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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/12/2015	.	
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The Committee on Judiciary (Diaz de la Portilla) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (3) of section 709.2109, Florida
Statutes, is amended to read:

709.2109 Termination or suspension of power of attorney or
agent's authority.—

(3) (a) If a power of attorney is suspended during any
~~person initiates~~ judicial proceedings to determine the



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11 principal's incapacity or for the appointment of a guardian
12 advocate, the authority granted under the power of attorney is
13 suspended until the petition is dismissed or withdrawn or the
14 court enters an order authorizing the agent to exercise one or
15 more powers granted under the power of attorney.

16 ~~(a) If an emergency arises after initiation of proceedings~~
17 ~~to determine incapacity and before adjudication regarding the~~
18 ~~principal's capacity, the agent may petition the court in which~~
19 ~~the proceeding is pending for authorization to exercise a power~~
20 ~~granted under the power of attorney. The petition must set forth~~
21 ~~the nature of the emergency, the property or matter involved,~~
22 ~~and the power to be exercised by the agent.~~

23 (b) Notwithstanding the provisions of this section, unless
24 otherwise ordered by the court, a proceeding to determine
25 incapacity does not affect the authority of the agent to make
26 health care decisions for the principal, including, but not
27 limited to, those provided in chapter 765. If the principal has
28 executed a health care advance directive designating a health
29 care surrogate, the terms of the directive control if the
30 directive and the power of attorney are in conflict unless the
31 power of attorney is later executed and expressly states
32 otherwise.

33 Section 2. Paragraphs (a) and (c) of subsection (2) of
34 section 709.2119, Florida Statutes, are amended, and subsection
35 (3) of that section is republished, to read:

36 709.2119 Acceptance of and reliance upon power of
37 attorney.—

38 (2) A third person may require:

39 (a) An agent to execute an affidavit stating where the



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40 principal is domiciled; that the principal is not deceased; that
41 there has been no revocation, or partial or complete termination
42 by adjudication of incapacity or by the occurrence of an event
43 referenced in the power of attorney; that the power of attorney
44 is not under a suspension as the result ~~there has been no~~
45 ~~suspension by initiation~~ of proceedings to determine incapacity,
46 or to appoint a guardian, of the principal; that the agent's
47 authority has not been terminated by the filing of an action for
48 dissolution or annulment of marriage or legal separation of the
49 agent and principal; and, if the affiant is a successor agent,
50 the reasons for the unavailability of the predecessor agents, if
51 any, at the time the authority is exercised.

52 (c) A written affidavit executed by the agent under this
53 subsection may, but need not, be in the following form:

54
55 STATE OF.....
56 COUNTY OF.....

57
58 Before me, the undersigned authority, personally appeared
59 ...(agent)... ("Affiant"), who swore or affirmed that:

60 1. Affiant is the agent named in the Power of Attorney
61 executed by ...(principal)... ("Principal") on ...(date)....

62 2. This Power of Attorney is currently exercisable by
63 Affiant. The principal is domiciled in ...(insert name of state,
64 territory, or foreign country)....

65 3. To the best of Affiant's knowledge after diligent search
66 and inquiry:

67 a. The Principal is not deceased;

68 b. Affiant's authority for the specific transaction has not



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69 been suspended during ~~by initiation of~~ proceedings to determine
70 incapacity or to appoint a guardian or a guardian advocate;

71 c. Affiant's authority has not been terminated by the
72 filing of an action for dissolution or annulment of Affiant's
73 marriage to the principal, or their legal separation; and

74 d. There has been no revocation, or partial or complete
75 termination, of the power of attorney or of Affiant's authority.

76 4. Affiant is acting within the scope of authority granted
77 in the power of attorney.

78 5. Affiant is the successor to ...(insert name of
79 predecessor agent)..., who has resigned, died, become
80 incapacitated, is no longer qualified to serve, has declined to
81 serve as agent, or is otherwise unable to act, if applicable.

82 6. Affiant agrees not to exercise any powers granted by the
83 Power of Attorney if Affiant attains knowledge that the power of
84 attorney has been revoked, has been partially or completely
85 terminated or suspended, or is no longer valid because of the
86 death or adjudication of incapacity of the Principal.

87
88
89 ... (Affiant) ...
90

91 Sworn to (or affirmed) and subscribed before me this
92 day of ...(month)..., ...(year)..., by ...(name of person making
93 statement)...

94
95 ...(Signature of Notary Public-State of Florida)...

