

CHAMBER ACTION

1 The Civil Justice Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to guardianship; amending s. 744.102,
7 F.S.; defining the terms "audit" and "surrogate guardian";
8 amending s. 744.1083, F.S.; revising provisions relating
9 to identification information provided by professional
10 guardians for registration; providing that the Statewide
11 Public Guardianship Office need not review credit and
12 criminal investigations from a state college or university
13 before registering the institution as a professional
14 guardian; amending s. 744.301, F.S.; providing that in the
15 event of death, the surviving parent is the sole natural
16 guardian of a minor; prohibiting a natural guardian from
17 using the property of the ward for the guardian's benefit
18 without a court order; creating s. 744.3025, F.S.;
19 authorizing a court to appoint a guardian ad litem to
20 represent a minor's interest in certain claims that exceed
21 a specified amount; requiring a court to appoint a
22 guardian ad litem to represent a minor's interest in
23 certain claims that exceed a specified amount; providing

24 | that a court need not appoint a guardian ad litem under
25 | certain circumstances; requiring a court to award
26 | reasonable fees and costs to the guardian ad litem;
27 | amending s. 744.3031, F.S.; increasing the time an
28 | emergency temporary guardian may serve; increasing the
29 | time of an extension; requiring an emergency temporary
30 | guardian to file a final report; providing for the
31 | contents of the final report; amending s. 744.304, F.S.;
32 | specifying the persons who may file a petition for a
33 | standby guardian; requiring that notice of the appointment
34 | hearing be served on the ward's next of kin; clarifying
35 | when a standby guardian may assume the duties of guardian;
36 | requiring that each standby guardian submit to credit and
37 | criminal background checks; amending s. 744.3115, F.S.;
38 | defining the term "health care decision"; amending s.
39 | 744.3135, F.S.; providing procedures for completing a
40 | guardian's criminal background investigation; authorizing
41 | a guardian to use inkless electronic fingerprinting
42 | equipment that is available for background investigations
43 | of public employees; providing that a guardian need not be
44 | rescreened if he or she uses certain inkless electronic
45 | fingerprinting equipment; providing for fees; requiring
46 | the Statewide Public Guardianship Office to adopt a rule
47 | for credit investigations of guardians; amending s.
48 | 744.3145, F.S.; reducing the time in which a guardian must
49 | complete the education courses; amending s. 744.3215,
50 | F.S.; providing that an incapacitated person retains the
51 | right to receive services and rehabilitation necessary to

52 | maximize the quality of the person's life; revising
53 | provisions relating to rights that may be removed from a
54 | person determined incapacitated; amending s. 744.331,
55 | F.S.; requiring that the court appoint an attorney for an
56 | alleged incapacitated person from a specified registry;
57 | requiring attorneys to complete certain training programs;
58 | providing that a member of the examining committee may not
59 | be related to or associated with certain persons;
60 | prohibiting a person who served on an examining committee
61 | from being appointed as the guardian; requiring each
62 | member of an examining committee to file an affidavit
63 | stating that he or she has completed or will timely
64 | complete the mandatory training; providing for training
65 | programs; requiring each member to report the time and
66 | date that he or she examined the person alleged to be
67 | incapacitated, the names of all persons present during the
68 | examination, and the response and name of each person
69 | supplying an answer posed to the examinee; providing for
70 | an award of attorney's fees; amending s. 744.341, F.S. ;
71 | requiring the voluntary guardian to include certain
72 | information in the annual report; amending s. 744.361,
73 | F.S.; requiring a professional guardian to ensure that
74 | each of his or her wards is personally visited at least
75 | quarterly; providing for the assessment of certain
76 | conditions during the personal visit; providing an
77 | exemption; amending s. 744.365, F.S.; requiring that the
78 | verified inventory include information on any trust to
79 | which a ward is a beneficiary; amending s. 744.367, F.S. ;

80 requiring that the annual report of the guardian filing on
81 a calendar-year basis be filed on or before a specified
82 date; exempting all minor wards from service of the annual
83 report; amending s. 744.3675, F.S.; requiring that the
84 annual guardianship plan include information on the mental
85 condition of the ward; providing for an annual
86 guardianship plan for wards who are minors; amending s.
87 744.3678, F.S.; providing that property of the ward which
88 is not under the control of the guardian, including
89 certain trusts, is not subject to annual accounting;
90 requiring certain documentation for the annual accounting;
91 amending s. 744.3679, F.S.; removing a provision
92 prohibiting the clerk of the court from having
93 responsibility for monitoring or auditing accounts in
94 certain cases; amending s. 744.368, F.S.; requiring that
95 the verified inventory and the accountings be audited
96 within a specified time period; amending s. 744.441, F.S.;
97 requiring the court to retain oversight for assets of a
98 ward transferred to a trust; creating s. 744.442, F.S.;
99 providing that a guardian may designate a surrogate
100 guardian to exercise the powers of the guardian if the
101 guardian is unavailable to act; requiring the surrogate
102 guardian to be a professional guardian; providing the
103 procedures to be used in appointing a surrogate guardian;
104 providing the duties of a surrogate guardian; requiring
105 the guardian to be liable for the acts of the surrogate
106 guardian; authorizing the guardian to terminate the
107 services of the surrogate guardian by filing a written

108 notice of the termination with the court; amending s.
109 744.464, F.S.; removing the state attorney from the list
110 of persons to be served a notice of a hearing on
111 restoration of capacity; removing a time limitation on the
112 filing of a suggestion of capacity; amending s. 744.474,
113 F.S.; revising provisions relating to removal of a
114 guardian who is not a family member; revising provisions
115 relating to removal of a guardian upon a showing that
116 removal of the current guardian is in the best interest of
117 the ward; amending s. 744.511, F.S.; providing that a ward
118 who is a minor need not be served with the final report of
119 a removed guardian; amending s. 744.527, F.S.; providing
120 that final reports for a deceased ward be filed at a
121 specified time; amending s. 744.528, F.S.; providing for a
122 notice of the hearing for objections to a report filed by
123 a guardian; amending s. 744.708, F.S.; revising provisions
124 relating to audits and investigations of each office of
125 public guardian; requiring a public guardian to ensure
126 that each of his or her wards is personally visited at
127 least quarterly; providing for the assessment of certain
128 conditions during the personal visit; providing for
129 additional distribution of a specified annual report;
130 deleting a definition; amending s. 765.101, F.S.;
131 redefining the term "health care decision" to include
132 informed consent for mental health treatment services;
133 amending s. 28.345, F.S.; revising provisions relating to
134 exemptions from paying court-related fees and charges;
135 amending ss. 121.091, 121.4501, 709.08, and 744.1085,

136 F.S.; conforming cross-references; reenacting s.
 137 117.107(4), F.S., relating to prohibited acts of a notary
 138 public, to incorporate the amendment made to s. 744.3215,
 139 F.S., in a reference thereto; providing an effective date.

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

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143 Section 1. Section 744.102, Florida Statutes, is amended
 144 to read:

145 744.102 Definitions.--As used in this chapter, the term:

146 (1) "Attorney for the alleged incapacitated person" means
 147 an attorney who represents the alleged incapacitated person. The
 148 ~~Such~~ attorney shall represent the expressed wishes of the
 149 alleged incapacitated person to the extent it is consistent with
 150 the rules regulating The Florida Bar.

151 (2) "Audit" means a systematic review of financial
 152 documents with adherence to generally accepted auditing
 153 standards.

154 (3)~~(2)~~ "Clerk" means the clerk or deputy clerk of the
 155 court.

156 (4)~~(3)~~ "Corporate guardian" means a corporation authorized
 157 to exercise fiduciary or guardianship powers in this state and
 158 includes a nonprofit corporate guardian.

159 (5)~~(4)~~ "Court" means the circuit court.

160 (6)~~(5)~~ "Court monitor" means a person appointed by the
 161 court under ~~pursuant to~~ s. 744.107 to provide the court with
 162 information concerning a ward.

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163 (7)~~(6)~~ "Estate" means the property of a ward subject to
164 administration.

