

1                   A bill to be entitled  
2           An act relating to guardianship; amending s. 744.102,  
3           F.S.; defining the terms "audit" and "surrogate guardian";  
4           amending s. 744.1083, F.S.; revising provisions relating  
5           to identification information provided by professional  
6           guardians for registration; providing that the Statewide  
7           Public Guardianship Office need not review credit and  
8           criminal investigations from a state college or university  
9           before registering the institution as a professional  
10          guardian; amending s. 744.301, F.S.; providing that in the  
11          event of death, the surviving parent is the sole natural  
12          guardian of a minor; prohibiting a natural guardian from  
13          using the property of the ward for the guardian's benefit  
14          without a court order; creating s. 744.3025, F.S.;  
15          authorizing a court to appoint a guardian ad litem to  
16          represent a minor's interest in certain claims that exceed  
17          a specified amount; requiring a court to appoint a  
18          guardian ad litem to represent a minor's interest in  
19          certain claims that exceed a specified amount; providing  
20          that a court need not appoint a guardian ad litem under  
21          certain circumstances; requiring a court to award  
22          reasonable fees and costs to the guardian ad litem;  
23          amending s. 744.3031, F.S.; increasing the time an  
24          emergency temporary guardian may serve; increasing the  
25          time of an extension; requiring an emergency temporary  
26          guardian to file a final report; providing for the  
27          contents of the final report; amending s. 744.304, F.S.;

28 specifying the persons who may file a petition for a  
29 standby guardian; requiring that notice of the appointment  
30 hearing be served on the ward's next of kin; clarifying  
31 when a standby guardian may assume the duties of guardian;  
32 requiring that each standby guardian submit to credit and  
33 criminal history record checks; amending s. 744.3115,  
34 F.S.; defining the term "health care decision"; amending  
35 s. 744.3135, F.S.; providing procedures for completing a  
36 guardian's criminal history record check; authorizing a  
37 guardian to use electronic fingerprinting equipment that  
38 is available for criminal history record checks of public  
39 employees; providing that a guardian need not be  
40 rescreened if he or she uses certain electronic  
41 fingerprinting equipment; providing for fees; requiring  
42 the Statewide Public Guardianship Office to request that  
43 the Department of Law Enforcement forward certain  
44 fingerprints to the Federal Bureau of Investigation;  
45 requiring the Statewide Public Guardianship Office to  
46 adopt a rule for credit investigations of guardians;  
47 amending s. 744.3145, F.S.; reducing the time in which a  
48 guardian must complete the education courses; amending s.  
49 744.3215, F.S.; providing that an incapacitated person  
50 retains the right to receive services and rehabilitation  
51 necessary to maximize the quality of the person's life;  
52 revising provisions relating to rights that may be removed  
53 from a person determined incapacitated; amending s.  
54 744.331, F.S.; requiring that the court appoint an

55 attorney for an alleged incapacitated person from a  
56 specified registry; requiring attorneys to complete  
57 certain training programs; providing that a member of the  
58 examining committee may not be related to or associated  
59 with certain persons; prohibiting a person who served on  
60 an examining committee from being appointed as the  
61 guardian; requiring each member of an examining committee  
62 to file an affidavit stating that he or she has completed  
63 or will timely complete the mandatory training; providing  
64 for training programs; requiring each member to file a  
65 report regarding his or her examination of an alleged  
66 incapacitated person; providing for dismissal of a  
67 petition alleging incapacity based on the reports of the  
68 majority of the committee members; providing for an award  
69 of attorney's fees; amending s. 744.341, F.S.; requiring  
70 the voluntary guardian to include certain information in  
71 the annual report; amending s. 744.361, F.S.; requiring a  
72 professional guardian to ensure that each of his or her  
73 wards is personally visited at least quarterly; providing  
74 for the assessment of certain conditions during the  
75 personal visit; providing an exemption; amending s.  
76 744.365, F.S.; requiring that the verified inventory  
77 include information on any trust to which a ward is a  
78 beneficiary; amending s. 744.367, F.S.; requiring that the  
79 annual report of the guardian filing on a calendar-year  
80 basis be filed on or before a specified date; exempting  
81 all minor wards from service of the annual report;

82 | amending s. 744.3675, F.S.; requiring that the annual  
83 | guardianship plan include information on the mental  
84 | condition of the ward; providing for an annual  
85 | guardianship plan for wards who are minors; amending s.  
86 | 744.3678, F.S.; providing that property of the ward which  
87 | is not under the control of the guardian, including  
88 | certain trusts, is not subject to annual accounting;  
89 | requiring certain documentation for the annual accounting;  
90 | amending s. 744.3679, F.S.; removing a provision  
91 | prohibiting the clerk of the court from having  
92 | responsibility for monitoring or auditing accounts in  
93 | certain cases; amending s. 744.368, F.S.; requiring that  
94 | the verified inventory and the accountings be audited  
95 | within a specified time period; amending s. 744.441, F.S.;  
96 | requiring the court to retain oversight for assets of a  
97 | ward transferred to a trust; creating s. 744.442, F.S.;  
98 | providing that a guardian may designate a surrogate  
99 | guardian to exercise the powers of the guardian if the  
100 | guardian is unavailable to act; requiring the surrogate  
101 | guardian to be a professional guardian; providing the  
102 | procedures to be used in appointing a surrogate guardian;  
103 | providing the duties of a surrogate guardian; requiring  
104 | the guardian to be liable for the acts of the surrogate  
105 | guardian; authorizing the guardian to terminate the  
106 | services of the surrogate guardian by filing a written  
107 | notice of the termination with the court; amending s.  
108 | 744.464, F.S.; removing the state attorney from the list

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

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

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

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

144 744.102 Definitions.--As used in this chapter, the term:

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

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

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.

