

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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1 Representative Sands offered the following:

2
3 **Amendment (with title amendment)**

4 Remove everything after the enacting clause and insert:

5 Section 1. Section 744.102, Florida Statutes, is amended
6 to read:

7 744.102 Definitions.--As used in this chapter, the term:

8 (1) "Attorney for the alleged incapacitated person" means
9 an attorney who represents the alleged incapacitated person. The
10 ~~Such~~ attorney shall represent the expressed wishes of the
11 alleged incapacitated person to the extent it is consistent with
12 the rules regulating The Florida Bar.

13 (2) "Audit" means a systematic review of financial and all
14 other documents to ensure compliance with s. 744.368, rules of
15 court, and local procedures using generally accepted auditing
16 and accounting procedures.

247703
4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

17 ~~(3)-(2)~~ "Clerk" means the clerk or deputy clerk of the
18 court.

19 ~~(4)-(3)~~ "Corporate guardian" means a corporation authorized
20 to exercise fiduciary or guardianship powers in this state and
21 includes a nonprofit corporate guardian.

22 ~~(5)-(4)~~ "Court" means the circuit court.

23 ~~(6)-(5)~~ "Court monitor" means a person appointed by the
24 court under ~~pursuant to~~ s. 744.107 to provide the court with
25 information concerning a ward.

26 ~~(7)-(6)~~ "Estate" means the property of a ward subject to
27 administration.

28 ~~(8)-(7)~~ "Foreign guardian" means a guardian appointed in
29 another state or country.

30 ~~(9)-(8)~~ "Guardian" means a person who has been appointed by
31 the court to act on behalf of a ward's person or property, or
32 both.

33 (a) "Limited guardian" means a guardian who has been
34 appointed by the court to exercise the legal rights and powers
35 specifically designated by court order entered after the court
36 has found that the ward lacks the capacity to do some, but not
37 all, of the tasks necessary to care for his or her person or
38 property, or after the person has voluntarily petitioned for
39 appointment of a limited guardian.

40 (b) "Plenary guardian" means a person who has been
41 appointed by the court to exercise all delegable legal rights
42 and powers of the ward after the court has found that the ward
43 lacks the capacity to perform all of the tasks necessary to care
44 for his or her person or property.

247703

4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

45 ~~(10)~~~~(9)~~ "Guardian ad litem" means a person who is
46 appointed by the court having jurisdiction of the guardianship
47 or a court in which a particular legal matter is pending to
48 represent a ward in that proceeding.

49 ~~(11)~~~~(10)~~ "Guardian advocate" means a person appointed by a
50 written order of the court to represent a person with
51 developmental disabilities under s. 393.12. As used in this
52 chapter, the term does not apply to a guardian advocate
53 appointed for a person determined incompetent to consent to
54 treatment under s. 394.4598.

55 ~~(12)~~~~(11)~~ "Incapacitated person" means a person who has
56 been judicially determined to lack the capacity to manage at
57 least some of the property or to meet at least some of the
58 essential health and safety requirements of the ~~such~~ person.

59 (a) To "manage property" means to take those actions
60 necessary to obtain, administer, and dispose of real and
61 personal property, intangible property, business property,
62 benefits, and income.

63 (b) To "meet essential requirements for health or safety"
64 means to take those actions necessary to provide the health
65 care, food, shelter, clothing, personal hygiene, or other care
66 without which serious and imminent physical injury or illness is
67 more likely than not to occur.

68 ~~(13)~~~~(12)~~ "Minor" means a person under 18 years of age
69 whose disabilities have not been removed by marriage or
70 otherwise.

71 ~~(14)~~~~(13)~~ "Next of kin" means those persons who would be
72 heirs at law of the ward or alleged incapacitated person if the

247703

4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

73 ~~such~~ person were deceased and includes the lineal descendants of
74 the ~~such~~ ward or alleged incapacitated person.

75 (15)~~(14)~~ "Nonprofit corporate guardian" means a nonprofit
76 corporation organized for religious or charitable purposes and
77 existing under the laws of this state.

78 (16)~~(15)~~ "Preneed guardian" means a person named in a
79 written declaration to serve as guardian in the event of the
80 incapacity of the declarant as provided in s. 744.3045.

81 (17)~~(16)~~ "Professional guardian" means any guardian who
82 ~~receives or has at any time received compensation for services~~
83 rendered services to three or more ~~than two~~ wards as their
84 guardian. A person serving as a guardian for two or more
85 relatives as defined in s. 744.309(2) is not considered a
86 professional guardian. A public guardian shall be considered a
87 professional guardian for purposes of regulation, education, and
88 registration.

89 (18)~~(17)~~ "Property" means both real and personal property
90 or any interest in it and anything that may be the subject of
91 ownership.

92 (19)~~(18)~~ "Standby guardian" means a person empowered to
93 assume the duties of guardianship upon the death or adjudication
94 of incapacity of the last surviving natural or appointed
95 guardian.

96 (20) "Surrogate guardian" means a guardian designated
97 according to s. 744.442.

98 (21)~~(19)~~ "Totally incapacitated" means incapable of
99 exercising any of the rights enumerated in s. 744.3215(2) and
100 (3).

247703

4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

101 ~~(22)(20)~~ "Ward" means a person for whom a guardian has
102 been appointed.

103 Section 2. Subsections (3), (7), and (10) of section
104 744.1083, Florida Statutes, are amended to read:

105 744.1083 Professional guardian registration.--

106 (3) Registration must include the following:

107 (a) Sufficient information to identify the professional
108 guardian, as follows:

109 1. If the professional guardian is a natural person, the
110 name, address, date of birth, and employer identification or
111 social security number of the person ~~professional guardian.~~

112 ~~2.(b)~~ If the professional guardian is a partnership or
113 association, the name, address, and ~~date of birth of every~~
114 ~~member, and the~~ employer identification number of the entity
115 ~~partnership or association.~~

116 ~~(c) If the professional guardian is a corporation, the~~
117 ~~name, address, and employer identification number of the~~
118 ~~corporation; the name, address, and date of birth of each of its~~
119 ~~directors and officers; the name of its resident agent; and the~~
120 ~~name, address, and date of birth of each person having at least~~
121 ~~a 10 percent interest in the corporation.~~

122 ~~(d) The name, address, date of birth, and employer~~
123 ~~identification number, if applicable, of each person providing~~
124 ~~guardian delegated financial or personal guardianship services~~
125 ~~for wards.~~

126 (b)(e) Documentation that the bonding and educational
127 requirements of s. 744.1085 have been met.

128 (c)(f) Sufficient information to distinguish a guardian
129 providing guardianship services as a public guardian,

247703

4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

130 individually, through partnership, corporation, or any other
131 business organization.

132 (7) A trust company, a state banking corporation or state
133 savings association authorized and qualified to exercise
134 fiduciary powers in this state, or a national banking
135 association or federal savings and loan association authorized
136 and qualified to exercise fiduciary powers in this state, may,
137 but is not required to, register as a professional guardian
138 under this section. If a trust company, state banking
139 corporation, state savings association, national banking
140 association, or federal savings and loan association described
141 in this subsection elects to register as a professional guardian
142 under this subsection, the requirements of subsections (3) and
143 (4) do not apply and the registration must include only the
144 name, address, and employer identification number of the
145 registrant, the name and address of its registered agent, if
146 any, and the documentation described in paragraph (3) (b) ~~(e)~~.

147 (10) A state college or university or an independent
148 college or university described in s. 1009.98(3)(a), may, but is
149 not required to, register as a professional guardian under this
150 section. If a state college or university or independent college
151 or university elects to register as a professional guardian
152 under this subsection, the requirements of subsections (3) and
153 (4) ~~subsection (3)~~ do not apply and the registration must
154 include only the name, address, and employer identification
155 number of the registrant.

156 Section 3. Section 744.301, Florida Statutes, is amended
157 to read:

158 744.301 Natural guardians.--

247703

4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

159 (1) The mother and father jointly are natural guardians of
160 their own children and of their adopted children, during
161 minority. If one parent dies, the surviving parent remains the
162 sole natural guardian even if he or she ~~the natural guardianship~~
163 ~~shall pass to the surviving parent, and the right shall continue~~
164 ~~even though the surviving parent remarries.~~ If the marriage
165 between the parents is dissolved, the natural guardianship
166 belongs ~~shall belong~~ to the parent to whom ~~the~~ custody of the
167 child is awarded. If the parents are given joint custody, then
168 both ~~shall~~ continue as natural guardians. If the marriage is
169 dissolved and neither the father nor the mother is given custody
170 of the child, neither shall act as natural guardian of the
171 child. The mother of a child born out of wedlock is the natural
172 guardian of the child and is entitled to primary residential
173 care and custody of the child unless a court of competent
174 jurisdiction enters an order stating otherwise.