165 (8)~~(7)~~ "Foreign guardian" means a guardian appointed in
166 another state or country.

167 (9)~~(8)~~ "Guardian" means a person who has been appointed by
168 the court to act on behalf of a ward's person or property, or
169 both.

170 (a) "Limited guardian" means a guardian who has been
171 appointed by the court to exercise the legal rights and powers
172 specifically designated by court order entered after the court
173 has found that the ward lacks the capacity to do some, but not
174 all, of the tasks necessary to care for his or her person or
175 property, or after the person has voluntarily petitioned for
176 appointment of a limited guardian.

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

182 (10)~~(9)~~ "Guardian ad litem" means a person who is
183 appointed by the court having jurisdiction of the guardianship
184 or a court in which a particular legal matter is pending to
185 represent a ward in that proceeding.

186 (11)~~(10)~~ "Guardian advocate" means a person appointed by a
187 written order of the court to represent a person with
188 developmental disabilities under s. 393.12. As used in this
189 chapter, the term does not apply to a guardian advocate

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190 appointed for a person determined incompetent to consent to
191 treatment under s. 394.4598.

192 (12)~~(11)~~ "Incapacitated person" means a person who has
193 been judicially determined to lack the capacity to manage at
194 least some of the property or to meet at least some of the
195 essential health and safety requirements of the ~~such~~ person.

196 (a) To "manage property" means to take those actions
197 necessary to obtain, administer, and dispose of real and
198 personal property, intangible property, business property,
199 benefits, and income.

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

205 (13)~~(12)~~ "Minor" means a person under 18 years of age
206 whose disabilities have not been removed by marriage or
207 otherwise.

208 (14)~~(13)~~ "Next of kin" means those persons who would be
209 heirs at law of the ward or alleged incapacitated person if the
210 ~~such~~ person were deceased and includes the lineal descendants of
211 the ~~such~~ ward or alleged incapacitated person.

212 (15)~~(14)~~ "Nonprofit corporate guardian" means a nonprofit
213 corporation organized for religious or charitable purposes and
214 existing under the laws of this state.

215 (16)~~(15)~~ "Preneed guardian" means a person named in a
216 written declaration to serve as guardian in the event of the
217 incapacity of the declarant as provided in s. 744.3045.

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218 (17)~~(16)~~ "Professional guardian" means any guardian who
219 ~~receives or has at any time received compensation for services~~
220 rendered services to three or more ~~than two~~ wards as their
221 guardian. A person serving as a guardian for two or more
222 relatives as defined in s. 744.309(2) is not considered a
223 professional guardian. A public guardian shall be considered a
224 professional guardian for purposes of regulation, education, and
225 registration.

226 (18)~~(17)~~ "Property" means both real and personal property
227 or any interest in it and anything that may be the subject of
228 ownership.

229 (19)~~(18)~~ "Standby guardian" means a person empowered to
230 assume the duties of guardianship upon the death or adjudication
231 of incapacity of the last surviving natural or appointed
232 guardian.

233 (20) "Surrogate guardian" means a guardian designated
234 according to s. 744.442.

235 (21)~~(19)~~ "Totally incapacitated" means incapable of
236 exercising any of the rights enumerated in s. 744.3215(2) and
237 (3).

238 (22)~~(20)~~ "Ward" means a person for whom a guardian has
239 been appointed.

240 Section 2. Subsections (3), (7), and (10) of section
241 744.1083, Florida Statutes, are amended to read:

242 744.1083 Professional guardian registration.--

243 (3) Registration must include the following:

244 (a) Sufficient information to identify the professional
245 guardian, as follows:

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

249 ~~2.(b)~~ If the professional guardian is a partnership or
250 association, the name, address, and ~~date of birth of every~~
251 ~~member, and the~~ employer identification number of the entity
252 ~~partnership or association~~.

253 ~~(c)~~ ~~If the professional guardian is a corporation, the~~
254 ~~name, address, and employer identification number of the~~
255 ~~corporation; the name, address, and date of birth of each of its~~
256 ~~directors and officers; the name of its resident agent; and the~~
257 ~~name, address, and date of birth of each person having at least~~
258 ~~a 10 percent interest in the corporation.~~

259 ~~(d)~~ ~~The name, address, date of birth, and employer~~
260 ~~identification number, if applicable, of each person providing~~
261 ~~guardian delegated financial or personal guardianship services~~
262 ~~for wards.~~

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

265 (c)(f) Sufficient information to distinguish a guardian
266 providing guardianship services as a public guardian,
267 individually, through partnership, corporation, or any other
268 business organization.

269 (7) A trust company, a state banking corporation or state
270 savings association authorized and qualified to exercise
271 fiduciary powers in this state, or a national banking
272 association or federal savings and loan association authorized
273 and qualified to exercise fiduciary powers in this state, may,

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274 but is not required to, register as a professional guardian
275 under this section. If a trust company, state banking
276 corporation, state savings association, national banking
277 association, or federal savings and loan association described
278 in this subsection elects to register as a professional guardian
279 under this subsection, the requirements of subsections (3) and
280 (4) do not apply and the registration must include only the
281 name, address, and employer identification number of the
282 registrant, the name and address of its registered agent, if
283 any, and the documentation described in paragraph (3) (b) ~~(e)~~.

284 (10) A state college or university or an independent
285 college or university described in s. 1009.98(3)(a), may, but is
286 not required to, register as a professional guardian under this
287 section. If a state college or university or independent college
288 or university elects to register as a professional guardian
289 under this subsection, the requirements of subsections (3) and
290 (4) ~~subsection (3)~~ do not apply and the registration must
291 include only the name, address, and employer identification
292 number of the registrant.

293 Section 3. Section 744.301, Florida Statutes, is amended
294 to read:

295 744.301 Natural guardians.--

296 (1) The mother and father jointly are natural guardians of
297 their own children and of their adopted children, during
298 minority. If one parent dies, the surviving parent remains the
299 sole natural guardian even if he or she ~~the natural guardianship~~
300 ~~shall pass to the surviving parent, and the right shall continue~~
301 ~~even though the surviving parent remarries.~~ If the marriage

302 | between the parents is dissolved, the natural guardianship
 303 | belongs ~~shall belong~~ to the parent to whom ~~the~~ custody of the
 304 | child is awarded. If the parents are given joint custody, then
 305 | both ~~shall~~ continue as natural guardians. If the marriage is
 306 | dissolved and neither the father nor the mother is given custody
 307 | of the child, neither shall act as natural guardian of the
 308 | child. The mother of a child born out of wedlock is the natural
 309 | guardian of the child and is entitled to primary residential
 310 | care and custody of the child unless a court of competent
 311 | jurisdiction enters an order stating otherwise.

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

314 | (a) Settle and consummate a settlement of any claim or
 315 | cause of action accruing to any of their minor children for
 316 | damages to the person or property of any of said minor children;

317 | (b) Collect, receive, manage, and dispose of the proceeds
 318 | of any such settlement;

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

321 | (d) Collect, receive, manage, and dispose of and make
 322 | elections regarding the proceeds from a life insurance policy or
 323 | annuity contract payable to, or otherwise accruing to the
 324 | benefit of, the child; and

325 | (e) Collect, receive, manage, dispose of, and make
 326 | elections regarding the proceeds of any benefit plan as defined
 327 | by s. 710.102, of which the minor is a beneficiary, participant,
 328 | or owner,

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330 without appointment, authority, or bond, when the amounts
331 received, in the aggregate, do ~~amount involved in any instance~~
332 ~~does~~ not exceed \$15,000.

333 (3) All instruments executed by a natural guardian for the
334 benefit of the ward under the powers specified ~~provided for~~ in
335 subsection (2) shall be binding on the ward. The natural
336 guardian may not, without a court order, use the property of the
337 ward for the guardian's benefit or to satisfy the guardian's
338 support obligation to the ward.

