

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

576-04508-15

2015318c2

1 A bill to be entitled  
2 An act relating to guardianship proceedings; amending  
3 s. 709.2105, F.S.; revising the qualifications of an  
4 agent in the execution of power of attorney to include  
5 certain not-for-profit corporations; providing  
6 criteria for such corporations; amending s. 709.2109,  
7 F.S.; requiring the filing of a motion before  
8 suspension of a power of attorney in proceedings to  
9 determine a principal's incapacity or for appointment  
10 of a guardian advocate under certain circumstances;  
11 amending ss. 744.107 and 744.1075, F.S.; authorizing a  
12 court to appoint the office of criminal conflict and  
13 civil regional counsel as a court monitor in  
14 guardianship proceedings; amending s. 744.108, F.S.;  
15 providing that fees and costs incurred by an attorney  
16 appointed by a court or an attorney who has rendered  
17 services to a ward in compensation proceedings are  
18 payable from guardianship assets; providing that  
19 expert testimony is not required in proceedings to  
20 determine compensation for an attorney, a guardian, or  
21 a person employed by a guardian; requiring a person  
22 offering expert testimony to provide notice to  
23 interested persons; providing that reasonable expert  
24 witness fees are recoverable; amending s. 744.3025,  
25 F.S.; providing that a court may appoint a guardian ad  
26 litem to represent a minor if necessary to protect the  
27 minor's interest in a settlement; providing that a  
28 settlement of a minor's claim is subject to certain  
29 confidentiality provisions; amending s. 744.3031,

576-04508-15

2015318c2

30 F.S.; requiring notice to an alleged incapacitated  
31 person and such person's attorney of a petition for  
32 appointment of an emergency temporary guardian before  
33 a hearing on the petition commences; providing an  
34 exception; prohibiting the final payment of the  
35 emergency temporary guardian fees and his or her  
36 attorney fees until the final report is filed;  
37 amending s. 744.309, F.S.; providing that a for-profit  
38 corporation may act as guardian of a person under  
39 certain circumstances; providing conditions; requiring  
40 the posting and maintenance of a fiduciary bond;  
41 limiting liability; requiring the corporation to  
42 maintain certain insurance coverage; providing for  
43 certain grandfathered guardianships; amending s.  
44 744.3115, F.S.; directing the court to specify  
45 authority for health care decisions with respect to a  
46 ward's advance directive; amending s. 744.312, F.S.;  
47 requiring a court to consider the wishes of the ward's  
48 relatives when appointing a guardian; prohibiting a  
49 court from giving preference to the appointment of  
50 certain persons as guardians; providing requirements  
51 for the appointment of professional guardians;  
52 amending s. 744.3203, F.S.; providing grounds for  
53 filing a motion for suspension of a power of attorney  
54 before determination of incapacity; providing criteria  
55 for such motion; requiring a hearing under certain  
56 conditions; providing for the award of attorney fees  
57 and costs; amending s. 744.331, F.S.; directing the  
58 court to consider certain factors when determining

576-04508-15

2015318c2

59       incapacity; requiring that the examining committee be  
60       paid from state funds as court-appointed expert  
61       witnesses if a petition for incapacity is dismissed or  
62       denied; requiring that a petitioner reimburse the  
63       state for such expert witness fees if the court finds  
64       the petition to have been filed in bad faith; amending  
65       s. 744.344, F.S.; revising conditions under which the  
66       court is authorized to appoint an emergency temporary  
67       guardian; amending s. 744.345, F.S.; revising  
68       provisions relating to letters of guardianship;  
69       creating s. 744.359, F.S.; prohibiting abuse, neglect,  
70       or exploitation of a ward by a guardian; requiring  
71       reporting thereof to the Department of Children and  
72       Families central abuse hotline; providing for  
73       interpretation; amending s. 744.361, F.S.; providing  
74       additional powers and duties of a guardian; amending  
75       s. 744.367, F.S.; revising the period during which a  
76       guardian must file an annual guardianship plan with  
77       the court; amending s. 744.369, F.S.; providing for  
78       the continuance of a guardian's authority to act under  
79       an expired annual report under certain circumstances;  
80       amending s. 744.3715, F.S.; providing that an  
81       interested party may petition the court regarding a  
82       guardian's failure to comply with the duties of a  
83       guardian; amending s. 744.464, F.S.; establishing the  
84       burden of proof for determining restoration of  
85       capacity of a ward in pending guardianship cases;  
86       requiring a court to advance such cases on the  
87       calendar; providing applicability; providing an