175 (2) ~~The Natural guardian or~~ guardians are authorized, on
176 behalf of any of their minor children, to:

177 (a) Settle and consummate a settlement of any claim or
178 cause of action accruing to any of their minor children for
179 damages to the person or property of any of said minor children;

180 (b) Collect, receive, manage, and dispose of the proceeds
181 of any such settlement;

182 (c) Collect, receive, manage, and dispose of any real or
183 personal property distributed from an estate or trust;

184 (d) Collect, receive, manage, and dispose of and make
185 elections regarding the proceeds from a life insurance policy or
186 annuity contract payable to, or otherwise accruing to the
187 benefit of, the child; and

247703

4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

188 (e) Collect, receive, manage, dispose of, and make
189 elections regarding the proceeds of any benefit plan as defined
190 by s. 710.102, of which the minor is a beneficiary, participant,
191 or owner,

192
193 without appointment, authority, or bond, when the amounts
194 received, in the aggregate, do amount involved in any instance
195 ~~does~~ not exceed \$15,000.

196 (3) All instruments executed by a natural guardian for the
197 benefit of the ward under the powers specified ~~provided for~~ in
198 subsection (2) shall be binding on the ward. The natural
199 guardian may not, without a court order, use the property of the
200 ward for the guardian's benefit or to satisfy the guardian's
201 support obligation to the ward.

202 ~~(4)(a) In any case where a minor has a claim for personal~~
203 ~~injury, property damage, or wrongful death in which the gross~~
204 ~~settlement for the claim of the minor exceeds \$15,000, the court~~
205 ~~may, prior to the approval of the settlement of the minor's~~
206 ~~claim, appoint a guardian ad litem to represent the minor's~~
207 ~~interests. In any case in which the gross settlement involving a~~
208 ~~minor equals or exceeds \$25,000, the court shall, prior to the~~
209 ~~approval of the settlement of the minor's claim, appoint a~~
210 ~~guardian ad litem to represent the minor's interests. The~~
211 ~~appointment of the guardian ad litem must be without the~~
212 ~~necessity of bond or a notice. The duty of the guardian ad litem~~
213 ~~is to protect the minor's interests. The procedure for carrying~~
214 ~~out that duty is as prescribed in the Florida Probate Rules. If~~
215 ~~a legal guardian of the minor has previously been appointed and~~
216 ~~has no potential adverse interest to the minor, the court may~~

247703

4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

217 ~~not appoint a guardian ad litem to represent the minor's~~
218 ~~interests, unless the court determines that the appointment is~~
219 ~~otherwise necessary.~~

220 ~~(b) Unless waived, the court shall award reasonable fees~~
221 ~~and costs to the guardian ad litem to be paid out of the gross~~
222 ~~proceeds of the settlement.~~

223 Section 4. Section 744.3025, Florida Statutes, is created
224 to read:

225 744.3025 Claims of minors.--

226 (1) (a) The court may appoint a guardian ad litem to
227 represent the minor's interest before approving a settlement of
228 the minor's portion of the claim in any case in which a minor
229 has a claim for personal injury, property damage, wrongful
230 death, or other cause of action in which the gross settlement of
231 the claim exceeds \$15,000.

232 (b) The court shall appoint a guardian ad litem to
233 represent the minor's interest before approving a settlement of
234 the minor's claim in any case in which the gross settlement
235 involving a minor equals or exceeds \$50,000.

236 (c) The appointment of the guardian ad litem must be
237 without the necessity of bond or notice.

238 (d) The duty of the guardian ad litem is to protect the
239 minor's interests as described in the Florida Probate Rules.

240 (e) A court need not appoint a guardian ad litem for the
241 minor if a guardian of the minor has previously been appointed
242 and that guardian has no potential adverse interest to the
243 minor. A court may appoint a guardian ad litem if the court
244 believes a guardian ad litem is necessary to protect the
245 interests of the minor.

247703

4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

246 (2) Unless waived, the court shall award reasonable fees
247 and costs to the guardian ad litem to be paid out of the gross
248 proceeds of the settlement.

249 Section 5. Subsection (3) of section 744.3031, Florida
250 Statutes, is amended, and subsection (8) is added to that
251 section, to read:

252 744.3031 Emergency temporary guardianship.--

253 (3) The authority of an emergency temporary guardian
254 expires 90 ~~60~~ days after the date of appointment or when a
255 guardian is appointed, whichever occurs first. The authority of
256 the emergency temporary guardian may be extended for an
257 additional 90 ~~30~~ days upon a showing that the emergency
258 conditions still exist.

259 (8)(a) An emergency temporary guardian shall file a final
260 report no later than 30 days after the expiration of the
261 emergency temporary guardianship.

262 (b) If an emergency temporary guardian is a guardian for
263 the property, the final report must consist of a verified
264 inventory of the property, as provided in s. 744.365, as of the
265 date the letters of emergency temporary guardianship were
266 issued, a final accounting that gives a full and correct account
267 of the receipts and disbursements of all the property of the
268 ward over which the guardian had control, and a statement of the
269 property of the ward on hand at the end of the emergency
270 temporary guardianship. If the emergency temporary guardian
271 becomes the successor guardian of the property, the final report
272 must satisfy the requirements of the initial guardianship report
273 for the guardian of the property as provided in s. 744.362.

247703

4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

274 (c) If the emergency temporary guardian is a guardian of
275 the person, the final report must summarize the activities of
276 the temporary guardian with regard to residential placement,
277 medical condition, mental health and rehabilitative services,
278 and the social condition of the ward to the extent of the
279 authority granted to the temporary guardian in the letters of
280 guardianship. If the emergency temporary guardian becomes the
281 successor guardian of the person, the report must satisfy the
282 requirements of the initial report for a guardian of the person
283 as stated in s. 744.362.

284 (d) A copy of the final report of the emergency temporary
285 guardianship shall be served on the successor guardian and the
286 ward.

287 Section 6. Section 744.304, Florida Statutes, is amended
288 to read:

289 744.304 Standby guardianship.--

290 (1) Upon a petition by the natural guardians or a guardian
291 appointed under s. 744.3021, the court may appoint a standby
292 guardian of the person or property of a minor ~~or consent of both~~
293 ~~parents, natural or adoptive, if living, or of the surviving~~
294 ~~parent, a standby guardian of the person or property of a minor~~
295 ~~may be appointed by the court.~~ The court may also appoint an
296 alternate to the guardian to act if the standby guardian does
297 not serve or ceases to serve after appointment. Notice of a
298 hearing on the petition must be served on the parents, natural
299 or adoptive, and on any guardian currently serving unless the
300 notice is waived in writing by them or waived by the court for
301 good cause shown ~~shall renounce, die, or become incapacitated~~
302 after the death of the last surviving parent of the minor.

247703

4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

303 (2) Upon petition of a currently serving guardian, a
304 standby guardian of the person or property of an incapacitated
305 person may be appointed by the court. Notice of the hearing
306 shall be served on the ward's next of kin.

307 (3) The standby guardian or alternate shall be empowered
308 to assume the duties of guardianship ~~his or her office~~
309 immediately on the death, removal, or resignation of the
310 guardian of a minor, or on the death or adjudication of
311 incapacity of the last surviving natural guardian ~~or adoptive~~
312 ~~parent~~ of a minor, or upon the death, removal, or resignation of
313 the guardian for an adult. ~~The; however, such a~~ guardian of the
314 ward's property may not be empowered to deal with the ward's
315 property, other than to safeguard it, before ~~prior to~~ issuance
316 of letters of guardianship. If the ward ~~incapacitated person~~ is
317 over the age of 18 years, the court shall conduct a hearing as
318 provided in s. 744.331 before confirming the appointment of the
319 standby guardian, unless the ward has previously been found to
320 be incapacitated.

321 (4) Within 20 days after assumption of duties as guardian,
322 a standby guardian shall petition for confirmation of
323 appointment. If the court finds the standby guardian to be
324 qualified to serve as guardian under ~~pursuant to~~ ss. 744.309 and
325 744.312, appointment of the guardian must be confirmed. Each
326 guardian so confirmed shall file an oath in accordance with s.
327 744.347, ~~and~~ shall file a bond, and shall submit to a credit and
328 a criminal history record check as set forth in s. 744.3135, if
329 required. Letters of guardianship must then be issued in the
330 manner provided in s. 744.345.

247703

4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

331 (5) After the assumption of duties by a standby guardian,
332 the court shall have jurisdiction over the guardian and the
333 ward.

