

Settlements Involving Minors

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Under Florida law, certain scenarios require that the parent or guardian seek court approval to initiate or settle claims on behalf of a minor. The mandatory judicial procedures are intended to provide an additional layer of protection for the minor's benefit. Ultimately, judicial approval is granted only when the settlement is deemed to be "fair and enforceable."¹

This article sets forth Florida's statutory requirements for settling claims of minors and when such settlement requires the establishment of a legal guardianship.

Who can bring the action?

As most attorneys recall from their Contracts class from Law School, minors lack legal capacity to contract. Such incapacity includes the ability to pursue claims or enter into settlement agreements.² Because a minor may need to pursue claims or enter into such settlements, the Florida Legislature has created statutory avenues for parents or duly appointed representatives, such as legal guardians, to act in such areas on behalf of a minor.³ Where a minor does not have a parent or legal representative, a "next friend,"⁴ such as a guardian ad litem, may act on behalf of the minor.⁵

Minors are considered to be wards of the court and the courts are thus charged with responsibility for their welfare in many situations.⁶ As a result, Florida has enacted specific rules and procedures for dealing with the property rights of minors.⁷ For example, even though parents are jointly the natural guardians of their minor children, the status as natural guardian typically confers only custody of the person and not of the property.⁸ As natural guardians, parents typically have all the rights, duties, and powers that a guardian of the *person* would have but without most of the rights, duties, and powers of a guardian of the *property*.⁹ It follows that, while acting as the natural guardian, unless the property interest has a value of \$15,000 or less, a parent does not have the power to contract away or waive her minor child's property rights.¹⁰ Thus, this lack of authority over the minor's property rights means that parents, generally, do not have the legal authority to settle or compromise a child's claim or to waive substantive rights without court approval.¹¹ Florida law provides limited circumstances where parents may exercise the property rights of their minor children without judicial oversight.

General principles

Fla. Stats. §§ 744.301, 744.387, 744.3025, and Florida Probate Rule 5.636, govern the settlement of claims on behalf of minors. Different standards apply for the settlement of claims that exceed \$15,000 from claims that fall under that monetary threshold. The Florida Statutes also have different requirements for the settlement of claims for minors

depending on whether the minor has a natural guardian, if the settlement arose prior to an action being filed or if settlement is reached after litigation commenced.¹²

It is worth noting that Florida courts do not consider court approval a prerequisite to a valid settlement *offer* for a minor.¹³ Stated differently, an offer to settle is not invalid simply because there is a requirement of subsequent court approval. Although Florida law requires a legal guardianship be established when the net settlement to the minor ward exceeds \$15,000, a guardian to obtain court appointment and approval before *negotiating* the particular settlement.¹⁴

Claims on behalf of minors may be settled either before or after an action is filed.¹⁵ However, once an action has commenced on behalf of a minor, no settlement shall be effective unless approved by the court having jurisdiction of the action.¹⁶ When a civil action is pending, the petition for approval of settlement must be filed in such action. By contrast, if no civil action is pending, the petition for approval of settlement should be filed in the court where the action would be brought, and should be assigned to the judge who would preside over a petition for appointment of guardian of a minor. Most likely, this would be the Probate Division of the circuit court.¹⁷

Settlements of Less Than \$15,000

If the *gross*¹⁸ settlement amount does not exceed \$15,000 and settlement is reached *before the filing of a lawsuit*, the claim can be settled by the minor's natural guardians without court approval.¹⁹ If the natural guardian desires for court approval, Fla. Stat. § 744.387(2), allows the minor's natural guardian to petition the court for an order authorizing settlement of the claim.