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

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.

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:

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,  
 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,

329  
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) If an emergency temporary guardian is a guardian for  
400 the property, the final report must consist of a verified  
401 inventory of the property, as provided in s. 744.365, as of the  
402 date the letters of emergency temporary guardianship were  
403 issued, a final accounting that gives a full and correct account

404 of the receipts and disbursements of all the property of the  
405 ward over which the guardian had control, and a statement of the  
406 property of the ward on hand at the end of the emergency  
407 temporary guardianship. If the emergency temporary guardian  
408 becomes the successor guardian of the property, the final report  
409 must satisfy the requirements of the initial guardianship report  
410 for the guardian of the property as provided in s. 744.362.

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  
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 a criminal history record check as set forth in s. 744.3135, if  
 466 required. Letters of guardianship must then be issued in the  
 467 manner 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  
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 history  
510 record check by any method described in this subsection. A

511 guardian satisfies the requirements of this section by  
512 undergoing:

513 (a) An electronic fingerprint criminal history record  
514 check. A guardian may use any electronic fingerprinting  
515 equipment used for criminal history record checks of public  
516 employees. The guardian shall pay the actual costs incurred by  
517 the Federal Bureau of Investigation and the Department of Law  
518 Enforcement for the criminal history record check. The agency  
519 that operates the equipment used by the guardian may charge the  
520 guardian an additional fee, not to exceed \$10, for the use of  
521 the equipment. The agency completing the record check must  
522 immediately send the results of the criminal history record  
523 check to the clerk of the court and the Statewide Public  
524 Guardianship Office. The clerk of the court shall maintain the  
525 results in the guardian's file and shall make the results  
526 available to the court; or

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

538 results in the guardian's ~~a guardian~~ file and ~~shall~~ make the  
539 results available to the court and the Statewide Public  
540 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  
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 history record check if he or she has been screened using  
553 electronic fingerprinting equipment that is capable of notifying  
554 the clerk of the court of any crime charged against the person  
555 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 to the clerk of court. The clerk of court must forward  
572 any arrest record received for a professional guardian to the  
573 Statewide Public Guardianship Office within 5 days. Each  
574 guardian who elects to submit fingerprint information  
575 electronically shall participate in this search process by  
576 paying an annual fee to the Statewide Public Guardianship Office  
577 of the Department of Elderly Affairs and by informing the clerk  
578 of court and the Statewide Public Guardianship Office of any  
579 change in the status of his or her guardianship appointment. The  
580 amount of the annual fee to be imposed for performing these  
581 searches and the procedures for the retention of guardian  
582 fingerprints and the dissemination of search results shall be  
583 established by rule of the Department of Law Enforcement. At  
584 least once every 5 years, the Statewide Public Guardianship  
585 Office must request that the Department of Law Enforcement  
586 forward the fingerprints maintained under this section to the  
587 Federal Bureau of Investigation.

588        (4) (a) A professional guardian, and each employee of a  
589 professional guardian who has a fiduciary responsibility to a  
590 ward, must complete, at his or her own expense, an investigation

591 of his or her credit history before and at least once every 2  
592 years after the date of the guardian's appointment.

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

601 (5) The Statewide Public Guardianship Office may inspect  
602 at any time the results of any credit or criminal investigation  
603 of a public or professional guardian conducted under this  
604 section. The office shall maintain copies of the credit or  
605 criminal results in the guardian's registration file. If the  
606 results of a credit or criminal investigation of a public or  
607 professional guardian have not been forwarded to the Statewide  
608 Public Guardianship Office by the investigating agency, the  
609 clerk of the court shall forward copies of the results of the  
610 investigations to the office upon receiving them. ~~If credit or~~  
611 ~~criminal investigations are required, the court must consider~~  
612 ~~the results of the investigations before appointing a guardian.~~  
613 ~~Professional guardians and all employees of a professional~~  
614 ~~guardian who have a fiduciary responsibility to a ward, so~~  
615 ~~appointed, must resubmit, at their own expense, to an~~  
616 ~~investigation of credit history, and undergo level 1 background~~  
617 ~~screening as required under s. 435.03, at least every 2 years~~

618 ~~after the date of their appointment. At any time, the court may~~  
619 ~~require guardians or their employees to submit to an~~  
620 ~~investigation of credit history and undergo level 1 background~~  
621 ~~screening as required under s. 435.03. The court must consider~~  
622 ~~the results of these investigations in reappointing a guardian.~~

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

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

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

638 744.3145 Guardian education requirements.--

639 (4) Each person appointed by the court to be a guardian  
640 must complete the required number of hours of instruction and  
641 education within 4 months ~~1 year~~ after his or her appointment as  
642 guardian. The instruction and education must be completed  
643 through a course approved by the chief judge of the circuit  
644 court and taught by a court-approved organization. Court-



645 approved organizations may include, but are not limited to,  
 646 community or junior colleges, guardianship organizations, and  
 647 the local bar association or The Florida Bar.

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

650 744.3215 Rights of persons determined incapacitated.--

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

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

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

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

660 (b) To vote.

661 (c) To personally apply for government benefits.

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

663 (e) To travel.

664 (f) To seek or retain employment.