339 ~~(4)(a) In any case where a minor has a claim for personal~~
340 ~~injury, property damage, or wrongful death in which the gross~~
341 ~~settlement for the claim of the minor exceeds \$15,000, the court~~
342 ~~may, prior to the approval of the settlement of the minor's~~
343 ~~claim, appoint a guardian ad litem to represent the minor's~~
344 ~~interests. In any case in which the gross settlement involving a~~
345 ~~minor equals or exceeds \$25,000, the court shall, prior to the~~
346 ~~approval of the settlement of the minor's claim, appoint a~~
347 ~~guardian ad litem to represent the minor's interests. The~~
348 ~~appointment of the guardian ad litem must be without the~~
349 ~~necessity of bond or a notice. The duty of the guardian ad litem~~
350 ~~is to protect the minor's interests. The procedure for carrying~~
351 ~~out that duty is as prescribed in the Florida Probate Rules. If~~
352 ~~a legal guardian of the minor has previously been appointed and~~
353 ~~has no potential adverse interest to the minor, the court may~~
354 ~~not appoint a guardian ad litem to represent the minor's~~
355 ~~interests, unless the court determines that the appointment is~~
356 ~~otherwise necessary.~~

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

360 Section 4. Section 744.3025, Florida Statutes, is created
361 to read:

362 744.3025 Claims of minors.--

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

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

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

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

377 (e) A court need not appoint a guardian ad litem for the
378 minor if a guardian of the minor has previously been appointed
379 and that guardian has no potential adverse interest to the
380 minor. A court may appoint a guardian ad litem if the court
381 believes a guardian ad litem is necessary to protect the
382 interests of the minor.

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

386 Section 5. Subsection (3) of section 744.3031, Florida
 387 Statutes, is amended, and subsection (8) is added to that
 388 section, to read:

389 744.3031 Emergency temporary guardianship.--

390 (3) The authority of an emergency temporary guardian
 391 expires 90 ~~60~~ days after the date of appointment or when a
 392 guardian is appointed, whichever occurs first. The authority of
 393 the emergency temporary guardian may be extended for an
 394 additional 90 ~~30~~ days upon a showing that the emergency
 395 conditions still exist.

396 (8) (a) An emergency temporary guardian shall file a final
 397 report no later than 30 days after the expiration of the
 398 emergency temporary guardianship.

399 (b) An emergency temporary guardian is a guardian for the
 400 property. The final report must consist of a verified inventory
 401 of the property, as provided in s. 744.365, as of the date the
 402 letters of emergency temporary guardianship were issued, a final
 403 accounting that gives a full and correct account of the receipts
 404 and disbursements of all the property of the ward over which the
 405 guardian had control, and a statement of the property of the
 406 ward on hand at the end of the emergency temporary guardianship.
 407 If the emergency temporary guardian becomes the successor
 408 guardian of the property, the final report must satisfy the
 409 requirements of the initial guardianship report for the guardian
 410 of the property as provided in s. 744.362.

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411 (c) If the emergency temporary guardian is a guardian of
412 the person, the final report must summarize the activities of
413 the temporary guardian with regard to residential placement,
414 medical condition, mental health and rehabilitative services,
415 and the social condition of the ward to the extent of the
416 authority granted to the temporary guardian in the letters of
417 guardianship. If the emergency temporary guardian becomes the
418 successor guardian of the person, the report must satisfy the
419 requirements of the initial report for a guardian of the person
420 as stated in s. 744.362.

421 (d) A copy of the final report of the emergency temporary
422 guardianship shall be served on the successor guardian and the
423 ward.

424 Section 6. Section 744.304, Florida Statutes, is amended
425 to read:

426 744.304 Standby guardianship.--

427 (1) Upon a petition by the natural guardians or a guardian
428 appointed under s. 744.3021, the court may appoint a standby
429 guardian of the person or property of a minor ~~or consent of both~~
430 ~~parents, natural or adoptive, if living, or of the surviving~~
431 ~~parent, a standby guardian of the person or property of a minor~~
432 ~~may be appointed by the court.~~ The court may also appoint an
433 alternate to the guardian to act if the standby guardian does
434 not serve or ceases to serve after appointment. Notice of a
435 hearing on the petition must be served on the parents, natural
436 or adoptive, and on any guardian currently serving unless the
437 notice is waived in writing by them or waived by the court for

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438 good cause shown ~~shall renounce, die, or become incapacitated~~
439 ~~after the death of the last surviving parent of the minor.~~

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

444 (3) The standby guardian or alternate shall be empowered
445 to assume the duties of guardianship ~~his or her office~~
446 immediately on the death, removal, or resignation of the
447 guardian of a minor, or on the death or adjudication of
448 incapacity of the last surviving natural guardian ~~or adoptive~~
449 ~~parent~~ of a minor, or upon the death, removal, or resignation of
450 the guardian for an adult. ~~The; however, such a~~ guardian of the
451 ward's property may not be empowered to deal with the ward's
452 property, other than to safeguard it, before ~~prior to~~ issuance
453 of letters of guardianship. If the ward ~~incapacitated person~~ is
454 over the age of 18 years, the court shall conduct a hearing as
455 provided in s. 744.331 before confirming the appointment of the
456 standby guardian, unless the ward has previously been found to
457 be incapacitated.

458 (4) Within 20 days after assumption of duties as guardian,
459 a standby guardian shall petition for confirmation of
460 appointment. If the court finds the standby guardian to be
461 qualified to serve as guardian under ~~pursuant to~~ ss. 744.309 and
462 744.312, appointment of the guardian must be confirmed. Each
463 guardian so confirmed shall file an oath in accordance with s.
464 744.347, ~~and~~ shall file a bond, and shall submit to a credit and
465 criminal investigation as set forth in s. 744.3135, if required.

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466 Letters of guardianship must then be issued in the manner
467 provided in s. 744.345.

468 (5) After the assumption of duties by a standby guardian,
469 the court shall have jurisdiction over the guardian and the
470 ward.

471 Section 7. Section 744.3115, Florida Statutes, is amended
472 to read:

473 744.3115 Advance directives for health care.--In each
474 proceeding in which a guardian is appointed under this chapter,
475 the court shall determine whether the ward, prior to incapacity,
476 has executed any valid advance directive under ~~pursuant to~~
477 chapter 765. If any ~~such~~ advance directive exists, the court
478 shall specify in its order and letters of guardianship what
479 authority, if any, the guardian shall exercise over the
480 surrogate. Pursuant to the grounds listed in s. 765.105, the
481 court, upon its own motion, may, with notice to the surrogate
482 and any other appropriate parties, modify or revoke the
483 authority of the surrogate to make health care decisions for the
484 ward. For purposes of this section, the term "health care
485 decision" has the same meaning as in s. 765.101.

486 Section 8. Section 744.3135, Florida Statutes, is amended
487 to read:

488 744.3135 Credit and criminal investigation.--

489 (1) The court may require a nonprofessional guardian and
490 shall require a professional or public guardian, and all
491 employees of a professional guardian who have a fiduciary
492 responsibility to a ward, to submit, at their own expense, to an
493 investigation of the guardian's credit history and to undergo

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494 | level 2 background screening as required under s. 435.04. If a
495 | credit or criminal investigation is required, the court must
496 | consider the results of any investigation before appointing a
497 | guardian. At any time, the court may require a guardian or the
498 | guardian's employees to submit to an investigation of the
499 | person's credit history and complete a level 1 background
500 | screening as set forth in s. 435.03. The court shall consider
501 | the results of any investigation when reappointing a guardian.
502 | The clerk of the court shall maintain a file on each guardian
503 | appointed by the court and retain in the file documentation of
504 | the result of any investigation conducted under this section. A
505 | professional guardian must pay the clerk of the court a fee of
506 | up to \$7.50 for handling and processing professional guardian
507 | files.