96
97 ...(Print, Type, or Stamp Commissioned Name of Notary Public)...



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98

99 Personally Known OR Produced Identification

100 ...(Type of Identification Produced)...

101 (3) A third person who is asked to accept a power of
102 attorney that appears to be executed in accordance with s.
103 709.2105 may in good faith request, and rely upon, without
104 further investigation:

105 (a) A certified English translation of the power of
106 attorney if the power of attorney contains, in whole or in part,
107 language other than English;

108 (b) An opinion of counsel as to any matter of law
109 concerning the power of attorney if the third person making the
110 request provides in a writing or other record the reason for the
111 request; or

112 (c) The affidavit described in subsection (2).

113 Section 3. Section 744.1065, Florida Statutes, is created
114 to read:

115 744.1065 Mediation; alternative dispute resolution.—At any
116 time, the court may, upon its own motion or the motion of an
117 interested person, refer a matter under the jurisdiction of this
118 chapter to mediation or alternative dispute resolution if the
119 court finds that mediation or alternative dispute resolution is
120 in the best interests of the alleged incapacitated person, ward,
121 or minor.

122 Section 4. Subsection (5) is added to section 744.107,
123 Florida Statutes, to read:

124 744.107 Court monitors.—

125 (5) The court may appoint the office of criminal conflict
126 and civil regional counsel as monitor if the ward is indigent.



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127 Section 5. Subsection (6) is added to section 744.1075,
128 Florida Statutes, to read:

129 744.1075 Emergency court monitor.—

130 (6) The court may appoint the office of criminal conflict
131 and civil regional counsel as monitor if the ward is indigent.

132 Section 6. Subsections (5) and (8) of section 744.108,
133 Florida Statutes, are amended, and subsection (9) is added to
134 that section, to read:

135 744.108 Guardian ~~Guardian's~~ and attorney ~~attorney's~~ fees
136 and expenses.—

137 (5) All petitions for guardian ~~guardian's~~ and attorney
138 ~~attorney's~~ fees and expenses must be accompanied by an itemized
139 description of the services performed for the fees and expenses
140 sought to be recovered.

141 (8) When court proceedings are instituted to review or
142 determine guardian ~~a guardian's~~ or attorney ~~an attorney's~~ fees
143 under subsection (2), such proceedings are part of the
144 guardianship administration process and the costs, including
145 costs and attorney fees for the guardian's attorney, an attorney
146 appointed under s. 744.331(2), or an attorney who has rendered
147 services to the ward, shall be determined by the court and paid
148 from the assets of the guardianship estate unless the court
149 finds the requested compensation under subsection (2) to be
150 substantially unreasonable.

151 (9) With respect to a request for compensation by the
152 guardian, the guardian's attorney, a person employed by the
153 guardian, an attorney appointed under s. 744.331(2), or an
154 attorney who has rendered services to the ward, the court may
155 determine the compensation to be reasonable without receiving



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156 expert testimony. A person or party may offer expert testimony
157 for or against a request for compensation after giving notice to
158 interested persons. If expert testimony is offered, the court
159 shall award reasonable expert witness fees to the prevailing
160 interested person, which must be paid from the assets of the
161 guardianship estate.

162 Section 7. Section 744.3025, Florida Statutes, is amended
163 to read:

164 744.3025 Claims of minors.—

165 (1) (a) The court may appoint a guardian ad litem to
166 represent the minor's interest before approving a settlement of
167 the minor's portion of the claim in a ~~any~~ case in which a minor
168 has a claim for personal injury, property damage, wrongful
169 death, or other cause of action in which the gross settlement of
170 the claim exceeds \$15,000 if the court believes a guardian ad
171 litem is necessary to protect the minor's interest.

172 (b) Except as provided in paragraph (e), the court shall
173 appoint a guardian ad litem to represent the minor's interest
174 before approving a settlement of the minor's claim in a ~~any~~ case
175 in which the gross settlement involving a minor equals or
176 exceeds \$50,000.

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

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

181 (e) A court need not appoint a guardian ad litem for the
182 minor if a guardian of the minor has previously been appointed
183 and that guardian has no potential adverse interest to the
184 minor. ~~A court may appoint a guardian ad litem if the court~~



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185 ~~believes a guardian ad litem is necessary to protect the~~
186 ~~interests of the minor.~~

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

190 (3) A settlement of a claim pursuant to this section is
191 subject to the confidentiality provisions of this chapter.