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

668 744.331 Procedures to determine incapacity.--

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

670 (a) When a court appoints an attorney for an alleged  
 671 incapacitated person, the court must appoint an attorney who is

672 included in the attorney registry compiled pursuant to ss. 27.40  
673 and 27.42 by the circuit's Article V indigent services  
674 committee. Appointments must be made on a rotating basis, taking  
675 into consideration conflicts arising under this chapter.

676 (b)-(a) The court shall appoint an attorney for each person  
677 alleged to be incapacitated in all cases involving a petition  
678 for adjudication of incapacity. The alleged incapacitated person  
679 may substitute her or his own attorney for the attorney  
680 appointed by the court.

681 (c)-(b) Any attorney representing an alleged incapacitated  
682 person may not serve as guardian of the alleged incapacitated  
683 person or as counsel for the guardian of the alleged  
684 incapacitated person or the petitioner.

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

692 (3) EXAMINING COMMITTEE.--

693 (a) Within 5 days after a petition for determination of  
694 incapacity has been filed, the court shall appoint an examining  
695 committee consisting of three members. One member must be a  
696 psychiatrist or other physician. The remaining members must be  
697 either a psychologist, gerontologist, another psychiatrist, or  
698 other physician, a registered nurse, nurse practitioner,

699 licensed social worker, a person with an advanced degree in  
700 gerontology from an accredited institution of higher education,  
701 or other person who by knowledge, skill, experience, training,  
702 or education may, in the court's discretion, advise the court in  
703 the form of an expert opinion. One of three members of the  
704 committee must have knowledge of the type of incapacity alleged  
705 in the petition. Unless good cause is shown, the attending or  
706 family physician may not be appointed to the committee. If the  
707 attending or family physician is available for consultation, the  
708 committee must consult with the physician. Members of the  
709 examining committee may not be related to or associated with one  
710 another, ~~or~~ with the petitioner, with counsel for the petitioner  
711 or the proposed guardian, or with the person alleged to be  
712 totally or partially incapacitated. A member may not be employed  
713 by any private or governmental agency that has custody of, or  
714 furnishes, services or subsidies, directly or indirectly, to the  
715 person or the family of the person alleged to be incapacitated  
716 or for whom a guardianship is sought. A petitioner may not serve  
717 as a member of the examining committee. Members of the examining  
718 committee must be able to communicate, either directly or  
719 through an interpreter, in the language that the alleged  
720 incapacitated person speaks or to communicate in a medium  
721 understandable to the alleged incapacitated person if she or he  
722 is able to communicate. The clerk of the court shall send notice  
723 of the appointment to each person appointed no later than 3 days  
724 after the court's appointment.

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

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

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

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

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

- 770            1. A physical examination;
- 771            2. A mental health examination; and
- 772            3. A functional assessment.

773  
774 If any of these three aspects of the examination is not  
775 indicated or cannot be accomplished for any reason, the written  
776 report must explain the reasons for its omission.

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

779            1. To the extent possible, a diagnosis, prognosis, and  
780 recommended course of treatment.

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

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

790            4. A description of any matters with respect to which the  
791 person lacks the capacity to exercise rights, the extent of that  
792 incapacity, and the factual basis for the determination that the  
793 person lacks that capacity.

794            5. The names of all persons present during the time the  
795 committee member conducted his or her examination. If a person  
796 other than the person who is the subject of the examination  
797 supplies answers posed to the alleged incapacitated person, the  
798 report must include the response and the name of the person  
799 supplying the answer.

800            ~~6.5-~~ The signature of each member of the committee member  
801 and the date and time the member conducted his or her  
802 examination.

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

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

811        (5) ADJUDICATORY HEARING.--

812        (a) Upon appointment of the examining committee, the court  
813 shall set the date upon which the petition will be heard. The  
814 date for the adjudicatory hearing must be set no more than 14  
815 days after the filing of the reports ~~report~~ of the examining  
816 committee members, unless good cause is shown. The adjudicatory  
817 hearing must be conducted at the time and place specified in the  
818 notice of hearing and in a manner consistent with due process.

819        (7) FEES.--

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

823        (b) The fees awarded under paragraph (a) shall be paid by  
824 the guardian from the property of the ward or, if the ward is  
825 indigent, by the state. The state shall have a creditor's claim  
826 against the guardianship property for any amounts paid under  
827 this section. The state may file its claim within 90 days after  
828 the entry of an order awarding attorney ad litem fees. If the  
829 state does not file its claim within the 90-day period, the

830 state is thereafter barred from asserting the claim. Upon  
831 petition by the state for payment of the claim, the court shall  
832 enter an order authorizing immediate payment out of the property  
833 of the ward. The state shall keep a record of the ~~such~~ payments.

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

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

840 744.341 Voluntary guardianship.--

841 (4) A guardian must include in the annual report filed  
842 with the court a certificate from a licensed physician who  
843 examined the ward not more than 90 days before the annual report  
844 is filed with the court. The certificate must certify that the  
845 ward is competent to understand the nature of the guardianship  
846 and of the ward's authority to delegate powers to the voluntary  
847 guardian.

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

850 744.361 Powers and duties of guardian.--

851 (9) A professional guardian must ensure that each of the  
852 guardian's wards is personally visited by the guardian or one of  
853 the guardian's professional staff at least once each calendar  
854 quarter. During the personal visit, the guardian or the  
855 guardian's professional staff person shall assess:

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



857        (b) The appropriateness of the ward's current living  
 858 situation.

