

1 A bill to be entitled
2 An act relating to guardianship; amending s.
3 744.102, F.S.; defining the terms "audit" and
4 "surrogate guardian"; amending s. 744.1083,
5 F.S.; revising the information that is required
6 to identify a professional guardian; providing
7 that the Statewide Public Guardianship Office
8 need not review credit and criminal
9 investigations from a college or university
10 before registering the institution as a
11 professional guardian; amending s. 744.301,
12 F.S.; providing that in the event of death, the
13 surviving parent is the sole natural guardian
14 of a minor; prohibiting a natural guardian from
15 using the property of the ward for the
16 guardian's benefit without a court order;
17 creating s. 744.3025, F.S.; authorizing a court
18 to appoint a guardian ad litem to represent a
19 minor's interest in certain claims that exceed
20 a specified amount; requiring a court to
21 appoint a guardian ad litem to represent a
22 minor's interest in certain claims that exceed
23 a specified amount; providing that a court need
24 not appoint a guardian ad litem under certain
25 circumstances; requiring a court to award
26 reasonable fees and costs to the guardian ad
27 litem; amending s. 744.3031, F.S.; increasing
28 the time an emergency temporary guardian may
29 serve to 90 days; authorizing an extension;
30 requiring an emergency temporary guardian to
31 file a final report; providing for the contents

1 of the final report; amending s. 744.304, F.S.;
2 specifying the persons who may file a petition
3 for a standby guardian; requiring that notice
4 of the appointment hearing be served on the
5 ward's next of kin; clarifying when a standby
6 guardian may assume the duties of guardian;
7 requiring that each standby guardian submit to
8 credit and criminal background checks; amending
9 s. 744.3115, F.S.; providing a cross-reference;
10 amending s. 744.3135, F.S.; providing
11 procedures for completing a guardian's criminal
12 history record check; authorizing a guardian to
13 use electronic fingerprinting equipment that is
14 available for criminal history record checks of
15 public employees; providing that a guardian
16 need not be rescreened if he or she uses
17 certain electronic fingerprinting equipment;
18 requiring the Department of Law Enforcement to
19 retain electronically submitted fingerprints
20 and to enter them into the statewide automated
21 fingerprint identification system; requiring
22 the department to search all fingerprint cards
23 received from each guardian and each employee
24 of such guardian against fingerprints retained
25 in the statewide automated fingerprint
26 identification system; requiring a guardian to
27 pay an annual fee to the clerk of court for the
28 background investigation; requiring a guardian
29 and each employee of such guardian to complete
30 an investigation of his or her credit history;
31 requiring the Statewide Public Guardianship

1 Office to adopt a rule for credit
2 investigations of guardians; authorizing the
3 office to inspect the results of any criminal
4 or credit investigation; amending s. 744.3145,
5 F.S.; reducing the time in which a guardian
6 must complete the education courses from 1 year
7 to 4 months; amending s. 744.3215, F.S.;
8 providing that an incapacitated person retains
9 the right to receive necessary services and
10 rehabilitation necessary to maximize the
11 quality of the person's life; amending s.
12 744.331, F.S.; requiring that the court appoint
13 an attorney from a specified registry;
14 requiring attorneys to complete certain
15 training programs; providing that a member of
16 the examining committee may not be related to
17 or associated with certain persons; prohibiting
18 a person who served on an examining committee
19 from being appointed as the guardian; requiring
20 each member of an examining committee to file
21 an affidavit stating that he or she has
22 completed the mandatory training; providing for
23 training programs; requiring each member to
24 file a report regarding his or her examination
25 of an alleged incapacitated person; providing
26 for an award of attorney's fees; amending s.
27 744.341, F.S.; requiring the voluntary guardian
28 to include certain information in the annual
29 report; amending s. 744.361, F.S.; requiring a
30 professional guardian to ensure that each of
31 his or her wards is personally visited at least

1 quarterly; providing for the assessment of
2 certain conditions during the personal visit;
3 amending s. 744.365, F.S.; requiring that the
4 verified inventory include information on any
5 trust to which a ward is a beneficiary;
6 amending s. 744.367, F.S.; requiring that the
7 annual report of the guardian be filed on or
8 before April 1 of each year; amending s.
9 744.3675, F.S.; requiring that the annual
10 guardianship plan include information on the
11 mental condition of the ward; providing for an
12 annual guardianship plan for wards who are
13 minors; amending s. 744.3678, F.S.; providing
14 that property of or a trust benefiting the ward
15 which is not under the control of the guardian
16 is not subject to annual accounting; requiring
17 certain documentation for the annual
18 accounting; amending s. 744.3679, F.S.;
19 removing a provision prohibiting the clerk of
20 court from having responsibility for monitoring
21 or auditing accounts in certain cases; amending
22 s. 744.368, F.S.; requiring that the verified
23 inventory and the accountings be audited within
24 a specified time period; amending s. 744.441,
25 F.S.; providing that a guardian, with the
26 approval of the court, may amend a revocable
27 trust of the property of the ward; creating s.
28 744.442, F.S.; providing that a guardian may
29 designate a surrogate guardian to exercise the
30 powers of the guardian if the guardian is
31 unavailable to act; requiring the surrogate

1 guardian to be a professional guardian;
2 providing the procedures to be used in
3 appointing a surrogate guardian; providing the
4 duties of a surrogate guardian; requiring the
5 guardian to be liable for the acts of the
6 surrogate guardian; authorizing the guardian to
7 terminate the services of the surrogate
8 guardian by filing a written notice of the
9 termination with the court; amending s.
10 744.464, F.S.; removing the state attorney from
11 the list of persons to be served a notice of a
12 hearing on restoration of capacity; removing a
13 time limitation on the filing of a suggestion
14 of capacity; amending s. 744.474, F.S.;
15 revising the circumstances under which a
16 guardian may be removed; providing a rebuttable
17 presumption that certain relatives act in the
18 best interests of the ward; amending s.
19 744.511, F.S.; providing that a ward who is a
20 minor need not be served with the final report
21 of a removed guardian; amending s. 744.527,
22 F.S.; providing that final reports for a
23 deceased ward be filed at a specified time;
24 amending s. 744.528, F.S.; providing for a
25 notice of the hearing for objections to a
26 report filed by a guardian; amending s.
27 744.708, F.S.; requiring each office of public
28 guardian to undergo an audit; requiring the
29 Statewide Public Guardianship Office to conduct
30 an investigation into the practices of each
31 office of public guardian; requiring a report

1 to the Secretary of Elderly Affairs; deleting a
2 definition; requiring a public guardian to
3 ensure that each of his or her wards is
4 personally visited at least quarterly;
5 providing for the assessment of certain
6 conditions during the personal visit; amending
7 s. 765.101, F.S.; redefining the term "health
8 care decision" to include informed consent for
9 mental health treatment services; amending ss.
10 121.091, 121.4501, 709.08, and 744.1085, F.S.;
11 conforming cross-references; reenacting s.
12 117.107(4), F.S., relating to prohibited acts
13 of a notary public, to incorporate the
14 amendment made to s. 744.3215, F.S., in a
15 reference thereto; providing an effective date.
16

17 Be It Enacted by the Legislature of the State of Florida:
18

19 Section 1. Section 744.102, Florida Statutes, is
20 amended to read:

21 744.102 Definitions.--As used in this chapter, the
22 term:

23 (1) "Attorney for the alleged incapacitated person"
24 means an attorney who represents the alleged incapacitated
25 person. ~~The~~ ~~Such~~ attorney shall represent the expressed wishes
26 of the alleged incapacitated person to the extent it is
27 consistent with the rules regulating The Florida Bar.

28 (2) "Audit" means a systematic review of financial and
29 all other documents to ensure compliance with s. 744.368,
30 rules of court, and local procedures, using generally accepted
31 auditing and accounting principles.

1 ~~(3)(2)~~ "Clerk" means the clerk or deputy clerk of the
2 court.

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

6 ~~(5)(4)~~ "Court" means the circuit court.