334 Section 7. Section 744.3115, Florida Statutes, is amended
335 to read:

336 744.3115 Advance directives for health care.--In each
337 proceeding in which a guardian is appointed under this chapter,
338 the court shall determine whether the ward, prior to incapacity,
339 has executed any valid advance directive under ~~pursuant to~~
340 chapter 765. If any ~~such~~ advance directive exists, the court
341 shall specify in its order and letters of guardianship what
342 authority, if any, the guardian shall exercise over the
343 surrogate. Pursuant to the grounds listed in s. 765.105, the
344 court, upon its own motion, may, with notice to the surrogate
345 and any other appropriate parties, modify or revoke the
346 authority of the surrogate to make health care decisions for the
347 ward. For purposes of this section, the term "health care
348 decision" has the same meaning as in s. 765.101.

349 Section 8. Section 744.3135, Florida Statutes, is amended
350 to read:

351 744.3135 Credit and criminal investigation.--

352 (1) The court may require a nonprofessional guardian and
353 shall require a professional or public guardian, and all
354 employees of a professional guardian who have a fiduciary
355 responsibility to a ward, to submit, at their own expense, to an
356 investigation of the guardian's credit history and to undergo
357 level 2 background screening as required under s. 435.04. If a
358 credit or criminal investigation is required, the court must
359 consider the results of any investigation before appointing a

247703

4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

360 guardian. At any time, the court may require a guardian or the
361 guardian's employees to submit to an investigation of the
362 person's credit history and complete a level 1 background
363 screening as set forth in s. 435.03. The court shall consider
364 the results of any investigation when reappointing a guardian.
365 The clerk of the court shall maintain a file on each guardian
366 appointed by the court and retain in the file documentation of
367 the result of any investigation conducted under this section. A
368 professional guardian must pay the clerk of the court a fee of
369 up to \$7.50 for handling and processing professional guardian
370 files.

371 (2) The court and the Statewide Public Guardianship Office
372 shall accept the satisfactory completion of a criminal history
373 record check by any method described in this subsection. A
374 guardian satisfies the requirements of this section by
375 undergoing:

376 (a) An electronic fingerprint criminal history record
377 check. A guardian may use any electronic fingerprinting
378 equipment used for criminal history record checks of public
379 employees. The guardian shall pay the actual costs incurred by
380 the Federal Bureau of Investigation and the Department of Law
381 Enforcement for the criminal history record check. The agency
382 that operates the equipment used by the guardian may charge the
383 guardian an additional fee, not to exceed \$10, for the use of
384 the equipment. The agency completing the record check must
385 immediately send the results of the criminal history record
386 check to the clerk of the court and the Statewide Public
387 Guardianship Office. The clerk of the court shall maintain the

247703

4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

388 results in the guardian's file and shall make the results
389 available to the court; or

390 (b) A criminal history record check using a fingerprint
391 card. The clerk of the court shall obtain fingerprint cards from
392 the Federal Bureau of Investigation and make them available to
393 guardians. Any guardian who is so required shall have his or her
394 fingerprints taken and forward the proper fingerprint card along
395 with the necessary fee to the ~~Florida~~ Department of Law
396 Enforcement for processing. ~~The professional guardian shall pay~~
397 ~~to the clerk of the court a fee of up to \$7.50 for handling and~~
398 ~~processing professional guardian files.~~ The results of the
399 fingerprint card criminal history record checks shall be
400 forwarded to the clerk of the court who shall maintain the
401 results in the guardian's ~~a guardian~~ file and shall make the
402 results available to the court and the Statewide Public
403 Guardianship Office.

404 (3) (a) A professional guardian, and each employee of a
405 professional guardian who has a fiduciary responsibility to a
406 ward, must complete, at his or her own expense, a level 2
407 background screening as set forth in s. 435.04 before and at
408 least once every 5 years after the date the guardian is
409 appointed. A professional guardian, and each employee of a
410 professional guardian who has a fiduciary responsibility to a
411 ward, must complete, at his or her own expense, a level 1
412 background screening as set forth in s. 435.03 at least once
413 every 2 years after the date the guardian is appointed. However,
414 a person is not required to resubmit fingerprints for a criminal
415 history record check if he or she has been screened using
416 electronic fingerprinting equipment that is capable of notifying

247703
4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

417 the clerk of the court of any crime charged against the person
418 in this state or elsewhere, as appropriate.

419 (b) Effective December 15, 2006, all fingerprints
420 electronically submitted to the Department of Law Enforcement
421 under this section shall be retained by the Department of Law
422 Enforcement in a manner provided by rule and entered in the
423 statewide automated fingerprint identification system authorized
424 by s. 943.05(2)(b). The fingerprints shall thereafter be
425 available for all purposes and uses authorized for arrest
426 fingerprint cards entered in the Criminal Justice Information
427 Program under s. 943.051.

428 (c) Effective December 15, 2006, the Department of Law
429 Enforcement shall search all arrest fingerprint cards received
430 under s. 943.051 against the fingerprints retained in the
431 statewide automated fingerprint identification system under
432 paragraph (b). Any arrest record that is identified with the
433 fingerprints of a person described in this paragraph must be
434 reported to the clerk of court. The clerk of court must forward
435 any arrest record received for a professional guardian to the
436 Statewide Public Guardianship Office within 5 days. Each
437 guardian who elects to submit fingerprint information
438 electronically shall participate in this search process by
439 paying an annual fee to the Statewide Public Guardianship Office
440 of the Department of Elderly Affairs and by informing the clerk
441 of court and the Statewide Public Guardianship Office of any
442 change in the status of his or her guardianship appointment. The
443 amount of the annual fee to be imposed for performing these
444 searches and the procedures for the retention of guardian
445 fingerprints and the dissemination of search results shall be

247703

4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

446 established by rule of the Department of Law Enforcement. At
447 least once every 5 years, the Statewide Public Guardianship
448 Office must request that the Department of Law Enforcement
449 forward the fingerprints maintained under this section to the
450 Federal Bureau of Investigation.

451 (4) (a) A professional guardian, and each employee of a
452 professional guardian who has a fiduciary responsibility to a
453 ward, must complete, at his or her own expense, an investigation
454 of his or her credit history before and at least once every 2
455 years after the date of the guardian's appointment.

456 (b) The Statewide Public Guardianship Office shall adopt a
457 rule detailing the acceptable methods for completing a credit
458 investigation under this section. If appropriate, the Statewide
459 Public Guardianship Office may administer credit investigations.
460 If the office chooses to administer the credit investigation,
461 the office may adopt a rule setting a fee, not to exceed \$25, to
462 reimburse the costs associated with the administration of a
463 credit investigation.

464 (5) The Statewide Public Guardianship Office may inspect
465 at any time the results of any credit or criminal investigation
466 of a public or professional guardian conducted under this
467 section. The office shall maintain copies of the credit or
468 criminal results in the guardian's registration file. If the
469 results of a credit or criminal investigation of a public or
470 professional guardian have not been forwarded to the Statewide
471 Public Guardianship Office by the investigating agency, the
472 clerk of the court shall forward copies of the results of the
473 investigations to the office upon receiving them. ~~If credit or~~
474 ~~criminal investigations are required, the court must consider~~

247703

4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

475 ~~the results of the investigations before appointing a guardian.~~
476 ~~Professional guardians and all employees of a professional~~
477 ~~guardian who have a fiduciary responsibility to a ward, so~~
478 ~~appointed, must resubmit, at their own expense, to an~~
479 ~~investigation of credit history, and undergo level 1 background~~
480 ~~screening as required under s. 435.03, at least every 2 years~~
481 ~~after the date of their appointment. At any time, the court may~~
482 ~~require guardians or their employees to submit to an~~
483 ~~investigation of credit history and undergo level 1 background~~
484 ~~screening as required under s. 435.03. The court must consider~~
485 ~~the results of these investigations in reappointing a guardian.~~

486 ~~(1) Upon receiving the results of a credit or criminal~~
487 ~~investigation of any public or professional guardian, the clerk~~
488 ~~of the court shall forward copies of the results to the~~
489 ~~Statewide Public Guardianship Office in order that the results~~
490 ~~may be maintained in the guardian's registration file.~~

491 ~~(6)(2)~~ The requirements of this section do ~~does~~ not apply
492 to a professional guardian, or to the employees of a
493 professional guardian, that ~~which~~ is a trust company, a state
494 banking corporation or state savings association authorized and
495 qualified to exercise fiduciary powers in this state, or a
496 national banking association or federal savings and loan
497 association authorized and qualified to exercise fiduciary
498 powers in this state.

499 Section 9. Subsection (4) of section 744.3145, Florida
500 Statutes, is amended to read:

501 744.3145 Guardian education requirements.--

502 (4) Each person appointed by the court to be a guardian
503 must complete the required number of hours of instruction and
247703

4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

504 education within 4 months ~~1 year~~ after his or her appointment as
505 guardian. The instruction and education must be completed
506 through a course approved by the chief judge of the circuit
507 court and taught by a court-approved organization. Court-
508 approved organizations may include, but are not limited to,
509 community or junior colleges, guardianship organizations, and
510 the local bar association or The Florida Bar.