859        (c) The need for any additional services and the necessity  
 860 for continuation of existing services, taking into consideration  
 861 all aspects of social, psychological, educational, direct  
 862 service, health, and personal care needs.

863  
 864 This subsection does not apply to a professional guardian who  
 865 has been appointed only as guardian of the property.

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

868        744.365 Verified inventory.--

869        (2) CONTENTS.--The verified inventory must include the  
 870 following:

871        (a) All property of the ward, real and personal, that has  
 872 come into the guardian's possession or knowledge, including a  
 873 statement of all encumbrances, liens, and other secured claims  
 874 on any item, any claims against the property, ~~and~~ any cause of  
 875 action accruing to the ward, and any trusts of which the ward is  
 876 a beneficiary.†

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

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

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

884 744.367 Duty to file annual guardianship report.--

885 (1) Unless the court requires filing on a calendar-year  
 886 basis, each guardian of the person shall file with the court an  
 887 annual guardianship plan within 90 days after the last day of  
 888 the anniversary month the letters of guardianship were signed,  
 889 and the plan must cover the coming fiscal year, ending on the  
 890 last day in such anniversary month. If the court requires  
 891 calendar-year filing, the guardianship plan must be filed on or  
 892 before April 1 of each year ~~within 90 days after the end of the~~  
 893 ~~calendar year.~~

894 (3) The annual guardianship report of a guardian of the  
 895 property must consist of an annual accounting, and the annual  
 896 report of a guardian of the person ~~of an incapacitated person~~  
 897 must consist of an annual guardianship plan. The annual report  
 898 shall be served on the ward, unless the ward is a minor ~~under~~  
 899 ~~the age of 14 years~~ or is totally incapacitated, and on the  
 900 attorney for the ward, if any. The guardian shall provide a copy  
 901 to any other person as the court may direct.

902 Section 16. Section 744.3675, Florida Statutes, is amended  
 903 to read:

904 744.3675 Annual guardianship plan.--Each guardian of the  
 905 person must file with the court an annual guardianship plan  
 906 which updates information about the condition of the ward. The  
 907 annual plan must specify the current needs of the ward and how  
 908 those needs are proposed to be met in the coming year.

909 (1) Each plan for an adult ward must, if applicable,  
 910 include:

911 (a) Information concerning the residence of the ward,  
 912 including:

- 913 1. The ward's address at the time of filing the plan.†
- 914 2. The name and address of each place where the ward was  
 915 maintained during the preceding year.†
- 916 3. The length of stay of the ward at each place.†
- 917 4. A statement of whether the current residential setting  
 918 is best suited for the current needs of the ward.†~~and~~
- 919 5. Plans for ensuring during the coming year that the ward  
 920 is in the best residential setting to meet his or her needs.

921 (b) Information concerning the medical and mental health  
 922 conditions ~~condition~~ and treatment and rehabilitation needs of  
 923 the ward, including:

- 924 1. A resume of any professional medical treatment given to  
 925 the ward during the preceding year.†
- 926 2. The report of a physician who examined the ward no more  
 927 than 90 days before the beginning of the applicable reporting  
 928 period. The ~~Such~~ report must contain an evaluation of the ward's  
 929 condition and a statement of the current level of capacity of  
 930 the ward.†~~and~~
- 931 3. The plan for providing ~~provision~~ of medical, mental  
 932 health, and rehabilitative services in the coming year.

933 (c) Information concerning the social condition of the  
 934 ward, including:

- 935 1. The social and personal services currently used  
 936 ~~utilized~~ by the ward.†

937           2. The social skills of the ward, including a statement of  
 938 how well the ward communicates and maintains interpersonal  
 939 relationships. ~~with others;~~

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

942           3.4. The social needs of the ward.

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

945           (a) Information concerning the residence of the minor,  
 946 including:

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

948           2. The name and address of each place the minor lived  
 949 during the preceding year.

950           (b) Information concerning the medical and mental health  
 951 conditions and treatment and rehabilitation needs of the minor,  
 952 including:

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

955           2. A report from the physician who examined the minor no  
 956 more than 180 days before the beginning of the applicable  
 957 reporting period that contains an evaluation of the minor's  
 958 physical and mental conditions.

959           3. The plan for providing medical services in the coming  
 960 year.

961           (c) Information concerning the education of the minor,  
 962 including:

963           1. A summary of the school progress report.

964           2. The social development of the minor, including a  
 965 statement of how well the minor communicates and maintains  
 966 interpersonal relationships.

967           3. The social needs of the minor.

968           ~~(3)(2)~~ Each plan for an adult ward must address the issue  
 969 of restoration of rights to the ward and include:

970           (a) A summary of activities during the preceding year that  
 971 ~~which~~ were designed to enhance ~~increase~~ the capacity of the  
 972 ward.~~†~~

973           (b) A statement of whether the ward can have any rights  
 974 restored.~~†~~ ~~and~~

975           (c) A statement of whether restoration of any rights will  
 976 be sought.

977           ~~(4)(3)~~ The court, in its discretion, may require  
 978 reexamination of the ward by a physician at any time.

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

981           744.3678 Annual accounting.--

982           (2) The annual accounting must include:

983           (a) A full and correct account of the receipts and  
 984 disbursements of all of the ward's property over which the  
 985 guardian has control and a statement of the ward's property on  
 986 hand at the end of the accounting period. This paragraph does  
 987 not apply to any property or any trust of which the ward is a  
 988 beneficiary but which is not under the control or administration  
 989 of the guardian.