192 Section 8. Section 744.3031, Florida Statutes, is amended
193 to read:

194 744.3031 Emergency temporary guardianship.—

195 (1) A court, prior to appointment of a guardian but after a
196 petition for determination of incapacity has been filed pursuant
197 to this chapter, and after a duly noticed hearing has been held,
198 may appoint an emergency temporary guardian for the person or
199 property, or both, of an alleged incapacitated person. The court
200 must specifically find that there appears to be imminent danger
201 that the physical or mental health or safety of the person will
202 be seriously impaired or that the person's property is in danger
203 of being wasted, misappropriated, or lost unless immediate
204 action is taken. The subject of the proceeding or any adult
205 interested in the welfare of that person may apply to the court
206 in which the proceeding is pending for the emergency appointment
207 of a temporary guardian. The powers and duties of the emergency
208 temporary guardian must be specifically enumerated by court
209 order. The court shall appoint counsel to represent the alleged
210 incapacitated person during any such summary proceedings, and
211 such appointed counsel may request that the proceeding be
212 recorded and transcribed.

213 (2) The court may appoint an emergency temporary guardian



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214 on its own motion if no petition for appointment of guardian has
215 been filed at the time of entry of an order determining
216 incapacity.

217 (3) Notice of filing of a petition for appointment of an
218 emergency temporary guardian and notice of any hearing on the
219 petition must be served on the alleged incapacitated person and
220 on the alleged incapacitated person's attorney at least 24 hours
221 before a hearing is held on the petition unless the petitioner
222 demonstrates that substantial harm to the alleged incapacitated
223 person will occur if the 24-hour notice is given.

224 (4)~~(3)~~ The authority of an emergency temporary guardian
225 expires 60 ~~90~~ days after the date of appointment or when a
226 guardian is appointed, whichever occurs first. The authority of
227 the emergency temporary guardian may be extended for an
228 additional 60 ~~90~~ days after a hearing is held and upon a showing
229 that the emergency conditions still exist.

230 (5)~~(4)~~ The court may issue an injunction, restraining
231 order, or other appropriate writ to protect the physical or
232 mental health or safety of the person who is the ward of the
233 emergency temporary guardianship.

234 (6)~~(5)~~ The emergency temporary guardian shall take an oath
235 to faithfully perform the duties of a guardian before letters of
236 emergency temporary guardianship are issued.

237 (7)~~(6)~~ The court may require that, before exercising
238 authority as guardian, the emergency temporary guardian of the
239 property ~~may be required to~~ file a bond in accordance with s.
240 744.351.

241 (8)~~(7)~~ An emergency temporary guardian's authority and
242 responsibility begins upon issuance of letters of emergency



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243 temporary guardianship in accordance with s. 744.345.

244 (9)~~(8)~~(a) An emergency temporary guardian shall file a
245 final report no later than 30 days after the expiration of the
246 emergency temporary guardianship.

247 (b) A court may not authorize any final payment of the
248 emergency temporary guardian fees or the fees of his or her
249 attorney until the final report is filed.

250 (c)1. If the final report is not timely filed, the court
251 shall issue to the emergency temporary guardian an order to show
252 cause which requires the emergency temporary guardian to appear
253 before the court and explain why the court should not take
254 further action. The order must specify the time and place of the
255 hearing within a reasonable time after service of the order to
256 allow for the preparation of a defense.

257 2. At any time before the hearing on the order to show
258 cause, the court may suspend the emergency temporary guardian if
259 he or she has become a successor guardian, appoint a guardian ad
260 litem, or issue any other appropriate order to protect the
261 physical or mental health, safety, or property of the ward. A
262 copy of any such order shall be transmitted by the court or
263 under its direction to all parties at the time of entry of the
264 order or injunction.

265 3. After the hearing on the order to show cause, the court
266 may impose sanctions on the emergency temporary guardian or take
267 any other action authorized by law, including, but not limited
268 to, entering a judgment of contempt; ordering an accounting;
269 freezing assets; referring the case to local law enforcement
270 agencies or the state attorney; filing an abuse, neglect, or
271 exploitation complaint with the Department of Children and



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272 Families; and initiating proceedings to remove the emergency
273 temporary guardian if he or she has become a successor guardian.

