

By the Committee on Judiciary; and Senators Diaz de la Portilla and Detert

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1                                   A bill to be entitled  
2           An act relating to guardianship proceedings; amending  
3           s. 709.2109, F.S.; revising the conditions under which  
4           an agent's power of attorney is terminated or  
5           suspended or continues; amending s. 709.2119, F.S.;  
6           revising the contents of an affidavit by an agent to a  
7           third person; creating s. 744.1065, F.S.; authorizing  
8           a court to refer guardianship matters to mediation or  
9           alternative dispute resolution under certain  
10          circumstances; amending ss. 744.107 and 744.1075,  
11          F.S.; authorizing a court to appoint the office of  
12          criminal conflict and civil regional counsel as a  
13          court monitor in guardianship proceedings under  
14          certain circumstances; amending s. 744.108, F.S.;  
15          providing that fees and costs incurred by specified  
16          attorneys in compensation proceedings are payable from  
17          the assets of the guardianship estate; providing that  
18          expert testimony is not required in proceedings to  
19          determine compensation for an attorney or guardian;  
20          providing that expert witness fees are payable from  
21          the assets of the guardianship estate under certain  
22          circumstances; amending s. 744.3025, F.S.; clarifying  
23          the circumstances under which a court may appoint a  
24          guardian ad litem to represent a minor; clarifying the  
25          circumstances under which a court must appoint a  
26          guardian ad litem; providing that a settlement of a  
27          minor's claim is subject to certain confidentiality  
28          provisions; amending s. 744.3031, F.S.; requiring that  
29          a duly noticed hearing be held before the appointment

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30 of an emergency temporary guardian; requiring a notice  
31 of filing of a petition for appointment of an  
32 emergency temporary guardian and a notice for any  
33 hearing on the petition to be served on certain  
34 persons before a hearing on the petition commences;  
35 revising the period for which an emergency temporary  
36 guardian may be appointed; prohibiting the final  
37 payment of the emergency temporary guardian fees and  
38 his or her attorney fees until the final report is  
39 filed; requiring a court to issue an order to show  
40 cause to an emergency temporary guardian who fails to  
41 timely file his or her final report; authorizing a  
42 court to take certain actions to protect the ward  
43 before a hearing on an order to show cause; requiring  
44 a copy of such order to be transmitted to certain  
45 parties; authorizing the court to impose sanctions on  
46 the emergency temporary guardian or take certain other  
47 actions after a show cause hearing; amending s.  
48 744.309, F.S.; providing that certain corporations not  
49 for profit may act as guardians of a ward; amending s.  
50 744.3115, F.S.; requiring the court to specify  
51 authority for health care decisions with respect to a  
52 ward's advance directive; requiring a court order  
53 revoking or modifying the authority of a health care  
54 surrogate to be supported by written findings of fact;  
55 amending s. 744.312, F.S.; requiring a court, in  
56 determining whom to appoint as a guardian, to consider  
57 the wishes of the close relatives of the incapacitated  
58 person under certain circumstances; limiting the

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59 authority of a court to appoint guardians under  
60 certain circumstances; authorizing the court to waive  
61 the limitations under certain circumstances;  
62 prohibiting the court from appointing a professional  
63 guardian as a permanent guardian under certain  
64 circumstances; creating s. 744.3203, F.S.; providing  
65 for the suspension of a power of attorney during  
66 guardianship proceedings under certain circumstances;  
67 requiring an expedited hearing on the motion to  
68 suspend a power of attorney under certain  
69 circumstances; authorizing a court to award reasonable  
70 attorney fees and costs to an agent who challenges the  
71 suspension of the power of attorney under certain  
72 circumstances; amending s. 744.345, F.S.; revising the  
73 circumstances under which letters of guardianship must  
74 describe the extent to which a guardian is authorized  
75 to act on behalf of the ward with regard to an advance  
76 directive; creating s. 744.359, F.S.; prohibiting  
77 abuse, neglect, or exploitation of a ward by a  
78 guardian; requiring the report of abuse, neglect, or  
79 exploitation to the Department of Children and  
80 Families central abuse hotline; amending s. 744.361,  
81 F.S.; revising the powers and duties of a guardian;  
82 amending s. 744.367, F.S.; revising the period during  
83 which a guardian must file an annual guardianship plan  
84 with the court; amending s. 744.369, F.S.; providing  
85 for the continuance of a guardian's authority to act  
86 under a last approved annual report under certain  
87 circumstances; amending s. 744.3715, F.S.; providing