511 Section 10. Paragraph (i) of subsection (1) and subsection
512 (2) of section 744.3215, Florida Statutes, are amended to read:

513 744.3215 Rights of persons determined incapacitated.--

514 (1) A person who has been determined to be incapacitated
515 retains the right:

516 (i) To receive ~~necessary~~ services and rehabilitation
517 necessary to maximize the quality of life.

518 (2) Rights that may be removed from a person by an order
519 determining incapacity but not delegated to a guardian include
520 the right:

521 (a) To marry. If the right to enter into a contract has
522 been removed, the right to marry is subject to court approval.

523 (b) To vote.

524 (c) To personally apply for government benefits.

525 (d) To have a driver's license.

526 (e) To travel.

527 (f) To seek or retain employment.

528 Section 11. Subsections (2), (3), and (4), paragraph (a)
529 of subsection (5), and subsection (7) of section 744.331,
530 Florida Statutes, are amended to read:

531 744.331 Procedures to determine incapacity.--

532 (2) ATTORNEY FOR THE ALLEGED INCAPACITATED PERSON.--

247703

4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

533 (a) When a court appoints an attorney for an alleged
534 incapacitated person, the court must appoint an attorney who is
535 included in the attorney registry compiled pursuant to ss. 27.40
536 and 27.42 by the circuit's Article V indigent services
537 committee. Appointments must be made on a rotating basis, taking
538 into consideration conflicts arising under this chapter.

539 (b)-(a) The court shall appoint an attorney for each person
540 alleged to be incapacitated in all cases involving a petition
541 for adjudication of incapacity. The alleged incapacitated person
542 may substitute her or his own attorney for the attorney
543 appointed by the court.

544 (c)-(b) Any attorney representing an alleged incapacitated
545 person may not serve as guardian of the alleged incapacitated
546 person or as counsel for the guardian of the alleged
547 incapacitated person or the petitioner.

548 (d) Effective January 1, 2007, an attorney seeking to be
549 appointed by a court for incapacity and guardianship proceedings
550 must have completed a minimum of 8 hours of education in
551 guardianship. A court may waive the initial training requirement
552 for an attorney who has served as a court-appointed attorney in
553 incapacity proceedings or as an attorney of record for guardians
554 for not less than 3 years.

555 (3) EXAMINING COMMITTEE.--

556 (a) Within 5 days after a petition for determination of
557 incapacity has been filed, the court shall appoint an examining
558 committee consisting of three members. One member must be a
559 psychiatrist or other physician. The remaining members must be
560 either a psychologist, gerontologist, another psychiatrist, or
561 other physician, a registered nurse, nurse practitioner,

247703

4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

562 licensed social worker, a person with an advanced degree in
563 gerontology from an accredited institution of higher education,
564 or other person who by knowledge, skill, experience, training,
565 or education may, in the court's discretion, advise the court in
566 the form of an expert opinion. One of three members of the
567 committee must have knowledge of the type of incapacity alleged
568 in the petition. Unless good cause is shown, the attending or
569 family physician may not be appointed to the committee. If the
570 attending or family physician is available for consultation, the
571 committee must consult with the physician. Members of the
572 examining committee may not be related to or associated with one
573 another, ~~or~~ with the petitioner, with counsel for the petitioner
574 or the proposed guardian, or with the person alleged to be
575 totally or partially incapacitated. A member may not be employed
576 by any private or governmental agency that has custody of, or
577 furnishes, services or subsidies, directly or indirectly, to the
578 person or the family of the person alleged to be incapacitated
579 or for whom a guardianship is sought. A petitioner may not serve
580 as a member of the examining committee. Members of the examining
581 committee must be able to communicate, either directly or
582 through an interpreter, in the language that the alleged
583 incapacitated person speaks or to communicate in a medium
584 understandable to the alleged incapacitated person if she or he
585 is able to communicate. The clerk of the court shall send notice
586 of the appointment to each person appointed no later than 3 days
587 after the court's appointment.

588 (b) A person who has been appointed to serve as a member
589 of an examining committee to examine an alleged incapacitated

247703

4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

590 person may not thereafter be appointed as a guardian for the
591 person who was the subject of the examination.

592 (c) Each person appointed to an examining committee must
593 file an affidavit with the court stating that he or she has
594 completed the required courses or will do so no later than 4
595 months after his or her initial appointment. Each year, the
596 chief judge of the circuit must prepare a list of persons
597 qualified to be members of an examining committee.

598 (d) A member of an examining committee must complete a
599 minimum of 4 hours of initial training. The person must complete
600 2 hours of continuing education during each 2-year period after
601 the initial training. The initial training and continuing
602 education program must be developed under the supervision of the
603 Statewide Public Guardianship Office, in consultation with the
604 Florida Conference of Circuit Court Judges; the Elder Law and
605 the Real Property, Probate and Trust Law sections of The Florida
606 Bar; the Florida State Guardianship Association; and the Florida
607 Guardianship Foundation. The court may waive the initial
608 training requirement for a person who has served for not less
609 than 5 years on examining committees. If a person wishes to
610 obtain his or her continuing education on the Internet or by
611 watching a video course, the person must first obtain the
612 approval of the chief judge before taking an Internet or video
613 course.

614 (e) ~~(b)~~ Each member of the examining committee shall
615 examine the person. ~~Each~~ ~~The~~ ~~examining committee member must~~
616 ~~shall~~ determine the alleged incapacitated person's ability to
617 exercise those rights specified in s. 744.3215. In addition to
618 the examination, ~~each~~ ~~the~~ ~~examining committee member must~~ ~~shall~~
247703

4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

619 have access to, and may consider, previous examinations of the
620 person, including, but not limited to, habilitation plans,
621 school records, and psychological and psychosocial reports
622 voluntarily offered for use by the alleged incapacitated person.
623 Each member of the examining committee must ~~shall~~ submit a
624 report within 15 days after appointment.

625 (f)-(e) The examination of the alleged incapacitated person
626 must include a comprehensive examination, a report of which
627 shall be filed by each ~~the~~ examining committee member as part of
628 his or her ~~its~~ written report. The comprehensive examination
629 report should be an essential element, but not necessarily the
630 only element, used in making a capacity and guardianship
631 decision. The comprehensive examination must include, if
632 indicated:

- 633 1. A physical examination;
- 634 2. A mental health examination; and
- 635 3. A functional assessment.

636
637 If any of these three aspects of the examination is not
638 indicated or cannot be accomplished for any reason, the written
639 report must explain the reasons for its omission.

640 (g)-(d) Each committee member's ~~The committee's~~ written
641 report must include:

- 642 1. To the extent possible, a diagnosis, prognosis, and
643 recommended course of treatment.

- 644 2. An evaluation of the alleged incapacitated person's
645 ability to retain her or his rights, including, without
646 limitation, the rights to marry; vote; contract; manage or
647 dispose of property; have a driver's license; determine her or

247703
4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

648 his residence; consent to medical treatment; and make decisions
649 affecting her or his social environment.

650 3. The results of the comprehensive examination and the
651 committee member's ~~members'~~ assessment of information provided
652 by the attending or family physician, if any.

653 4. A description of any matters with respect to which the
654 person lacks the capacity to exercise rights, the extent of that
655 incapacity, and the factual basis for the determination that the
656 person lacks that capacity.

657 5. The names of all persons present during the time the
658 committee member conducted his or her examination. If a person
659 other than the person who is the subject of the examination
660 supplies answers posed to the alleged incapacitated person, the
661 report must include the response and the name of the person
662 supplying the answer.

663 6.5- The signature of ~~each member of~~ the committee member
664 and the date and time the member conducted his or her
665 examination.

666 (h)-(e) A copy of each committee member's ~~the~~ report must
667 be served on the petitioner and on the attorney for the alleged
668 incapacitated person within 3 days after the report is filed and
669 at least 5 days before the hearing on the petition.

670 (4) DISMISSAL OF PETITION.--If a majority of the examining
671 committee members conclude ~~concludes~~ that the alleged
672 incapacitated person is not incapacitated in any respect, the
673 court shall dismiss the petition.

674 (5) ADJUDICATORY HEARING.--

675 (a) Upon appointment of the examining committee, the court
676 shall set the date upon which the petition will be heard. The

247703

4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

677 date for the adjudicatory hearing must be set no more than 14
678 days after the filing of the reports ~~report~~ of the examining
679 committee members, unless good cause is shown. The adjudicatory
680 hearing must be conducted at the time and place specified in the
681 notice of hearing and in a manner consistent with due process.

682 (7) FEES.--

683 (a) The examining committee and any attorney appointed
684 under subsection (2) are entitled to reasonable fees to be
685 determined by the court.