7 ~~(6)(5)~~ "Court monitor" means a person appointed by the
8 court under ~~pursuant to~~ s. 744.107 to provide the court with
9 information concerning a ward.

10 ~~(7)(6)~~ "Estate" means the property of a ward subject
11 to administration.

12 ~~(8)(7)~~ "Foreign guardian" means a guardian appointed
13 in another state or country.

14 ~~(9)(8)~~ "Guardian" means a person who has been
15 appointed by the court to act on behalf of a ward's person or
16 property, or both.

17 (a) "Limited guardian" means a guardian who has been
18 appointed by the court to exercise the legal rights and powers
19 specifically designated by court order entered after the court
20 has found that the ward lacks the capacity to do some, but not
21 all, of the tasks necessary to care for his or her person or
22 property, or after the person has voluntarily petitioned for
23 appointment of a limited guardian.

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

29 ~~(10)(9)~~ "Guardian ad litem" means a person who is
30 appointed by the court having jurisdiction of the guardianship
31

1 or a court in which a particular legal matter is pending to
2 represent a ward in that proceeding.

3 ~~(11)~~~~(10)~~ "Guardian advocate" means a person appointed
4 by a written order of the court to represent a person with
5 developmental disabilities under s. 393.12. As used in this
6 chapter, the term does not apply to a guardian advocate
7 appointed for a person determined incompetent to consent to
8 treatment under s. 394.4598.

9 ~~(12)~~~~(11)~~ "Incapacitated person" means a person who has
10 been judicially determined to lack the capacity to manage at
11 least some of the property or to meet at least some of the
12 essential health and safety requirements of ~~the~~ ~~such~~ person.

13 (a) To "manage property" means to take those actions
14 necessary to obtain, administer, and dispose of real and
15 personal property, intangible property, business property,
16 benefits, and income.

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

22 ~~(13)~~~~(12)~~ "Minor" means a person under 18 years of age
23 whose disabilities have not been removed by marriage or
24 otherwise.

25 ~~(14)~~~~(13)~~ "Next of kin" means those persons who would
26 be heirs at law of the ward or alleged incapacitated person if
27 ~~the~~ ~~such~~ person were deceased and includes the lineal
28 descendants of ~~the~~ ~~such~~ ward or alleged incapacitated person.

29 ~~(15)~~~~(14)~~ "Nonprofit corporate guardian" means a
30 nonprofit corporation organized for religious or charitable
31 purposes and existing under the laws of this state.

1 ~~(16)~~~~(15)~~ "Preneed guardian" means a person named in a
2 written declaration to serve as guardian in the event of the
3 incapacity of the declarant as provided in s. 744.3045.

4 ~~(17)~~~~(16)~~ "Professional guardian" means any guardian
5 who ~~receives or~~ has at any time ~~received compensation for~~
6 ~~services~~ rendered services to three or more ~~than two~~ wards as
7 their guardian. A person serving as a guardian for two or more
8 relatives as defined in s. 744.309(2) is not considered a
9 professional guardian. A public guardian shall be considered a
10 professional guardian for purposes of regulation, education,
11 and registration.

12 ~~(18)~~~~(17)~~ "Property" means both real and personal
13 property or any interest in it and anything that may be the
14 subject of ownership.

15 ~~(19)~~~~(18)~~ "Standby guardian" means a person empowered
16 to assume the duties of guardianship upon the death or
17 adjudication of incapacity of the last surviving natural or
18 appointed guardian.

19 ~~(20)~~ "Surrogate guardian" means a guardian designated
20 according to s. 744.442.

21 ~~(21)~~~~(19)~~ "Totally incapacitated" means incapable of
22 exercising any of the rights enumerated in s. 744.3215(2) and
23 (3).

24 ~~(22)~~~~(20)~~ "Ward" means a person for whom a guardian has
25 been appointed.

26 Section 2. Subsections (3), (7), and (10) of section
27 744.1083, Florida Statutes, are amended to read:

28 744.1083 Professional guardian registration.--

29 (3) Registration must include the following:

30 (a) Sufficient information to identify the
31 professional guardian.

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

4 ~~2.(b)~~ If the professional guardian is a partnership or
5 association, the name, address, and ~~date of birth of every~~
6 ~~member, and the~~ employer identification number of the entity
7 ~~partnership or association~~.

8 ~~(c)~~ ~~If the professional guardian is a corporation, the~~
9 ~~name, address, and employer identification number of the~~
10 ~~corporation; the name, address, and date of birth of each of~~
11 ~~its directors and officers; the name of its resident agent;~~
12 ~~and the name, address, and date of birth of each person having~~
13 ~~at least a 10 percent interest in the corporation.~~

14 ~~(d)~~ ~~The name, address, date of birth, and employer~~
15 ~~identification number, if applicable, of each person providing~~
16 ~~guardian delegated financial or personal guardianship services~~
17 ~~for wards.~~

18 ~~(b)(e)~~ Documentation that the bonding and educational
19 requirements of s. 744.1085 have been met.

20 ~~(c)(f)~~ Sufficient information to distinguish a
21 guardian providing guardianship services as a public guardian,
22 individually, through partnership, corporation, or any other
23 business organization.

24 (7) A trust company, a state banking corporation or
25 state savings association authorized and qualified to exercise
26 fiduciary powers in this state, or a national banking
27 association or federal savings and loan association authorized
28 and qualified to exercise fiduciary powers in this state, may,
29 but is not required to, register as a professional guardian
30 under this section. If a trust company, state banking
31 corporation, state savings association, national banking

1 association, or federal savings and loan association described
 2 in this subsection elects to register as a professional
 3 guardian under this subsection, the requirements of
 4 subsections (3) and (4) do not apply and the registration must
 5 include only the name, address, and employer identification
 6 number of the registrant, the name and address of its
 7 registered agent, if any, and the documentation described in
 8 paragraph (3)(b)(e).

9 (10) A state college or university or an independent
 10 college or university described in s. 1009.98(3)(a), may, but
 11 is not required to, register as a professional guardian under
 12 this section. If a state college or university or independent
 13 college or university elects to register as a professional
 14 guardian under this subsection, the requirements of
 15 subsections (3) and (4) ~~subsection (3)~~ do not apply and the
 16 registration must include only the name, address, and employer
 17 identification number of the registrant.

18 Section 3. Section 744.301, Florida Statutes, is
 19 amended to read:

20 744.301 Natural guardians.--

21 (1) The mother and father jointly are natural
 22 guardians of their own children and of their adopted children,
 23 during minority. If one parent dies, the surviving parent
 24 remains the sole natural guardian even if he or she the
 25 ~~natural guardianship shall pass to the surviving parent, and~~
 26 ~~the right shall continue even though the surviving parent~~
 27 remarries. If the marriage between the parents is dissolved,
 28 the natural guardianship belongs ~~shall belong~~ to the parent to
 29 whom ~~the~~ custody of the child is awarded. If the parents are
 30 given joint custody, then both ~~shall~~ continue as natural
 31 guardians. If the marriage is dissolved and neither the

1 father nor the mother is given custody of the child, neither
2 shall act as natural guardian of the child. The mother of a
3 child born out of wedlock is the natural guardian of the child
4 and is entitled to primary residential care and custody of the
5 child unless a court of competent jurisdiction enters an order
6 stating otherwise.

7 (2) The natural ~~guardian or~~ guardians are authorized,
8 on behalf of any of their minor children, to:

9 (a) Settle and consummate a settlement of any claim or
10 cause of action accruing to any of their minor children for
11 damages to the person or property of any of said minor
12 children;

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

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

17 (d) Collect, receive, manage, and dispose of and make
18 elections regarding the proceeds from a life insurance policy
19 or annuity contract payable to, or otherwise accruing to the
20 benefit of, the child; and

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

25
26 without appointment, authority, or bond, when the amounts
27 received, in the aggregate, do ~~amount involved in any instance~~
28 ~~does~~ not exceed \$15,000.