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88 an additional circumstance under which an interested  
89 person may petition the court regarding a guardian's  
90 failure to comply with the duties of a guardian;  
91 amending s. 744.464, F.S.; establishing the burden of  
92 proof for determining restoration of capacity of a  
93 ward in pending guardianship cases; requiring the  
94 court to make findings of fact in its determination to  
95 restore or deny capacity; providing that the ward has  
96 the burden of proving by a preponderance of the  
97 evidence; requiring a court to advance such cases on  
98 the calendar; providing applicability; providing an  
99 effective date.

100  
101 Be It Enacted by the Legislature of the State of Florida:

102  
103 Section 1. Subsection (3) of section 709.2109, Florida  
104 Statutes, is amended to read:

105 709.2109 Termination or suspension of power of attorney or  
106 agent's authority.—

107 (3) (a) If a power of attorney is suspended during any  
108 ~~person initiates~~ judicial proceedings to determine the  
109 principal's incapacity or for the appointment of a guardian  
110 advocate, the authority granted under the power of attorney is  
111 suspended until the petition is dismissed or withdrawn or the  
112 court enters an order authorizing the agent to exercise one or  
113 more powers granted under the power of attorney.

114 ~~(a) If an emergency arises after initiation of proceedings~~  
115 ~~to determine incapacity and before adjudication regarding the~~  
116 ~~principal's capacity, the agent may petition the court in which~~

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117 ~~the proceeding is pending for authorization to exercise a power~~  
118 ~~granted under the power of attorney. The petition must set forth~~  
119 ~~the nature of the emergency, the property or matter involved,~~  
120 ~~and the power to be exercised by the agent.~~

121 (b) Notwithstanding the provisions of this section, unless  
122 otherwise ordered by the court, a proceeding to determine  
123 incapacity does not affect the authority of the agent to make  
124 health care decisions for the principal, including, but not  
125 limited to, those provided in chapter 765. If the principal has  
126 executed a health care advance directive designating a health  
127 care surrogate, the terms of the directive control if the  
128 directive and the power of attorney are in conflict unless the  
129 power of attorney is later executed and expressly states  
130 otherwise.

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

134 709.2119 Acceptance of and reliance upon power of  
135 attorney.—

136 (2) A third person may require:

137 (a) An agent to execute an affidavit stating where the  
138 principal is domiciled; that the principal is not deceased; that  
139 there has been no revocation, or partial or complete termination  
140 by adjudication of incapacity or by the occurrence of an event  
141 referenced in the power of attorney; that the power of attorney  
142 is not under a suspension as the result ~~there has been no~~  
143 ~~suspension by initiation~~ of proceedings to determine incapacity,  
144 or to appoint a guardian, of the principal; that the agent's  
145 authority has not been terminated by the filing of an action for

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146 dissolution or annulment of marriage or legal separation of the  
147 agent and principal; and, if the affiant is a successor agent,  
148 the reasons for the unavailability of the predecessor agents, if  
149 any, at the time the authority is exercised.

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

152  
153 STATE OF.....

154 COUNTY OF.....  
155

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

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

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

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

165 a. The Principal is not deceased;

166 b. Affiant's authority for the specific transaction has not  
167 been suspended during ~~by initiation of~~ proceedings to determine  
168 incapacity or to appoint a guardian or a guardian advocate;

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

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

174 4. Affiant is acting within the scope of authority granted

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175 in the power of attorney.

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

180 6. Affiant agrees not to exercise any powers granted by the  
181 Power of Attorney if Affiant attains knowledge that the power of  
182 attorney has been revoked, has been partially or completely  
183 terminated or suspended, or is no longer valid because of the  
184 death or adjudication of incapacity of the Principal.

185  
186 .....  
187 ...(Affiant)...

188  
189 Sworn to (or affirmed) and subscribed before me this ....  
190 day of ...(month)..., ...(year)..., by ...(name of person making  
191 statement)...

192  
193 ...(Signature of Notary Public-State of Florida)...

194  
195 ...(Print, Type, or Stamp Commissioned Name of Notary Public)...

196  
197 Personally Known OR Produced Identification

198 ...(Type of Identification Produced)...