576-04508-15

2015318c2

88 effective date.

89

90 Be It Enacted by the Legislature of the State of Florida:

91

92 Section 1. Section 709.2105, Florida Statutes, is amended  
93 to read:

94 709.2105 Qualifications of agent; execution of power of  
95 attorney.—

96 (1) The agent must be one of the following:

97 (a) A natural person who is 18 years of age or older. ~~or~~

98 (b) A financial institution that has trust powers and, ~~has~~  
99 a place of business in this state, ~~7~~ and is authorized to conduct  
100 trust business in this state.

101 (c) A not-for-profit corporation that:

102 1. Is organized for charitable or religious purposes in  
103 this state;

104 2. Was qualified as a court-appointed guardian before  
105 January 1, 1996; and

106 3. Is a tax-exempt organization under s. 501(c)(3) of the  
107 Internal Revenue Code. However, this subparagraph applies only  
108 to a corporation that acts through an individual listed in the  
109 records of the Division of Corporations of the Department of  
110 State as a current officer of the corporation and only upon the  
111 occurrence of any of the following events:

112 a. Posting and maintenance by the corporation of a blanket  
113 fiduciary bond of at least \$250,000 with the clerk of the  
114 circuit court in the county in which the corporation's primary  
115 place of business is located. The corporation shall provide  
116 proof of the fiduciary bond to the clerk of each additional

576-04508-15

2015318c2

117 circuit court in which the corporation is serving as agent for a  
118 resident of that circuit. The bond must cover all principals for  
119 whom the corporation has been appointed as an agent at any given  
120 time. The liability of the provider of the bond is limited to  
121 the face value of the bond, regardless of the number of  
122 principals for whom the corporation is acting as an agent. The  
123 terms of the bond must cover the acts or omissions of each agent  
124 or employee of the corporation who has direct contact with the  
125 principal or access to the principal's assets. The bond must be  
126 payable to the Governor and his or her successors in office and  
127 be conditioned on the faithful performance of all duties of an  
128 agent under this chapter.

129 b. Maintenance by the corporation of a liability insurance  
130 policy that covers any losses sustained by the principal caused  
131 by errors, omissions, or any intentional misconduct committed by  
132 the corporation's officers or agents. The policy must cover all  
133 principals for whom the corporation is acting as an agent for  
134 losses up to \$250,000. The terms of the policy must cover acts  
135 or omissions of each agent or employee of the corporation who  
136 has direct contact with the principal or access to the  
137 principal's assets.

138 c. Signing by the principal of a separate written  
139 instrument containing the following language in 14-point  
140 uppercase type:

141  
142 I HAVE BEEN ADVISED THAT OFFICERS OF THE NOT-FOR-PROFIT  
143 CORPORATION HAVE DECLINED TO AGREE TO BE JOINTLY AND SEVERALLY  
144 LIABLE WITH THE NOT-FOR-PROFIT CORPORATION FOR ACTS OR OMISSIONS  
145 OCCURRING IN THE EXERCISE OF THE POWER OF ATTORNEY EXECUTED

576-04508-15

2015318c2

146 UNDER CHAPTER 709, FLORIDA STATUTES.

147  
148 I HAVE ALSO BEEN ADVISED THAT THE NOT-FOR-PROFIT CORPORATION  
149 THAT I HAVE NAMED AS MY AGENT UNDER MY POWER OF ATTORNEY HAS  
150 ELECTED NOT TO POST AND MAINTAIN A FIDUCIARY BOND OR MAINTAIN  
151 INSURANCE IN ACCORDANCE WITH SECTION 709.2105(1) (c), FLORIDA  
152 STATUTES.