29 (3) All instruments executed by a natural guardian for
30 the benefit of the ward under the powers specified ~~provided~~
31 ~~for~~ in subsection (2) shall be binding on the ward. The

1 natural guardian may not, without a court order, use the
2 property of the ward for the guardian's benefit or to satisfy
3 the guardian's support obligation to the ward.

4 ~~(4)(a) In any case where a minor has a claim for~~
5 ~~personal injury, property damage, or wrongful death in which~~
6 ~~the gross settlement for the claim of the minor exceeds~~
7 ~~\$15,000, the court may, prior to the approval of the~~
8 ~~settlement of the minor's claim, appoint a guardian ad litem~~
9 ~~to represent the minor's interests. In any case in which the~~
10 ~~gross settlement involving a minor equals or exceeds \$25,000,~~
11 ~~the court shall, prior to the approval of the settlement of~~
12 ~~the minor's claim, appoint a guardian ad litem to represent~~
13 ~~the minor's interests. The appointment of the guardian ad~~
14 ~~litem must be without the necessity of bond or a notice. The~~
15 ~~duty of the guardian ad litem is to protect the minor's~~
16 ~~interests. The procedure for carrying out that duty is as~~
17 ~~prescribed in the Florida Probate Rules. If a legal guardian~~
18 ~~of the minor has previously been appointed and has no~~
19 ~~potential adverse interest to the minor, the court may not~~
20 ~~appoint a guardian ad litem to represent the minor's~~
21 ~~interests, unless the court determines that the appointment is~~
22 ~~otherwise necessary.~~

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

26 Section 4. Section 744.3025, Florida Statutes, is
27 created to read:

28 744.3025 Claims of minors.--

29 (1)(a) The court may appoint a guardian ad litem to
30 represent the minor's interest, before approving a settlement
31 of the minor's portion of the claim, in any case in which a

1 minor has a claim for personal injury, property damage,
2 wrongful death, or other cause of action in which the gross
3 settlement of the claim exceeds \$15,000.

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

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

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

13 (e) A court need not appoint a guardian ad litem for
14 the child if a guardian of the minor has previously been
15 appointed and that guardian has no potential adverse interest
16 to the minor. A court may appoint a guardian ad litem if the
17 court believes a guardian ad litem is necessary to protect the
18 interests of the minor.

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

22 Section 5. Subsection (3) of section 744.3031, Florida
23 Statutes, is amended, and subsection (8) is added to that
24 section, to read:

25 744.3031 Emergency temporary guardianship.--

26 (3) The authority of an emergency temporary guardian
27 expires 90 ~~60~~ days after the date of appointment or when a
28 guardian is appointed, whichever occurs first. The authority
29 of the emergency temporary guardian may be extended for an
30 additional 90 ~~30~~ days upon a showing that the emergency
31 conditions still exist.

1 (8)(a) An emergency temporary guardian shall file a
2 final report no later than 30 days after the expiration of the
3 emergency temporary guardianship.

4 (b) If an emergency temporary guardian is a guardian
5 for the property, the final report must consist of a verified
6 inventory of the property, as provided in s. 744.365, as of
7 the date the letters of emergency temporary guardianship were
8 issued, a final accounting that gives a full and correct
9 account of the receipts and disbursements of all the property
10 of the ward over which the guardian had control, and a
11 statement of the property of the ward on hand at the end of
12 the emergency temporary guardianship. If the emergency
13 temporary guardian becomes the successor guardian of the
14 property, the final report must satisfy the requirements of
15 the initial guardianship report for the guardian of the
16 property as provided in s. 744.362.

17 (c) If the emergency temporary guardian is a guardian
18 of the person, the final report must summarize the activities
19 of the temporary guardian with regard to residential
20 placement, medical condition, mental health and rehabilitative
21 services, and the social condition of the ward to the extent
22 of the authority granted to the temporary guardian in the
23 letters of guardianship. If the emergency temporary guardian
24 becomes the successor guardian of the person, the report must
25 satisfy the requirements of the initial report for a guardian
26 of the person as stated in s. 744.362.

27 (d) A copy of the final report of the emergency
28 temporary guardianship shall be served on the successor
29 guardian and the ward.

30 Section 6. Section 744.304, Florida Statutes, is
31 amended to read:

1 744.304 Standby guardianship.--

2 (1) Upon a petition by the natural guardians or a
3 guardian appointed under s. 744.3021, the court may appoint a
4 standby guardian of the person or property of a minor ~~or~~
5 ~~consent of both parents, natural or adoptive, if living, or of~~
6 ~~the surviving parent, a standby guardian of the person or~~
7 ~~property of a minor may be appointed by the court.~~ The court
8 may also appoint an alternate to the guardian to act if the
9 standby guardian does not serve or ceases to serve after
10 appointment. Notice of a hearing on the petition must be
11 served on the parents, natural or adoptive, and on any
12 guardian currently serving unless the notice is waived in
13 writing by them or waived by the court for good cause shown
14 ~~shall renounce, die, or become incapacitated after the death~~
15 ~~of the last surviving parent of the minor.~~

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

20 (3) The standby guardian or alternate shall be
21 empowered to assume the duties of guardianship ~~his or her~~
22 ~~office~~ immediately on the death, removal, or resignation of
23 the guardian of a minor, or on the death or adjudication of
24 incapacity of the last surviving natural guardian ~~or adoptive~~
25 ~~parent~~ of a minor, or upon the death, removal, or resignation
26 of the guardian for an adult. ~~The; however, such a~~ guardian of
27 the ward's property may not be empowered to deal with the
28 ward's property, other than to safeguard it, before ~~prior to~~
29 issuance of letters of guardianship. If the ward
30 ~~incapacitated person~~ is over the age of 18 years, the court
31 shall conduct a hearing as provided in s. 744.331 before

1 confirming the appointment of the standby guardian, unless the
2 ward has previously been found to be incapacitated.

3 (4) Within 20 days after assumption of duties as
4 guardian, a standby guardian shall petition for confirmation
5 of appointment. If the court finds the standby guardian to be
6 qualified to serve as guardian under ~~pursuant to~~ ss. 744.309
7 and 744.312, appointment of the guardian must be confirmed.
8 Each guardian so confirmed shall file an oath in accordance
9 with s. 744.347, ~~and~~ shall file a bond, and shall submit to a
10 credit and criminal investigation as set forth in s. 744.3135,
11 if required. Letters of guardianship must then be issued in
12 the manner provided in s. 744.345.

13 (5) After the assumption of duties by a standby
14 guardian, the court shall have jurisdiction over the guardian
15 and the ward.

16 Section 7. Section 744.3115, Florida Statutes, is
17 amended to read:

18 744.3115 Advance directives for health care.--In each
19 proceeding in which a guardian is appointed under this
20 chapter, the court shall determine whether the ward, prior to
21 incapacity, has executed any valid advance directive under
22 ~~pursuant to~~ chapter 765. If any ~~such~~ advance directive exists,
23 the court shall specify in its order and letters of
24 guardianship what authority, if any, the guardian shall
25 exercise over the surrogate. Pursuant to the grounds listed in
26 s. 765.105, the court, upon its own motion, may, with notice
27 to the surrogate and any other appropriate parties, modify or
28 revoke the authority of the surrogate to make health care
29 decisions for the ward. For purposes of this section, the term
30 "health care decision" has the same meaning as in s. 765.101.
31

1 Section 8. Section 744.3135, Florida Statutes, is
2 amended to read:

3 744.3135 Credit and criminal investigation.--

4 (1) The court may require a nonprofessional guardian
5 and shall require a professional or public guardian, and all
6 employees of a professional guardian who have a fiduciary
7 responsibility to a ward, to submit, at their own expense, to
8 an investigation of the guardian's credit history and to
9 undergo level 2 background screening as required under s.
10 435.04. ~~If a credit or criminal history record check is~~
11 ~~required, the court must consider the results of any~~
12 ~~investigation before appointing a guardian. At any time, the~~
13 ~~court may require a guardian or its employees to submit to an~~
14 ~~investigation of the person's credit history and complete a~~
15 ~~level 1 background screening as set forth in s. 435.03. The~~
16 ~~court shall consider the results of any investigation when~~
17 ~~reappointing a guardian. The clerk of the court shall maintain~~
18 ~~a file on each guardian appointed by the court and retain in~~
19 ~~the file documentation of the result of any investigation~~
20 ~~conducted under this section. A professional guardian must pay~~
21 ~~the clerk of the court a fee of up to \$7.50 for handling and~~
22 ~~processing professional guardian files.~~