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

993 (3) The guardian must obtain a receipt, ~~or~~ canceled check,  
 994 or other proof of payment for all expenditures and disbursements  
 995 made on behalf of the ward. The guardian must preserve all  
 996 evidence of payment ~~the receipts and canceled checks~~, along with  
 997 other substantiating papers, for a period of 3 years after his  
 998 or her discharge. The receipts, proofs of payment ~~checks~~, and  
 999 substantiating papers need not be filed with the court but shall  
 1000 be made available for inspection and review at the ~~such~~ time and  
 1001 ~~in such~~ place and before the ~~such~~ persons as the court may ~~from~~  
 1002 ~~time to time~~ order.

1003 Section 18. Section 744.3679, Florida Statutes, is amended  
 1004 to read:

1005 744.3679 Simplified accounting procedures in certain  
 1006 cases.--

1007 (1) In a guardianship of property, when all assets of the  
 1008 estate are in designated depositories under s. 69.031 and the  
 1009 only transactions that occur in that account are interest  
 1010 accrual, deposits from a ~~pursuant to~~ settlement, or financial  
 1011 institution service charges, the guardian may elect to file an  
 1012 accounting consisting of:

1013 (a) The original or a certified copy of the year-end  
 1014 statement of the ward's account from the financial institution;  
 1015 and

1016 (b) A statement by the guardian under penalty of perjury  
 1017 that the guardian has custody and control of the ward's property  
 1018 as shown in the year-end statement.

1019 ~~(2) The clerk has no responsibility to monitor or audit~~  
 1020 ~~the accounts and may not accept a fee for doing so.~~

1021 (2)~~(3)~~ The accounting allowed by subsection (1) is in lieu  
 1022 of the accounting and auditing procedures under s. 744.3678(2)  
 1023 ~~ss. 744.3678 and 744.368(1)(f)~~. However, any interested party  
 1024 may seek judicial review as provided in s. 744.3685.

1025 (3)~~(4)~~ The guardian need not be represented by an attorney  
 1026 in order to file the annual accounting allowed by subsection  
 1027 (1).

1028 Section 19. Subsection (3) of section 744.368, Florida  
 1029 Statutes, is amended to read:

1030 744.368 Responsibilities of the clerk of the circuit  
 1031 court.--

1032 (3) Within 90 days after the filing of the verified  
 1033 inventory and accountings ~~initial or annual guardianship report~~  
 1034 by a guardian of the property, the clerk shall audit the  
 1035 verified inventory and ~~or~~ the accountings ~~annual accounting~~. The  
 1036 clerk shall advise the court of the results of the audit.

1037 Section 20. Subsection (19) of section 744.441, Florida  
 1038 Statutes, is amended to read:

1039 744.441 Powers of guardian upon court approval.--After  
 1040 obtaining approval of the court pursuant to a petition for  
 1041 authorization to act, a plenary guardian of the property, or a  
 1042 limited guardian of the property within the powers granted by

1043 the order appointing the guardian or an approved annual or  
 1044 amended guardianship report, may:

1045 (19) Create or amend revocable trusts or create  
 1046 irrevocable trusts of property of the ward's estate which may  
 1047 extend beyond the disability or life of the ward in connection  
 1048 with estate, gift, income, or other tax planning or in  
 1049 connection with estate planning. The court shall retain  
 1050 oversight of the assets transferred to a trust, unless otherwise  
 1051 ordered by the court.

1052 Section 21. Section 744.442, Florida Statutes, is created  
 1053 to read:

1054 744.442 Delegation of authority.--

1055 (1) A guardian may designate a surrogate guardian to  
 1056 exercise the powers of the guardian if the guardian is  
 1057 unavailable to act. A person designated as a surrogate guardian  
 1058 under this section must be a professional guardian.

1059 (2)(a) A guardian must file a petition with the court  
 1060 requesting permission to designate a surrogate guardian.

1061 (b) If the court approves the designation, the order must  
 1062 specify the name and business address of the surrogate guardian  
 1063 and the duration of appointment, which may not exceed 30 days.  
 1064 The court may extend the appointment for good cause shown. The  
 1065 surrogate guardian may exercise all powers of the guardian  
 1066 unless limited by order of the court. The surrogate guardian  
 1067 must file with the court an oath swearing or affirming that he  
 1068 or she will faithfully perform the duties delegated. The court  
 1069 may require the surrogate guardian to post a bond.



1070           (3) This section does not limit the responsibility of the  
 1071 guardian to the ward and to the court. The guardian is liable  
 1072 for the acts of the surrogate guardian. The guardian may  
 1073 terminate the authority of the surrogate guardian by filing a  
 1074 written notice of the termination with the court.

1075           (4) The surrogate guardian is subject to the jurisdiction  
 1076 of the court as if appointed to serve as guardian.

1077           Section 22. Paragraphs (c), (e), and (f) of subsection (2)  
 1078 and subsection (4) of section 744.464, Florida Statutes, are  
 1079 amended to read:

1080           744.464 Restoration to capacity.--

1081           (2) SUGGESTION OF CAPACITY.--

1082           (c) The court shall immediately send notice of the filing  
 1083 of the suggestion of capacity to the ward, the guardian, the  
 1084 attorney for the ward, if any, ~~the state attorney,~~ and any other  
 1085 interested persons designated by the court. Formal notice must  
 1086 be served on the guardian. Informal notice may be served on  
 1087 other persons. Notice need not be served on the person who filed  
 1088 the suggestion of capacity.

