

## **Research Guide**

### **EMANCIPATION IN FLORIDA**

#### **(Removal of disabilities of nonage of minor F.S. 743)**

- Emancipation is the removal of disability of nonage. In other words, emancipation is the act by which a person gains all the rights and responsibilities of an adult.
- In Florida, emancipation automatically occurs when a minor reaches 18 years of age or when they marry. However, a minor cannot get married without parental consent.
- A minor under 16 years of age cannot get married with parental consent unless the minor female is pregnant and a Judge approves the marriage.
- To obtain emancipation, one must petition the court for an order of emancipation.
- A minor parent of a child is not considered emancipated except to seek a child support proceeding for the child, consent to the child's medical care, consent to the minor pregnant mother's own medical care for her pregnancy; and consent to the child's adoption.
- An emancipated minor has the legal capacity to act as an adult, be in control of his or her affairs and free of the legal control and custody of his or her parents. Emancipated minors **do lose** the benefits of their parents providing for them and the protection of Department of Children and Families.
- Emancipation does not change the effect of certain laws, i.e. drinking and voting ages.

#### **FILING YOUR CASE:**

**VENUE:** Venue is in the county where the minor resides.

- To obtain a court order of emancipation, the minor must be at least 16 years of age.
- The following forms should be completed:
  1. A CIVIL COVER SHEET
  2. SUMMONS (If necessary)
  3. PETITION FOR EMANCIPATION OF A MINOR
  4. NOTICE OF PERMANENT MAILING ADDRESS
  5. MOTION FOR DEFAULT and DEFAULT (If necessary)

## 6. STATEMENT OF RESPONSIBILITY

A packet containing generic samples of these forms is available in the Law Library.

- A 'PETITION FOR EMANCIPATION OF A MINOR', must be completed and filed by the minor's parent(s) or legal guardian or, if none, by a court appointed guardian ad litem. The petition must show the court:
  1. That the minor is independent and able to support him or herself, and his or her child, if any.
  2. A specific plan for meeting the needs of the minor if the minor is not supporting him or herself at the time of petitioning.
  3. That he or she is not dependent on public benefits.
  4. The reasons why the minor needs to be emancipated.
  5. Evidence that the removal of disabilities of nonage is in the best interest of the minor.
- If the petition is not signed by **both** parents, the non-petitioning parent will need 'Service of Process': To be served by means of a 'Summons' and a copy of the petition and all accompanying documents, if any, by a Deputy Sheriff.
- The non-petitioning parent will have twenty (20) days from date of service of the Summons in which to file an Answer to the petition. The '**SUMMONS**', must be executed by the Clerk or a Deputy Clerk.
- If the location/residence of the non-petitioning parent is unknown, the petitioning parent may use 'Constructive Service' provided the petitioning parent makes an actual, diligent search to discover the location of, and provide notice to, the non-petitioning parent.
- If the petition is filed by a guardian ad litem or next friend, 'Service of Process' by use of Summonses must be made on both natural parents of the minor.
- If a non-petitioning parent, after having Service of Process by either 'Summons' or 'Constructive Service', has not responded to the petition, the Petitioner may file the **MOTION FOR DEFAULT** and **DEFAULT**, with the Clerk of Court.
- During the proceeding, an attorney ad litem will need to be appointed by the court to represent the minor in all related proceedings. The Petitioner will need to retain an attorney to serve as the attorney ad litem.
- A hearing will be scheduled by the Court upon filing a **MOTION FOR HEARING**. The minor must attend the hearing, together with the Petitioner(s) and attorney ad litem.

- The Petitioner & Minor should be sure to keep copies of all documents for their records and BE ON TIME, appropriately dressed, for the hearing.
- If the court is satisfied that emancipation is in the minor's best interest, it will enter an order removing the disabilities of nonage and shall authorize the minor to perform all acts that the minor could do if he or she were 18 years of age.
- The order will be recorded in the public records of the county where the action is filed. The minor will need to obtain certified copies of the order to show proof of his or her emancipation.
- **COST OF THE ACTION:** There is a filing fee due to the **Clerk of Court** – please check with the Clerk for specific information on fees and methods of payment.

#### **VCLL Resources:**

The following are just a few of the resources available on this subject; please feel free to browse the shelves or ask a Librarian for assistance:

1. Chapter 743.015, Florida Statutes
2. Florida Jurisprudence, 2<sup>nd</sup> Edition, Family Law, section 237
3. Trawick's Florida Practice & Procedure, section 30-14
4. VCLL Patron Computer Desktops – sample generic self-help forms

**NOTICE:** This research guide is based on information gathered from the resources cited above. For more information on this or other legal topics visit the nearest branch of the Volusia County Law Library.

**IF YOU ARE ACTING AS YOUR OWN ATTORNEY YOU ARE RESPONSIBLE FOR EVERYTHING THAT INVOLVES YOUR CASE. Remember:** Court and Clerk Filing & Service fees vary. Check with the Clerk of the Court for exact fees and court costs.