Pursuant to Fla. Stat. § 744.387(3)(a), once an action on behalf of a minor has been commenced, no settlement – regardless of the amount at issue – is effective unless approved by the court having jurisdiction of the action.²⁰ The court must then determine if the settlement is in the best interest of the minor.²¹ Further, it appears that when there is no natural guardian of the minor with the authority to settle a claim, a guardian of

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the property must be appointed and obtain court approval for both pre-suit settlements and those made after litigation has commenced.²²

Settlements Exceeding \$15,000

Where a proposed settlement exceeds \$15,000 – regardless whether an action has been commenced – the natural guardian’s authority to settle claims or to receive settlement proceeds ceases to exist. Court appointment of a guardian is required to settle such claims or effectively sign releases of those claims, which also means that the court must conclude that such proposed settlement is in the child’s best interests.²³

Although Florida courts agree that court approval is required when the minor receives a *pre-suit* settlement exceeding \$15,000, they have not been consistent with the statutory authority for this conclusion.

For example, in *Sullivan v. Dept. of Transportation*,²⁴ the Second District Court of Appeal considered the pertinent provisions of Fla. Stat. § 744.387, in conjunction with the Florida Wrongful Death Act and found that, although the legislature omitted *pre-suit* procedures for the settlement for minors exceeding the statutory threshold, this did not exempt the minor’s guardian from obtaining the court approval of the settlement. The court held that, based on its inherent jurisdiction to protect minors, when a minor child received a pre-lawsuit settlement in excess of the statutory amounts,²⁵ a court of competent jurisdiction must approve that settlement.²⁶

On the other hand, several other Florida and Federal courts have interpreted the language of Fla. Stat. § 744.387, to *explicitly* require that, if the settlement is in excess of \$15,000, a guardian must be judicially appointed and the court must determine that the settlement is in the minor’s best interests.²⁷ Either way, the practical implications are the same for Florida practitioners - seek court approval when settlements exceed \$15,000 for minors.

Legal Guardianship Requirements

Parents may receive and manage their minor child’s property “if the amounts received in the aggregate do not exceed \$15,000.”²⁸ If the *net* amount of the settlement exceeds \$15,000, a legal guardianship is required²⁹ and the payment of the settlement proceeds should be made only to the minor’s guardian of the property.³⁰ Inadvertently making payments directly to the parent as natural guardian does not discharge an obligation to the minor in excess of \$15,000 and thus, the obligor could be in a position of having to pay the settlement amount twice.³¹

Appointment of a Guardian ad Litem

In certain scenarios, the court has discretion to appoint a guardian ad litem to review the settlement to determine whether it is in the best interests of the minor. The ad litem’s duty of protection as to the minor’s interests are set forth in Fla. Stat. § 744.3025, and Florida Probate Rule 5.636.³²

When making a determination whether an ad litem *may* or *shall* be appointed by the court, the Committee Notes to Florida Probate Rule 5.636 make clear that the *gross* (total) settlement to be considered under this Rule is not limited to the amounts received only by the minor, but should include all settlement payments or proceeds received by all parties to the claim or action.³³

If a minor’s claim for personal injury, property damage, wrongful death, or any other cause of action in which the *gross* settlement of the claim exceeds \$15,000, and if the court believes that an ad litem is necessary to protect the minor’s interests, the court *may* appoint an ad litem before approving a settlement of the minor’s portion of the claim.³⁴ By contrast, the court *shall* appoint an ad litem, without bond or notice, with respect to any proposed settlement that exceeds \$50,000 if the minor, (a) does not have a court-

appointed guardian of the property, (b) the court-appointed guardian has an interest adverse to the minor, or (c) the court determines that representation of the minor’s interest is otherwise inadequate.³⁵ A proposed settlement is deemed to exceed \$50,000 if the gross amount payable exceeds \$50,000, without reduction to reflect present value or fees and costs.³⁶

Recently, in *Allen v. Montalvan*, the Fourth District Court of Appeal reversed the trial court for failure to comply with Fla. Stat. § 744.3025(1), and held that where the insurance company *globally* tendered the \$50,000 policy limit and the *pre-suit* settlement involved minors, the trial court was required to appoint an ad litem to represent the children’s interest before approving a settlement that disposed of their claims.³⁷ This decision reiterates the principle that where minors’ interests are involved, the failure to comply with Florida’s statutory requirements will result in an invalid settlement not legally binding on the parties.

