

By Senator Saunders

37-144-03

1 A bill to be entitled
2 An act relating to guardianship; amending s.
3 744.108, F.S.; providing for payment of
4 attorney's fees and costs incurred on behalf of
5 an indigent ward; amending s. 744.1085, F.S.;
6 requiring all guardians to post a bond;
7 revising training requirements for guardians;
8 requiring a professional guardian to file a
9 statement with the court attesting completion
10 of education requirements and compliance with
11 other requirements; amending s. 744.331, F.S.;
12 requiring that the court appoint an examining
13 committee for an alleged incapacitated person
14 without influence by other interested parties;
15 requiring that such person be examined in his
16 or her residential setting if possible;
17 authorizing the court to order that an
18 appropriate less-restrictive alternative be
19 implemented for a person who is declared to be
20 incapacitated; revising requirements for the
21 award of fees; amending s. 744.344, F.S.;
22 clarifying provisions requiring the least
23 restrictive form of guardianship for an
24 incapacitated person; amending s. 744.365,
25 F.S.; requiring the presence of a witness
26 during the inventory of a ward's personal
27 property; amending s. 744.3678, F.S.; requiring
28 that the guardian obtain a receipt and
29 cancelled check for all expenditures and
30 disbursements made on behalf of the ward;
31 deleting a fee required for certain estates

1 when filing the annual financial return;
2 amending s. 518.11, F.S.; specifying that a
3 fiduciary acting as the guardian of an
4 incapacitated ward has a duty to procure
5 certain benefits; authorizing the guardian to
6 take certain actions to procure such benefits;
7 providing an effective date.

8

9 Be It Enacted by the Legislature of the State of Florida:

10

11 Section 1. Subsection (1) of section 744.108, Florida
12 Statutes, is amended to read:

13 744.108 Guardian's and attorney's fees and expenses.--

14 (1) A guardian, or an attorney who has rendered
15 services to the ward or to the guardian on the ward's behalf,
16 is entitled to a reasonable fee for services rendered and
17 reimbursement for costs incurred on behalf of the ward. If the
18 ward is indigent and does not qualify for a public guardian,
19 the fees and costs incurred by the attorney on behalf of the
20 ward shall be paid by the county.

21 Section 2. Section 744.1085, Florida Statutes, is
22 amended to read:

23 744.1085 Regulation of professional guardians;
24 application; bond required; educational requirements.--

25 (1) The provisions of this section are in addition to
26 and supplemental to any other provision of the Florida
27 Guardianship Law, except s. 744.3145.

28 (2) Each ~~professional~~ guardian who files a petition
29 for appointment after October 1, 1997, shall post a blanket
30 fiduciary bond with the clerk of the circuit court in the
31 county in which the guardian's primary place of business is

1 located. The guardian shall provide proof of the fiduciary
2 bond to the clerks of each additional circuit court in which
3 he or she is serving as a ~~professional~~ guardian. The bond
4 shall be maintained by the guardian in an amount not less than
5 \$50,000. The bond must cover all wards for whom the guardian
6 has been appointed at any given time. The liability of the
7 provider of the bond is limited to the face amount of the
8 bond, regardless of the number of wards for whom the
9 ~~professional~~ guardian has been appointed. The act or omissions
10 of each employee of a ~~professional~~ guardian who has direct
11 contact with the ward or access to the ward's assets is
12 covered by the terms of such bond. The bond must be payable
13 to the Governor of the State of Florida and his or her
14 successors in office and conditioned on the faithful
15 performance of all duties by the guardian. In form, the bond
16 must be joint and several. The bond is in addition to any
17 bonds required under s. 744.351. This subsection does not
18 apply to any attorney who is licensed to practice law in this
19 state and who is in good standing, to any financial
20 institution as defined in s. 744.309(4), or to a public
21 guardian. The expenses incurred to satisfy the bonding
22 requirements prescribed in this section may not be paid with
23 the assets of any ward.