199 (3) A third person who is asked to accept a power of  
200 attorney that appears to be executed in accordance with s.  
201 709.2105 may in good faith request, and rely upon, without  
202 further investigation:

203 (a) A certified English translation of the power of

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204 attorney if the power of attorney contains, in whole or in part,  
205 language other than English;

206 (b) An opinion of counsel as to any matter of law  
207 concerning the power of attorney if the third person making the  
208 request provides in a writing or other record the reason for the  
209 request; or

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

211 Section 3. Section 744.1065, Florida Statutes, is created  
212 to read:

213 744.1065 Mediation; alternative dispute resolution.—At any  
214 time, the court may, upon its own motion or the motion of an  
215 interested person, refer a matter under the jurisdiction of this  
216 chapter to mediation or alternative dispute resolution if the  
217 court finds that mediation or alternative dispute resolution is  
218 in the best interests of the alleged incapacitated person, ward,  
219 or minor.

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

222 744.107 Court monitors.—

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

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

227 744.1075 Emergency court monitor.—

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

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

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233           744.108 Guardian ~~Guardian's~~ and attorney ~~attorney's~~ fees  
234 and expenses.—

235           (5) All petitions for guardian ~~guardian's~~ and attorney  
236 ~~attorney's~~ fees and expenses must be accompanied by an itemized  
237 description of the services performed for the fees and expenses  
238 sought to be recovered.

239           (8) When court proceedings are instituted to review or  
240 determine guardian ~~a guardian's~~ or attorney ~~an attorney's~~ fees  
241 under subsection (2), such proceedings are part of the  
242 guardianship administration process and the costs, including  
243 costs and attorney fees for the guardian's attorney, an attorney  
244 appointed under s. 744.331(2), or an attorney who has rendered  
245 services to the ward, shall be determined by the court and paid  
246 from the assets of the guardianship estate unless the court  
247 finds the requested compensation under subsection (2) to be  
248 substantially unreasonable.

249           (9) With respect to a request for compensation by the  
250 guardian, the guardian's attorney, a person employed by the  
251 guardian, an attorney appointed under s. 744.331(2), or an  
252 attorney who has rendered services to the ward, the court may  
253 determine the compensation to be reasonable without receiving  
254 expert testimony. A person or party may offer expert testimony  
255 for or against a request for compensation after giving notice to  
256 interested persons. If expert testimony is offered, the court  
257 shall award reasonable expert witness fees to the prevailing  
258 interested person, which must be paid from the assets of the  
259 guardianship estate.

260           Section 7. Section 744.3025, Florida Statutes, is amended  
261 to read:

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262 744.3025 Claims of minors.—

263 (1) (a) The court may appoint a guardian ad litem to  
264 represent the minor's interest before approving a settlement of  
265 the minor's portion of the claim in a any case in which a minor  
266 has a claim for personal injury, property damage, wrongful  
267 death, or other cause of action in which the gross settlement of  
268 the claim exceeds \$15,000 if the court believes a guardian ad  
269 litem is necessary to protect the minor's interest.

270 (b) Except as provided in paragraph (e), the court shall  
271 appoint a guardian ad litem to represent the minor's interest  
272 before approving a settlement of the minor's claim in a any case  
273 in which the gross settlement involving a minor equals or  
274 exceeds \$50,000.

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

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

279 (e) A court need not appoint a guardian ad litem for the  
280 minor if a guardian of the minor has previously been appointed  
281 and that guardian has no potential adverse interest to the  
282 minor. ~~A court may appoint a guardian ad litem if the court~~  
283 ~~believes a guardian ad litem is necessary to protect the~~  
284 ~~interests of the minor.~~

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

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

290 Section 8. Section 744.3031, Florida Statutes, is amended

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291 to read:

292 744.3031 Emergency temporary guardianship.—

293 (1) A court, prior to appointment of a guardian but after a  
294 petition for determination of incapacity has been filed pursuant  
295 to this chapter, and after a duly noticed hearing has been held,  
296 may appoint an emergency temporary guardian for the person or  
297 property, or both, of an alleged incapacitated person. The court  
298 must specifically find that there appears to be imminent danger  
299 that the physical or mental health or safety of the person will  
300 be seriously impaired or that the person's property is in danger  
301 of being wasted, misappropriated, or lost unless immediate  
302 action is taken. The subject of the proceeding or any adult  
303 interested in the welfare of that person may apply to the court  
304 in which the proceeding is pending for the emergency appointment  
305 of a temporary guardian. The powers and duties of the emergency  
306 temporary guardian must be specifically enumerated by court  
307 order. The court shall appoint counsel to represent the alleged  
308 incapacitated person during any such summary proceedings, and  
309 such appointed counsel may request that the proceeding be  
310 recorded and transcribed.