686 (b) The fees awarded under paragraph (a) shall be paid by
687 the guardian from the property of the ward or, if the ward is
688 indigent, by the state. The state shall have a creditor's claim
689 against the guardianship property for any amounts paid under
690 this section. The state may file its claim within 90 days after
691 the entry of an order awarding attorney ad litem fees. If the
692 state does not file its claim within the 90-day period, the
693 state is thereafter barred from asserting the claim. Upon
694 petition by the state for payment of the claim, the court shall
695 enter an order authorizing immediate payment out of the property
696 of the ward. The state shall keep a record of the such payments.

697 (c) If the petition is dismissed, costs and attorney's
698 fees of the proceeding may be assessed against the petitioner if
699 the court finds the petition to have been filed in bad faith.

700 Section 12. Subsection (4) of section 744.341, Florida
701 Statutes, is renumbered as subsection (5) and a new subsection
702 (4) is added to that section to read:

703 744.341 Voluntary guardianship.--

704 (4) A guardian must include in the annual report filed
705 with the court a certificate from a licensed physician who

247703

4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

706 examined the ward not more than 90 days before the annual report
707 is filed with the court. The certificate must certify that the
708 ward is competent to understand the nature of the guardianship
709 and of the ward's authority to delegate powers to the voluntary
710 guardian.

711 Section 13. Subsection (9) is added to section 744.361,
712 Florida Statutes, to read:

713 744.361 Powers and duties of guardian.--

714 (9) A professional guardian must ensure that each of the
715 guardian's wards is personally visited by the guardian or one of
716 the guardian's professional staff at least once each calendar
717 quarter. During the personal visit, the guardian or the
718 guardian's professional staff person shall assess:

719 (a) The ward's physical appearance and condition.

720 (b) The appropriateness of the ward's current living
721 situation.

722 (c) The need for any additional services and the necessity
723 for continuation of existing services, taking into consideration
724 all aspects of social, psychological, educational, direct
725 service, health, and personal care needs.

726
727 This subsection does not apply to a professional guardian who
728 has been appointed only as guardian of the property.

729 Section 14. Subsection (2) of section 744.365, Florida
730 Statutes, is amended to read:

731 744.365 Verified inventory.--

732 (2) CONTENTS.--The verified inventory must include the
733 following:

247703

4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

734 (a) All property of the ward, real and personal, that has
735 come into the guardian's possession or knowledge, including a
736 statement of all encumbrances, liens, and other secured claims
737 on any item, any claims against the property, ~~and~~ any cause of
738 action accruing to the ward, and any trusts of which the ward is
739 a beneficiary.†

740 (b) The location of the real and personal property in
741 sufficient detail so that it may be clearly identified or
742 located.† ~~and~~

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

745 Section 15. Subsections (1) and (3) of section 744.367,
746 Florida Statutes, are amended to read:

747 744.367 Duty to file annual guardianship report.--

748 (1) Unless the court requires filing on a calendar-year
749 basis, each guardian of the person shall file with the court an
750 annual guardianship plan within 90 days after the last day of
751 the anniversary month the letters of guardianship were signed,
752 and the plan must cover the coming fiscal year, ending on the
753 last day in such anniversary month. If the court requires
754 calendar-year filing, the guardianship plan must be filed on or
755 before April 1 of each year ~~within 90 days after the end of the~~
756 ~~calendar year.~~

757 (3) The annual guardianship report of a guardian of the
758 property must consist of an annual accounting, and the annual
759 report of a guardian of the person ~~of an incapacitated person~~
760 must consist of an annual guardianship plan. The annual report
761 shall be served on the ward, unless the ward is a minor ~~under~~
762 ~~the age of 14 years~~ or is totally incapacitated, and on the

247703

4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

763 attorney for the ward, if any. The guardian shall provide a copy
764 to any other person as the court may direct.

765 Section 16. Section 744.3675, Florida Statutes, is amended
766 to read:

767 744.3675 Annual guardianship plan.--Each guardian of the
768 person must file with the court an annual guardianship plan
769 which updates information about the condition of the ward. The
770 annual plan must specify the current needs of the ward and how
771 those needs are proposed to be met in the coming year.

772 (1) Each plan for an adult ward must, if applicable,
773 include:

774 (a) Information concerning the residence of the ward,
775 including:

776 1. The ward's address at the time of filing the plan.~~†~~

777 2. The name and address of each place where the ward was
778 maintained during the preceding year.~~†~~

779 3. The length of stay of the ward at each place.~~†~~

780 4. A statement of whether the current residential setting
781 is best suited for the current needs of the ward.~~†~~~~and~~

782 5. Plans for ensuring during the coming year that the ward
783 is in the best residential setting to meet his or her needs.

784 (b) Information concerning the medical and mental health
785 conditions ~~condition~~ and treatment and rehabilitation needs of
786 the ward, including:

787 1. A resume of any professional medical treatment given to
788 the ward during the preceding year.~~†~~

789 2. The report of a physician who examined the ward no more
790 than 90 days before the beginning of the applicable reporting
791 period. The ~~Such~~ report must contain an evaluation of the ward's
247703

4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

792 condition and a statement of the current level of capacity of
793 the ward. ~~and~~

794 3. The plan for providing ~~provision of~~ medical, mental
795 health, and rehabilitative services in the coming year.

796 (c) Information concerning the social condition of the
797 ward, including:

798 1. The social and personal services currently used
799 ~~utilized~~ by the ward. ~~and~~

800 2. The social skills of the ward, including a statement of
801 how well the ward communicates and maintains interpersonal
802 relationships. ~~with others;~~

803 ~~3. A description of the ward's activities at communication~~
804 ~~and visitation; and~~

805 ~~3.4.~~ The social needs of the ward.

806 (2) Each plan filed by the legal guardian of a minor must
807 include:

808 (a) Information concerning the residence of the minor,
809 including:

810 1. The minor's address at the time of filing the plan.

811 2. The name and address of each place the minor lived
812 during the preceding year.

813 (b) Information concerning the medical and mental health
814 conditions and treatment and rehabilitation needs of the minor,
815 including:

816 1. A resume of any professional medical treatment given to
817 the minor during the preceding year.

818 2. A report from the physician who examined the minor no
819 more than 180 days before the beginning of the applicable

247703

4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

820 reporting period that contains an evaluation of the minor's
821 physical and mental conditions.

822 3. The plan for providing medical services in the coming
823 year.

824 (c) Information concerning the education of the minor,
825 including:

826 1. A summary of the school progress report.

827 2. The social development of the minor, including a
828 statement of how well the minor communicates and maintains
829 interpersonal relationships.

830 3. The social needs of the minor.

831 (3)-(2) Each plan for an adult ward must address the issue
832 of restoration of rights to the ward and include:

833 (a) A summary of activities during the preceding year that
834 which were designed to enhance ~~increase~~ the capacity of the
835 ward.

836 (b) A statement of whether the ward can have any rights
837 restored. ~~and~~

838 (c) A statement of whether restoration of any rights will
839 be sought.

840 (4)-(3) The court, in its discretion, may require
841 reexamination of the ward by a physician at any time.

842 Section 17. Subsections (2) and (3) of section 744.3678,
843 Florida Statutes, are amended to read:

844 744.3678 Annual accounting.--

845 (2) The annual accounting must include:

846 (a) A full and correct account of the receipts and
847 disbursements of all of the ward's property over which the
848 guardian has control and a statement of the ward's property on
247703

4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

849 hand at the end of the accounting period. This paragraph does
850 not apply to any property or any trust of which the ward is a
851 beneficiary but which is not under the control or administration
852 of the guardian.

853 (b) A copy of the annual or year-end statement of all of
854 the ward's cash accounts from each of the institutions where the
855 cash is deposited.

856 (3) The guardian must obtain a receipt, ~~or~~ canceled check,
857 or other proof of payment for all expenditures and disbursements
858 made on behalf of the ward. The guardian must preserve all
859 evidence of payment ~~the receipts and canceled checks~~, along with
860 other substantiating papers, for a period of 3 years after his
861 or her discharge. The receipts, proofs of payment ~~checks~~, and
862 substantiating papers need not be filed with the court but shall
863 be made available for inspection and review at the such time and
864 ~~in such~~ place and before the such persons as the court may ~~from~~
865 ~~time to time~~ order.

866 Section 18. Section 744.3679, Florida Statutes, is amended
867 to read:

868 744.3679 Simplified accounting procedures in certain
869 cases.--

870 (1) In a guardianship of property, when all assets of the
871 estate are in designated depositories under s. 69.031 and the
872 only transactions that occur in that account are interest
873 accrual, deposits from a pursuant ~~to~~ settlement, or financial
874 institution service charges, the guardian may elect to file an
875 accounting consisting of:

247703

4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

876 (a) The original or a certified copy of the year-end
877 statement of the ward's account from the financial institution;
878 and

879 (b) A statement by the guardian under penalty of perjury
880 that the guardian has custody and control of the ward's property
881 as shown in the year-end statement.