508 | (2) The court and the Statewide Public Guardianship Office
509 | shall accept the satisfactory completion of a criminal
510 | background investigation by any method described in this
511 | subsection. A guardian satisfies the requirements of this
512 | section by undergoing:

513 | (a) An inkless electronic fingerprint criminal background
514 | investigation. A guardian may use any inkless electronic
515 | fingerprinting equipment used for criminal background
516 | investigations of public employees. The guardian shall pay the
517 | actual costs incurred by the Federal Bureau of Investigation and
518 | the Department of Law Enforcement for the criminal background
519 | investigation. The agency that operates the equipment used by
520 | the guardian may charge the guardian an additional fee, not to
521 | exceed \$10, for the use of the equipment. The agency completing

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522 the investigation must immediately send the results of the
523 criminal background investigation to the clerk of the court and
524 the Statewide Public Guardianship Office. The clerk of the court
525 shall maintain the results in the guardian's file and shall make
526 the results available to the court; or

527 (b) A criminal background investigation using a
528 fingerprint card. The clerk of the court shall obtain
529 fingerprint cards from the Federal Bureau of Investigation and
530 make them available to guardians. Any guardian who is so
531 required shall have his or her fingerprints taken and forward
532 the proper fingerprint card along with the necessary fee to the
533 Florida Department of Law Enforcement for processing. The
534 professional guardian shall pay to the clerk of the court a fee
535 of up to \$7.50 for handling and processing professional guardian
536 files. The results of the fingerprint card background
537 investigations checks shall be forwarded to the clerk of the
538 court who shall maintain the results in the guardian's a
539 guardian file and shall make the results available to the court
540 and the Statewide Public Guardianship Office.

541 (3) (a) A professional guardian, and each employee of a
542 professional guardian who has a fiduciary responsibility to a
543 ward, must complete, at his or her own expense, a level 2
544 background screening as set forth in s. 435.04 before and at
545 least once every 5 years after the date the guardian is
546 appointed. A professional guardian, and each employee of a
547 professional guardian who has a fiduciary responsibility to a
548 ward, must complete, at his or her own expense, a level 1
549 background screening as set forth in s. 435.03 at least once

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550 every 2 years after the date the guardian is appointed. However,
551 a person is not required to resubmit fingerprints for a criminal
552 background investigation if he or she has been screened using
553 inkless electronic fingerprinting equipment that is capable of
554 notifying the clerk of the court of any crime charged against
555 the person in this state or elsewhere, as appropriate.

556 (b) Effective December 15, 2006, all fingerprints
557 electronically submitted to the Department of Law Enforcement
558 under this section shall be retained by the Department of Law
559 Enforcement in a manner provided by rule and entered in the
560 statewide automated fingerprint identification system authorized
561 by s. 943.05(2)(b). The fingerprints shall thereafter be
562 available for all purposes and uses authorized for arrest
563 fingerprint cards entered in the Criminal Justice Information
564 Program under s. 943.051.

565 (c) Effective December 15, 2006, the Department of Law
566 Enforcement shall search all arrest fingerprint cards received
567 under s. 943.051 against the fingerprints retained in the
568 statewide automated fingerprint identification system under
569 paragraph (b). Any arrest record that is identified with the
570 fingerprints of a person described in this paragraph must be
571 reported as soon as possible to the clerk of the court. The
572 clerk of the court must forward any arrest record received for a
573 professional guardian to the Statewide Public Guardianship
574 Office within 5 days. Each guardian who elects to undergo an
575 inkless electronic background investigation shall participate in
576 this search process by paying an annual fee to the clerk of the
577 court and by informing the clerk of the court of any change in

578 the status of his or her guardianship appointment. The amount of
579 the annual fee to be imposed upon each clerk of the court for
580 performing these searches and the procedures for the retention
581 of guardian fingerprints and the dissemination of search results
582 shall be established by rule of the Department of Law
583 Enforcement. The fee may be borne by the clerk of the court or
584 the guardian, but may not exceed \$10.

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

590 (b) The Statewide Public Guardianship Office shall adopt a
591 rule detailing the acceptable methods for completing a credit
592 investigation under this section. If appropriate, the Statewide
593 Public Guardianship Office may administer credit investigations.
594 If the office chooses to administer the credit investigation,
595 the office may adopt a rule setting a fee, not to exceed \$25, to
596 reimburse the costs associated with the administration of a
597 credit investigation.

598 (5) The Statewide Public Guardianship Office may inspect
599 at any time the results of any credit or criminal investigation
600 of a public or professional guardian conducted under this
601 section. The office shall maintain copies of the credit or
602 criminal results in the guardian's registration file. If the
603 results of a credit or criminal investigation of a public or
604 professional guardian have not been forwarded to the Statewide
605 Public Guardianship Office by the investigating agency, the

606 clerk of the court shall forward copies of the results of the
607 investigations to the office upon receiving them. ~~If credit or~~
608 ~~criminal investigations are required, the court must consider~~
609 ~~the results of the investigations before appointing a guardian.~~
610 ~~Professional guardians and all employees of a professional~~
611 ~~guardian who have a fiduciary responsibility to a ward, so~~
612 ~~appointed, must resubmit, at their own expense, to an~~
613 ~~investigation of credit history, and undergo level 1 background~~
614 ~~screening as required under s. 435.03, at least every 2 years~~
615 ~~after the date of their appointment. At any time, the court may~~
616 ~~require guardians or their employees to submit to an~~
617 ~~investigation of credit history and undergo level 1 background~~
618 ~~screening as required under s. 435.03. The court must consider~~
619 ~~the results of these investigations in reappointing a guardian.~~

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

625 (6)(2) The requirements of this section do ~~does~~ not apply
626 to a professional guardian, or to the employees of a
627 professional guardian, that ~~which~~ is a trust company, a state
628 banking corporation or state savings association authorized and
629 qualified to exercise fiduciary powers in this state, or a
630 national banking association or federal savings and loan
631 association authorized and qualified to exercise fiduciary
632 powers in this state.

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

635 744.3145 Guardian education requirements.--

636 (4) Each person appointed by the court to be a guardian
637 must complete the required number of hours of instruction and
638 education within 4 months ~~1 year~~ after his or her appointment as
639 guardian. The instruction and education must be completed
640 through a course approved by the chief judge of the circuit
641 court and taught by a court-approved organization. Court-
642 approved organizations may include, but are not limited to,
643 community or junior colleges, guardianship organizations, and
644 the local bar association or The Florida Bar.

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

647 744.3215 Rights of persons determined incapacitated.--

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

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

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

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

657 (b) To vote.

658 (c) To personally apply for government benefits.

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

660 (e) To travel.

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661 (f) To seek or retain employment.

662 Section 11. Subsections (2), (3), and (7) of section
663 744.331, Florida Statutes, are amended to read:

664 744.331 Procedures to determine incapacity.--

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

666 (a) When a court appoints an attorney for an alleged
667 incapacitated person, the court must appoint an attorney who is
668 included in the attorney registry compiled by the circuit's
669 Article V indigent services committee. Appointments must be made
670 on a rotating basis, taking into consideration conflicts arising
671 under this chapter.

672 (b)~~(a)~~ The court shall appoint an attorney for each person
673 alleged to be incapacitated in all cases involving a petition
674 for adjudication of incapacity. The alleged incapacitated person
675 may substitute her or his own attorney for the attorney
676 appointed by the court, subject to court approval.

677 (c)~~(b)~~ Any attorney representing an alleged incapacitated
678 person may not serve as guardian of the alleged incapacitated
679 person or as counsel for the guardian of the alleged
680 incapacitated person or the petitioner.

681 (d) Effective January 1, 2007, an attorney seeking to be
682 appointed by a court for incapacity and guardianship proceedings
683 must have completed a minimum of 8 hours of education in
684 guardianship. A court may waive the initial training requirement
685 for an attorney who has served as a court-appointed attorney in
686 incapacity proceedings or as an attorney of record for guardians
687 for not less than 3 years.