23 (2) The court and the Statewide Public Guardianship
24 Office shall accept the satisfactory completion of a criminal
25 history record check by any method described in this
26 subsection. A guardian satisfies the requirements of this
27 section by undergoing:

28 (a) An electronic fingerprint criminal history record
29 check. A guardian may use any electronic fingerprinting
30 equipment used for criminal history record checks of public
31 employees. The guardian shall pay the actual costs incurred by

1 the Federal Bureau of Investigation and the Department of Law
2 Enforcement for the criminal history record check. The agency
3 that operates the equipment used by the guardian may charge
4 the guardian an additional fee, not to exceed \$10, for the use
5 of the equipment. The agency completing the investigation must
6 immediately send the results of the criminal history record
7 check to the clerk of the court and the Statewide Public
8 Guardianship Office. The clerk of the court shall maintain the
9 results in the guardian's file and shall make the results
10 available to the court; or

11 (b) A criminal history record check using a
12 fingerprint card. The clerk of the court shall obtain
13 fingerprint cards from the Federal Bureau of Investigation and
14 make them available to guardians. Any guardian who is so
15 required shall have his or her fingerprints taken and forward
16 the proper fingerprint card along with the necessary fee to
17 the Florida Department of Law Enforcement for processing. ~~The~~
18 ~~professional guardian shall pay to the clerk of the court a~~
19 ~~fee of up to \$7.50 for handling and processing professional~~
20 ~~guardian files.~~ The results of the fingerprint card criminal
21 history record checks shall be forwarded to the clerk of the
22 court who shall maintain the results in the guardian's a
23 ~~guardian~~ file and shall make the results available to the
24 court and the Statewide Public Guardianship Office. If credit
25 ~~or criminal investigations are required, the court must~~
26 ~~consider the results of the investigations before appointing a~~
27 ~~guardian. Professional guardians and all employees of a~~
28 ~~professional guardian who have a fiduciary responsibility to a~~
29 ~~ward, so appointed, must resubmit, at their own expense, to an~~
30 ~~investigation of credit history, and undergo level 1~~
31 ~~background screening as required under s. 435.03, at least~~

1 ~~every 2 years after the date of their appointment. At any~~
2 ~~time, the court may require guardians or their employees to~~
3 ~~submit to an investigation of credit history and undergo level~~
4 ~~1 background screening as required under s. 435.03. The court~~
5 ~~must consider the results of these investigations in~~
6 ~~reappointing a guardian.~~

7 (3)(a) A professional guardian, and each employee of a
8 professional guardian who has a fiduciary responsibility to a
9 ward, must complete, at his or her own expense, a level 2
10 background screening as set forth in s. 435.04 before and at
11 least once every 5 years after the date the guardian is
12 appointed. A professional guardian, and each employee of a
13 professional guardian who has a fiduciary responsibility to a
14 ward, must complete, at his or her own expense, a level 1
15 background screening as set forth in s. 435.03 at least once
16 every 2 years after the date the guardian is appointed.
17 However, a person is not required to resubmit fingerprints for
18 a criminal history record check if he or she has been screened
19 using electronic fingerprinting equipment and the fingerprints
20 are retained by the Department of Law Enforcement in order to
21 notify the clerk of the court of any crime charged against the
22 person in the State of Florida or elsewhere as appropriate.

23 (b) Effective December 15, 2006, all fingerprints
24 electronically submitted to the Department of Law Enforcement
25 under this section shall be retained by the Department of Law
26 Enforcement in a manner provided by rule and entered in the
27 statewide automated fingerprint identification system
28 authorized by s. 943.05(2)(b). The fingerprints shall
29 thereafter be available for all purposes and uses authorized
30 for arrest fingerprint cards entered in the statewide
31 automated fingerprint identification system under s. 943.051.

1 (c) Effective December 15, 2006, the Department of Law
2 Enforcement shall search all arrest fingerprint cards received
3 under s. 943.051 against the fingerprints retained in the
4 statewide automated fingerprint identification system under
5 paragraph (b). Any arrest record that is identified with the
6 fingerprints of a person described in this paragraph must be
7 reported as soon as possible to the clerk of court. The clerk
8 of court must forward any arrest record received for a
9 professional guardian to the Statewide Public Guardianship
10 Office within 5 days. Each guardian who elects to submit
11 fingerprint information electronically shall participate in
12 this search process by paying an annual fee to the clerk of
13 court and by informing the clerk of court of any change in the
14 status of his or her guardianship appointment. The amount of
15 the annual fee to be imposed upon each clerk of court for
16 performing these searches and the procedures for the retention
17 of guardian fingerprints and the dissemination of search
18 results shall be established by rule of the Department of Law
19 Enforcement. The fee may be borne by the clerk of court or the
20 guardian, but may not exceed \$10.

21 (4)(a) A professional guardian, and each employee of a
22 professional guardian who has a fiduciary responsibility to a
23 ward, must complete, at his or her own expense, an
24 investigation of the credit history of the person before and
25 at least once every 2 years after the date of the guardian's
26 appointment.

27 (b) The Statewide Public Guardianship Office shall
28 adopt a rule detailing the acceptable methods for completing a
29 credit investigation under this section. If appropriate, the
30 Statewide Public Guardianship Office may administer credit
31 investigations. If the office chooses to administer the credit

1 investigation, the office may adopt a rule setting a fee, not
2 to exceed \$25, to reimburse the costs associated with the
3 administration of a credit investigation.

4 (5) The Statewide Public Guardianship Office may
5 inspect at any time the results of any credit or criminal
6 investigation of a public or professional guardian conducted
7 under this section. The office shall maintain copies of the
8 credit or criminal history record results in the guardian's
9 registration file. If the results of a credit or criminal
10 investigation of a public or professional guardian have not
11 been forwarded to the Statewide Public Guardianship Office by
12 the investigating agency, the clerk of the court shall forward
13 copies of the results of the investigations to the office upon
14 receiving them.

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

20 (6)(2) The requirements of this section do does not
21 apply to a professional guardian, or to the employees of a
22 professional guardian, which is a trust company, a state
23 banking corporation or state savings association authorized
24 and qualified to exercise fiduciary powers in this state, or a
25 national banking association or federal savings and loan
26 association authorized and qualified to exercise fiduciary
27 powers in this state.

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

30 744.3145 Guardian education requirements.--
31

1 (4) Each person appointed by the court to be a
2 guardian must complete the required number of hours of
3 instruction and education within 4 months ~~1 year~~ after his or
4 her appointment as guardian. The instruction and education
5 must be completed through a course approved by the chief judge
6 of the circuit court and taught by a court-approved
7 organization. Court-approved organizations may include, but
8 are not limited to, community or junior colleges, guardianship
9 organizations, and the local bar association or The Florida
10 Bar.

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

14 744.3215 Rights of persons determined incapacitated.--

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

17 (i) To receive necessary services and rehabilitation
18 necessary to maximize the quality of life.

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

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

25 (b) To vote.

26 (c) To personally apply for government benefits.

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

28 (e) To travel.

29 (f) To seek or retain employment.

30 Section 11. Subsections (2), (3), (5), and (7) of
31 section 744.331, Florida Statutes, are amended to read:

1 744.331 Procedures to determine incapacity.--

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

3 (a) When a court appoints an attorney for an alleged
4 incapacitated person, the court must appoint an attorney who
5 is included in the attorney registry compiled pursuant to ss.
6 27.40 and 27.42 by the circuit's Article V indigent services
7 committee. Appointments must be made on a rotating basis,
8 taking into consideration conflicts arising under this
9 chapter.