311 (2) The court may appoint an emergency temporary guardian  
312 on its own motion if no petition for appointment of guardian has  
313 been filed at the time of entry of an order determining  
314 incapacity.

315 (3) Notice of filing of a petition for appointment of an  
316 emergency temporary guardian and notice of any hearing on the  
317 petition must be served on the alleged incapacitated person and  
318 on the alleged incapacitated person's attorney at least 24 hours  
319 before a hearing is held on the petition unless the petitioner

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320 demonstrates that substantial harm to the alleged incapacitated  
321 person will occur if the 24-hour notice is given.

322 (4)~~(3)~~ The authority of an emergency temporary guardian  
323 expires 60 ~~90~~ days after the date of appointment or when a  
324 guardian is appointed, whichever occurs first. The authority of  
325 the emergency temporary guardian may be extended for an  
326 additional 60 ~~90~~ days after a hearing is held and upon a showing  
327 that the emergency conditions still exist.

328 (5)~~(4)~~ The court may issue an injunction, restraining  
329 order, or other appropriate writ to protect the physical or  
330 mental health or safety of the person who is the ward of the  
331 emergency temporary guardianship.

332 (6)~~(5)~~ The emergency temporary guardian shall take an oath  
333 to faithfully perform the duties of a guardian before letters of  
334 emergency temporary guardianship are issued.

335 (7)~~(6)~~ The court may require that, before exercising  
336 authority as guardian, the emergency temporary guardian of the  
337 property ~~may be required to~~ file a bond in accordance with s.  
338 744.351.

339 (8)~~(7)~~ An emergency temporary guardian's authority and  
340 responsibility begins upon issuance of letters of emergency  
341 temporary guardianship in accordance with s. 744.345.

342 (9)~~(8)~~ (a) An emergency temporary guardian shall file a  
343 final report no later than 30 days after the expiration of the  
344 emergency temporary guardianship.

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

348 (c)1. If the final report is not timely filed, the court

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349 shall issue to the emergency temporary guardian an order to show  
350 cause which requires the emergency temporary guardian to appear  
351 before the court and explain why the court should not take  
352 further action. The order must specify the time and place of the  
353 hearing within a reasonable time after service of the order to  
354 allow for the preparation of a defense.

355 2. At any time before the hearing on the order to show  
356 cause, the court may suspend the emergency temporary guardian if  
357 he or she has become a successor guardian, appoint a guardian ad  
358 litem, or issue any other appropriate order to protect the  
359 physical or mental health, safety, or property of the ward. A  
360 copy of any such order shall be transmitted by the court or  
361 under its direction to all parties at the time of entry of the  
362 order or injunction.

363 3. After the hearing on the order to show cause, the court  
364 may impose sanctions on the emergency temporary guardian or take  
365 any other action authorized by law, including, but not limited  
366 to, entering a judgment of contempt; ordering an accounting;  
367 freezing assets; referring the case to local law enforcement  
368 agencies or the state attorney; filing an abuse, neglect, or  
369 exploitation complaint with the Department of Children and  
370 Families; and initiating proceedings to remove the emergency  
371 temporary guardian if he or she has become a successor guardian.

372 (d) ~~(b)~~ If an emergency temporary guardian is a guardian for  
373 the property, the final report must consist of a verified  
374 inventory of the property, as provided in s. 744.365, as of the  
375 date the letters of emergency temporary guardianship were  
376 issued, a final accounting that gives a full and correct account  
377 of the receipts and disbursements of all the property of the

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378 ward over which the guardian had control, and a statement of the  
379 property of the ward on hand at the end of the emergency  
380 temporary guardianship. If the emergency temporary guardian  
381 becomes the successor guardian of the property, the final report  
382 must satisfy the requirements of the initial guardianship report  
383 for the guardian of the property as provided in s. 744.362.