688 (3) EXAMINING COMMITTEE.--

689 (a) Within 5 days after a petition for determination of
690 incapacity has been filed, the court shall appoint an examining
691 committee consisting of three members. One member must be a
692 psychiatrist or other physician. The remaining members must be
693 either a psychologist, gerontologist, another psychiatrist, or
694 other physician, a registered nurse, nurse practitioner,
695 licensed social worker, a person with an advanced degree in
696 gerontology from an accredited institution of higher education,
697 or other person who by knowledge, skill, experience, training,
698 or education may, in the court's discretion, advise the court in
699 the form of an expert opinion, including a professional
700 guardian. One of three members of the committee must have
701 knowledge of the type of incapacity alleged in the petition.
702 Unless good cause is shown, the attending or family physician
703 may not be appointed to the committee. If the attending or
704 family physician is available for consultation, the committee
705 must consult with the physician. Members of the examining
706 committee may not be related to or associated with one another,
707 ~~or~~ with the petitioner, with counsel for the petitioner or the
708 proposed guardian, or with the person alleged to be totally or
709 partially incapacitated. A member may not be employed by any
710 private or governmental agency that has custody of, or
711 furnishes, services or subsidies, directly or indirectly, to the
712 person or the family of the person alleged to be incapacitated
713 or for whom a guardianship is sought. A petitioner may not serve
714 as a member of the examining committee. Members of the examining
715 committee must be able to communicate, either directly or
716 through an interpreter, in the language that the alleged

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717 incapacitated person speaks or to communicate in a medium
718 understandable to the alleged incapacitated person if she or he
719 is able to communicate. The clerk of the court shall send notice
720 of the appointment to each person appointed no later than 3 days
721 after the court's appointment.

722 (b) A person who has been appointed to serve as a member
723 of an examining committee to examine an alleged incapacitated
724 person may not thereafter be appointed as a guardian for the
725 person who was the subject of the examination.

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

732 (d) A member of an examining committee must complete a
733 minimum of 4 hours of initial training. The person must complete
734 2 hours of continuing education during each 2-year period after
735 the initial training. The initial training and continuing
736 education program must be developed under the supervision of the
737 Statewide Public Guardianship Office, in consultation with the
738 Florida Conference of Circuit Court Judges; the Elder Law and
739 the Real Property, Probate and Trust Law sections of The Florida
740 Bar; the Florida State Guardianship Association; and the Florida
741 Guardianship Foundation. The court may waive the initial
742 training requirement for a person who has served for not less
743 than 5 years on examining committees. If a person wishes to
744 obtain his or her continuing education on the Internet or by

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745 | watching a video course, the person must first obtain the
746 | approval of the chief judge before taking an Internet or video
747 | course.

748 | ~~(e)-(b)~~ Each member of the examining committee shall
749 | examine the person. Each ~~The~~ examining committee member must
750 | ~~shall~~ determine the alleged incapacitated person's ability to
751 | exercise those rights specified in s. 744.3215. In addition to
752 | the examination, each ~~the~~ examining committee member must ~~shall~~
753 | have access to, and may consider, previous examinations of the
754 | person, including, but not limited to, habilitation plans,
755 | school records, and psychological and psychosocial reports
756 | voluntarily offered for use by the alleged incapacitated person.
757 | Each member of the examining committee must ~~shall~~ submit a
758 | report within 15 days after appointment.

759 | ~~(f)-(e)~~ The examination of the alleged incapacitated person
760 | must include a comprehensive examination, a report of which
761 | shall be filed by the examining committee as part of its written
762 | report. The comprehensive examination report should be an
763 | essential element, but not necessarily the only element, used in
764 | making a capacity and guardianship decision. The comprehensive
765 | examination must include, if indicated:

- 766 | 1. A physical examination;
767 | 2. A mental health examination; and
768 | 3. A functional assessment.

769 |
770 | If any of these three aspects of the examination is not
771 | indicated or cannot be accomplished for any reason, the written
772 | report must explain the reasons for its omission.

773 | (g) ~~(d)~~ The committee's written report must include:

774 | 1. To the extent possible, a diagnosis, prognosis, and
775 | recommended course of treatment.

776 | 2. An evaluation of the alleged incapacitated person's
777 | ability to retain her or his rights, including, without
778 | limitation, the rights to marry; vote; contract; manage or
779 | dispose of property; have a driver's license; determine her or
780 | his residence; consent to medical treatment; and make decisions
781 | affecting her or his social environment.

782 | 3. The results of the comprehensive examination and the
783 | committee members' assessment of information provided by the
784 | attending or family physician, if any.

785 | 4. A description of any matters with respect to which the
786 | person lacks the capacity to exercise rights, the extent of that
787 | incapacity, and the factual basis for the determination that the
788 | person lacks that capacity.

789 | 5. The names of all persons present during the time the
790 | committee member conducted his or her examination. If a person
791 | other than the person who is the subject of the examination
792 | supplies answers posed to the alleged incapacitated person, the
793 | report must include the response and the name of the person
794 | supplying the answer.

795 | 6.5- The signature of each member of the committee and the
796 | date and time that each member conducted his or her examination.

797 | (h) ~~(e)~~ A copy of the report must be served on the
798 | petitioner and on the attorney for the alleged incapacitated
799 | person within 3 days after the report is filed and at least 5
800 | days before the hearing on the petition.

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801 (7) FEES.--

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

805 (b) The fees awarded under paragraph (a) shall be paid by
806 the guardian from the property of the ward or, if the ward is
807 indigent, by the state. The state shall have a creditor's claim
808 against the guardianship property for any amounts paid under
809 this section. The state may file its claim within 90 days after
810 the entry of an order awarding attorney ad litem fees. If the
811 state does not file its claim within the 90-day period, the
812 state is thereafter barred from asserting the claim. Upon
813 petition by the state for payment of the claim, the court shall
814 enter an order authorizing immediate payment out of the property
815 of the ward. The state shall keep a record of the ~~such~~ payments.

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

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

822 744.341 Voluntary guardianship.--

823 (4) A guardian must include in the annual report filed
824 with the court a certificate from a licensed physician who
825 examined the ward not more than 90 days before the annual report
826 is filed with the court. The certificate must certify that the
827 ward is competent to understand the nature of the guardianship

828 | and of the ward's authority to delegate powers to the voluntary
829 | guardian.

830 | Section 13. Subsection (9) is added to section 744.361,
831 | Florida Statutes, to read:

832 | 744.361 Powers and duties of guardian.--

833 | (9) A professional guardian must ensure that each of the
834 | guardian's wards is personally visited by the guardian or one of
835 | the guardian's professional staff at least once each calendar
836 | quarter. During the personal visit, the guardian or the
837 | guardian's professional staff person shall assess:

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

839 | (b) The appropriateness of the ward's current living
840 | situation.

841 | (c) The need for any additional services and the necessity
842 | for continuation of existing services, taking into consideration
843 | all aspects of social, psychological, educational, direct
844 | service, health, and personal care needs.

845 |
846 | This subsection does not apply to a professional guardian who
847 | has been appointed only as guardian of the property.

848 | Section 14. Subsection (2) of section 744.365, Florida
849 | Statutes, is amended to read:

850 | 744.365 Verified inventory.--

851 | (2) CONTENTS.--The verified inventory must include the
852 | following:

853 | (a) All property of the ward, real and personal, that has
854 | come into the guardian's possession or knowledge, including a
855 | statement of all encumbrances, liens, and other secured claims

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856 | on any item, any claims against the property, ~~and~~ any cause of
 857 | action accruing to the ward, and any trusts of which the ward is
 858 | a beneficiary.†

859 | (b) The location of the real and personal property in
 860 | sufficient detail so that it may be clearly identified or
 861 | located.†~~and~~

862 | (c) A description of all sources of income, including,
 863 | without limitation, social security benefits and pensions.