1089           (e) If an objection is timely filed, or if the medical  
 1090 examination suggests that full restoration is not appropriate,  
 1091 the court shall set the matter for hearing. If the ward does not  
 1092 have an attorney, the court shall appoint one to represent the  
 1093 ward.

1094           (f) Notice of the hearing and copies of the objections and  
 1095 medical examination reports shall be served upon the ward, the  
 1096 ward's attorney, the guardian, ~~the state attorney,~~ the ward's

1097 next of kin, and any other interested persons as directed by the  
 1098 court.

1099 ~~(4) TIME LIMITATION FOR FILING SUGGESTION OF~~  
 1100 ~~CAPACITY. Notwithstanding this section, a suggestion of~~  
 1101 ~~capacity may not be filed within 90 days after an adjudication~~  
 1102 ~~of incapacity or denial of restoration, unless good cause is~~  
 1103 ~~shown.~~

1104 Section 23. Paragraph (a) of subsection (19) of section  
 1105 744.474, Florida Statutes, is amended, and paragraph (b) of that  
 1106 subsection is redesignated as subsection (20) of that section  
 1107 and amended, to read:

1108 744.474 Reasons for removal of guardian.--A guardian may  
 1109 be removed for any of the following reasons, and the removal  
 1110 shall be in addition to any other penalties prescribed by law:

1111 (19) Upon a showing by a person who did not receive notice  
 1112 of the petition for adjudication of incapacity, when such notice  
 1113 is required, or who is related to the ward within the  
 1114 relationships specified for nonresident relatives in ss.  
 1115 744.309(2) and 744.312(2) and who has not previously been  
 1116 rejected by the court as a guardian that+

1117 ~~(a)~~ the current guardian is not a family member, and  
 1118 subsection (20) applies.

1119 (20) ~~(b)~~ Upon a showing that removal of the current  
 1120 guardian is in the best interest of the ward. In determining  
 1121 whether a guardian who is related by blood or marriage to the  
 1122 ward is to be removed, there shall be a rebuttable presumption  
 1123 that the guardian is acting in the best interests of the ward,

1124  
1125 ~~the court may remove the current guardian and appoint the~~  
1126 ~~petitioner, or such person as the court deems in the best~~  
1127 ~~interest of the ward, either as guardian of the person or of the~~  
1128 ~~property, or both.~~

1129 Section 24. Section 744.511, Florida Statutes, is amended  
1130 to read:

1131 744.511 Accounting upon removal.--A removed guardian shall  
1132 file with the court a true, complete, and final report of his or  
1133 her guardianship within 20 days after removal and shall serve a  
1134 copy on the successor guardian and the ward, unless the ward is  
1135 a minor ~~under 14 years of age~~ or has been determined to be  
1136 totally incapacitated.

1137 Section 25. Section 744.527, Florida Statutes, is amended  
1138 to read:

1139 744.527 Final reports and application for discharge;  
1140 hearing.--

1141 (1) When the court terminates the guardianship for any of  
1142 the reasons set forth in s. 744.521, the guardian shall promptly  
1143 file his or her final report. If the ward has died, the guardian  
1144 must file a final report with the court no later than 45 days  
1145 after he or she has been served with letters of administration  
1146 or letters of curatorship. If no objections are filed and if it  
1147 appears that the guardian has made full and complete  
1148 distribution to the person entitled and has otherwise faithfully  
1149 discharged his or her duties, the court shall approve the final  
1150 report. If objections are filed, the court shall conduct a

1151 | hearing in the same manner as provided for a hearing on  
 1152 | objections to annual guardianship reports.

1153 |         (2) The guardian applying for discharge may ~~is authorized~~  
 1154 | ~~to~~ retain from the funds in his or her possession a sufficient  
 1155 | amount to pay the final costs of administration, including  
 1156 | guardian and attorney's fees regardless of the death of the  
 1157 | ward, accruing between the filing of his or her final returns  
 1158 | and the order of discharge.

1159 |         Section 26. Subsection (3) of section 744.528, Florida  
 1160 | Statutes, is amended to read:

1161 |         744.528 Discharge of guardian named as personal  
 1162 | representative.--

1163 |         (3) Any interested person may file a notice of ~~The court~~  
 1164 | ~~shall set~~ a hearing on any objections filed by the  
 1165 | beneficiaries. Notice of the hearing must ~~shall~~ be served upon  
 1166 | the guardian, beneficiaries of the ward's estate, and any other  
 1167 | person to whom the court directs service. If a notice of hearing  
 1168 | on the objections is not served within 90 days after filing of  
 1169 | the objections, the objections are deemed abandoned.

1170 |         Section 27. Subsections (5) through (8) of section  
 1171 | 744.708, Florida Statutes, are amended to read:

1172 |         744.708 Reports and standards.--

1173 |         (5) (a) Each office of public guardian shall undergo an  
 1174 | independent audit by a qualified certified public accountant  
 1175 | ~~shall be performed~~ at least once every 2 years. ~~The audit should~~  
 1176 | ~~include an investigation into the practices of the office for~~  
 1177 | ~~managing the person and property of the wards.~~ A copy of the

1178 audit report shall be submitted to the Statewide Public  
 1179 Guardianship Office.

1180 (b) In addition to regular monitoring activities, the  
 1181 Statewide Public Guardianship Office shall conduct an  
 1182 investigation into the practices of each office of public  
 1183 guardian related to the managing of each ward's personal affairs  
 1184 and property. When feasible, the investigation required under  
 1185 this paragraph shall be conducted in conjunction with the  
 1186 financial audit of each office of public guardian under  
 1187 paragraph (a).