274 (d)~~(b)~~ If an emergency temporary guardian is a guardian for
275 the property, the final report must consist of a verified
276 inventory of the property, as provided in s. 744.365, as of the
277 date the letters of emergency temporary guardianship were
278 issued, a final accounting that gives a full and correct account
279 of the receipts and disbursements of all the property of the
280 ward over which the guardian had control, and a statement of the
281 property of the ward on hand at the end of the emergency
282 temporary guardianship. If the emergency temporary guardian
283 becomes the successor guardian of the property, the final report
284 must satisfy the requirements of the initial guardianship report
285 for the guardian of the property as provided in s. 744.362.

286 (e)~~(c)~~ If the emergency temporary guardian is a guardian of
287 the person, the final report must summarize the activities of
288 the temporary guardian with regard to residential placement,
289 medical condition, mental health and rehabilitative services,
290 and the social condition of the ward to the extent of the
291 authority granted to the temporary guardian in the letters of
292 guardianship. If the emergency temporary guardian becomes the
293 successor guardian of the person, the report must satisfy the
294 requirements of the initial report for a guardian of the person
295 as stated in s. 744.362.

296 (f)~~(d)~~ A copy of the final report of the emergency
297 temporary guardianship shall be served on the successor guardian
298 and the ward.

299 Section 9. Subsection (1) of section 744.309, Florida
300 Statutes, is amended to read:



301 744.309 Who may be appointed guardian of a resident ward.-

302 (1) RESIDENT.-

303 (a) Any resident of this state who is sui juris and is 18
304 years of age or older is qualified to act as guardian of a ward.

305 (b) A corporation not for profit incorporated pursuant to
306 chapter 617 is qualified to act as guardian of a ward if the
307 corporation is a charitable organization that is exempt from
308 taxation under s. 501(c) (3) of the Internal Revenue Code and the
309 corporation is registered as a professional guardian pursuant to
310 s. 744.1083.

311 (c) A justice or ~~No judge may not shall~~ act as guardian
312 unless after this law becomes effective, except when he or she
313 is related to the ward by blood, marriage, or adoption, or has
314 maintained a close relationship with the ward or the ward's
315 family, and serves without compensation.

316 Section 10. Section 744.3115, Florida Statutes, is amended
317 to read:

318 744.3115 Advance directives for health care.-In each
319 proceeding in which a guardian is appointed under this chapter,
320 the court shall determine whether the ward, prior to incapacity,
321 has executed any valid advance directive under chapter 765. If
322 any advance directive exists, the court shall specify in its
323 order and letters of guardianship what authority, if any, the
324 guardian shall exercise over the ward with regard to health care
325 decisions and what authority, if any, the surrogate shall
326 continue to exercise over the ward with regard to health care
327 decisions surrogate. Pursuant to the grounds listed in s.
328 765.105, the court, upon its own motion, may, with notice to the
329 surrogate and any other appropriate parties, modify or revoke



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330 the authority of the surrogate to make health care decisions for
331 the ward. Any order revoking or modifying the authority of the
332 surrogate must be supported by specific written findings of
333 fact. If the court order provides that the guardian is
334 responsible for making health care decisions for the ward, the
335 guardian shall assume the responsibilities of the surrogate
336 which are provided in s. 765.205. For purposes of this section,
337 the term "health care decision" has the same meaning as in s.
338 765.101.

339 Section 11. Section 744.312, Florida Statutes, is reordered
340 and amended to read:

341 744.312 Considerations in appointment of guardian.—

342 (2) ~~(1)~~ If a guardian cannot be appointed pursuant to
343 subsection (1) ~~Subject to the provisions of subsection (4)~~, the
344 court may appoint any person who is fit and proper and qualified
345 to act as guardian, whether related to the ward or not.

346 ~~(2)~~ The court shall give preference to the appointment of a
347 person who:

348 (a) Is related by blood or marriage to the ward;

349 (b) Has educational, professional, or business experience
350 relevant to the nature of the services sought to be provided;

351 (c) Has the capacity to manage the financial resources
352 involved; or

353 (d) Has the ability to meet the requirements of the law and
354 the unique needs of the individual case.

355 (3) The court shall also consider all of the following:

356 (a) ~~Consider~~ The wishes expressed by an incapacitated
357 person as to who shall be appointed guardian. ~~†~~

358 (b) ~~Consider~~ The preference of a minor who is at least age



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359 14 years of age ~~or over~~ as to who should be appointed guardian.†

360 (c) ~~Consider~~ Any person designated as guardian in any will
361 in which the ward is a beneficiary.

362 (d) The wishes of close relatives of the incapacitated
363 person if the person cannot express a preference.