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

866 | 744.367 Duty to file annual guardianship report.--

867 | (1) Unless the court requires filing on a calendar-year
 868 | basis, each guardian of the person shall file with the court an
 869 | annual guardianship plan within 90 days after the last day of
 870 | the anniversary month the letters of guardianship were signed,
 871 | and the plan must cover the coming fiscal year, ending on the
 872 | last day in such anniversary month. If the court requires
 873 | calendar-year filing, the guardianship plan must be filed on or
 874 | before April 1 of each year ~~within 90 days after the end of the~~
 875 | ~~calendar year.~~

876 | (3) The annual guardianship report of a guardian of the
 877 | property must consist of an annual accounting, and the annual
 878 | report of a guardian of the person ~~of an incapacitated person~~
 879 | must consist of an annual guardianship plan. The annual report
 880 | shall be served on the ward, unless the ward is a minor ~~under~~
 881 | ~~the age of 14 years~~ or is totally incapacitated, and on the
 882 | attorney for the ward, if any. The guardian shall provide a copy
 883 | to any other person as the court may direct.

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884 Section 16. Section 744.3675, Florida Statutes, is amended
885 to read:

886 744.3675 Annual guardianship plan.--Each guardian of the
887 person must file with the court an annual guardianship plan
888 which updates information about the condition of the ward. The
889 annual plan must specify the current needs of the ward and how
890 those needs are proposed to be met in the coming year.

891 (1) Each plan for an adult ward must, if applicable,
892 include:

893 (a) Information concerning the residence of the ward,
894 including:

- 895 1. The ward's address at the time of filing the plan.†
- 896 2. The name and address of each place where the ward was
897 maintained during the preceding year.†
- 898 3. The length of stay of the ward at each place.†
- 899 4. A statement of whether the current residential setting
900 is best suited for the current needs of the ward.†~~and~~
- 901 5. Plans for ensuring during the coming year that the ward
902 is in the best residential setting to meet his or her needs.

903 (b) Information concerning the medical and mental health
904 conditions ~~condition~~ and treatment and rehabilitation needs of
905 the ward, including:

- 906 1. A resume of any professional medical treatment given to
907 the ward during the preceding year.†
- 908 2. The report of a physician who examined the ward no more
909 than 90 days before the beginning of the applicable reporting
910 period. The ~~Such~~ report must contain an evaluation of the ward's

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911 condition and a statement of the current level of capacity of
912 the ward. ~~;~~ and

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

915 (c) Information concerning the social condition of the
916 ward, including:

917 1. The social and personal services currently used
918 ~~utilized~~ by the ward. ~~;~~

919 2. The social skills of the ward, including a statement of
920 how well the ward communicates and maintains interpersonal
921 relationships. ~~with others;~~

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

924 ~~3.4.~~ The social needs of the ward.

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

927 (a) Information concerning the residence of the minor,
928 including:

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

930 2. The name and address of each place the minor lived
931 during the preceding year.

932 (b) Information concerning the medical and mental health
933 conditions and treatment and rehabilitation needs of the minor,
934 including:

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

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

939 | reporting period that contains an evaluation of the minor's
 940 | physical and mental conditions.

941 | 3. The plan for providing medical services in the coming
 942 | year.

943 | (c) Information concerning the education of the minor,
 944 | including:

945 | 1. A summary of the school progress report.

946 | 2. The social development of the minor, including a
 947 | statement of how well the minor communicates and maintains
 948 | interpersonal relationships.

949 | 3. The social needs of the minor.

950 | (3)-(2) Each plan for an adult ward must address the issue
 951 | of restoration of rights to the ward and include:

952 | (a) A summary of activities during the preceding year that
 953 | ~~which~~ were designed to enhance ~~increase~~ the capacity of the
 954 | ward.†

955 | (b) A statement of whether the ward can have any rights
 956 | restored.†~~and~~

957 | (c) A statement of whether restoration of any rights will
 958 | be sought.

959 | (4)-(3) The court, in its discretion, may require
 960 | reexamination of the ward by a physician at any time.

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

963 | 744.3678 Annual accounting.--

964 | (2) The annual accounting must include:

965 | (a) A full and correct account of the receipts and
 966 | disbursements of all of the ward's property over which the

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967 guardian has control and a statement of the ward's property on
 968 hand at the end of the accounting period. This paragraph does
 969 not apply to any property or any trust of which the ward is a
 970 beneficiary but which is not under the control or administration
 971 of the guardian.

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

975 (3) The guardian must obtain a receipt, ~~or canceled check,~~
 976 or other proof of payment for all expenditures and disbursements
 977 made on behalf of the ward. The guardian must preserve all
 978 evidence of payment ~~the receipts and canceled checks,~~ along with
 979 other substantiating papers, for a period of 3 years after his
 980 or her discharge. The receipts, proofs of payment ~~checks,~~ and
 981 substantiating papers need not be filed with the court but shall
 982 be made available for inspection and review at the ~~such~~ time and
 983 ~~in such~~ place and before the ~~such~~ persons as the court may ~~from~~
 984 ~~time to time~~ order.

985 Section 18. Section 744.3679, Florida Statutes, is amended
 986 to read:

987 744.3679 Simplified accounting procedures in certain
 988 cases.--

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

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995 (a) The original or a certified copy of the year-end
996 statement of the ward's account from the financial institution;
997 and

998 (b) A statement by the guardian under penalty of perjury
999 that the guardian has custody and control of the ward's property
1000 as shown in the year-end statement.

1001 ~~(2) The clerk has no responsibility to monitor or audit~~
1002 ~~the accounts and may not accept a fee for doing so.~~

1003 (2)~~(3)~~ The accounting allowed by subsection (1) is in lieu
1004 of the accounting and auditing procedures under s. 744.3678(2)
1005 ~~ss. 744.3678 and 744.368(1)(f)~~. However, any interested party
1006 may seek judicial review as provided in s. 744.3685.

1007 (3)~~(4)~~ The guardian need not be represented by an attorney
1008 in order to file the annual accounting allowed by subsection
1009 (1).

1010 Section 19. Subsection (3) of section 744.368, Florida
1011 Statutes, is amended to read:

1012 744.368 Responsibilities of the clerk of the circuit
1013 court.--

1014 (3) Within 90 days after the filing of the verified
1015 inventory and accountings ~~initial or annual guardianship report~~
1016 by a guardian of the property, the clerk shall audit the
1017 verified inventory and ~~or~~ the accountings ~~annual accounting~~. The
1018 clerk shall advise the court of the results of the audit.

1019 Section 20. Subsection (19) of section 744.441, Florida
1020 Statutes, is amended to read:

1021 744.441 Powers of guardian upon court approval.--After
1022 obtaining approval of the court pursuant to a petition for

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1023 authorization to act, a plenary guardian of the property, or a
 1024 limited guardian of the property within the powers granted by
 1025 the order appointing the guardian or an approved annual or
 1026 amended guardianship report, may:

1027 (19) Create or amend revocable or irrevocable trusts of
 1028 property of the ward's estate which may extend beyond the
 1029 disability or life of the ward in connection with estate, gift,
 1030 income, or other tax planning or in connection with estate
 1031 planning. The court shall retain oversight of the assets
 1032 transferred to a trust, unless otherwise ordered by the court.

1033 Section 21. Section 744.442, Florida Statutes, is created
 1034 to read:

1035 744.442 Delegation of authority.--

1036 (1) A guardian may designate a surrogate guardian to
 1037 exercise the powers of the guardian if the guardian is
 1038 unavailable to act. A person designated as a surrogate guardian
 1039 under this section must be a professional guardian.

1040 (2) (a) A guardian must file a petition with the court
 1041 requesting permission to designate a surrogate guardian.

1042 (b) If the court approves the designation, the order must
 1043 specify the name and business address of the surrogate guardian
 1044 and the duration of appointment, which may not exceed 30 days.
 1045 The court may extend the appointment for good cause shown. The
 1046 surrogate guardian may exercise all powers of the guardian
 1047 unless limited by order of the court. The surrogate guardian
 1048 must file with the court an oath swearing or affirming that he
 1049 or she will faithfully perform the duties delegated. The court
 1050 may require the surrogate guardian to post a bond.

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1051 (3) This section does not limit the responsibility of the
1052 guardian to the ward and to the court. The guardian is liable
1053 for the acts of the surrogate guardian. The guardian may
1054 terminate the authority of the surrogate guardian by filing a
1055 written notice of the termination with the court.