10 ~~(b)(a)~~ The court shall appoint an attorney for each
11 person alleged to be incapacitated in all cases involving a
12 petition for adjudication of incapacity. The alleged
13 incapacitated person may substitute her or his own attorney
14 for the attorney appointed by the court.

15 ~~(c)(b)~~ Any attorney representing an alleged
16 incapacitated person may not serve as guardian of the alleged
17 incapacitated person or as counsel for the guardian of the
18 alleged incapacitated person or the petitioner.

19 (d) Effective January 1, 2007, an attorney seeking to
20 be appointed by a court for incapacity and guardianship
21 proceedings must have completed a minimum of 8 hours of
22 education in guardianship. A court may waive the initial
23 training requirement for an attorney who has served as a
24 court-appointed attorney in incapacity proceedings or as an
25 attorney of record for guardians for not less than 3 years.

26 (3) EXAMINING COMMITTEE.--

27 (a) Within 5 days after a petition for determination
28 of incapacity has been filed, the court shall appoint an
29 examining committee consisting of three members. One member
30 must be a psychiatrist or other physician. The remaining
31 members must be either a psychologist, gerontologist, another

1 psychiatrist, or other physician, a registered nurse, nurse
2 practitioner, licensed social worker, a person with an
3 advanced degree in gerontology from an accredited institution
4 of higher education, or other person who by knowledge, skill,
5 experience, training, or education may, in the court's
6 discretion, advise the court in the form of an expert opinion.
7 One of three members of the committee must have knowledge of
8 the type of incapacity alleged in the petition. Unless good
9 cause is shown, the attending or family physician may not be
10 appointed to the committee. If the attending or family
11 physician is available for consultation, the committee must
12 consult with the physician. Members of the examining
13 committee may not be related to or associated with one
14 another, ~~or~~ with the petitioner, with counsel for the
15 petitioner or the proposed guardian, or the person alleged to
16 be totally or partially incapacitated. A member may not be
17 employed by any private or governmental agency that has
18 custody of, or furnishes, services or subsidies, directly or
19 indirectly, to the person or the family of the person alleged
20 to be incapacitated or for whom a guardianship is sought. A
21 petitioner may not serve as a member of the examining
22 committee. Members of the examining committee must be able to
23 communicate, either directly or through an interpreter, in the
24 language that the alleged incapacitated person speaks or to
25 communicate in a medium understandable to the alleged
26 incapacitated person if she or he is able to communicate. The
27 clerk of the court shall send notice of the appointment to
28 each person appointed no later than 3 days after the court's
29 appointment.

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

1 incapacitated person may not thereafter be appointed as a
2 guardian for the person who was the subject of the
3 examination.

4 (c) Each person appointed to an examining committee
5 must file an affidavit with the court stating that he or she
6 has completed the required courses or will do so no later than
7 4 months after his or her initial appointment. Each year, the
8 chief judge of the circuit must prepare a list of persons
9 qualified to be members of the examining committee.

10 (d) A member of an examining committee must complete a
11 minimum of 4 hours of initial training. The person must
12 complete 2 hours of continuing education during each 2-year
13 period after the initial training. The initial training and
14 continuing education program must be developed under the
15 supervision of the Statewide Public Guardianship Office, in
16 consultation with the Florida Conference of Circuit Court
17 Judges, the Elder Law and Real Property, Probate and Trust Law
18 sections of The Florida Bar, the Florida State Guardianship
19 Association, and the Florida Guardianship Foundation. The
20 court may waive the initial training requirement for a person
21 who has served for not less than 5 years on examining
22 committees. If a person wishes to obtain his or her continuing
23 education on the Internet or by watching a video course, the
24 person must first obtain the approval of the chief judge
25 before taking an Internet or video course.

26 (e)(b) Each member of the examining committee shall
27 examine the person. ~~Each~~ ~~The~~ ~~examining committee member must~~
28 ~~shall~~ determine the alleged incapacitated person's ability to
29 exercise those rights specified in s. 744.3215. In addition to
30 the examination, ~~each~~ ~~the~~ ~~examining committee member must~~
31 ~~shall~~ have access to, and may consider, previous examinations

1 of the person, including, but not limited to, habilitation
2 plans, school records, and psychological and psychosocial
3 reports voluntarily offered for use by the alleged
4 incapacitated person. Each member of the examining committee
5 must ~~shall~~ submit a report within 15 days after appointment.

6 ~~(f)(e)~~ The examination of the alleged incapacitated
7 person must include a comprehensive examination, a report of
8 which shall be filed by each ~~the~~ examining committee member as
9 part of his or her ~~its~~ written report. The comprehensive
10 examination report should be an essential element, but not
11 necessarily the only element, used in making a capacity and
12 guardianship decision. The comprehensive examination must
13 include, if indicated:

- 14 1. A physical examination;
- 15 2. A mental health examination; and
- 16 3. A functional assessment.

17
18 If any of these three aspects of the examination is not
19 indicated or cannot be accomplished for any reason, the
20 written report must explain the reasons for its omission.

21 ~~(g)(d)~~ Each committee member's ~~The committee's~~ written
22 report must include:

- 23 1. To the extent possible, a diagnosis, prognosis, and
24 recommended course of treatment.
- 25 2. An evaluation of the alleged incapacitated person's
26 ability to retain her or his rights, including, without
27 limitation, the rights to marry; vote; contract; manage or
28 dispose of property; have a driver's license; determine her or
29 his residence; consent to medical treatment; and make
30 decisions affecting her or his social environment.

31

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

4 4. A description of any matters with respect to which
5 the person lacks the capacity to exercise rights, the extent
6 of that incapacity, and the factual basis for the
7 determination that the person lacks that capacity.

8 5. The names of all persons present during the time
9 the committee member conducted his or her examination. If a
10 person other than the person who is the subject of the
11 examination supplies answers posed to the alleged
12 incapacitated person, the report must include the response and
13 the name of the person supplying the answer.

14 ~~6.5.~~ The signature of ~~each member~~ of the committee
15 member and the date and time the member conducted his or her
16 examination.

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

21 (5) ADJUDICATORY HEARING.--

22 (a) Upon appointment of the examining committee, the
23 court shall set the date upon which the petition will be
24 heard. The date for the adjudicatory hearing must be set no
25 more than 14 days after the filing of the ~~reports~~ report of
26 the examining committee members, unless good cause is shown.
27 The adjudicatory hearing must be conducted at the time and
28 place specified in the notice of hearing and in a manner
29 consistent with due process.

30 (b) The alleged incapacitated person must be present
31 at the adjudicatory hearing, unless waived by the alleged

1 incapacitated person or the person's attorney or unless good
2 cause can be shown for her or his absence. Determination of
3 good cause rests in the sound discretion of the court.

4 (c) In the adjudicatory hearing on a petition alleging
5 incapacity, the partial or total incapacity of the person must
6 be established by clear and convincing evidence.

7 (7) FEES.--

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

11 (b) The fees awarded under paragraph (a) shall be paid
12 by the guardian from the property of the ward or, if the ward
13 is indigent, by the state. The state shall have a creditor's
14 claim against the guardianship property for any amounts paid
15 under this section. The state may file its claim within 90
16 days after the entry of an order awarding attorney ad litem
17 fees. If the state does not file its claim within the 90-day
18 period, the state is thereafter barred from asserting the
19 claim. Upon petition by the state for payment of the claim,
20 the court shall enter an order authorizing immediate payment
21 out of the property of the ward. The state shall keep a record
22 of the ~~such~~ payments.

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

27 Section 12. Present subsection (4) of section 744.341,
28 Florida Statutes, is redesignated as subsection (5), and a new
29 subsection (4) is added to that section, to read:

30 744.341 Voluntary guardianship.--
31

1 (4) A guardian must include in the annual report filed
2 with the court a certificate from a licensed physician who
3 examined the ward not more than 90 days before the annual
4 report is filed with the court. The certificate must certify
5 that the ward is competent to understand the nature of the
6 guardianship and of the ward's authority to delegate powers to
7 the voluntary guardian.