882 ~~(2) The clerk has no responsibility to monitor or audit~~
883 ~~the accounts and may not accept a fee for doing so.~~

884 (2)~~(3)~~ The accounting allowed by subsection (1) is in lieu
885 of the accounting and auditing procedures under s. 744.3678(2)
886 ~~ss. 744.3678 and 744.368(1)(f)~~. However, any interested party
887 may seek judicial review as provided in s. 744.3685.

888 (3)~~(4)~~ The guardian need not be represented by an attorney
889 in order to file the annual accounting allowed by subsection
890 (1).

891 Section 19. Subsection (3) of section 744.368, Florida
892 Statutes, is amended to read:

893 744.368 Responsibilities of the clerk of the circuit
894 court.--

895 (3) Within 90 days after the filing of the verified
896 inventory and accountings ~~initial or annual guardianship report~~
897 by a guardian of the property, the clerk shall audit the
898 verified inventory and ~~or~~ the accountings ~~annual accounting~~. The
899 clerk shall advise the court of the results of the audit.

900 Section 20. Subsection (19) of section 744.441, Florida
901 Statutes, is amended to read:

902 744.441 Powers of guardian upon court approval.--After
903 obtaining approval of the court pursuant to a petition for
904 authorization to act, a plenary guardian of the property, or a
247703

4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

905 limited guardian of the property within the powers granted by
906 the order appointing the guardian or an approved annual or
907 amended guardianship report, may:

908 (19) Create or amend revocable trusts or create
909 irrevocable trusts of property of the ward's estate which may
910 extend beyond the disability or life of the ward in connection
911 with estate, gift, income, or other tax planning or in
912 connection with estate planning. The court shall retain
913 oversight of the assets transferred to a trust, unless otherwise
914 ordered by the court.

915 Section 21. Section 744.442, Florida Statutes, is created
916 to read:

917 744.442 Delegation of authority.--

918 (1) A guardian may designate a surrogate guardian to
919 exercise the powers of the guardian if the guardian is
920 unavailable to act. A person designated as a surrogate guardian
921 under this section must be a professional guardian.

922 (2) (a) A guardian must file a petition with the court
923 requesting permission to designate a surrogate guardian.

924 (b) If the court approves the designation, the order must
925 specify the name and business address of the surrogate guardian
926 and the duration of appointment, which may not exceed 30 days.
927 The court may extend the appointment for good cause shown. The
928 surrogate guardian may exercise all powers of the guardian
929 unless limited by order of the court. The surrogate guardian
930 must file with the court an oath swearing or affirming that he
931 or she will faithfully perform the duties delegated. The court
932 may require the surrogate guardian to post a bond.

247703

4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

933 (3) This section does not limit the responsibility of the
934 guardian to the ward and to the court. The guardian is liable
935 for the acts of the surrogate guardian. The guardian may
936 terminate the authority of the surrogate guardian by filing a
937 written notice of the termination with the court.

938 (4) The surrogate guardian is subject to the jurisdiction
939 of the court as if appointed to serve as guardian.

940 Section 22. Paragraphs (c), (e), and (f) of subsection (2)
941 and subsection (4) of section 744.464, Florida Statutes, are
942 amended to read:

943 744.464 Restoration to capacity.--

944 (2) SUGGESTION OF CAPACITY.--

945 (c) The court shall immediately send notice of the filing
946 of the suggestion of capacity to the ward, the guardian, the
947 attorney for the ward, if any, ~~the state attorney~~, and any other
948 interested persons designated by the court. Formal notice must
949 be served on the guardian. Informal notice may be served on
950 other persons. Notice need not be served on the person who filed
951 the suggestion of capacity.

952 (e) If an objection is timely filed, or if the medical
953 examination suggests that full restoration is not appropriate,
954 the court shall set the matter for hearing. If the ward does not
955 have an attorney, the court shall appoint one to represent the
956 ward.

957 (f) Notice of the hearing and copies of the objections and
958 medical examination reports shall be served upon the ward, the
959 ward's attorney, the guardian, ~~the state attorney~~, the ward's
960 next of kin, and any other interested persons as directed by the
961 court.

247703

4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

962 ~~(4) TIME LIMITATION FOR FILING SUGGESTION OF~~
963 ~~CAPACITY. Notwithstanding this section, a suggestion of~~
964 ~~capacity may not be filed within 90 days after an adjudication~~
965 ~~of incapacity or denial of restoration, unless good cause is~~
966 ~~shown.~~

967 Section 23. Paragraph (a) of subsection (19) of section
968 744.474, Florida Statutes, is amended, and paragraph (b) of that
969 subsection is redesignated as subsection (20) of that section
970 and amended, to read:

971 744.474 Reasons for removal of guardian.--A guardian may
972 be removed for any of the following reasons, and the removal
973 shall be in addition to any other penalties prescribed by law:

974 (19) Upon a showing by a person who did not receive notice
975 of the petition for adjudication of incapacity, when such notice
976 is required, or who is related to the ward within the
977 relationships specified for nonresident relatives in ss.
978 744.309(2) and 744.312(2) and who has not previously been
979 rejected by the court as a guardian that:

980 ~~(a) the current guardian is not a family member, and~~
981 subsection (20) applies.

982 (20) ~~(b)~~ Upon a showing that removal of the current
983 guardian is in the best interest of the ward. In determining
984 whether a guardian who is related by blood or marriage to the
985 ward is to be removed, there shall be a rebuttable presumption
986 that the guardian is acting in the best interests of the ward,

987
988 ~~the court may remove the current guardian and appoint the~~
989 ~~petitioner, or such person as the court deems in the best~~

Amendment No. (for drafter's use only)

990 ~~interest of the ward, either as guardian of the person or of the~~
991 ~~property, or both.~~

992 Section 24. Section 744.511, Florida Statutes, is amended
993 to read:

994 744.511 Accounting upon removal.--A removed guardian shall
995 file with the court a true, complete, and final report of his or
996 her guardianship within 20 days after removal and shall serve a
997 copy on the successor guardian and the ward, unless the ward is
998 a minor ~~under 14 years of age~~ or has been determined to be
999 totally incapacitated.

1000 Section 25. Section 744.527, Florida Statutes, is amended
1001 to read:

1002 744.527 Final reports and application for discharge;
1003 hearing.--

1004 (1) When the court terminates the guardianship for any of
1005 the reasons set forth in s. 744.521, the guardian shall promptly
1006 file his or her final report. If the ward has died, the guardian
1007 must file a final report with the court no later than 45 days
1008 after he or she has been served with letters of administration
1009 or letters of curatorship. If no objections are filed and if it
1010 appears that the guardian has made full and complete
1011 distribution to the person entitled and has otherwise faithfully
1012 discharged his or her duties, the court shall approve the final
1013 report. If objections are filed, the court shall conduct a
1014 hearing in the same manner as provided for a hearing on
1015 objections to annual guardianship reports.

1016 (2) The guardian applying for discharge may ~~is authorized~~
1017 ~~to~~ retain from the funds in his or her possession a sufficient
1018 amount to pay the final costs of administration, including

247703

4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

1019 guardian and attorney's fees regardless of the death of the
1020 ward, accruing between the filing of his or her final returns
1021 and the order of discharge.

1022 Section 26. Subsection (3) of section 744.528, Florida
1023 Statutes, is amended to read:

1024 744.528 Discharge of guardian named as personal
1025 representative.--

1026 (3) Any interested person may file a notice of ~~The court~~
1027 ~~shall set~~ a hearing on any objections filed by the
1028 beneficiaries. Notice of the hearing must ~~shall~~ be served upon
1029 the guardian, beneficiaries of the ward's estate, and any other
1030 person to whom the court directs service. If a notice of hearing
1031 on the objections is not served within 90 days after filing of
1032 the objections, the objections are deemed abandoned.

1033 Section 27. Subsections (5) through (8) of section
1034 744.708, Florida Statutes, are amended to read:

1035 744.708 Reports and standards.--

1036 (5) (a) Each office of public guardian shall undergo an
1037 independent audit by a qualified certified public accountant
1038 ~~shall be performed~~ at least once every 2 years. ~~The audit should~~
1039 ~~include an investigation into the practices of the office for~~
1040 ~~managing the person and property of the wards.~~ A copy of the
1041 audit report shall be submitted to the Statewide Public
1042 Guardianship Office.

1043 (b) In addition to regular monitoring activities, the
1044 Statewide Public Guardianship Office shall conduct an
1045 investigation into the practices of each office of public
1046 guardian related to the managing of each ward's personal affairs
1047 and property. When feasible, the investigation required under

247703

4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

1048 this paragraph shall be conducted in conjunction with the
1049 financial audit of each office of public guardian under
1050 paragraph (a).