1188 (c) In addition, each ~~the~~ office of public guardian shall  
 1189 be subject to audits or examinations by the Auditor General and  
 1190 the Office of Program Policy Analysis and Government  
 1191 Accountability pursuant to law.

1192 (6) A ~~The~~ public guardian shall ensure that each of the  
 1193 guardian's wards is personally visited ~~ward is seen~~ by the  
 1194 public guardian or by one of the guardian's a professional staff  
 1195 person at least once each calendar quarter ~~four times a year.~~  
 1196 During this personal visit, the public guardian or the  
 1197 professional staff person shall assess:

1198 (a) The ward's physical appearance and condition.

1199 (b) The appropriateness of the ward's current living  
 1200 situation.

1201 (c) The need for any additional services and the necessity  
 1202 for continuation of existing services, taking into consideration  
 1203 all aspects of social, psychological, educational, direct  
 1204 service, health, and personal care needs.

1205 (7) The ratio for professional staff to wards shall be 1  
 1206 professional to 40 wards. The Statewide Public Guardianship  
 1207 Office may increase or decrease the ratio after consultation  
 1208 with the local public guardian and the chief judge of the  
 1209 circuit court. The basis of the decision to increase or decrease  
 1210 the prescribed ratio shall be reported in the annual report to  
 1211 the Secretary of Elderly Affairs, the Governor, the President of  
 1212 the Senate, the Speaker of the House of Representatives, and the  
 1213 Chief Justice of the Supreme Court.

1214 ~~(8) The term "professional," for purposes of this part,~~  
 1215 ~~shall not include the public guardian nor the executive director~~  
 1216 ~~of the Statewide Public Guardianship Office. The term~~  
 1217 ~~"professional" shall be limited to those persons who exercise~~  
 1218 ~~direct supervision of individual wards under the direction of~~  
 1219 ~~the public guardian.~~

1220 Section 28. Paragraph (a) of subsection (5) of section  
 1221 765.101, Florida Statutes, is amended to read:

1222 765.101 Definitions.--As used in this chapter:

1223 (5) "Health care decision" means:

1224 (a) Informed consent, refusal of consent, or withdrawal of  
 1225 consent to any and all health care, including life-prolonging  
 1226 procedures and mental health treatment, unless otherwise stated  
 1227 in the advance directives.

1228 Section 29. Section 28.345, Florida Statutes, is amended  
 1229 to read:

1230 28.345 Exemption from court-related fees and  
 1231 charges.--Notwithstanding any other ~~provision of this chapter or~~

1232 law to the contrary, judges and those court staff acting on  
1233 behalf of judges, state attorneys, guardians ad litem, public  
1234 guardians, attorneys ad litem, court-appointed private counsel,  
1235 and public defenders, acting in their official capacity, and  
1236 state agencies, are exempt from all court-related fees and  
1237 charges assessed by the clerks of the circuit courts.

1238 Section 30. Paragraph (c) of subsection (8) of section  
1239 121.091, Florida Statutes, is amended to read:

1240 121.091 Benefits payable under the system.--Benefits may  
1241 not be paid under this section unless the member has terminated  
1242 employment as provided in s. 121.021(39)(a) or begun  
1243 participation in the Deferred Retirement Option Program as  
1244 provided in subsection (13), and a proper application has been  
1245 filed in the manner prescribed by the department. The department  
1246 may cancel an application for retirement benefits when the  
1247 member or beneficiary fails to timely provide the information  
1248 and documents required by this chapter and the department's  
1249 rules. The department shall adopt rules establishing procedures  
1250 for application for retirement benefits and for the cancellation  
1251 of such application when the required information or documents  
1252 are not received.

1253 (8) DESIGNATION OF BENEFICIARIES.--

1254 (c) Notwithstanding the member's designation of benefits  
1255 to be paid through a trust to a beneficiary that is a natural  
1256 person as provided in s. 121.021(46), and notwithstanding the  
1257 provisions of the trust, benefits shall be paid directly to the

1258 beneficiary if the ~~such~~ person is no longer a minor or an  
 1259 incapacitated person as defined in s. 744.102~~(11)~~ and ~~(12)~~.

1260 Section 31. Paragraph (c) of subsection (20) of section  
 1261 121.4501, Florida Statutes, is amended to read:

1262 121.4501 Public Employee Optional Retirement Program.--

1263 (20) DESIGNATION OF BENEFICIARIES.--

1264 (c) Notwithstanding the participant's designation of  
 1265 benefits to be paid through a trust to a beneficiary that is a  
 1266 natural person, and notwithstanding the provisions of the trust,  
 1267 benefits shall be paid directly to the beneficiary if the ~~such~~  
 1268 person is no longer a minor or an incapacitated person as  
 1269 defined in s. 744.102~~(11)~~ and ~~(12)~~.