8 ~~(5)(4)~~ A voluntary guardianship may be terminated by
9 the ward by filing a notice with the court that the voluntary
10 guardianship is terminated. A copy of the notice must be
11 served on all interested persons.

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

14 744.361 Powers and duties of guardian.--

15 (9) A professional guardian must ensure that each of
16 the guardian's wards is personally visited by the guardian or
17 one of the guardian's professional staff at least once each
18 calendar quarter. During the personal visit, the guardian or
19 the guardian's professional staff person must assess:

20 (a) The ward's physical appearance and condition;

21 (b) The appropriateness of the ward's current living
22 situation; and

23 (c) The need for any additional services and the
24 necessity for continuation of existing services, taking into
25 consideration all aspects of social, psychological,
26 educational, direct service, health, and personal care needs.

27
28 This subsection does not apply to a professional guardian who
29 has been appointed only as guardian of the property.

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

1 744.365 Verified inventory.--

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

4 (a) All property of the ward, real and personal, that
5 has come into the guardian's possession or knowledge,
6 including a statement of all encumbrances, liens, and other
7 secured claims on any item, any claims against the property,
8 and any cause of action accruing to the ward and any trusts of
9 which the ward is a beneficiary;

10 (b) The location of the real and personal property in
11 sufficient detail so that it may be clearly identified or
12 located; and

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

15 Section 15. Subsections (1) and (3) of section
16 744.367, Florida Statutes, are amended to read:

17 744.367 Duty to file annual guardianship report.--

18 (1) Unless the court requires filing on a
19 calendar-year basis, each guardian of the person shall file
20 with the court an annual guardianship plan within 90 days
21 after the last day of the anniversary month the letters of
22 guardianship were signed, and the plan must cover the coming
23 fiscal year, ending on the last day in such anniversary month.
24 If the court requires calendar-year filing, the guardianship
25 plan must be filed on or before April 1 of each year ~~within 90~~
26 ~~days after the end of the calendar year.~~

27 (3) The annual guardianship report of a guardian of
28 the property must consist of an annual accounting, and the
29 annual report of a guardian of the person ~~of an incapacitated~~
30 ~~person~~ must consist of an annual guardianship plan. The annual
31 report shall be served on the ward, unless the ward is a minor

1 ~~under the age of 14 years~~ or is totally incapacitated, and on
2 the attorney for the ward, if any. The guardian shall provide
3 a copy to any other person as the court may direct.

4 Section 16. Section 744.3675, Florida Statutes, is
5 amended to read:

6 744.3675 Annual guardianship plan.--Each guardian of
7 the person must file with the court an annual guardianship
8 plan which updates information about the condition of the
9 ward. The annual plan must specify the current needs of the
10 ward and how those needs are proposed to be met in the coming
11 year.

12 (1) Each plan for an adult ward must, if applicable,
13 include:

14 (a) Information concerning the residence of the ward,
15 including:

- 16 1. The ward's address at the time of filing the plan;
- 17 2. The name and address of each place where the ward
18 was maintained during the preceding year;
- 19 3. The length of stay of the ward at each place;
- 20 4. A statement of whether the current residential
21 setting is best suited for the current needs of the ward; and
- 22 5. Plans for ensuring during the coming year that the
23 ward is in the best residential setting to meet his or her
24 needs.

25 (b) Information concerning the medical and mental
26 health conditions ~~condition~~ and treatment and rehabilitation
27 needs of the ward, including:

- 28 1. A resume of any professional medical treatment
29 given to the ward during the preceding year;
- 30 2. The report of a physician who examined the ward no
31 more than 90 days before the beginning of the applicable

1 reporting period. ~~The Such~~ report must contain an evaluation
2 of the ward's condition and a statement of the current level
3 of capacity of the ward; and

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

6 (c) Information concerning the social condition of the
7 ward, including:

8 1. The social and personal services currently used
9 ~~utilized~~ by the ward;

10 2. The social skills of the ward, including a
11 statement of how well the ward communicates and maintains
12 interpersonal relationships with others; and

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

15 ~~3.4.~~ The social needs of the ward.

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

18 (a) Information concerning the residence of the minor,
19 including:

20 1. The minor's address at the time of filing the plan;
21 and

22 2. The name and address of each place where the minor
23 lived during the preceding year.

24 (b) Information concerning the medical and mental
25 health conditions and treatment and rehabilitation needs of
26 the minor, including:

27 1. A resume of any professional medical treatment
28 given to the minor during the preceding year;

29 2. A report from the physician who examined the minor
30 no more than 180 days before the beginning of the applicable
31

1 reporting period which contains an evaluation of the minor's
2 physical and mental conditions; and

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

5 (c) Information concerning the education of the minor,
6 including:

7 1. A summary of the school progress report;

8 2. The social development of the minor, including a
9 statement of how well the minor communicates and maintains
10 interpersonal relationships with others; and

11 3. The social needs of the minor.

12 ~~(3)(2)~~ Each plan for an adult ward must address the
13 issue of restoration of rights to the ward and include:

14 (a) A summary of activities during the preceding year
15 which were designed to enhance ~~increase~~ the capacity of the
16 ward;

17 (b) A statement of whether the ward can have any
18 rights restored; and

19 (c) A statement of whether restoration of any rights
20 will be sought.

21 ~~(4)(3)~~ The court, in its discretion, may require
22 reexamination of the ward by a physician at any time.

23 Section 17. Subsections (2) and (3) of section
24 744.3678, Florida Statutes, are amended to read:

25 744.3678 Annual accounting.--

26 (2) The annual accounting must include:

27 (a) A full and correct account of the receipts and
28 disbursements of all of the ward's property over which the
29 guardian has control and a statement of the ward's property on
30 hand at the end of the accounting period. This paragraph does
31 not apply to any property or any trust of which the ward is a

1 beneficiary but which is not under the control or
 2 administration of the guardian.

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

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

16 Section 18. Section 744.3679, Florida Statutes, is
 17 amended to read:

18 744.3679 Simplified accounting procedures in certain
 19 cases.--

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

26 (a) The original or a certified copy of the year-end
 27 statement of the ward's account from the financial
 28 institution; and

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

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

3 ~~(2)(3)~~ The accounting allowed by subsection (1) is in
4 lieu of the accounting and auditing procedures under s.
5 744.3678(2) ~~ss. 744.3678 and 744.368(1)(f)~~. However, any
6 interested party may seek judicial review as provided in s.
7 744.3685.

8 ~~(3)(4)~~ The guardian need not be represented by an
9 attorney in order to file the annual accounting allowed by
10 subsection (1).

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

13 744.368 Responsibilities of the clerk of the circuit
14 court.--

15 (3) Within 90 days after the filing of the verified
16 inventory and accountings ~~initial or annual guardianship~~
17 ~~report~~ by a guardian of the property, the clerk shall audit
18 the verified inventory and ~~or~~ the accountings ~~annual~~
19 ~~accounting~~. The clerk shall advise the court of the results of
20 the audit.

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

23 744.441 Powers of guardian upon court approval.--After
24 obtaining approval of the court pursuant to a petition for
25 authorization to act, a plenary guardian of the property, or a
26 limited guardian of the property within the powers granted by
27 the order appointing the guardian or an approved annual or
28 amended guardianship report, may:

29 (19) Create or amend revocable trusts or create
30 irrevocable trusts of property of the ward's estate which may
31 extend beyond the disability or life of the ward in connection

1 with estate, gift, income, or other tax planning or in
2 connection with estate planning.

3 Section 21. Section 744.442, Florida Statutes, is
4 created to read:

5 744.442 Delegation of authority.--

6 (1) A guardian may designate a surrogate guardian to
7 exercise the powers of the guardian if the guardian is
8 unavailable to act. A person designated as a surrogate
9 guardian under this section must be a professional guardian.