1051 (c) In addition, each ~~the~~ office of public guardian shall
1052 be subject to audits or examinations by the Auditor General and
1053 the Office of Program Policy Analysis and Government
1054 Accountability pursuant to law.

1055 (6) ~~A~~ The public guardian shall ensure that each of the
1056 guardian's wards is personally visited ~~ward is seen by the~~
1057 public guardian or by one of the guardian's ~~a professional staff~~
1058 ~~person~~ at least once each calendar quarter ~~four times a year.~~
1059 During this personal visit, the public guardian or the
1060 professional staff person shall assess:

1061 (a) The ward's physical appearance and condition.

1062 (b) The appropriateness of the ward's current living
1063 situation.

1064 (c) The need for any additional services and the necessity
1065 for continuation of existing services, taking into consideration
1066 all aspects of social, psychological, educational, direct
1067 service, health, and personal care needs.

1068 (7) The ratio for professional staff to wards shall be 1
1069 professional to 40 wards. The Statewide Public Guardianship
1070 Office may increase or decrease the ratio after consultation
1071 with the local public guardian and the chief judge of the
1072 circuit court. The basis of the decision to increase or decrease
1073 the prescribed ratio shall be reported in the annual report to
1074 the Secretary of Elderly Affairs, the Governor, the President of
1075 the Senate, the Speaker of the House of Representatives, and the
1076 Chief Justice of the Supreme Court.

247703

4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

1077 ~~(8) The term "professional," for purposes of this part,~~
1078 ~~shall not include the public guardian nor the executive director~~
1079 ~~of the Statewide Public Guardianship Office. The term~~
1080 ~~"professional" shall be limited to those persons who exercise~~
1081 ~~direct supervision of individual wards under the direction of~~
1082 ~~the public guardian.~~

1083 Section 28. Paragraph (a) of subsection (5) of section
1084 765.101, Florida Statutes, is amended to read:

1085 765.101 Definitions.--As used in this chapter:

1086 (5) "Health care decision" means:

1087 (a) Informed consent, refusal of consent, or withdrawal of
1088 consent to any and all health care, including life-prolonging
1089 procedures and mental health treatment, unless otherwise stated
1090 in the advance directives.

1091 Section 29. Section 28.345, Florida Statutes, is amended
1092 to read:

1093 28.345 Exemption from court-related fees and
1094 charges.--Notwithstanding any other ~~provision of this chapter or~~
1095 law to the contrary, judges and those court staff acting on
1096 behalf of judges, state attorneys, guardians ad litem, public
1097 guardians, attorneys ad litem, court-appointed private counsel,
1098 and public defenders, acting in their official capacity, and
1099 state agencies, are exempt from all court-related fees and
1100 charges assessed by the clerks of the circuit courts.

1101 Section 30. Paragraph (c) of subsection (8) of section
1102 121.091, Florida Statutes, is amended to read:

1103 121.091 Benefits payable under the system.--Benefits may
1104 not be paid under this section unless the member has terminated
1105 employment as provided in s. 121.021(39)(a) or begun

247703

4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

1106 participation in the Deferred Retirement Option Program as
1107 provided in subsection (13), and a proper application has been
1108 filed in the manner prescribed by the department. The department
1109 may cancel an application for retirement benefits when the
1110 member or beneficiary fails to timely provide the information
1111 and documents required by this chapter and the department's
1112 rules. The department shall adopt rules establishing procedures
1113 for application for retirement benefits and for the cancellation
1114 of such application when the required information or documents
1115 are not received.

1116 (8) DESIGNATION OF BENEFICIARIES.--

1117 (c) Notwithstanding the member's designation of benefits
1118 to be paid through a trust to a beneficiary that is a natural
1119 person as provided in s. 121.021(46), and notwithstanding the
1120 provisions of the trust, benefits shall be paid directly to the
1121 beneficiary if the ~~such~~ person is no longer a minor or an
1122 incapacitated person as defined in s. 744.102~~(11) and (12)~~.

1123 Section 31. Paragraph (c) of subsection (20) of section
1124 121.4501, Florida Statutes, is amended to read:

1125 121.4501 Public Employee Optional Retirement Program.--

1126 (20) DESIGNATION OF BENEFICIARIES.--

1127 (c) Notwithstanding the participant's designation of
1128 benefits to be paid through a trust to a beneficiary that is a
1129 natural person, and notwithstanding the provisions of the trust,
1130 benefits shall be paid directly to the beneficiary if the ~~such~~
1131 person is no longer a minor or an incapacitated person as
1132 defined in s. 744.102~~(11) and (12)~~.

247703

4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

1133 Section 32. Subsection (1) and paragraphs (b), (d), and
1134 (f) of subsection (4) of section 709.08, Florida Statutes, are
1135 amended to read:

1136 709.08 Durable power of attorney.--

1137 (1) CREATION OF DURABLE POWER OF ATTORNEY.--A durable
1138 power of attorney is a written power of attorney by which a
1139 principal designates another as the principal's attorney in
1140 fact. The durable power of attorney must be in writing, must be
1141 executed with the same formalities required for the conveyance
1142 of real property by Florida law, and must contain the words:
1143 "This durable power of attorney is not affected by subsequent
1144 incapacity of the principal except as provided in s. 709.08,
1145 Florida Statutes"; or similar words that show the principal's
1146 intent that the authority conferred is exercisable
1147 notwithstanding the principal's subsequent incapacity, except as
1148 otherwise provided by this section. The durable power of
1149 attorney is exercisable as of the date of execution; however, if
1150 the durable power of attorney is conditioned upon the
1151 principal's lack of capacity to manage property as defined in s.
1152 744.102 (12) ~~(11)~~ (a), the durable power of attorney is exercisable
1153 upon the delivery of affidavits in paragraphs (4) (c) and (d) to
1154 the third party.

1155 (4) PROTECTION WITHOUT NOTICE; GOOD FAITH ACTS;
1156 AFFIDAVITS.--

1157 (b) Any third party may rely upon the authority granted in
1158 a durable power of attorney that is conditioned on the
1159 principal's lack of capacity to manage property as defined in s.
1160 744.102 (12) ~~(11)~~ (a) only after receiving the affidavits provided

247703

4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

1161 in paragraphs (c) and (d), and such reliance shall end when the
1162 third party has received notice as provided in subsection (5).

1163 (d) A determination that a principal lacks the capacity to
1164 manage property as defined in s. 744.102(12)-(11)(a) must be made
1165 and evidenced by the affidavit of a physician licensed to
1166 practice medicine pursuant to chapters 458 and 459 as of the
1167 date of the affidavit. A judicial determination that the
1168 principal lacks the capacity to manage property pursuant to
1169 chapter 744 is not required prior to the determination by the
1170 physician and the execution of the affidavit. For purposes of
1171 this section, the physician executing the affidavit must be the
1172 primary physician who has responsibility for the treatment and
1173 care of the principal. The affidavit executed by a physician
1174 must state where the physician is licensed to practice medicine,
1175 that the physician is the primary physician who has
1176 responsibility for the treatment and care of the principal, and
1177 that the physician believes that the principal lacks the
1178 capacity to manage property as defined in s. 744.102(12)-(11)(a).
1179 The affidavit may, but need not, be in the following form:

1180
1181 STATE OF _____
1182 COUNTY OF _____
1183

1184 Before me, the undersigned authority, personally appeared
1185 (name of physician) , Affiant, who swore or affirmed that:

1186 1. Affiant is a physician licensed to practice medicine in
1187 (name of state, territory, or foreign country) .

1188 2. Affiant is the primary physician who has responsibility
1189 for the treatment and care of (principal's name) .

247703
4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

1190 3. To the best of Affiant's knowledge after reasonable
 1191 inquiry, Affiant believes that the principal lacks the capacity
 1192 to manage property, including taking those actions necessary to
 1193 obtain, administer, and dispose of real and personal property,
 1194 intangible property, business property, benefits, and income.

1195
 1196
 1197 _____

1198 (Affiant)

1199
 1200 Sworn to (or affirmed) and subscribed before me this (day
 1201 of) (month) , (year) , by (name of person making
 1202 statement)

1204 (Signature of Notary Public-State of Florida)

1206 (Print, Type, or Stamp Commissioned Name of Notary Public)

1208 Personally Known OR Produced Identification

1209 (Type of Identification Produced)

1210 (f) A third party may not rely on the authority granted in
 1211 a durable power of attorney conditioned on the principal's lack
 1212 of capacity to manage property as defined in s.

1213 744.102(12)-(11)(a) when any affidavit presented has been
 1214 executed more than 6 months prior to the first presentation of
 1215 the durable power of attorney to the third party.

