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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/05/2014	.	
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The Committee on Judiciary (Thrasher) recommended the following:

Senate Amendment (with title amendment)

Delete lines 43 - 150
and insert:
professional audit standards, such as verifications, reviews of
substantiating papers and accounts, interviews, inspections, and
investigations.

Section 2. Subsection (1) of section 744.3135, Florida
Statutes, is amended to read:

744.3135 Credit and criminal investigation.—

(1) The court shall require all persons who are seeking



640150

12 appointment by the court, other than a corporate guardian as
13 described in s. 744.309(4) ~~may require a nonprofessional~~
14 guardian and shall require a professional or public guardian,
15 and all employees of a professional guardian, other than a
16 corporate guardian as described in s. 744.309(4), who have a
17 fiduciary responsibility to a ward, to submit, at their own
18 expense, to ~~a an investigation of the guardian's~~ credit history
19 investigation and to undergo level 2 background screening as
20 required under s. 435.04. If appointed, a nonprofessional
21 guardian may petition the court for reimbursement of the
22 reasonable expenses of the credit history investigation and
23 background screening. ~~If a credit or criminal history record~~
24 check is required, The court must consider the results of any
25 investigation before appointing a guardian. At any time, the
26 court may require a guardian or the guardian's employees to
27 submit to an investigation of the person's credit history and
28 complete a level 1 background screening pursuant to ~~as set forth~~
29 in s. 435.03. The court shall consider the results of any
30 investigation in determining whether to reappoint ~~when~~
31 reappointing a guardian. The clerk of the court shall maintain a
32 file on each guardian appointed by the court and retain in the
33 file documentation of the result of any investigation conducted
34 under this section. A professional guardian shall ~~must~~ pay the
35 clerk of the court a fee of up to \$7.50 for handling and
36 processing professional guardian files.

37 Section 3. Subsections (5) through (7) are added to section
38 744.368, Florida Statutes, to read:

39 744.368 Responsibilities of the clerk of the circuit
40 court.-



640150

41 (5) If the clerk has reason to believe further review is
42 appropriate, the clerk may request and review records and
43 documents that reasonably relate to the guardianship assets,
44 including, but not limited to, the beginning inventory balance
45 and any fees charged to the guardianship.

46 (6) If a guardian fails to produce records or documents to
47 the clerk upon request, the clerk may request the court to enter
48 an order pursuant to s. 744.3685(2) by filing an affidavit that
49 identifies the records or documents requested and shows good
50 cause as to why the records or documents requested should be
51 produced.

52 (7) Upon application to the court supported by an affidavit
53 pursuant to subsection (6), the clerk may issue subpoenas to
54 nonparties to compel production of records or documents. Before
55 issuance of a subpoena by affidavit, the clerk must serve notice
56 on the guardian and the ward, unless the ward is a minor or
57 totally incapacitated, of the intent to serve subpoenas to
58 nonparties.

59 (a) The clerk must attach the affidavit and the proposed
60 subpoena to the notice to the guardian and, if appropriate, to
61 the ward. The notice must:

62 1. State the time, place, and method for production of the
63 records or documents, and the name and address of the person who
64 is to produce the documents or items, if known, or if not known,
65 a general description sufficient to identify the person or the
66 particular class or group to which the person belongs;

67 2. Include a designation of the records or documents to be
68 produced; and

69 3. State that the person who will be asked to produce the



640150

70 records or documents has the right to object to the production
71 under this section and that the person is not required to
72 surrender the records or documents.

73 (b) A copy of the notice and proposed subpoena may not be
74 furnished to the person upon whom the subpoena is to be served.

75 (c) If the guardian or ward serves an objection to
76 production under this subsection within 10 days after service of
77 the notice, the records or documents may not be required to be
78 produced until resolution of the objection. If an objection is
79 not made within 10 days after service of the notice, the clerk
80 may issue the subpoena to the nonparty. The court may shorten
81 the period within which a guardian or ward must file an
82 objection if the clerk's affidavit shows that the ward's
83 property is in danger of being wasted, misappropriated, or lost
84 unless immediate action is taken.

85 Section 4. Section 744.3685, Florida Statutes, is amended
86 to read:

87 744.3685 Order requiring guardianship report; contempt.—

88 (1) If ~~When~~ a guardian fails to file the guardianship
89 report, the court shall order the guardian to file the report
90 within 15 days after the service of the order upon her or him or
91 show cause why she or he may ~~should~~ not be compelled to do so.

92 (2) If a guardian fails to comply with the submission of
93 records or documents requested by the clerk during the audit,
94 upon a showing of good cause by affidavit of the clerk which
95 shows the reasons the records must be produced, the court may
96 order the guardian to produce the records or documents within a
97 period specified by the court unless the guardian shows good
98 cause as to why the guardian may not be compelled to do so



640150

99 before the deadline specified by the court. The affidavit of the
100 clerk shall be served with the order.

101 (3) A copy of an ~~the~~ order entered pursuant to subsection
102 (1) or subsection (2) shall be served on the guardian or on the
103 guardian's resident agent. If the guardian fails to comply with
104 the order ~~file her or his report~~ within the time specified by
105 the order without good cause, the court may cite the guardian
106 for contempt of court and may fine her or him. The fine may not
107 be paid out of the ward's property.

108 Section 5. Subsection (21) is added to section 744.474,
109 Florida Statutes, to read:

110 744.474 Reasons for removal of guardian.—A guardian may be
111 removed for any of the following reasons, and the removal shall
112 be in addition to any other penalties prescribed by law:

113 (21) The failure in bad faith to submit guardianship records
114

115 ===== T I T L E A M E N D M E N T =====

116 And the title is amended as follows:

117 Delete line 12

118 and insert:

119 records and documents relating to guardianship assets
120 and to issue