C. Definitions are attached to this procedure as Exhibit B.

- D. See Forms Appendix for a sample of the HSMV forms referred to in this procedure.

Revision(s) to Procedure

Added A, 2 and 5 in section Documentation Required Special Instructions. Added (A) in Miscellaneous Information.

Exhibit A Transfer of a Certificate of Title Involving Guardianship Checklist

FLORIDA RECORD

OUT-OF-STATE RECORD

_____ Certificate of Title

_____ HSMV 82040 **or HSMV 82041**

_____ HSMV 82040 **or HSMV 82041**

_____ Out-of-state proof of ownership

Copy of one of the following:

_____ The letter of guardianship.

_____ An order of appointment for guardian ad-litem.

_____ An order of appointment for successor guardian.

_____ An appointment as the conservator of the estate.

In most cases, Plenary Guardianship papers provide the guardian with complete authority to exercise all rights and powers for the incompetent, which would include the purchase, sell or the recording of a lien against a vessel for the incompetent person. If complete authority is granted in the Plenary Guardianship papers, a separate court order is not required.

_____ A court order authorizing the sale, purchase or the recording of a lien against the vessel, unless the guardianship papers are plenary.

When the court order authorizes the purchase, sale or recording of a lien and includes the name of the guardian, the court order would be acceptable without separate proof of the guardian’s appointment.

_____ **Florida sales tax or specify sales tax exemption information on form HSMV 82040 or form HSMV 82041.**

_____ Florida registration number or a nonuse affidavit.

_____ Title fees.

Exhibit B Definitions

CONSERVATOR OF THE ESTATE

A person, official or institution designated to take over and protect the interest of an incompetent.

GUARDIAN

A person who has been appointed by the court to act on behalf of a ward's person or property, or both.

GUARDIAN AD LITEM

A person appointed by **the court having jurisdiction of the guardianship or a court in which a particular legal matter is pending to represent a ward in that proceeding.**

INCOMPETENT

A person who has been judicially determined to lack the capacity to manage at least some of the property **or to meet at least some of the essential health and safety requirements of such person.**

LETTER OF GUARDIANSHIP

A court order appointing a guardian to a person or property. The letter shall specify whether the guardianship pertains to the person, or the property, or both. The letter of guardianship must state whether the guardianship is plenary (complete) or limited, and if limited, must state the powers and duties of the guardian.

LIMITED GUARDIAN

A guardian who has been appointed by the court to exercise the legal rights and powers specifically designated by court order entered after the court has found that the ward lacks the capacity to do some, but not all, of the tasks necessary to care for his or her person or property, or after the person has voluntarily petitioned for appointment of a limited guardian.

NATURAL GUARDIAN

The mother and father jointly are natural guardians of their own children and of their adopted children, during minority. If one parent dies, the natural guardianship shall pass to the surviving parent, and the right shall continue even though the surviving parent remarries. If the marriage between the parents is dissolved, the natural guardianship shall belong to the parent to whom the custody of the child is awarded. If the parents are given joint custody, then both shall continue as natural guardians. If the marriage is dissolved and neither the father nor the mother is given custody of the child, neither shall act as natural guardian of the child. The mother of a child born out of wedlock is the natural guardian of the child and is entitled to primary residential care and

custody of the child unless a court of competent jurisdiction enters an order stating otherwise.

PLENARY GUARDIAN

A person who has been appointed by the court to exercise all legal rights and powers of the ward after the court has found that the ward lacks the capacity to perform all the tasks necessary to care for his or her person or property.

SUCCESSOR GUARDIAN

A person empowered to assume the duties of guardianship if a guardian dies or becomes incapacitated.

WARD

A person for whom a guardian has been app