1216 Section 33. Subsection (3) of section 744.1085, Florida
 1217 Statutes, is amended to read:

Amendment No. (for drafter's use only)

1218 744.1085 Regulation of professional guardians;
1219 application; bond required; educational requirements.--

1220 (3) Each professional guardian defined in s.
1221 744.102~~(17)~~~~(16)~~ and public guardian must receive a minimum of 40
1222 hours of instruction and training. Each professional guardian
1223 must receive a minimum of 16 hours of continuing education every
1224 2 calendar years after the year in which the initial 40-hour
1225 educational requirement is met. The instruction and education
1226 must be completed through a course approved or offered by the
1227 Statewide Public Guardianship Office. The expenses incurred to
1228 satisfy the educational requirements prescribed in this section
1229 may not be paid with the assets of any ward. This subsection
1230 does not apply to any attorney who is licensed to practice law
1231 in this state.

1232 Section 34. For the purpose of incorporating the amendment
1233 made by this act to section 744.3215, Florida Statutes, in a
1234 reference thereto, subsection (4) of section 117.107, Florida
1235 Statutes, is reenacted to read:

1236 117.107 Prohibited acts.--

1237 (4) A notary public may not take the acknowledgment of or
1238 administer an oath to a person whom the notary public actually
1239 knows to have been adjudicated mentally incapacitated by a court
1240 of competent jurisdiction, where the acknowledgment or oath
1241 necessitates the exercise of a right that has been removed
1242 pursuant to s. 744.3215(2) or (3), and where the person has not
1243 been restored to capacity as a matter of record.

1244 Section 35. This act shall take effect July 1, 2006.

1245
1246 ===== T I T L E A M E N D M E N T =====

247703

4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

1247 Remove the entire title and insert:
1248 A bill to be entitled
1249 An act relating to guardianship; amending s. 744.102,
1250 F.S.; defining the terms "audit" and "surrogate guardian";
1251 amending s. 744.1083, F.S.; revising provisions relating
1252 to identification information provided by professional
1253 guardians for registration; providing that the Statewide
1254 Public Guardianship Office need not review credit and
1255 criminal investigations from a state college or university
1256 before registering the institution as a professional
1257 guardian; amending s. 744.301, F.S.; providing that in the
1258 event of death, the surviving parent is the sole natural
1259 guardian of a minor; prohibiting a natural guardian from
1260 using the property of the ward for the guardian's benefit
1261 without a court order; creating s. 744.3025, F.S.;
1262 authorizing a court to appoint a guardian ad litem to
1263 represent a minor's interest in certain claims that exceed
1264 a specified amount; requiring a court to appoint a
1265 guardian ad litem to represent a minor's interest in
1266 certain claims that exceed a specified amount; providing
1267 that a court need not appoint a guardian ad litem under
1268 certain circumstances; requiring a court to award
1269 reasonable fees and costs to the guardian ad litem;
1270 amending s. 744.3031, F.S.; increasing the time an
1271 emergency temporary guardian may serve; increasing the
1272 time of an extension; requiring an emergency temporary
1273 guardian to file a final report; providing for the
1274 contents of the final report; amending s. 744.304, F.S.;
1275 specifying the persons who may file a petition for a

247703

4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

1276 standby guardian; requiring that notice of the appointment
1277 hearing be served on the ward's next of kin; clarifying
1278 when a standby guardian may assume the duties of guardian;
1279 requiring that each standby guardian submit to credit and
1280 criminal history record checks; amending s. 744.3115,
1281 F.S.; defining the term "health care decision"; amending
1282 s. 744.3135, F.S.; providing procedures for completing a
1283 guardian's criminal history record check; authorizing a
1284 guardian to use electronic fingerprinting equipment that
1285 is available for criminal history record checks of public
1286 employees; providing that a guardian need not be
1287 rescreened if he or she uses certain electronic
1288 fingerprinting equipment; providing for fees; requiring
1289 the Statewide Public Guardianship Office to request that
1290 the Department of Law Enforcement forward certain
1291 fingerprints to the Federal Bureau of Investigation;
1292 requiring the Statewide Public Guardianship Office to
1293 adopt a rule for credit investigations of guardians;
1294 amending s. 744.3145, F.S.; reducing the time in which a
1295 guardian must complete the education courses; amending s.
1296 744.3215, F.S.; providing that an incapacitated person
1297 retains the right to receive services and rehabilitation
1298 necessary to maximize the quality of the person's life;
1299 revising provisions relating to rights that may be removed
1300 from a person determined incapacitated; amending s.
1301 744.331, F.S.; requiring that the court appoint an
1302 attorney for an alleged incapacitated person from a
1303 specified registry; requiring attorneys to complete
1304 certain training programs; providing that a member of the

247703

4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

1305 examining committee may not be related to or associated
1306 with certain persons; prohibiting a person who served on
1307 an examining committee from being appointed as the
1308 guardian; requiring each member of an examining committee
1309 to file an affidavit stating that he or she has completed
1310 or will timely complete the mandatory training; providing
1311 for training programs; requiring each member to file a
1312 report regarding his or her examination of an alleged
1313 incapacitated person; providing for dismissal of a
1314 petition alleging incapacity based on the reports of the
1315 majority of the committee members; providing for an award
1316 of attorney's fees; amending s. 744.341, F.S.; requiring
1317 the voluntary guardian to include certain information in
1318 the annual report; amending s. 744.361, F.S.; requiring a
1319 professional guardian to ensure that each of his or her
1320 wards is personally visited at least quarterly; providing
1321 for the assessment of certain conditions during the
1322 personal visit; providing an exemption; amending s.
1323 744.365, F.S.; requiring that the verified inventory
1324 include information on any trust to which a ward is a
1325 beneficiary; amending s. 744.367, F.S.; requiring that the
1326 annual report of the guardian filing on a calendar-year
1327 basis be filed on or before a specified date; exempting
1328 all minor wards from service of the annual report;
1329 amending s. 744.3675, F.S.; requiring that the annual
1330 guardianship plan include information on the mental
1331 condition of the ward; providing for an annual
1332 guardianship plan for wards who are minors; amending s.
1333 744.3678, F.S.; providing that property of the ward which

247703

4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

1334 is not under the control of the guardian, including
1335 certain trusts, is not subject to annual accounting;
1336 requiring certain documentation for the annual accounting;
1337 amending s. 744.3679, F.S.; removing a provision
1338 prohibiting the clerk of the court from having
1339 responsibility for monitoring or auditing accounts in
1340 certain cases; amending s. 744.368, F.S.; requiring that
1341 the verified inventory and the accountings be audited
1342 within a specified time period; amending s. 744.441, F.S.;
1343 requiring the court to retain oversight for assets of a
1344 ward transferred to a trust; creating s. 744.442, F.S.;
1345 providing that a guardian may designate a surrogate
1346 guardian to exercise the powers of the guardian if the
1347 guardian is unavailable to act; requiring the surrogate
1348 guardian to be a professional guardian; providing the
1349 procedures to be used in appointing a surrogate guardian;
1350 providing the duties of a surrogate guardian; requiring
1351 the guardian to be liable for the acts of the surrogate
1352 guardian; authorizing the guardian to terminate the
1353 services of the surrogate guardian by filing a written
1354 notice of the termination with the court; amending s.
1355 744.464, F.S.; removing the state attorney from the list
1356 of persons to be served a notice of a hearing on
1357 restoration of capacity; removing a time limitation on the
1358 filing of a suggestion of capacity; amending s. 744.474,
1359 F.S.; revising provisions relating to removal of a
1360 guardian who is not a family member; revising provisions
1361 relating to removal of a guardian upon a showing that
1362 removal of the current guardian is in the best interest of

247703

4/28/2006 12:06:12 AM

Amendment No. (for drafter's use only)

1363 the ward; amending s. 744.511, F.S.; providing that a ward
1364 who is a minor need not be served with the final report of
1365 a removed guardian; amending s. 744.527, F.S.; providing
1366 that final reports for a deceased ward be filed at a
1367 specified time; amending s. 744.528, F.S.; providing for a
1368 notice of the hearing for objections to a report filed by
1369 a guardian; amending s. 744.708, F.S.; revising provisions
1370 relating to audits and investigations of each office of
1371 public guardian; requiring a public guardian to ensure
1372 that each of his or her wards is personally visited at
1373 least quarterly; providing for the assessment of certain
1374 conditions during the personal visit; providing for
1375 additional distribution of a specified annual report;
1376 deleting a definition; amending s. 765.101, F.S.;
1377 redefining the term "health care decision" to include
1378 informed consent for mental health treatment services;
1379 amending s. 28.345, F.S.; revising provisions relating to
1380 exemptions from paying court-related fees and charges;
1381 amending ss. 121.091, 121.4501, 709.08, and 744.1085,
1382 F.S.; conforming cross-references; reenacting s.
1383 117.107(4), F.S., relating to prohibited acts of a notary
1384 public, to incorporate the amendment made to s. 744.3215,
1385 F.S., in a reference thereto; providing an effective date.

247703

4/28/2006 12:06:12 AM