153  
154 I UNDERSTAND THAT THE ASSETS OF THE NOT-FOR-PROFIT CORPORATION  
155 MAY NOT BE SUFFICIENT TO COVER LIABILITY ARISING FROM AN ERROR,  
156 AN OMISSION, OR ANY INTENTIONAL MISCONDUCT COMMITTED BY AN  
157 EMPLOYEE OR AGENT OF THE CORPORATION.

158  
159 d. Designation of the corporation by a principal as an  
160 agent under a power of attorney and the corporation acts as an  
161 agent for the principal. However, each officer of the  
162 corporation is jointly and severally liable with the corporation  
163 for acts and omissions under the power of attorney and this  
164 chapter which occur when there is no fiduciary bond as provided  
165 in sub-subparagraph a., liability insurance as provided in sub-  
166 subparagraph b., or signed acknowledgement as provided in sub-  
167 subparagraph c.

168 (2) A power of attorney must be signed by the principal and  
169 by two subscribing witnesses and be acknowledged by the  
170 principal before a notary public or as otherwise provided in s.  
171 695.03.

172 (3) If the principal is physically unable to sign the power  
173 of attorney, the notary public before whom the principal's oath  
174 or acknowledgment is made may sign the principal's name on the

576-04508-15

2015318c2

175 power of attorney pursuant to s. 117.05(14).

176 Section 2. Subsection (3) of section 709.2109, Florida  
177 Statutes, is amended to read:

178 709.2109 Termination or suspension of power of attorney or  
179 agent's authority.—

180 (3) If any person initiates judicial proceedings to  
181 determine the principal's incapacity or for the appointment of a  
182 guardian advocate, the authority granted under the power of  
183 attorney is suspended until the petition is dismissed or  
184 withdrawn or the court enters an order authorizing the agent to  
185 exercise one or more powers granted under the power of attorney.  
186 However, if the agent named in the power of attorney is the  
187 principal's parent, spouse, child, or grandchild, the authority  
188 under the power of attorney is not suspended unless a verified  
189 motion in accordance with s. 744.3203 is also filed.

190 (a) If an emergency arises after initiation of proceedings  
191 to determine incapacity and before adjudication regarding the  
192 principal's capacity, the agent may petition the court in which  
193 the proceeding is pending for authorization to exercise a power  
194 granted under the power of attorney. The petition must set forth  
195 the nature of the emergency, the property or matter involved,  
196 and the power to be exercised by the agent.

197 (b) Notwithstanding the provisions of this section, unless  
198 otherwise ordered by the court, a proceeding to determine  
199 incapacity does not affect the authority of the agent to make  
200 health care decisions for the principal, including, but not  
201 limited to, those provided in chapter 765. If the principal has  
202 executed a health care advance directive designating a health  
203 care surrogate, the terms of the directive control if the

576-04508-15

2015318c2

204 directive and the power of attorney are in conflict unless the  
205 power of attorney is later executed and expressly states  
206 otherwise.

207 Section 3. Subsection (5) is added to section 744.107,  
208 Florida Statutes, to read:

209 744.107 Court monitors.—

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

212 Section 4. Subsection (6) is added to section 744.1075,  
213 Florida Statutes, to read:

214 744.1075 Emergency court monitor.—

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

217 Section 5. Subsections (5) and (8) of section 744.108,  
218 Florida Statutes, are amended, and subsection (9) is added to  
219 that section, to read:

220 744.108 Guardian ~~Guardian's~~ and attorney ~~attorney's~~ fees  
221 and expenses.—

222 (5) All petitions for guardian ~~guardian's~~ and attorney  
223 ~~attorney's~~ fees and expenses must be accompanied by an itemized  
224 description of the services performed for the fees and expenses  
225 sought to be recovered.