1056 (4) The surrogate guardian is subject to the jurisdiction
1057 of the court as if appointed to serve as guardian.

1058 Section 22. Paragraphs (c), (e), and (f) of subsection (2)
1059 and subsection (4) of section 744.464, Florida Statutes, are
1060 amended to read:

1061 744.464 Restoration to capacity.--

1062 (2) SUGGESTION OF CAPACITY.--

1063 (c) The court shall immediately send notice of the filing
1064 of the suggestion of capacity to the ward, the guardian, the
1065 attorney for the ward, if any, ~~the state attorney,~~ and any other
1066 interested persons designated by the court. Formal notice must
1067 be served on the guardian. Informal notice may be served on
1068 other persons. Notice need not be served on the person who filed
1069 the suggestion of capacity.

1070 (e) If an objection is timely filed, or if the medical
1071 examination suggests that full restoration is not appropriate,
1072 the court shall set the matter for hearing. If the ward does not
1073 have an attorney, the court shall appoint one to represent the
1074 ward.

1075 (f) Notice of the hearing and copies of the objections and
1076 medical examination reports shall be served upon the ward, the
1077 ward's attorney, the guardian, ~~the state attorney,~~ the ward's

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1078 next of kin, and any other interested persons as directed by the
1079 court.

1080 ~~(4) TIME LIMITATION FOR FILING SUGGESTION OF~~
1081 ~~CAPACITY. Notwithstanding this section, a suggestion of~~
1082 ~~capacity may not be filed within 90 days after an adjudication~~
1083 ~~of incapacity or denial of restoration, unless good cause is~~
1084 ~~shown.~~

1085 Section 23. Paragraph (a) of subsection (19) of section
1086 744.474, Florida Statutes, is amended, and paragraph (b) of that
1087 subsection is redesignated as subsection (20) of that section
1088 and amended, to read:

1089 744.474 Reasons for removal of guardian.--A guardian may
1090 be removed for any of the following reasons, and the removal
1091 shall be in addition to any other penalties prescribed by law:

1092 (19) Upon a showing by a person who did not receive notice
1093 of the petition for adjudication of incapacity, when such notice
1094 is required, or who is related to the ward within the
1095 relationships specified for nonresident relatives in ss.
1096 744.309(2) and 744.312(2) and who has not previously been
1097 rejected by the court as a guardian that:

1098 ~~(a)~~ the current guardian is not a family member, and
1099 subsection (20) applies.

1100 ~~(20)(b)~~ Upon a showing that removal of the current
1101 guardian is in the best interest of the ward,
1102 the court may remove the current guardian and appoint the
1103 petitioner, or such person as the court deems in the best
1104 interest of the ward, either as guardian of the person or of the
1105 property, or both.

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1106 Section 24. Section 744.511, Florida Statutes, is amended
1107 to read:

1108 744.511 Accounting upon removal.--A removed guardian shall
1109 file with the court a true, complete, and final report of his or
1110 her guardianship within 20 days after removal and shall serve a
1111 copy on the successor guardian and the ward, unless the ward is
1112 a minor ~~under 14 years of age~~ or has been determined to be
1113 totally incapacitated.

1114 Section 25. Section 744.527, Florida Statutes, is amended
1115 to read:

1116 744.527 Final reports and application for discharge;
1117 hearing.--

1118 (1) When the court terminates the guardianship for any of
1119 the reasons set forth in s. 744.521, the guardian shall promptly
1120 file his or her final report. If the ward has died, the guardian
1121 must file a final report with the court no later than 45 days
1122 after he or she has been served with letters of administration
1123 or letters of curatorship. If no objections are filed and if it
1124 appears that the guardian has made full and complete
1125 distribution to the person entitled and has otherwise faithfully
1126 discharged his or her duties, the court shall approve the final
1127 report. If objections are filed, the court shall conduct a
1128 hearing in the same manner as provided for a hearing on
1129 objections to annual guardianship reports.

1130 (2) The guardian applying for discharge may ~~is authorized~~
1131 ~~to~~ retain from the funds in his or her possession a sufficient
1132 amount to pay the final costs of administration, including
1133 guardian and attorney's fees regardless of the death of the

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1134 ward, accruing between the filing of his or her final returns
1135 and the order of discharge.

1136 Section 26. Subsection (3) of section 744.528, Florida
1137 Statutes, is amended to read:

1138 744.528 Discharge of guardian named as personal
1139 representative.--

1140 (3) Any interested person may file a notice of ~~The court~~
1141 ~~shall set~~ a hearing on any objections filed by the
1142 beneficiaries. Notice of the hearing must ~~shall~~ be served upon
1143 the guardian, beneficiaries of the ward's estate, and any other
1144 person to whom the court directs service. If a notice of hearing
1145 on the objections is not served within 90 days after filing of
1146 the objections, the objections are deemed abandoned.

1147 Section 27. Subsections (5) through (8) of section
1148 744.708, Florida Statutes, are amended to read:

1149 744.708 Reports and standards.--

1150 (5) (a) Each office of public guardian shall undergo an
1151 independent audit by a qualified certified public accountant
1152 ~~shall be performed~~ at least once every 2 years. ~~The audit should~~
1153 ~~include an investigation into the practices of the office for~~
1154 ~~managing the person and property of the wards.~~ A copy of the
1155 audit report shall be submitted to the Statewide Public
1156 Guardianship Office.

1157 (b) In addition to regular monitoring activities, the
1158 Statewide Public Guardianship Office shall conduct an
1159 investigation into the practices of each office of public
1160 guardian related to the managing of each ward's personal affairs
1161 and property. When feasible, the investigation required under

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1162 this paragraph shall be conducted in conjunction with the
1163 financial audit of each office of public guardian under
1164 paragraph (a).

1165 (c) In addition, each ~~the~~ office of public guardian shall
1166 be subject to audits or examinations by the Auditor General and
1167 the Office of Program Policy Analysis and Government
1168 Accountability pursuant to law.

1169 (6) ~~A~~ ~~The~~ public guardian shall ensure that each of the
1170 guardian's wards is personally visited ~~ward is seen~~ by the
1171 public guardian or by one of the guardian's a professional staff
1172 person at least once each calendar quarter ~~four times a year~~.
1173 During this personal visit, the public guardian or the
1174 professional staff person shall assess:

1175 (a) The ward's physical appearance and condition.

1176 (b) The appropriateness of the ward's current living
1177 situation.

1178 (c) The need for any additional services and the necessity
1179 for continuation of existing services, taking into consideration
1180 all aspects of social, psychological, educational, direct
1181 service, health, and personal care needs.

1182 (7) The ratio for professional staff to wards shall be 1
1183 professional to 40 wards. The Statewide Public Guardianship
1184 Office may increase or decrease the ratio after consultation
1185 with the local public guardian and the chief judge of the
1186 circuit court. The basis of the decision to increase or decrease
1187 the prescribed ratio shall be reported in the annual report to
1188 the Secretary of Elderly Affairs, the Governor, the President of

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1189 the Senate, the Speaker of the House of Representatives, and the
1190 Chief Justice of the Supreme Court.

1191 ~~(8) The term "professional," for purposes of this part,~~
1192 ~~shall not include the public guardian nor the executive director~~
1193 ~~of the Statewide Public Guardianship Office. The term~~
1194 ~~"professional" shall be limited to those persons who exercise~~
1195 ~~direct supervision of individual wards under the direction of~~
1196 ~~the public guardian.~~

1197 Section 28. Paragraph (a) of subsection (5) of section
1198 765.101, Florida Statutes, is amended to read:

1199 765.101 Definitions.--As used in this chapter:

1200 (5) "Health care decision" means:

1201 (a) Informed consent, refusal of consent, or withdrawal of
1202 consent to any and all health care, including life-prolonging
1203 procedures and mental health treatment, unless otherwise stated
1204 in the advance directives.