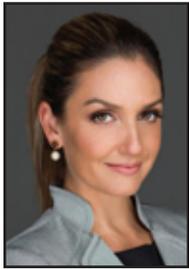
Conclusion

Florida practitioners should be aware that where a minor’s interests are involved in any property settlement, significant additional legal work will likely be involved to protect the minor. Court approval of the settlement, and possibly the establishment of a legal guardianship, may be required to protect the best interests of the minor and to ensure that any

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release given on behalf of the minor is legally effective. If settlement above the statutory threshold is entered into on behalf of a minor and there is no compliance with Florida law regarding guardianships, the settlement is unenforceable. Further, the purpose of obtaining an order from the court approving a minor's settlement is not to allow a party to control the settlement or the allocation of it, but instead, "is to protect the best interests of the minor and to ensure that any release given on behalf of the minor is legally sufficient."³⁸ Understanding the public policy behind the statutory requirements and following the proper procedures



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for settlements involving minors will guarantee that, (a) the parties are not exposed to additional liability, (b) the minor's interests are protected, and (c) their funds are secure and will be available for them for years to come.⁴¹

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Endnotes

- 1 Fla. Stat. § 744.387; See, e.g., *Wisekal v. Laboratory Corporation of America Holdings*, No.12-80806-CIV-HURLEY, 2016 WL 1623418 (S.D. Fla. Apr. 22, 2016).
- 2 *Kingsley v. Kingsley*, 623 So. 2d 780 (1993) (citing to Fla.R.Civ.P. 1.210 Parties. "An infant or incompetent person who does not have a duly appointed representative may sue by next friend or by a guardian ad litem.").
- 3 Fla.R.Civ.P. 1.210(b); See, e.g., *Dudley v. McCormick*, 799 So. 2d 436 (Fla. 1st DCA 2001); see also Fla. Stat. § 744.301.
- 4 "Next friend," *Black's Law Dictionary* (10th ed. 2014). A person who appears in a lawsuit to act for the benefit of an incompetent or minor plaintiff, but for who is not a party to the lawsuit and is not appointed as a guardian.
- 5 *Kingsley* at 781 ("unless minor has a guardian or other like fiduciary, minor must sue by his next friend.... When the action is brought by a next friend, the minor is the real party in interest, and the next friend is not a party to the suit").
- 6 See *In re Brock*, 25 So. 2d 659, 660 (Fla. 1946); See also *Brown v. Ripley*, 119 So. 2d 712, 717 (1st DCA 1960).
- 7 *Id.*
- 8 *J.S.J. v. Pena*, 109 So.3d 1281 (5th DCA 2013); See Fla. Stat. §§ 744.301(2), 744.387(2), 744.397(3), and 744.444(8).
- 9 Fla. Stat. § 744.301(2) – the property threshold for a natural guardian is \$15,000; See also *McKinnon v. First Nat. Bank*, 77 Fla. 777 (Fla. 1919).
- 10 See Kathleen A. Kadyszewski, *Florida Guardianship Practice*, § 22.7 (8th ed. 2014).
- 11 *Valentine v. Kelner*, 452 So. 2d 965, 966 (Fla. 3d DCA 1984).
- 12 See Kadyszewski at § 22.41 (8th ed. 2014).
- 13 *Berges v. Infinity Ins. Co.*, 896 So. 2d 665 (Fla. 2004).