226 (8) When court proceedings are instituted to review or  
227 determine a guardian ~~guardian's~~ or an attorney ~~attorney's~~ fees  
228 under subsection (2), such proceedings are part of the  
229 guardianship administration process and the costs, including  
230 costs and attorney fees for the guardian's attorney, an attorney  
231 appointed under s. 744.331(2), or an attorney who has rendered  
232 services to the ward, shall be determined by the court and paid



576-04508-15

2015318c2

233 from the assets of the guardianship estate unless the court  
234 finds the requested compensation under subsection (2) to be  
235 substantially unreasonable.

236 (9) The court may determine that a request for compensation  
237 by the guardian, the guardian's attorney, a person employed by  
238 the guardian, an attorney appointed under s. 744.331(2), or an  
239 attorney who has rendered services to the ward is reasonable  
240 without receiving expert testimony. A person or party may offer  
241 expert testimony for or against a request for compensation after  
242 giving notice to interested persons. Reasonable expert witness  
243 fees shall be awarded by the court and paid from the assets of  
244 the guardianship estate using the standards in subsection (8).

245 Section 6. Section 744.3025, Florida Statutes, is amended  
246 to read:

247 744.3025 Claims of minors.—

248 (1) (a) The court may appoint a guardian ad litem to  
249 represent the minor's interest before approving a settlement of  
250 the minor's portion of the claim in a any case in which a minor  
251 has a claim for personal injury, property damage, wrongful  
252 death, or other cause of action in which the gross settlement of  
253 the claim exceeds \$15,000 if the court believes a guardian ad  
254 litem is necessary to protect the minor's interest.

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

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

576-04508-15

2015318c2

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

264 (e) A court need not appoint a guardian ad litem for the  
265 minor if a guardian of the minor has previously been appointed  
266 and that guardian has no potential adverse interest to the  
267 minor. ~~A court may appoint a guardian ad litem if the court  
268 believes a guardian ad litem is necessary to protect the  
269 interests of the minor.~~

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

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

275 Section 7. Subsections (2) through (8) of section 744.3031,  
276 Florida Statutes, are renumbered as subsections (3) through (9),  
277 respectively, a new subsection (2) is added to that section, and  
278 present subsection (8) of that section is amended, to read:

279 744.3031 Emergency temporary guardianship.—

280 (2) Notice of filing of the petition for appointment of an  
281 emergency temporary guardian and a hearing on the petition must  
282 be served on the alleged incapacitated person and on the alleged  
283 incapacitated person's attorney at least 24 hours before the  
284 hearing on the petition is commenced, unless the petitioner  
285 demonstrates that substantial harm to the alleged incapacitated  
286 person would occur if the 24-hour notice is given.

287 (9)~~(8)~~(a) An emergency temporary guardian shall file a  
288 final report no later than 30 days after the expiration of the  
289 emergency temporary guardianship.

290 (b) A court may not authorize any final payment of the

576-04508-15

2015318c2

291 emergency temporary guardian fees or the fees of his or her  
292 attorney until the final report is filed.

293 (c)~~(b)~~ If an emergency temporary guardian is a guardian for  
294 the property, the final report must consist of a verified  
295 inventory of the property, as provided in s. 744.365, as of the  
296 date the letters of emergency temporary guardianship were  
297 issued, a final accounting that gives a full and correct account  
298 of the receipts and disbursements of all the property of the  
299 ward over which the guardian had control, and a statement of the  
300 property of the ward on hand at the end of the emergency  
301 temporary guardianship. If the emergency temporary guardian  
302 becomes the successor guardian of the property, the final report  
303 must satisfy the requirements of the initial guardianship report  
304 for the guardian of the property as provided in s. 744.362.