1205 Section 29. Section 28.345, Florida Statutes, is amended
1206 to read:

1207 28.345 Exemption from court-related fees and
1208 charges.--Notwithstanding any other ~~provision of this chapter or~~
1209 law to the contrary, judges and those court staff acting on
1210 behalf of judges, state attorneys, guardians ad litem, public
1211 guardians, attorneys ad litem, court-appointed private counsel,
1212 and public defenders, acting in their official capacity, and
1213 state agencies, are exempt from all court-related fees and
1214 charges assessed by the clerks of the circuit courts.

1215 Section 30. Paragraph (c) of subsection (8) of section
1216 121.091, Florida Statutes, is amended to read:

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1217 121.091 Benefits payable under the system.--Benefits may
1218 not be paid under this section unless the member has terminated
1219 employment as provided in s. 121.021(39) (a) or begun
1220 participation in the Deferred Retirement Option Program as
1221 provided in subsection (13), and a proper application has been
1222 filed in the manner prescribed by the department. The department
1223 may cancel an application for retirement benefits when the
1224 member or beneficiary fails to timely provide the information
1225 and documents required by this chapter and the department's
1226 rules. The department shall adopt rules establishing procedures
1227 for application for retirement benefits and for the cancellation
1228 of such application when the required information or documents
1229 are not received.

1230 (8) DESIGNATION OF BENEFICIARIES.--

1231 (c) Notwithstanding the member's designation of benefits
1232 to be paid through a trust to a beneficiary that is a natural
1233 person as provided in s. 121.021(46), and notwithstanding the
1234 provisions of the trust, benefits shall be paid directly to the
1235 beneficiary if the ~~such~~ person is no longer a minor or an
1236 incapacitated person as defined in s. 744.102(~~11~~) and (~~12~~).

1237 Section 31. Paragraph (c) of subsection (20) of section
1238 121.4501, Florida Statutes, is amended to read:

1239 121.4501 Public Employee Optional Retirement Program.--

1240 (20) DESIGNATION OF BENEFICIARIES.--

1241 (c) Notwithstanding the participant's designation of
1242 benefits to be paid through a trust to a beneficiary that is a
1243 natural person, and notwithstanding the provisions of the trust,
1244 benefits shall be paid directly to the beneficiary if the ~~such~~

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1245 person is no longer a minor or an incapacitated person as
1246 defined in s. 744.102~~(11)~~ and ~~(12)~~.

1247 Section 32. Subsection (1) and paragraphs (b), (d), and
1248 (f) of subsection (4) of section 709.08, Florida Statutes, are
1249 amended to read:

1250 709.08 Durable power of attorney.--

1251 (1) CREATION OF DURABLE POWER OF ATTORNEY.--A durable
1252 power of attorney is a written power of attorney by which a
1253 principal designates another as the principal's attorney in
1254 fact. The durable power of attorney must be in writing, must be
1255 executed with the same formalities required for the conveyance
1256 of real property by Florida law, and must contain the words:
1257 "This durable power of attorney is not affected by subsequent
1258 incapacity of the principal except as provided in s. 709.08,
1259 Florida Statutes"; or similar words that show the principal's
1260 intent that the authority conferred is exercisable
1261 notwithstanding the principal's subsequent incapacity, except as
1262 otherwise provided by this section. The durable power of
1263 attorney is exercisable as of the date of execution; however, if
1264 the durable power of attorney is conditioned upon the
1265 principal's lack of capacity to manage property as defined in s.
1266 744.102 (12)~~(11)~~(a), the durable power of attorney is exercisable
1267 upon the delivery of affidavits in paragraphs (4)(c) and (d) to
1268 the third party.

1269 (4) PROTECTION WITHOUT NOTICE; GOOD FAITH ACTS;
1270 AFFIDAVITS.--

1271 (b) Any third party may rely upon the authority granted in
1272 a durable power of attorney that is conditioned on the

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1273 principal's lack of capacity to manage property as defined in s.
1274 744.102 (12) ~~(11)~~ (a) only after receiving the affidavits provided
1275 in paragraphs (c) and (d), and such reliance shall end when the
1276 third party has received notice as provided in subsection (5).

1277 (d) A determination that a principal lacks the capacity to
1278 manage property as defined in s. 744.102 (12) ~~(11)~~ (a) must be made
1279 and evidenced by the affidavit of a physician licensed to
1280 practice medicine pursuant to chapters 458 and 459 as of the
1281 date of the affidavit. A judicial determination that the
1282 principal lacks the capacity to manage property pursuant to
1283 chapter 744 is not required prior to the determination by the
1284 physician and the execution of the affidavit. For purposes of
1285 this section, the physician executing the affidavit must be the
1286 primary physician who has responsibility for the treatment and
1287 care of the principal. The affidavit executed by a physician
1288 must state where the physician is licensed to practice medicine,
1289 that the physician is the primary physician who has
1290 responsibility for the treatment and care of the principal, and
1291 that the physician believes that the principal lacks the
1292 capacity to manage property as defined in s. 744.102 (12) ~~(11)~~ (a).
1293 The affidavit may, but need not, be in the following form:

1294
1295 STATE OF _____
1296 COUNTY OF _____

1297
1298 Before me, the undersigned authority, personally appeared
1299 (name of physician) , Affiant, who swore or affirmed that:

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1300 1. Affiant is a physician licensed to practice medicine in
1301 (name of state, territory, or foreign country) .

1302 2. Affiant is the primary physician who has responsibility
1303 for the treatment and care of (principal's name) .

1304 3. To the best of Affiant's knowledge after reasonable
1305 inquiry, Affiant believes that the principal lacks the capacity
1306 to manage property, including taking those actions necessary to
1307 obtain, administer, and dispose of real and personal property,
1308 intangible property, business property, benefits, and income.

1309

1310

1311

(Affiant)

1313

1314 Sworn to (or affirmed) and subscribed before me this (day
1315 of) (month) , (year) , by (name of person making
1316 statement)

1317

1318 (Signature of Notary Public-State of Florida)

1319

1320 (Print, Type, or Stamp Commissioned Name of Notary Public)

1321

1322 Personally Known OR Produced Identification

1323 (Type of Identification Produced)

1324 (f) A third party may not rely on the authority granted in
1325 a durable power of attorney conditioned on the principal's lack
1326 of capacity to manage property as defined in s.

1327 744.102 (12) ~~(11)~~ (a) when any affidavit presented has been

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1328 | executed more than 6 months prior to the first presentation of
1329 | the durable power of attorney to the third party.

1330 | Section 33. Subsection (3) of section 744.1085, Florida
1331 | Statutes, is amended to read:

1332 | 744.1085 Regulation of professional guardians;
1333 | application; bond required; educational requirements.--

1334 | (3) Each professional guardian defined in s.
1335 | 744.102(17)~~(16)~~ and public guardian must receive a minimum of 40
1336 | hours of instruction and training. Each professional guardian
1337 | must receive a minimum of 16 hours of continuing education every
1338 | 2 calendar years after the year in which the initial 40-hour
1339 | educational requirement is met. The instruction and education
1340 | must be completed through a course approved or offered by the
1341 | Statewide Public Guardianship Office. The expenses incurred to
1342 | satisfy the educational requirements prescribed in this section
1343 | may not be paid with the assets of any ward. This subsection
1344 | does not apply to any attorney who is licensed to practice law
1345 | in this state.

1346 | Section 34. For the purpose of incorporating the amendment
1347 | made by this act to section 744.3215, Florida Statutes, in a
1348 | reference thereto, subsection (4) of section 117.107, Florida
1349 | Statutes, is reenacted to read:

1350 | 117.107 Prohibited acts.--

1351 | (4) A notary public may not take the acknowledgment of or
1352 | administer an oath to a person whom the notary public actually
1353 | knows to have been adjudicated mentally incapacitated by a court
1354 | of competent jurisdiction, where the acknowledgment or oath
1355 | necessitates the exercise of a right that has been removed

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1356 | pursuant to s. 744.3215(2) or (3), and where the person has not
1357 | been restored to capacity as a matter of record.

1358 | Section 35. This act shall take effect July 1, 2006.