364 (4) Unless a court appoints a standby or preneed guardian,
365 the court:

366 (a) Must use a rotation system for the appointment of the
367 guardian or support its order appointing a guardian with written
368 findings of fact for each factor in subsections (2) and (3).

369 (b) May not give preference to the appointment of a person
370 under subsection (2) solely based on the fact that the person
371 was appointed by the court to serve as an emergency temporary
372 guardian.

373 (c) May not appoint as the permanent guardian a
374 professional guardian who served as an emergency temporary
375 guardian for the incapacitated person.

376 (5) The limitations in paragraphs (4) (b) and (c) apply only
377 if an interested person objects to the appointment of the
378 guardian. However, the court may waive the limitations if the
379 special requirements of the guardianship demand that the court
380 appoint a guardian who has a special talent or specific prior
381 experience. The court must make specific findings of fact which
382 justify such special requirements, which require an appointment
383 without reference to the limitations in paragraphs (4) (b) and
384 (c).

385 (1)-(4) If the person designated is qualified to serve
386 pursuant to s. 744.309, The court shall appoint as guardian any
387 standby guardian or preneed guardian who is qualified as



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388 guardian under s. 744.309, unless the court determines that
389 appointing the ~~such~~ person is contrary to the best interests of
390 the ward.

391 Section 12. Section 744.3203, Florida Statutes, is created
392 to read:

393 744.3203 Suspension of power of attorney before incapacity
394 determination.-

395 (1) At any time during proceedings to determine incapacity
396 but before the entry of an order determining incapacity, an
397 alleged incapacitated person's power of attorney is suspended
398 when the petitioner files a motion stating that a specific power
399 of attorney should be suspended or modified for any of the
400 following grounds:

401 (a) The agent's decisions are not in accord with the
402 alleged incapacitated person's known desires.

403 (b) The power of attorney is invalid.

404 (c) The agent has failed to discharge duties, or incapacity
405 or illness renders the agent incapable of discharging duties.

406 (d) The agent has abused powers.

407
408 Grounds for suspending a power of attorney do not include the
409 existence of a dispute between the agent and the petitioner
410 which is more appropriate for resolution in some other forum or
411 a legal proceeding other than a guardianship proceeding.

412 (2) The motion must:

413 (a) Identify one or more of the grounds in subsection (1);

414 (b) Include specific statements of fact showing that
415 grounds exist to justify the relief sought; and

416 (c) Include the following statement: "Under penalties of



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417 perjury, I declare that I have read the foregoing motion and
418 that the facts stated in it are true," followed by the signature
419 of the petitioner.

420 (3) Upon the filing of a response to the motion by the
421 agent under the power of attorney, the court shall schedule the
422 motion for an expedited hearing. Unless an emergency has arisen
423 and the agent's response sets forth the nature of the emergency,
424 the property or matter involved, and the power to be exercised
425 by the agent, notice must be given to all interested persons,
426 the alleged incapacitated person, and the alleged incapacitated
427 person's attorney. The court order following the hearing must
428 set forth what powers the agent is permitted to exercise, if
429 any, pending the outcome of the petition to determine
430 incapacity.

431 (4) In addition to any other remedy authorized by law, a
432 court may award reasonable attorney fees and costs to an agent
433 who successfully challenges the suspension of the power of
434 attorney if the petitioner's motion contains false or incomplete
435 statements, was made in bad faith, or fails to contain
436 sufficient factual allegations.

437 Section 13. Section 744.345, Florida Statutes, is amended
438 to read:

439 744.345 Letters of guardianship.—Letters of guardianship
440 shall be issued to the guardian and shall specify whether the
441 guardianship pertains to the person, or the property, or both,
442 of the ward. The letters must state whether the guardianship is
443 plenary or limited, and, if limited, the letters must state the
444 powers and duties of the guardian. ~~If the guardianship is~~
445 ~~limited,~~ The letters shall state whether or not and to what



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446 extent the guardian is authorized to act on behalf of the ward
447 with regard to any advance directive previously executed by the
448 ward.

449 Section 14. Section 744.359, Florida Statutes, is created
450 to read:

451 744.359 Abuse, neglect, or exploitation by a guardian.—

452 (1) A guardian may not abuse, neglect, or exploit a ward.

453 (2) A guardian commits exploitation when the guardian:

454 (a) Commits fraud in obtaining appointment as a guardian.

455 (b) Abuses his or her powers.

456 (c) Wastes, embezzles, or intentionally mismanages the
457 assets of the ward.