24 (3) Each individual who is a professional guardian, as
25 defined in s. 744.102(15), on July 1, 2003 ~~October 1, 1997,~~
26 must receive a minimum of 40 hours of instruction and training
27 by January 1, 2004. On or after July 1, 2003, the court may
28 not issue a letter of appointment for an individual to act as
29 a professional guardian until the individual has completed all
30 requirements for instruction and training. ~~October 1, 1998, or~~
31 ~~within 1 year after becoming a professional guardian,~~

1 ~~whichever occurs later.~~ Each professional guardian must
2 receive a minimum of 16 hours of continuing education every 2
3 calendar years after the year in which the initial 40-hour
4 educational requirement is met. The instruction and education
5 must be completed through a course approved or offered by the
6 Statewide Public Guardianship Office. The expenses incurred to
7 satisfy the educational requirements prescribed in this
8 subsection may not be paid with the assets of any ward. This
9 subsection does not apply to any attorney who is licensed to
10 practice law in this state.

11 (4) Each professional guardian must file with the
12 court, and update every 2 years, a written and notarized
13 statement that indicates the date the professional guardian
14 completed the education requirements and attests to the
15 professional guardian's knowledge of the requirements for
16 continuing education and satisfaction of the bond
17 requirements. Each professional guardian must file the
18 statement with the court prior to appointment in a case for
19 compensation. This subsection does not apply to an attorney
20 who is licensed to practice law in this state.

21 Section 3. Paragraphs (a) and (b) of subsection (3),
22 paragraph (b) of subsection (6), and paragraph (b) of
23 subsection (7) of section 744.331, Florida Statutes, are
24 amended to read:

25 744.331 Procedures to determine incapacity.--

26 (3) EXAMINING COMMITTEE.--

27 (a) Within 5 days after a petition for determination
28 of incapacity has been filed, the court shall appoint an
29 examining committee consisting of three members. The court
30 shall determine the composition of the examining committee
31 without influence or predetermination by the petitioner, an

1 attorney for an interested party, or any other interested
2 party.One member must be a psychiatrist or other physician.
3 The remaining members must be either a psychologist,
4 gerontologist, another psychiatrist, or other physician, a
5 registered nurse, nurse practitioner, licensed social worker,
6 a person with an advanced degree in gerontology from an
7 accredited institution of higher education, or other person
8 who by knowledge, skill, experience, training, or education
9 may, in the court's discretion, advise the court in the form
10 of an expert opinion. One of three members of the committee
11 must have knowledge of the type of incapacity alleged in the
12 petition. Unless good cause is shown, the attending or family
13 physician may not be appointed to the committee. If the
14 attending or family physician is available for consultation,
15 the committee must consult with the physician. Members of the
16 examining committee may not be related to or associated with
17 one another or with the petitioner or the person alleged to be
18 totally or partially incapacitated. A member may not be
19 employed by any private or governmental agency that has
20 custody of, or furnishes, services or subsidies, directly or
21 indirectly, to the person or the family of the person alleged
22 to be incapacitated or for whom a guardianship is sought. A
23 petitioner may not serve as a member of the examining
24 committee. Members of the examining committee must be able to
25 communicate, either directly or through an interpreter, in the
26 language that the alleged incapacitated person speaks or to
27 communicate in a medium understandable to the alleged
28 incapacitated person if she or he is able to communicate.
29 (b) Each member of the examining committee shall
30 examine the person in the person's usual residential setting,
31 if possible. The examining committee shall determine the

1 alleged incapacitated person's ability to exercise those
2 rights specified in s. 744.3215. In addition to the
3 examination, the examining committee shall have access to, and
4 may consider, previous examinations of the person, including,
5 but not limited to, habilitation plans, school records, and
6 psychological and psychosocial reports voluntarily offered for
7 use by the alleged incapacitated person. The examining
8 committee shall submit a report within 15 days after
9 appointment.

10 (6) ORDER DETERMINING INCAPACITY.--If, after making
11 findings of fact on the basis of clear and convincing
12 evidence, the court finds that a person is incapacitated with
13 respect to the exercise of a particular right, or all rights,
14 the court shall enter a written order determining such
15 incapacity. A person is determined to be incapacitated only
16 with respect to those rights specified in the order.

17 (b) In any order declaring a person incapacitated the
18 court must find that:

19 1. An appropriate less-restrictive alternative must be
20 implemented; or alternatives to guardianship were considered
21 ~~and that~~

22 2. No alternative to guardianship will sufficiently
23 address the problems of the ward.