305 (d)~~(e)~~ If the emergency temporary guardian is a guardian of  
306 the person, the final report must summarize the activities of  
307 the temporary guardian with regard to residential placement,  
308 medical condition, mental health and rehabilitative services,  
309 and the social condition of the ward to the extent of the  
310 authority granted to the temporary guardian in the letters of  
311 guardianship. If the emergency temporary guardian becomes the  
312 successor guardian of the person, the report must satisfy the  
313 requirements of the initial report for a guardian of the person  
314 as stated in s. 744.362.

315 (e)~~(d)~~ A copy of the final report of the emergency  
316 temporary guardianship shall be served on the successor guardian  
317 and the ward.

318 Section 8. Subsection (7) is added to section 744.309,  
319 Florida Statutes, to read:

576-04508-15

2015318c2

320 744.309 Who may be appointed guardian of a resident ward.-

321 (7) FOR-PROFIT CORPORATE GUARDIAN.-A for-profit corporate  
322 guardian existing under the laws of this state is qualified to  
323 act as guardian of a ward if the entity is qualified to do  
324 business in the state, is wholly owned by the person who is the  
325 circuit's public guardian in the circuit where the corporate  
326 guardian is appointed, has met the registration requirements of  
327 s. 744.1083, and posts and maintains a bond or insurance policy  
328 under paragraph (a).

329 (a) The for-profit corporate guardian must meet one of the  
330 following requirements:

331 1. Post and maintain a blanket fiduciary bond of at least  
332 \$250,000 with the clerk of the circuit court in the county in  
333 which the corporate guardian has its principal place of  
334 business. The corporate guardian shall provide proof of the  
335 fiduciary bond to the clerks of each additional circuit court in  
336 which he or she is serving as a guardian. The bond must cover  
337 all wards for whom the corporation has been appointed as a  
338 guardian at any given time. The liability of the provider of the  
339 bond is limited to the face value of the bond, regardless of the  
340 number of wards for whom the corporation is acting as a  
341 guardian. The terms of the bond must cover the acts or omissions  
342 of each agent or employee of the corporation who has direct  
343 contact with the ward or access to the assets of the  
344 guardianship. The bond must be payable to the Governor and his  
345 or her successors in office and be conditioned on the faithful  
346 performance of all duties of a guardian under this chapter. The  
347 bond is in lieu of and not in addition to the bond required  
348 under s. 744.1085 but is in addition to any bonds required under

576-04508-15

2015318c2

349 s. 744.351. The expenses incurred to satisfy the bonding  
350 requirements of this section may not be paid with the assets of  
351 any ward; or

352 2. Maintain a liability insurance policy that covers any  
353 losses sustained by the guardianship caused by errors,  
354 omissions, or any intentional misconduct committed by the  
355 corporation's officers or agents. The policy must cover all  
356 wards for whom the corporation is acting as a guardian for  
357 losses up to \$250,000. The terms of the policy must cover acts  
358 or omissions of each agent or employee of the corporation who  
359 has direct contact with the ward or access to the assets of the  
360 guardianship. The corporate guardian shall provide proof of the  
361 fiduciary bond to the clerk of each circuit court in which he or  
362 she is serving as a guardian.

363 (b) A for-profit corporation appointed as guardian before  
364 July 1, 2015, is also qualified to serve as a guardian in the  
365 particular guardianships in which the corporation has already  
366 been appointed as guardian.

367 Section 9. Section 744.3115, Florida Statutes, is amended  
368 to read:

369 744.3115 Advance directives for health care.—In each  
370 proceeding in which a guardian is appointed under this chapter,  
371 the court shall determine whether the ward, prior to incapacity,  
372 has executed any valid advance directive under chapter 765. If  
373 any advance directive exists, the court shall specify in its  
374 order and letters of guardianship what authority, if any, the  
375 guardian shall exercise over the ward with regard to health care  
376 decisions and what authority, if any, the surrogate shall  
377 continue to exercise over the ward with regard to health care

576-04508-15

2015318c2

378 decisions ~~surrogate~~. Pursuant to the grounds listed in s.  
379 765.105, the court, upon its own motion, may, with notice to the  
380 surrogate and any other appropriate parties, modify or revoke  
381 the authority of the surrogate to make health care decisions for  
382 the ward. Any order revoking or modifying the authority of the  
383 surrogate must be supported by specific written findings of  
384 fact. If the court order provides that the guardian is  
385 responsible for making health care decisions for the ward, the  
386 guardian shall assume the responsibilities of the surrogate  
387 which are provided in s. 765.205. For purposes of this section,  
388 the term "health care decision" has the same meaning as in s.  
389 765.101.