384 (e)~~(e)~~ If the emergency temporary guardian is a guardian of  
385 the person, the final report must summarize the activities of  
386 the temporary guardian with regard to residential placement,  
387 medical condition, mental health and rehabilitative services,  
388 and the social condition of the ward to the extent of the  
389 authority granted to the temporary guardian in the letters of  
390 guardianship. If the emergency temporary guardian becomes the  
391 successor guardian of the person, the report must satisfy the  
392 requirements of the initial report for a guardian of the person  
393 as stated in s. 744.362.

394 (f)~~(d)~~ A copy of the final report of the emergency  
395 temporary guardianship shall be served on the successor guardian  
396 and the ward.

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

399 744.309 Who may be appointed guardian of a resident ward.—

400 (1) RESIDENT.—

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

403 (b) A corporation not for profit incorporated pursuant to  
404 chapter 617 is qualified to act as guardian of a ward if the  
405 corporation is a charitable organization that is exempt from  
406 taxation under s. 501(c)(3) of the Internal Revenue Code and the

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407 corporation is registered as a professional guardian pursuant to  
408 s. 744.1083.

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

414 Section 10. Section 744.3115, Florida Statutes, is amended  
415 to read:

416 744.3115 Advance directives for health care.—In each  
417 proceeding in which a guardian is appointed under this chapter,  
418 the court shall determine whether the ward, prior to incapacity,  
419 has executed any valid advance directive under chapter 765. If  
420 any advance directive exists, the court shall specify in its  
421 order and letters of guardianship what authority, if any, the  
422 guardian shall exercise over the ward with regard to health care  
423 decisions and what authority, if any, the surrogate shall  
424 continue to exercise over the ward with regard to health care  
425 decisions ~~surrogate~~. Pursuant to the grounds listed in s.  
426 765.105, the court, upon its own motion, may, with notice to the  
427 surrogate and any other appropriate parties, modify or revoke  
428 the authority of the surrogate to make health care decisions for  
429 the ward. Any order revoking or modifying the authority of the  
430 surrogate must be supported by specific written findings of  
431 fact. If the court order provides that the guardian is  
432 responsible for making health care decisions for the ward, the  
433 guardian shall assume the responsibilities of the surrogate  
434 which are provided in s. 765.205. For purposes of this section,  
435 the term "health care decision" has the same meaning as in s.

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436 765.101.

437 Section 11. Section 744.312, Florida Statutes, is reordered  
438 and amended to read:

439 744.312 Considerations in appointment of guardian.—

440 (2) ~~(1)~~ If a guardian cannot be appointed pursuant to  
441 subsection (1) Subject to the provisions of subsection (4), the  
442 court may appoint any person who is fit and proper and qualified  
443 to act as guardian, whether related to the ward or not.

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

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

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

449 (c) Has the capacity to manage the financial resources  
450 involved; or

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

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

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

456 (b) ~~Consider~~ The preference of a minor who is at least age  
457 14 years of age ~~or over~~ as to who should be appointed guardian. ~~†~~

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

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

462 (4) Unless a court appoints a standby or preneed guardian,  
463 the court:

464 (a) Must use a rotation system for the appointment of the

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465 guardian or support its order appointing a guardian with written  
466 findings of fact for each factor in subsections (2) and (3).

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

471 (c) May not appoint as the permanent guardian a  
472 professional guardian who served as an emergency temporary  
473 guardian for the incapacitated person.

474 (5) The limitations in paragraphs (4) (b) and (c) apply only  
475 if an interested person objects to the appointment of the  
476 guardian. However, the court may waive the limitations if the  
477 special requirements of the guardianship demand that the court  
478 appoint a guardian who has a special talent or specific prior  
479 experience. The court must make specific findings of fact which  
480 justify such special requirements, which require an appointment  
481 without reference to the limitations in paragraphs (4) (b) and  
482 (c).

483 (1) ~~(4)~~ If the person designated is qualified to serve  
484 pursuant to s. 744.309, The court shall appoint as guardian any  
485 standby guardian or preneed guardian who is qualified as  
486 guardian under s. 744.309, unless the court determines that  
487 appointing the ~~such~~ person is contrary to the best interests of  
488 the ward.