458 (3) A person who believes that a guardian is abusing,
459 neglecting, or exploiting a ward, including criminal
460 exploitation of a ward as prohibited in s. 825.103, shall report
461 the conduct to the central abuse hotline of the Department of
462 Children and Families.

463 Section 15. Section 744.361, Florida Statutes, is amended
464 to read:

465 744.361 Powers and duties of guardian.—

466 (1) The guardian of an incapacitated person is a fiduciary
467 and may exercise only those rights that have been removed from
468 the ward and delegated to the guardian. The guardian of a minor
469 shall exercise the powers of a plenary guardian.

470 (2) The guardian shall act within the scope of the
471 authority granted by the court and as provided by law.

472 (3) The guardian shall act in good faith.

473 (4) The guardian may not act in a manner that is contrary
474 to the ward's best interests under the circumstances.



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475 (5) A guardian who has special skills or expertise, or is
476 appointed in reliance upon the guardian's representation that
477 the guardian has special skills or expertise, shall use those
478 special skills or expertise when acting on behalf of the ward.

479 ~~(6)(2)~~ The guardian shall file an initial guardianship
480 report in accordance with s. 744.362.

481 ~~(7)(3)~~ The guardian shall file a guardianship report
482 annually in accordance with s. 744.367.

483 ~~(8)(4)~~ The guardian of the person shall implement the
484 guardianship plan.

485 ~~(9)(5)~~ When two or more guardians have been appointed, the
486 guardians shall consult with each other.

487 ~~(10)(6)~~ A guardian who is given authority over any property
488 of the ward shall:

489 (a) Protect and preserve the property and invest it
490 prudently as provided in chapter 518, apply it as provided in s.
491 744.397, and keep clear, distinct, and accurate records of the
492 administration of the ward's property ~~account for it faithfully.~~

493 (b) Perform all other duties required of him or her by law.

494 (c) At the termination of the guardianship, deliver the
495 property of the ward to the person lawfully entitled to it.

496 ~~(11)(7)~~ The guardian shall observe the standards in dealing
497 with the guardianship property that would be observed by a
498 prudent person dealing with the property of another, ~~and, if the~~
499 ~~guardian has special skills or is named guardian on the basis of~~
500 ~~representations of special skills or expertise, he or she is~~
501 ~~under a duty to use those skills.~~

502 ~~(12)(8)~~ The guardian, if authorized by the court, shall
503 take possession of all of the ward's property and of the rents,



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504 income, issues, and profits from it, whether accruing before or
505 after the guardian's appointment, and of the proceeds arising
506 from the sale, lease, or mortgage of the property or of any
507 part. All of the property and the rents, income, issues, and
508 profits from it are assets in the hands of the guardian for the
509 payment of debts, taxes, claims, charges, and expenses of the
510 guardianship and for the care, support, maintenance, and
511 education of the ward or the ward's dependents, as provided for
512 under the terms of the guardianship plan or by law.

513 (13) Recognizing that every individual has unique needs and
514 abilities, a guardian who is given authority over a ward's
515 person shall, as appropriate under the circumstances:

516 (a) Consider the expressed desires of the ward as known by
517 the guardian when making decisions that affect the ward.

518 (b) Allow the ward to maintain contact with family and
519 friends unless the guardian believes that such contact may cause
520 harm to the ward.

521 (c) Not restrict the physical liberty of the ward more than
522 reasonably necessary to protect the ward or another person from
523 serious physical injury, illness, or disease.

524 (d) Assist the ward in developing or regaining his or her
525 own capacity, if medically possible.

526 (e) Notify the court if the guardian believes that the ward
527 has regained capacity and that one or more of the rights that
528 have been removed should be restored to the ward.

529 (f) To the extent applicable, make provision for the
530 medical, mental, rehabilitative, or personal care services for
531 the welfare of the ward.

532 (g) To the extent applicable, acquire a clear understanding



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533 of the risks and benefits of a recommended course of health care
534 treatment before making a health care decision.

535 (h) Evaluate the ward's medical and health care options,
536 financial resources, and desires when making residential
537 decisions that are best suited for the current needs of the
538 ward.

539 (i) Advocate on behalf of the ward in institutional and
540 other residential settings and regarding access to home and
541 community-based services.

542 (j) Acquire an understanding of the available residential
543 options and give priority to home and other community-based
544 services and settings when not inconsistent with the person's
545 goals, needs, and preferences.