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

12 (b) If the court approves the designation, the order
13 must specify the name and business address of the surrogate
14 guardian, and the duration of appointment, which may not
15 exceed 30 days. The court may extend the appointment for good
16 cause shown. The surrogate guardian may exercise all powers of
17 the guardian unless limited by order of the court. The
18 surrogate guardian must file with the court an oath swearing
19 or affirming that he or she will faithfully perform the duties
20 delegated. The court may require the surrogate guardian to
21 post a bond.

22 (3) This section does not limit the responsibility of
23 the guardian to the ward and to the court. The guardian is
24 liable for the acts of the surrogate guardian. The guardian
25 may terminate the authority of the surrogate guardian by
26 filing a written notice of the termination with the court.

27 (4) The surrogate guardian is subject to the
28 jurisdiction of the court as if appointed to serve as
29 guardian.

30
31

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

4 744.464 Restoration to capacity.--

5 (2) SUGGESTION OF CAPACITY.--

6 (c) The court shall immediately send notice of the
7 filing of the suggestion of capacity to the ward, the
8 guardian, the attorney for the ward, if any, ~~the state~~
9 ~~attorney~~, and any other interested persons designated by the
10 court. Formal notice must be served on the guardian.
11 Informal notice may be served on other persons. Notice need
12 not be served on the person who filed the suggestion of
13 capacity.

14 (e) If an objection is timely filed, or if the medical
15 examination suggests that full restoration is not appropriate,
16 the court shall set the matter for hearing. If the ward does
17 not have an attorney, the court shall appoint one to represent
18 the ward.

19 (f) Notice of the hearing and copies of the objections
20 and medical examination reports shall be served upon the ward,
21 the ward's attorney, the guardian, ~~the state attorney~~, the
22 ward's next of kin, and any other interested persons as
23 directed by the court.

24 ~~(4) TIME LIMITATION FOR FILING SUGGESTION OF~~
25 ~~CAPACITY. Notwithstanding this section, a suggestion of~~
26 ~~capacity may not be filed within 90 days after an adjudication~~
27 ~~of incapacity or denial of restoration, unless good cause is~~
28 ~~shown.~~

29 Section 23. Section 744.474, Florida Statutes, is
30 amended to read:

31

1 744.474 Reasons for removal of guardian.--A guardian
2 may be removed for any of the following reasons, and the
3 removal shall be in addition to any other penalties prescribed
4 by law:

5 (1) Fraud in obtaining her or his appointment.

6 (2) Failure to discharge her or his duties.

7 (3) Abuse of her or his powers.

8 (4) An incapacity or illness, including substance
9 abuse, which renders the guardian incapable of discharging her
10 or his duties.

11 (5) Failure to comply with any order of the court.

12 (6) Failure to return schedules of property sold or
13 accounts of sales of property or to produce and exhibit the
14 ward's assets when so required.

15 (7) The wasting, embezzlement, or other mismanagement
16 of the ward's property.

17 (8) Failure to give bond or security for any purpose
18 when required by the court or failure to file with the annual
19 guardianship plan the evidence required by s. 744.351 that the
20 sureties on her or his bond are alive and solvent.

21 (9) Conviction of a felony.

22 (10) Appointment of a receiver, trustee in bankruptcy,
23 or liquidator for any corporate guardian.

24 (11) Development of a conflict of interest between the
25 ward and the guardian.

26 (12) Having been found guilty of, regardless of
27 adjudication, or entered a plea of nolo contendere or guilty
28 to, any offense prohibited under s. 435.03 or under any
29 similar statute of another jurisdiction.

30 (13) A material failure to comply with the
31 guardianship report by the guardian.

1 (14) A failure to comply with the rules for timely
2 filing the initial and annual guardianship reports.

3 (15) A failure to fulfill the guardianship education
4 requirements.

5 (16) The improper management of the ward's assets.

6 (17) A material change in the ward's financial
7 circumstances such that the guardian is no longer qualified to
8 manage the finances of the ward, or the previous degree of
9 management is no longer required.

10 (18) After appointment, the guardian becomes a
11 disqualified person as set forth in s. 744.309(3).

12 (19) Upon a showing by a person who did not receive
13 notice of the petition for adjudication of incapacity, when
14 such notice is required, or who is related to the ward within
15 the relationships specified for nonresident relatives in ss.
16 744.309(2) and 744.312(2) and who has not previously been
17 rejected by the court as a guardian that+

18 ~~(a)~~ the current guardian is not a family member+ and
19 subsection (20) applies, in which case the court may remove
20 the current guardian and appoint the petitioner, or such
21 person as the court deems in the best interest of the ward, as
22 guardian of the person or of the property, or both.

23 ~~(20)(b)~~ Upon a showing that removal of the current
24 guardian is in the best interest of the ward. In determining
25 whether a guardian who is related by blood or marriage to the
26 ward is to be removed, there shall be a rebuttable presumption
27 that the guardian is acting in the best interests of the
28 ward., the court may remove the current guardian and appoint
29 the petitioner, or such person as the court deems in the best
30 interest of the ward, either as guardian of the person or of
31 the property, or both.

1 Section 24. Section 744.511, Florida Statutes, is
2 amended to read:

3 744.511 Accounting upon removal.--A removed guardian
4 shall file with the court a true, complete, and final report
5 of his or her guardianship within 20 days after removal and
6 shall serve a copy on the successor guardian and the ward,
7 unless the ward is a minor ~~under 14 years of age~~ or has been
8 determined to be totally incapacitated.

9 Section 25. Section 744.527, Florida Statutes, is
10 amended to read:

11 744.527 Final reports and application for discharge;
12 hearing.--

13 (1) When the court terminates the guardianship,
14 according to the reasons set forth in s. 744.521 the guardian
15 shall promptly file his or her final report. If the ward has
16 died, the guardian must file a final report with the court no
17 later than 45 days after he or she has been served with
18 letters of administration or letters of curatorship. If no
19 objections are filed and if it appears that the guardian has
20 made full and complete distribution to the person entitled and
21 has otherwise faithfully discharged his or her duties, the
22 court shall approve the final report. If objections are
23 filed, the court shall conduct a hearing in the same manner as
24 provided for a hearing on objections to annual guardianship
25 reports.

26 (2) The guardian applying for discharge may is
27 ~~authorized to~~ retain from the funds in his or her possession a
28 sufficient amount to pay the final costs of administration,
29 including guardian and attorney's fees regardless of the death
30 of the ward, accruing between the filing of his or her final
31 returns and the order of discharge.

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

3 744.528 Discharge of guardian named as personal
4 representative.--

5 (3) Any interested person may file a notice of ~~The~~
6 ~~court shall set~~ a hearing on any objections filed by the
7 beneficiaries. Notice of the hearing ~~must shall~~ be served upon
8 the guardian, beneficiaries of the ward's estate, and any
9 other person to whom the court directs service. If a notice of
10 hearing on the objections is not served within 90 days after
11 filing of the objections, the objections are deemed abandoned.

12 Section 27. Subsections (5) through (8) of section
13 744.708, Florida Statutes, are amended to read:

14 744.708 Reports and standards.--

15 (5)(a) Each office of public guardian shall undergo an
16 independent audit by a qualified certified public accountant
17 ~~shall be performed~~ at least once every 2 years. ~~The audit~~
18 ~~should include an investigation into the practices of the~~
19 ~~office for managing the person and property of the wards.~~ A
20 copy of the audit report shall be submitted to the Statewide
21 Public Guardianship Office.

22 (b) In addition to regular monitoring activities, the
23 Statewide Public Guardianship Office shall conduct an
24 investigation into the practices of each office of public
25 guardian related to the managing of the personal affairs and
26 property of each ward. When feasible, the investigation
27 required under this paragraph should be conducted in
28 conjunction with the financial audit of each office.

29 (c) In addition, each ~~the~~ office of public guardian
30 shall be subject to audits or examinations by the Auditor
31

1 General and the Office of Program Policy Analysis and
2 Government Accountability pursuant to law.

3 (6) A ~~The~~ public guardian shall ensure that each of
4 the guardian's wards is personally visited ~~ward is seen~~ by the
5 public guardian or by a professional staff person of the
6 public guardian at least once each calendar quarter ~~four times~~
7 ~~a year~~. During this personal visit, the public guardian or the
8 professional staff person shall assess:

9 (a) The ward's physical and mental appearance and
10 condition;

11 (b) The appropriateness of the ward's current living
12 situation; and

13 (c) The need for any additional services and the
14 necessity for continuation of existing services, taking into
15 consideration all aspects of social, psychological,
16 educational, direct service, health, and personal care needs.