489 Section 12. Section 744.3203, Florida Statutes, is created  
490 to read:

491 744.3203 Suspension of power of attorney before incapacity  
492 determination.—

493 (1) At any time during proceedings to determine incapacity

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494 but before the entry of an order determining incapacity, an  
495 alleged incapacitated person's power of attorney is suspended  
496 when the petitioner files a motion stating that a specific power  
497 of attorney should be suspended or modified for any of the  
498 following grounds:

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

501 (b) The power of attorney is invalid.

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

504 (d) The agent has abused powers.

505  
506 Grounds for suspending a power of attorney do not include the  
507 existence of a dispute between the agent and the petitioner  
508 which is more appropriate for resolution in some other forum or  
509 a legal proceeding other than a guardianship proceeding.

510 (2) The motion must:

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

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

514 (c) Include the following statement: "Under penalties of  
515 perjury, I declare that I have read the foregoing motion and  
516 that the facts stated in it are true," followed by the signature  
517 of the petitioner.

518 (3) Upon the filing of a response to the motion by the  
519 agent under the power of attorney, the court shall schedule the  
520 motion for an expedited hearing. Unless an emergency has arisen  
521 and the agent's response sets forth the nature of the emergency,  
522 the property or matter involved, and the power to be exercised

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523 by the agent, notice must be given to all interested persons,  
524 the alleged incapacitated person, and the alleged incapacitated  
525 person's attorney. The court order following the hearing must  
526 set forth what powers the agent is permitted to exercise, if  
527 any, pending the outcome of the petition to determine  
528 incapacity.

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

535 Section 13. Section 744.345, Florida Statutes, is amended  
536 to read:

537 744.345 Letters of guardianship.—Letters of guardianship  
538 shall be issued to the guardian and shall specify whether the  
539 guardianship pertains to the person, or the property, or both,  
540 of the ward. The letters must state whether the guardianship is  
541 plenary or limited, and, if limited, the letters must state the  
542 powers and duties of the guardian. ~~If the guardianship is~~  
543 ~~limited,~~ The letters shall state whether or not and to what  
544 extent the guardian is authorized to act on behalf of the ward  
545 with regard to any advance directive previously executed by the  
546 ward.

547 Section 14. Section 744.359, Florida Statutes, is created  
548 to read:

549 744.359 Abuse, neglect, or exploitation by a guardian.—

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

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

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

553 (b) Abuses his or her powers.

554 (c) Wastes, embezzles, or intentionally mismanages the  
555 assets of the ward.

556 (3) A person who believes that a guardian is abusing,  
557 neglecting, or exploiting a ward, including criminal  
558 exploitation of a ward as prohibited in s. 825.103, shall report  
559 the conduct to the central abuse hotline of the Department of  
560 Children and Families.

561 Section 15. Section 744.361, Florida Statutes, is amended  
562 to read:

563 744.361 Powers and duties of guardian.—

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

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

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

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

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

577 (6)~~(2)~~ The guardian shall file an initial guardianship  
578 report in accordance with s. 744.362.

579 (7)~~(3)~~ The guardian shall file a guardianship report  
580 annually in accordance with s. 744.367.

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581        (8)~~(4)~~ The guardian of the person shall implement the  
582 guardianship plan.

583        (9)~~(5)~~ When two or more guardians have been appointed, the  
584 guardians shall consult with each other.

585        (10)~~(6)~~ A guardian who is given authority over any property  
586 of the ward shall:

587            (a) Protect and preserve the property and invest it  
588 prudently as provided in chapter 518, apply it as provided in s.  
589 744.397, and keep clear, distinct, and accurate records of the  
590 administration of the ward's property ~~account for it faithfully.~~

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

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

594        (11)~~(7)~~ The guardian shall observe the standards in dealing  
595 with the guardianship property that would be observed by a  
596 prudent person dealing with the property of another, ~~and, if the~~  
597 ~~guardian has special skills or is named guardian on the basis of~~  
598 ~~representations of special skills or expertise, he or she is~~  
599 ~~under a duty to use those skills.~~

600        (12)~~(8)~~ The guardian, if authorized by the court, shall  
601 take possession of all of the ward's property and of the rents,  
602 income, issues, and profits from it, whether accruing before or  
603 after the guardian's appointment, and of the proceeds arising  
604 from the sale, lease, or mortgage of the property or of any  
605 part. All of the property and the rents, income, issues, and  
606 profits from it are assets in the hands of the guardian for the  
607 payment of debts, taxes, claims, charges, and expenses of the  
608 guardianship and for the care, support, maintenance, and  
609 education of the ward or the ward's dependents, as provided for

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610 under the terms of the guardianship plan or by law.