390 Section 10. Section 744.312, Florida Statutes, is reordered  
391 and amended to read:

392 744.312 Considerations in appointment of guardian.—

393 (2) ~~(1)~~ If a guardian cannot be appointed under subsection  
394 (1) ~~Subject to the provisions of subsection (4)~~, the court may  
395 appoint any person who is fit and proper and qualified to act as  
396 guardian, whether related to the ward or not.

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

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

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

402 (c) Has the capacity to manage the financial resources  
403 involved; or

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

406 (3) The court shall also:

576-04508-15

2015318c2

407 (a) Consider the wishes expressed by an incapacitated  
408 person as to who shall be appointed guardian.~~†~~

409 (b) Consider the preference of a minor who is age 14 or  
410 over as to who should be appointed guardian.~~†~~

411 (c) Consider any person designated as guardian in any will  
412 in which the ward is a beneficiary.

413 (d) Consider the wishes of the ward's next of kin when the  
414 ward cannot express a preference.

415 (1)~~(4)~~ If the person designated is qualified to serve  
416 pursuant to s. 744.309, the court shall appoint any standby  
417 guardian or preneed guardian, unless the court determines that  
418 appointing such person is contrary to the best interests of the  
419 ward.

420 (4) Except when a standby guardian or a preneed guardian is  
421 appointed by the court:

422 (a) In each case when a court appoints a professional  
423 guardian and does not use a rotation system for such  
424 appointment, the court must make specific findings of fact  
425 stating why the person was selected as guardian in the  
426 particular matter involved. The findings must reference each of  
427 the factors listed in subsections (2) and (3).

428 (b) An emergency temporary guardian who is a professional  
429 guardian may not be appointed as the permanent guardian of a  
430 ward unless one of the next of kin of the alleged incapacitated  
431 person or the ward requests that the professional guardian be  
432 appointed as permanent guardian. The court may waive the  
433 limitations of this paragraph if the special requirements of the  
434 guardianship demand that the court appoint a guardian because he  
435 or she has special talent or specific prior experience. The

576-04508-15

2015318c2

436 court must make specific findings of fact that justify waiving  
437 the limitations of this paragraph.

438 (5) The court may not give preference to the appointment of  
439 a person under subsection (2) based solely on the fact that such  
440 person was appointed by the court to serve as an emergency  
441 temporary guardian.

442 Section 11. Section 744.3203, Florida Statutes, is created  
443 to read:

444 744.3203 Suspension of power of attorney before incapacity  
445 determination.—

446 (1) At any time during proceedings to determine incapacity  
447 but before the entry of an order determining incapacity, the  
448 authority granted under an alleged incapacitated person's power  
449 of attorney to a parent, spouse, child, or grandchild is  
450 suspended when the petitioner files a motion stating that a  
451 specific power of attorney should be suspended for any of the  
452 following grounds:

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

455 (b) The power of attorney is invalid.

456 (c) The agent has failed to discharge his or her duties or  
457 incapacity or illness renders the agent incapable of discharging  
458 duties.

459 (d) The agent has abused powers.

460 (e) There is a danger that the property of the alleged  
461 incapacitated person may be wasted, misappropriated, or lost  
462 unless the authority under the power of attorney is suspended.

463  
464 Grounds for suspending a power of attorney do not include the



576-04508-15

2015318c2

465 existence of a dispute between the agent and the petitioner  
466 which is more appropriate for resolution in some other forum or  
467 a legal proceeding other than a guardianship proceeding.