546 (14)-(9) A professional guardian must ensure that each of
547 the guardian's wards is personally visited by the guardian or
548 one of the guardian's professional staff at least once each
549 calendar quarter. During the personal visit, the guardian or the
550 guardian's professional staff person shall assess:

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

552 (b) The appropriateness of the ward's current living
553 situation.

554 (c) The need for any additional services and the necessity
555 for continuation of existing services, taking into consideration
556 all aspects of social, psychological, educational, direct
557 service, health, and personal care needs.

558 (d) The nature and extent of visitation and communication
559 with the ward's family and friends.

560
561 This subsection does not apply to a professional guardian who



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562 has been appointed only as guardian of the property.

563 Section 16. Subsection (1) of section 744.367, Florida
564 Statutes, is amended to read:

565 744.367 Duty to file annual guardianship report.-

566 (1) Unless the court requires filing on a calendar-year
567 basis, each guardian of the person shall file with the court an
568 annual guardianship plan at least 60 days, but no more than
569 within 90 days, before ~~after~~ the last day of the anniversary
570 month that the letters of guardianship were signed, and the plan
571 must cover the coming fiscal year, ending on the last day in
572 such anniversary month. If the court requires calendar-year
573 filing, the guardianship plan for the forthcoming calendar year
574 must be filed on or after September 1, but no later than
575 December 1, of the current year ~~before April 1 of each year.~~

576 Section 17. Subsection (8) of section 744.369, Florida
577 Statutes, is amended to read:

578 744.369 Judicial review of guardianship reports.-

579 (8) The approved report constitutes the authority for the
580 guardian to act in the forthcoming year. The powers of the
581 guardian are limited by the terms of the report. The annual
582 report may not grant additional authority to the guardian
583 without a hearing, as provided for in s. 744.331, to determine
584 that the ward is incapacitated to act in that matter. Unless the
585 court orders otherwise, the guardian may continue to act under
586 authority of the last approved report until the forthcoming
587 year's report is approved.

588 Section 18. Subsection (1) of section 744.3715, Florida
589 Statutes, is amended to read:

590 744.3715 Petition for interim judicial review.-



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591 (1) At any time, any interested person, including the ward,
592 may petition the court for review alleging that the guardian is
593 not complying with the guardianship plan, ~~or~~ is exceeding his or
594 her authority under the guardianship plan, is acting in manner
595 contrary to s. 744.361, is denying visitation between the ward
596 and his or her relatives in violation of s. 744.361(13), or ~~and~~
597 the guardian is not acting in the best interest of the ward. The
598 petition for review must state the nature of the objection to
599 the guardian's action or proposed action. Upon the filing of any
600 such petition, the court shall review the petition and act upon
601 it expeditiously.

602 Section 19. Paragraphs (a) and (b) of subsection (3) of
603 section 744.464, Florida Statutes, are amended, and subsection
604 (4) is added to that section, to read:

605 744.464 Restoration to capacity.—

606 (3) ORDER OF RESTORATION.—

607 (a) If no objections are filed, ~~and~~ and the court is satisfied
608 that with the medical examination establishes by a preponderance
609 of the evidence that restoration of all or some of the ward's
610 rights is appropriate, the court shall enter an order of
611 restoration of capacity, restoring all or some of the rights
612 that which were removed from the ward in accordance with those
613 findings. ~~The order must be issued within 30 days after the~~
614 ~~medical report is filed.~~

615 (b) At the conclusion of a hearing, conducted pursuant to
616 s. 744.1095, the court shall make specific findings of fact and,
617 based on a preponderance of the evidence, enter an order either
618 denying the suggestion of capacity or restoring all or some of
619 the rights that which were removed from the ward. The ward has



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620 the burden of proving by a preponderance of the evidence that
621 the restoration of capacity is warranted.

622 (4) TIMELINESS OF HEARING.—The court shall give priority to
623 any suggestion of capacity and shall advance the cause on the
624 calendar.