1270 Section 32. Subsection (1) and paragraphs (b), (d), and  
 1271 (f) of subsection (4) of section 709.08, Florida Statutes, are  
 1272 amended to read:

1273 709.08 Durable power of attorney.--

1274 (1) CREATION OF DURABLE POWER OF ATTORNEY.--A durable  
 1275 power of attorney is a written power of attorney by which a  
 1276 principal designates another as the principal's attorney in  
 1277 fact. The durable power of attorney must be in writing, must be  
 1278 executed with the same formalities required for the conveyance  
 1279 of real property by Florida law, and must contain the words:  
 1280 "This durable power of attorney is not affected by subsequent  
 1281 incapacity of the principal except as provided in s. 709.08,  
 1282 Florida Statutes"; or similar words that show the principal's  
 1283 intent that the authority conferred is exercisable  
 1284 notwithstanding the principal's subsequent incapacity, except as



1285 otherwise provided by this section. The durable power of  
1286 attorney is exercisable as of the date of execution; however, if  
1287 the durable power of attorney is conditioned upon the  
1288 principal's lack of capacity to manage property as defined in s.  
1289 744.102(12)~~(11)~~(a), the durable power of attorney is exercisable  
1290 upon the delivery of affidavits in paragraphs (4)(c) and (d) to  
1291 the third party.

1292 (4) PROTECTION WITHOUT NOTICE; GOOD FAITH ACTS;  
1293 AFFIDAVITS.--

1294 (b) Any third party may rely upon the authority granted in  
1295 a durable power of attorney that is conditioned on the  
1296 principal's lack of capacity to manage property as defined in s.  
1297 744.102(12)~~(11)~~(a) only after receiving the affidavits provided  
1298 in paragraphs (c) and (d), and such reliance shall end when the  
1299 third party has received notice as provided in subsection (5).

1300 (d) A determination that a principal lacks the capacity to  
1301 manage property as defined in s. 744.102(12)~~(11)~~(a) must be made  
1302 and evidenced by the affidavit of a physician licensed to  
1303 practice medicine pursuant to chapters 458 and 459 as of the  
1304 date of the affidavit. A judicial determination that the  
1305 principal lacks the capacity to manage property pursuant to  
1306 chapter 744 is not required prior to the determination by the  
1307 physician and the execution of the affidavit. For purposes of  
1308 this section, the physician executing the affidavit must be the  
1309 primary physician who has responsibility for the treatment and  
1310 care of the principal. The affidavit executed by a physician  
1311 must state where the physician is licensed to practice medicine,

1312 that the physician is the primary physician who has  
 1313 responsibility for the treatment and care of the principal, and  
 1314 that the physician believes that the principal lacks the  
 1315 capacity to manage property as defined in s. 744.102 (12) ~~(11)~~ (a).  
 1316 The affidavit may, but need not, be in the following form:

1317  
 1318 STATE OF \_\_\_\_\_  
 1319 COUNTY OF \_\_\_\_\_

1320  
 1321 Before me, the undersigned authority, personally appeared  
 1322 (name of physician) , Affiant, who swore or affirmed that:

1323 1. Affiant is a physician licensed to practice medicine in  
 1324 (name of state, territory, or foreign country) .

1325 2. Affiant is the primary physician who has responsibility  
 1326 for the treatment and care of (principal's name) .

1327 3. To the best of Affiant's knowledge after reasonable  
 1328 inquiry, Affiant believes that the principal lacks the capacity  
 1329 to manage property, including taking those actions necessary to  
 1330 obtain, administer, and dispose of real and personal property,  
 1331 intangible property, business property, benefits, and income.

1332  
 1333  
 1334 \_\_\_\_\_  
 1335 (Affiant)

1336

1337 Sworn to (or affirmed) and subscribed before me this (day  
 1338 of) (month) , (year) , by (name of person making  
 1339 statement)

1340

1341 (Signature of Notary Public-State of Florida)

1342

1343 (Print, Type, or Stamp Commissioned Name of Notary Public)

1344

1345 Personally Known OR Produced Identification

1346 (Type of Identification Produced)

1347 (f) A third party may not rely on the authority granted in  
 1348 a durable power of attorney conditioned on the principal's lack  
 1349 of capacity to manage property as defined in s.

1350 744.102 (12) ~~(11)~~ (a) when any affidavit presented has been  
 1351 executed more than 6 months prior to the first presentation of  
 1352 the durable power of attorney to the third party.

1353 Section 33. Subsection (3) of section 744.1085, Florida  
 1354 Statutes, is amended to read:

1355 744.1085 Regulation of professional guardians;  
 1356 application; bond required; educational requirements.--

1357 (3) Each professional guardian defined in s.  
 1358 744.102 (17) ~~(16)~~ and public guardian must receive a minimum of 40  
 1359 hours of instruction and training. Each professional guardian  
 1360 must receive a minimum of 16 hours of continuing education every  
 1361 2 calendar years after the year in which the initial 40-hour  
 1362 educational requirement is met. The instruction and education  
 1363 must be completed through a course approved or offered by the

1364 Statewide Public Guardianship Office. The expenses incurred to  
1365 satisfy the educational requirements prescribed in this section  
1366 may not be paid with the assets of any ward. This subsection  
1367 does not apply to any attorney who is licensed to practice law  
1368 in this state.

1369 Section 34. For the purpose of incorporating the amendment  
1370 made by this act to section 744.3215, Florida Statutes, in a  
1371 reference thereto, subsection (4) of section 117.107, Florida  
1372 Statutes, is reenacted to read:

1373 117.107 Prohibited acts.--

1374 (4) A notary public may not take the acknowledgment of or  
1375 administer an oath to a person whom the notary public actually  
1376 knows to have been adjudicated mentally incapacitated by a court  
1377 of competent jurisdiction, where the acknowledgment or oath  
1378 necessitates the exercise of a right that has been removed  
1379 pursuant to s. 744.3215(2) or (3), and where the person has not  
1380 been restored to capacity as a matter of record.

1381 Section 35. This act shall take effect July 1, 2006.