17 (7) The ratio for professional staff to wards shall be
18 1 professional to 40 wards. The Statewide Public Guardianship
19 Office may increase or decrease the ratio after consultation
20 with the local public guardian and the chief judge of the
21 circuit court. The basis of the decision to increase or
22 decrease the prescribed ratio shall be reported in the annual
23 report to the Secretary of Elderly Affairs, the Governor, the
24 President of the Senate, the Speaker of the House of
25 Representatives, and the Chief Justice of the Supreme Court.

26 ~~(8) The term "professional," for purposes of this~~
27 ~~part, shall not include the public guardian nor the executive~~
28 ~~director of the Statewide Public Guardianship Office. The term~~
29 ~~"professional" shall be limited to those persons who exercise~~
30 ~~direct supervision of individual wards under the direction of~~
31 ~~the public guardian.~~

1 Section 28. Paragraph (a) of subsection (5) of section
2 765.101, Florida Statutes, is amended to read:

3 765.101 Definitions.--As used in this chapter:

4 (5) "Health care decision" means:

5 (a) Informed consent, refusal of consent, or
6 withdrawal of consent to any and all health care, including
7 life-prolonging procedures and mental health treatment, unless
8 otherwise stated in the advance directives.

9 Section 29. Paragraph (c) of subsection (8) of section
10 121.091, Florida Statutes, is amended to read:

11 121.091 Benefits payable under the system.--Benefits
12 may not be paid under this section unless the member has
13 terminated employment as provided in s. 121.021(39)(a) or
14 begun participation in the Deferred Retirement Option Program
15 as provided in subsection (13), and a proper application has
16 been filed in the manner prescribed by the department. The
17 department may cancel an application for retirement benefits
18 when the member or beneficiary fails to timely provide the
19 information and documents required by this chapter and the
20 department's rules. The department shall adopt rules
21 establishing procedures for application for retirement
22 benefits and for the cancellation of such application when the
23 required information or documents are not received.

24 (8) DESIGNATION OF BENEFICIARIES.--

25 (c) Notwithstanding the member's designation of
26 benefits to be paid through a trust to a beneficiary that is a
27 natural person as provided in s. 121.021(46), and
28 notwithstanding the provisions of the trust, benefits shall be
29 paid directly to the beneficiary if the ~~such~~ person is no
30 longer a minor or incapacitated as defined in s. 744.102(12)
31 and (13) ~~s. 744.102(11) and (12)~~.

1 Section 30. Paragraph (c) of subsection (20) of
2 section 121.4501, Florida Statutes, is amended to read:

3 121.4501 Public Employee Optional Retirement
4 Program.--

5 (20) DESIGNATION OF BENEFICIARIES.--

6 (c) Notwithstanding the participant's designation of
7 benefits to be paid through a trust to a beneficiary that is a
8 natural person, and notwithstanding the provisions of the
9 trust, benefits shall be paid directly to the beneficiary if
10 such person is no longer a minor or incapacitated as defined
11 in s. 744.102(12) and (13) ~~s. 744.102(11) and (12)~~.

12 Section 31. Subsection (1) and paragraphs (b), (d),
13 and (f) of subsection (4) of section 709.08, Florida Statutes,
14 are amended to read:

15 709.08 Durable power of attorney.--

16 (1) CREATION OF DURABLE POWER OF ATTORNEY.--A durable
17 power of attorney is a written power of attorney by which a
18 principal designates another as the principal's attorney in
19 fact. The durable power of attorney must be in writing, must
20 be executed with the same formalities required for the
21 conveyance of real property by Florida law, and must contain
22 the words: "This durable power of attorney is not affected by
23 subsequent incapacity of the principal except as provided in
24 s. 709.08, Florida Statutes"; or similar words that show the
25 principal's intent that the authority conferred is exercisable
26 notwithstanding the principal's subsequent incapacity, except
27 as otherwise provided by this section. The durable power of
28 attorney is exercisable as of the date of execution; however,
29 if the durable power of attorney is conditioned upon the
30 principal's lack of capacity to manage property as defined in
31 s. 744.102(12)(a) ~~s. 744.102(11)(a)~~, the durable power of

1 attorney is exercisable upon the delivery of affidavits in
2 paragraphs (4)(c) and (d) to the third party.

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

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

12 (d) A determination that a principal lacks the
13 capacity to manage property as defined in s. 744.102(12)(a) ~~s-~~
14 ~~744.102(11)(a)~~ must be made and evidenced by the affidavit of
15 a physician licensed to practice medicine pursuant to chapters
16 458 and 459 as of the date of the affidavit. A judicial
17 determination that the principal lacks the capacity to manage
18 property pursuant to chapter 744 is not required prior to the
19 determination by the physician and the execution of the
20 affidavit. For purposes of this section, the physician
21 executing the affidavit must be the primary physician who has
22 responsibility for the treatment and care of the principal.
23 The affidavit executed by a physician must state where the
24 physician is licensed to practice medicine, that the physician
25 is the primary physician who has responsibility for the
26 treatment and care of the principal, and that the physician
27 believes that the principal lacks the capacity to manage
28 property as defined in s. 744.102(11)(a). The affidavit may,
29 but need not, be in the following form:

30
31 STATE OF.....

1 COUNTY OF.....

2

3 Before me, the undersigned authority, personally
4 appeared ...(name of physician)..., Affiant, who swore or
5 affirmed that:

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

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

12 3. To the best of Affiant's knowledge after reasonable
13 inquiry, Affiant believes that the principal lacks the
14 capacity to manage property, including taking those actions
15 necessary to obtain, administer, and dispose of real and
16 personal property, intangible property, business property,
17 benefits, and income.

18

19
20 ...(Affiant)...

21

22 Sworn to (or affirmed) and subscribed before me this
23 ...(day of)... ...(month)..., ...(year)..., by ...(name of
24 person making statement)...

25

26 ...(Signature of Notary Public-State of Florida)...

27

28 ...(Print, Type, or Stamp Commissioned Name of Notary
29 Public)...

30

31 Personally Known OR Produced Identification

1 | ...(Type of Identification Produced)...

2 |
3 | (f) A third party may not rely on the authority
4 | granted in a durable power of attorney conditioned on the
5 | principal's lack of capacity to manage property as defined in
6 | s. 744.102(12)(a) ~~s. 744.102(11)(a)~~ when any affidavit
7 | presented has been executed more than 6 months prior to the
8 | first presentation of the durable power of attorney to the
9 | third party.

10 | Section 32. Subsection (3) of section 744.1085,
11 | Florida Statutes, is amended to read:

12 | 744.1085 Regulation of professional guardians;
13 | application; bond required; educational requirements.--

14 | (3) Each professional guardian defined in s.
15 | 744.102(17) ~~s. 744.102(16)~~ and public guardian must receive a
16 | minimum of 40 hours of instruction and training. Each
17 | professional guardian must receive a minimum of 16 hours of
18 | continuing education every 2 calendar years after the year in
19 | which the initial 40-hour educational requirement is met. The
20 | instruction and education must be completed through a course
21 | approved or offered by the Statewide Public Guardianship
22 | Office. The expenses incurred to satisfy the educational
23 | requirements prescribed in this section may not be paid with
24 | the assets of any ward. This subsection does not apply to any
25 | attorney who is licensed to practice law in this state.

26 | Section 33. For the purpose of incorporating the
27 | amendment made by this act to section 744.3215, Florida
28 | Statutes, in a reference thereto, subsection (4) of section
29 | 117.107, Florida Statutes, is reenacted to read:

30 | 117.107 Prohibited acts.--

31 |

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

9 Section 34. This act shall take effect July 1, 2006.

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