24 (7) FEES.--

25 (b) The fees awarded under paragraph (a) shall be paid
26 by the guardian from the property of the ward or, if the ward
27 is indigent, by the county. The county shall have a
28 creditor's claim against the guardianship property for any
29 amounts paid under this section. The county must file its
30 claim within 90 days after the entry of an order awarding
31 attorney ad litem fees. If the county does not file its claim

1 on all interested parties within the 90-day period, the county
2 is thereafter barred from asserting the claim. Upon petition
3 by the county for payment of the claim, the court shall,
4 except in the case of an indigent ward, enter an order
5 authorizing immediate payment out of the property of the ward.
6 The board of county commissioners shall keep a record of such
7 payments.

8 Section 4. Subsection (2) of section 744.344, Florida
9 Statutes, is amended to read:

10 744.344 Order of appointment.--

11 (2) The order appointing a guardian must be consistent
12 with the incapacitated person's welfare and safety, must be
13 the least restrictive form of guardianship appropriate for the
14 incapacitated person ~~alternative~~, and must reserve to the
15 incapacitated person the right to make decisions in all
16 matters commensurate with the person's ability to do so.

17 Section 5. Subsection (2) of section 744.365, Florida
18 Statutes, is amended to read:

19 744.365 Verified inventory.--

20 (2) CONTENTS.--The verified inventory must include the
21 following:

22 (a) All property of the ward, real and personal, that
23 has come into the guardian's possession or knowledge,
24 including a statement of all encumbrances, liens, and other
25 secured claims on any item, any claims against the property,
26 and any cause of action accruing to the ward.†

27 (b) The location of the real and personal property in
28 sufficient detail so that it may be clearly identified or
29 located. A witness must be present during the inventory of the
30 ward's personal property and the guardian must identify each
31 witness present by name, address, and occupation.†~~and~~

1 (c) A description of all sources of income, including,
2 without limitation, social security benefits and pensions.

3 Section 6. Subsections (3) and (4) of section
4 744.3678, Florida Statutes, are amended to read:

5 744.3678 Annual accounting.--

6 (3) The guardian must obtain a receipt and ~~or~~ canceled
7 check for all expenditures and disbursements made on behalf of
8 the ward. The guardian must preserve the receipts and
9 canceled checks, along with other substantiating papers, for a
10 period of 3 years after his or her discharge. The receipts,
11 checks, and substantiating papers need not be filed with the
12 court but shall be made available for inspection and review at
13 such time and in such place and before such persons as the
14 court may from time to time order.

15 (4) The guardian shall pay from the ward's estate to
16 the clerk of the circuit court a fee based upon the following
17 graduated fee schedule, upon the filing of the annual
18 financial return, for the auditing of the return:

19 (a) For estates with a value of \$25,000 or less the
20 fee shall be \$0~~\$10~~.

21 (b) For estates with a value of more than \$25,000 up
22 to and including \$100,000 the fee shall be \$50.

23 (c) For estates with a value of more than \$100,000 up
24 to and including \$500,000 the fee shall be \$100.

25 (d) For estates with a value in excess of \$500,000 the
26 fee shall be \$150.

27
28 Any guardian unable to pay the auditing fee may petition the
29 court for a waiver of the fee. The court may waive the fee
30 after it has reviewed the documentation filed by the guardian
31 in support of the waiver. Upon such waiver, the clerk of the

1 circuit court shall bill the board of county commissioners for
2 the auditing fee.

3 Section 7. Paragraph (g) is added to subsection (1) of
4 section 518.11, Florida Statutes, to read:

5 518.11 Investments by fiduciaries; prudent investor
6 rule.--

7 (1) A fiduciary has a duty to invest and manage
8 investment assets as follows:

9 (g) A fiduciary acting as the guardian of the person
10 or property of an incapacitated ward has a duty to procure the
11 employment and government benefits to which the ward, or the
12 ward's spouse or children, are entitled. The fiduciary shall
13 take action as necessary, including executing documents and
14 obtaining court orders, to procure such benefits.

15 Section 8. This act shall take effect July 1, 2003.

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18 SENATE SUMMARY

19 Revises various provisions of the Florida Guardianship
20 Law. Requires that the county pay attorney's fees and
costs for an indigent ward. Requires guardians to post a
bond. Revises training requirements for guardians.
21 Revises requirements for an examining committee for an
alleged incapacitated person. Requires that a witness be
22 present during an inventory of property. Deletes a filing
fee required for estates with a value of \$25,000 or less.
23 (See bill for details.)

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