625 Section 20. The amendments made by this act apply to all
626 proceedings pending on the effective date of this act.

627 Section 21. This act shall take effect upon becoming a law.

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

629 And the title is amended as follows:

630 Delete everything before the enacting clause
631 and insert:

632 A bill to be entitled
633 An act relating to guardianship proceedings; amending
634 s. 709.2109, F.S.; revising the conditions under which
635 an agent's power of attorney is terminated or
636 suspended or continues; amending s. 709.2119, F.S.;
637 revising the contents of an affidavit by an agent to a
638 third person; creating s. 744.1065, F.S.; authorizing
639 a court to refer guardianship matters to mediation or
640 alternative dispute resolution under certain
641 circumstances; amending ss. 744.107 and 744.1075,
642 F.S.; authorizing a court to appoint the office of
643 criminal conflict and civil regional counsel as a
644 court monitor in guardianship proceedings under
645 certain circumstances; amending s. 744.108, F.S.;
646 providing that fees and costs incurred by specified
647 attorneys in compensation proceedings are payable from
648 the assets of the guardianship estate; providing that



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649 expert testimony is not required in proceedings to
650 determine compensation for an attorney or guardian;
651 providing that expert witness fees are payable from
652 the assets of the guardianship estate under certain
653 circumstances; amending s. 744.3025, F.S.; clarifying
654 the circumstances under which a court may appoint a
655 guardian ad litem to represent a minor; clarifying the
656 circumstances under which a court must appoint a
657 guardian ad litem; providing that a settlement of a
658 minor's claim is subject to certain confidentiality
659 provisions; amending s. 744.3031, F.S.; requiring that
660 a duly noticed hearing be held before the appointment
661 of an emergency temporary guardian; requiring a notice
662 of filing of a petition for appointment of an
663 emergency temporary guardian and a notice for any
664 hearing on the petition to be served on certain
665 persons before a hearing on the petition commences;
666 revising the period for which an emergency temporary
667 guardian may be appointed; prohibiting the final
668 payment of the emergency temporary guardian fees and
669 his or her attorney fees until the final report is
670 filed; requiring a court to issue an order to show
671 cause to an emergency temporary guardian who fails to
672 timely file his or her final report; authorizing a
673 court to take certain actions to protect the ward
674 before a hearing on an order to show cause; requiring
675 a copy of such order to be transmitted to certain
676 parties; authorizing the court to impose sanctions on
677 the emergency temporary guardian or take certain other



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678 actions after a show cause hearing; amending s.
679 744.309, F.S.; providing that certain corporations not
680 for profit may act as guardians of a ward; amending s.
681 744.3115, F.S.; requiring the court to specify
682 authority for health care decisions with respect to a
683 ward's advance directive; requiring a court order
684 revoking or modifying the authority of a health care
685 surrogate to be supported by written findings of fact;
686 amending s. 744.312, F.S.; requiring a court, in
687 determining whom to appoint as a guardian, to consider
688 the wishes of the close relatives of the incapacitated
689 person under certain circumstances; limiting the
690 authority of a court to appoint guardians under
691 certain circumstances; authorizing the court to waive
692 the limitations under certain circumstances;
693 prohibiting the court from appointing a professional
694 guardian as a permanent guardian under certain
695 circumstances; creating s. 744.3203, F.S.; providing
696 for the suspension of a power of attorney during
697 guardianship proceedings under certain circumstances;
698 requiring an expedited hearing on the motion to
699 suspend a power of attorney under certain
700 circumstances; authorizing a court to award reasonable
701 attorney fees and costs to an agent who challenges the
702 suspension of the power of attorney under certain
703 circumstances; amending s. 744.345, F.S.; revising the
704 circumstances under which letters of guardianship must
705 describe the extent to which a guardian is authorized
706 to act on behalf of the ward with regard to an advance



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707 directive; creating s. 744.359, F.S.; prohibiting
708 abuse, neglect, or exploitation of a ward by a
709 guardian; requiring the report of abuse, neglect, or
710 exploitation to the Department of Children and
711 Families central abuse hotline; amending s. 744.361,
712 F.S.; revising the powers and duties of a guardian;
713 amending s. 744.367, F.S.; revising the period during
714 which a guardian must file an annual guardianship plan
715 with the court; amending s. 744.369, F.S.; providing
716 for the continuance of a guardian's authority to act
717 under a last approved annual report under certain
718 circumstances; amending s. 744.3715, F.S.; providing
719 an additional circumstance under which an interested
720 person may petition the court regarding a guardian's
721 failure to comply with the duties of a guardian;
722 amending s. 744.464, F.S.; establishing the burden of
723 proof for determining restoration of capacity of a
724 ward in pending guardianship cases; requiring the
725 court to make findings of fact in its determination to
726 restore or deny capacity; providing that the ward has
727 the burden of proving by a preponderance of the
728 evidence; requiring a court to advance such cases on
729 the calendar; providing applicability; providing an
730 effective date.