

HB 1327

2004

A bill to be entitled

An act relating to guardianship; amending s. 737.2065, F.S.; excepting from a prohibition against commencing certain actions contesting trust validity by property guardians of incapacitated grantors; amending s. 744.331, F.S.; requiring a court to determine whether acceptable alternatives to guardianship of incapacitated persons exist under certain circumstances; requiring appointment of a guardian if no alternative exists; prohibiting such appointment if an alternative exists; specifying circumstances of nonexistence of an alternative; preserving certain court authority to determine exercise of certain powers of attorney; amending s. 744.441, F.S.; requiring a court to make certain findings in a ward's best interest before authorizing a guardian to bring certain actions; requiring a court to review certain continuing needs for guardians and delegation of a ward's rights; creating s. 744.462, F.S.; requiring guardians to immediately report certain judicial determinations in certain guardianship proceedings; requiring a court to review certain continuing needs for guardians and delegation of a ward's rights under certain circumstances; providing an effective date.

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

Section 1. Section 737.2065, Florida Statutes, is amended to read:

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29 737.2065 Trust contests.--An action to contest the
 30 validity of all or part of a trust may not be commenced until
 31 the trust becomes irrevocable, except this section shall not
 32 prohibit such action by the guardian of the property of an
 33 incapacitated grantor.

34 Section 2. Paragraphs (b) and (f) of subsection (6) of
 35 section 744.331, Florida Statutes, are amended to read:

36 744.331 Procedures to determine incapacity.--

37 (6) ORDER DETERMINING INCAPACITY.--If, after making
 38 findings of fact on the basis of clear and convincing evidence,
 39 the court finds that a person is incapacitated with respect to
 40 the exercise of a particular right, or all rights, the court
 41 shall enter a written order determining such incapacity. A
 42 person is determined to be incapacitated only with respect to
 43 those rights specified in the order.

44 (b) When an order is entered which determines that a
 45 person is incapable of exercising delegable rights, the court
 46 must consider and find whether there is an alternative to
 47 guardianship that will sufficiently address the problems of the
 48 incapacitated person. A guardian must be appointed to exercise
 49 the incapacitated person's delegable rights unless the court
 50 finds that there is an alternative. A guardian shall not be
 51 appointed if the court finds that there is an alternative to
 52 guardianship that will sufficiently address the problems of the
 53 incapacitated person ~~In any order declaring a person~~
 54 ~~incapacitated the court must find that alternatives to~~
 55 ~~guardianship were considered and that no alternative to~~
 56 ~~guardianship will sufficiently address the problems of the ward.~~

57 (f) Upon the filing of a verified statement by an

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58 interested person stating that he or she has a good faith belief
 59 that the alleged incapacitated person's trust, trust amendment,
 60 or durable power of attorney is invalid and a reasonable factual
 61 basis for that belief, the trust, trust amendment, or durable
 62 power of attorney shall not be deemed to be an alternative to
 63 the appointment of a guardian. The appointment of a guardian
 64 shall not limit the court's authority to determine that certain
 65 authority granted by a durable power of attorney is to remain
 66 exercisable by the attorney in fact ~~When an order is entered~~
 67 ~~which determines that a person is incapable of exercising~~
 68 ~~delegable rights, a guardian must be appointed to exercise those~~
 69 ~~rights.~~

70 Section 3. Subsection (11) of section 744.441, Florida
 71 Statutes, is amended to read:

72 744.441 Powers of guardian upon court approval.--After
 73 obtaining approval of the court pursuant to a petition for
 74 authorization to act, a plenary guardian of the property, or a
 75 limited guardian of the property within the powers granted by
 76 the order appointing the guardian or an approved annual or
 77 amended guardianship report, may:

78 (11) Prosecute or defend claims or proceedings in any
 79 jurisdiction for the protection of the estate and of the
 80 guardian in the performance of his or her duties. Before
 81 authorizing a guardian to bring an action described in s.
 82 737.2065, the court shall first find that the action appears to
 83 be in the ward's best interests during the ward's probable
 84 lifetime. If the court denies a request that a guardian be
 85 authorized to bring an action described in s. 737.2065, the
 86 court shall review the continued need for a guardian and the

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87 extent of the need for delegation of the ward's rights.

88 Section 4. Section 744.462, Florida Statutes, is created
89 to read:

90 744.462 Determination regarding alternatives to
91 guardianship.--Any judicial determination concerning the
92 validity of the ward's durable power of attorney, trust, or
93 trust amendment shall be promptly reported in the guardianship
94 proceeding by the guardian of the property. If the instrument
95 has been judicially determined to be valid, or if after the
96 appointment of a guardian a petition is filed alleging that
97 there is an alternative to guardianship that will sufficiently
98 address the problems of the ward, the court shall review the
99 continued need for a guardian and the extent of the need for
100 delegation of the ward's rights.

101 Section 5. This act shall take effect upon becoming a law.