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

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

616 (b) Allow the ward to maintain contact with family and  
617 friends unless the guardian believes that such contact may cause  
618 harm to the ward.

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

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

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

627 (f) To the extent applicable, make provision for the  
628 medical, mental, rehabilitative, or personal care services for  
629 the welfare of the ward.

630 (g) To the extent applicable, acquire a clear understanding  
631 of the risks and benefits of a recommended course of health care  
632 treatment before making a health care decision.

633 (h) Evaluate the ward's medical and health care options,  
634 financial resources, and desires when making residential  
635 decisions that are best suited for the current needs of the  
636 ward.

637 (i) Advocate on behalf of the ward in institutional and  
638 other residential settings and regarding access to home and

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639 community-based services.

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

644 (14)~~(9)~~ A professional guardian must ensure that each of  
645 the guardian's wards is personally visited by the guardian or  
646 one of the guardian's professional staff at least once each  
647 calendar quarter. During the personal visit, the guardian or the  
648 guardian's professional staff person shall assess:

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

650 (b) The appropriateness of the ward's current living  
651 situation.

652 (c) The need for any additional services and the necessity  
653 for continuation of existing services, taking into consideration  
654 all aspects of social, psychological, educational, direct  
655 service, health, and personal care needs.

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

658

659 This subsection does not apply to a professional guardian who  
660 has been appointed only as guardian of the property.

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

663 744.367 Duty to file annual guardianship report.—

664 (1) Unless the court requires filing on a calendar-year  
665 basis, each guardian of the person shall file with the court an  
666 annual guardianship plan at least 60 days, but no more than  
667 ~~within~~ 90 days, before ~~after~~ the last day of the anniversary

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668 month that the letters of guardianship were signed, and the plan  
669 must cover the coming fiscal year, ending on the last day in  
670 such anniversary month. If the court requires calendar-year  
671 filing, the guardianship plan for the forthcoming calendar year  
672 must be filed on or after September 1, but no later than  
673 December 1, of the current year ~~before April 1 of each year.~~

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

676 744.369 Judicial review of guardianship reports.-

677 (8) The approved report constitutes the authority for the  
678 guardian to act in the forthcoming year. The powers of the  
679 guardian are limited by the terms of the report. The annual  
680 report may not grant additional authority to the guardian  
681 without a hearing, as provided for in s. 744.331, to determine  
682 that the ward is incapacitated to act in that matter. Unless the  
683 court orders otherwise, the guardian may continue to act under  
684 authority of the last approved report until the forthcoming  
685 year's report is approved.

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

688 744.3715 Petition for interim judicial review.-

689 (1) At any time, any interested person, including the ward,  
690 may petition the court for review alleging that the guardian is  
691 not complying with the guardianship plan, ~~or~~ is exceeding his or  
692 her authority under the guardianship plan, is acting in manner  
693 contrary to s. 744.361, is denying visitation between the ward  
694 and his or her relatives in violation of s. 744.361(13), or ~~and~~  
695 ~~the guardian~~ is not acting in the best interest of the ward. The  
696 petition for review must state the nature of the objection to

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697 the guardian's action or proposed action. Upon the filing of any  
698 such petition, the court shall review the petition and act upon  
699 it expeditiously.

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

703 744.464 Restoration to capacity.—

704 (3) ORDER OF RESTORATION.—

705 (a) If no objections are filed, and the court is satisfied  
706 that with the medical examination establishes by a preponderance  
707 of the evidence that restoration of all or some of the ward's  
708 rights is appropriate, the court shall enter an order of  
709 restoration of capacity, restoring all or some of the rights  
710 that which were removed from the ward in accordance with those  
711 findings. ~~The order must be issued within 30 days after the~~  
712 ~~medical report is filed.~~

713 (b) At the conclusion of a hearing, conducted pursuant to  
714 s. 744.1095, the court shall make specific findings of fact and,  
715 based on a preponderance of the evidence, enter an order either  
716 denying the suggestion of capacity or restoring all or some of  
717 the rights that which were removed from the ward. The ward has  
718 the burden of proving by a preponderance of the evidence that  
719 the restoration of capacity is warranted.

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

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

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