- 14 *Id.* at 675.
- 15 Fla. Prob. R. 5.636(a).
- 16 Fla. Stat. § 744.387(3)(a).
- 17 Committee Notes to Fla. Prob. R. 5.636.
- 18 *Id.* ("The total settlement to be considered for valuation of the proposed settlement is not limited to the amounts received only by the minor, but includes all settlement payments or proceeds received by all parties to the claim or action.... Further, the "gross amount payable" under subdivision (e) is the total sum payable, without reducing the settlement amount by fees and costs that might be paid from the proceeds of the settlement. For example, if the proposed settlement is \$60,000 but \$20,000 of that sum will be paid to the attorneys representing the minor's interest in the action, the 'gross amount payable' still exceeds \$50,000.").
- 19 Fla. Stat. § 744.301(1) and (4) and Fla. Stat. § 744.387(2).
- 20 Fla. Stat. §§ 744.387(3)(a) and 744.301; see, e.g., *Wilson v. Griffiths*, 811 So. 2d 709 (5th DCA 2002).
- 21 Fla. Stat. § 744.387(1); See *Hernandez v. United Contractors Corp.*, 766 So. 2d 1249 (3d DCA 2000).
- 22 See *Sullivan v. Dept. of Transportation*, 595 So. 2d 219 (2d DCA 1992). This occurs regardless of the amount of the claim, as the \$15,000 threshold would only apply if there is a natural guardian, which, in this case, there is none.
- 23 Fla. Stat. § 744.38(3)(b); see *Wisekal*, No.12-80806-CIV-HURLEY, 2016 WL 1623418 (S.D. Fla. Apr. 22, 2016); see also *Wilson*.
- 24 *Sullivan v. Dept. of Transportation*, 595 So. 2d 219 (2d DCA 1992).
- 25 *Sullivan* at 220. (At the time the opinion was issued the statutory threshold was \$5,000; the threshold amount has since been increased to \$15,000. See Fla. Stat. § 744.387(3)(b)).
- 26 See, e.g., *Allen v. Montalvan*, No.4D15-675, 2016 WL 3419303 (4th DCA 2016) (citing to *Sullivan* at 220, again recognizing that execution of a pre-suit settlement agreement by the natural guardian of a minor, without court approval, did not bar the bringing of a subsequent wrongful death claim – arising out of the exact same set of facts).
- 27 See, e.g., *Wisekal* (where the proposed settlement of the claims of the minor children exceeds \$15,000 the natural guardian could not settle the claims of the children or effectively sign a release of those claims without court appointment as the legal guardian of the children and without court approval as to the determination that the proposed settlement was in the minors' best interest.); See, e.g., *Berges* at 667; *J.S.J.* at 1281; and *Meyers v. U.S.*, No. 6:13-CV-1555-Orl-41TBS, 2014 WL 5038585 (M.D. Fla. Sept. 29, 2014).
- 28 Fla. Stat. § 744.301(2).
- 29 Fla. Stat. § 744.387(2).
- 30 See *Ash v. Coconut Grove Bank*, 443 So. 2d 437 (Fla. 3d DCA 1984).
- 31 *Auerbach v. McKinney*, 549 So. 2d 1022 (Fla. 3d DCA 1989) (The acceptance of funds offered in settlement of a minor's claim using an arrangement that circumvents the proper legal procedures may result in personal liability of the plaintiff's counsel, restoration of funds improperly paid to the attorney, and legal malpractice liability. Attorneys had to return money meant for brain damaged minor client, where attorneys accepted payments from defendant's insurers made out to attorneys rather than to the minor client without seeking court approval.).
- 32 Fla. Stat. § 744.3025(d); Fla. Prob. R. 5.636.
- 33 See Committee Notes of Fla. Prob. R. 5.636.
- 34 Fla. Stat. § 744.3025(1)(a).
- 35 Fla. Prob. R. 5.636(d).
- 36 Fla. Prob. R. 5.636(e).
- 37 See *Allen* (where the monetary threshold amount is met in a global pre-suit settlement, the minor's guardian, natural or appointed, must obtain the circuit court's approval of the settlement.).
- 38 *Lincoln Nat'l. Life Ins. Co. v. Ragan*, No. 6:14-CV-1730-Or I041KRS, 2015 WM 4756747 (M.D. Fla. Aug. 11, 2015) (quoting from *McLaughlin v. Lara*, 133 So.3d 1004, 1006 (2d DCA 2013).

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