468 (2) The motion must:

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

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

472 (c) Include the following statement: "Under penalties of  
473 perjury, I declare that I have read the foregoing motion and  
474 that the facts stated in it are true to the best of my knowledge  
475 and belief," followed by the signature of the petitioner.

476 (3) Upon the filing of a response to the motion by the  
477 agent under the power of attorney, the court shall schedule the  
478 motion for an expedited hearing. Unless an emergency arises and  
479 the agent's response sets forth the nature of the emergency, the  
480 property or matter involved, and the power to be exercised by  
481 the agent, notice must be given to all interested persons, the  
482 alleged incapacitated person, and the alleged incapacitated  
483 person's attorney. The court order following the hearing must  
484 set forth what powers the agent is permitted to exercise, if  
485 any, pending the outcome of the petition to determine  
486 incapacity.

487 (4) In addition to any other remedy authorized by law, a  
488 court may award reasonable attorney fees and costs to an agent  
489 who successfully challenges the suspension of the power of  
490 attorney if the petitioner's motion was made in bad faith.

491 (5) The suspension of authority granted to persons other  
492 than a parent, spouse, child, or grandchild shall be as provided  
493 in s. 709.2109.

576-04508-15

2015318c2

494 Section 12. Subsection (6) and paragraph (c) of subsection  
495 (7) of section 744.331, Florida Statutes, are amended to read:

496 744.331 Procedures to determine incapacity.—

497 (6) ORDER DETERMINING INCAPACITY.—If, after making findings  
498 of fact on the basis of clear and convincing evidence, the court  
499 finds that a person is incapacitated with respect to the  
500 exercise of a particular right, or all rights, the court shall  
501 enter a written order determining such incapacity. In  
502 determining incapacity, the court shall consider the person's  
503 unique needs and abilities and may remove only those rights that  
504 the court finds the person does not have the capacity to  
505 exercise. A person is determined to be incapacitated only with  
506 respect to those rights specified in the order.

507 (a) The court shall make the following findings:

508 1. The exact nature and scope of the person's incapacities;

509 2. The exact areas in which the person lacks capacity to  
510 make informed decisions about care and treatment services or to  
511 meet the essential requirements for her or his physical or  
512 mental health or safety;

513 3. The specific legal disabilities to which the person is  
514 subject; and

515 4. The specific rights that the person is incapable of  
516 exercising.

517 (b) When an order determines that a person is incapable of  
518 exercising delegable rights, the court must consider and find  
519 whether there is an alternative to guardianship that will  
520 sufficiently address the problems of the incapacitated person. ~~A~~  
521 ~~guardian must be appointed to exercise the incapacitated~~  
522 ~~person's delegable rights unless the court finds there is an~~

576-04508-15

2015318c2

523 ~~alternative.~~ A guardian may not be appointed if the court finds  
524 there is an alternative to guardianship which will sufficiently  
525 address the problems of the incapacitated person. If the court  
526 finds there is not an alternative to guardianship that  
527 sufficiently addresses the problems of the incapacitated person,  
528 a guardian must be appointed to exercise the incapacitated  
529 person's delegable rights.

530 (c) In determining that a person is totally incapacitated,  
531 the order must contain findings of fact demonstrating that the  
532 individual is totally without capacity to care for herself or  
533 himself or her or his property.

534 (d) An order adjudicating a person to be incapacitated  
535 constitutes proof of such incapacity until further order of the  
536 court.

537 (e) After the order determining that the person is  
538 incapacitated has been filed with the clerk, it must be served  
539 on the incapacitated person. The person is deemed incapacitated  
540 only to the extent of the findings of the court. The filing of  
541 the order is notice of the incapacity. An incapacitated person  
542 retains all rights not specifically removed by the court.

543 (f) Upon the filing of a verified statement by an  
544 interested person stating:

545 1. That he or she has a good faith belief that the alleged  
546 incapacitated person's trust, trust amendment, or durable power  
547 of attorney is invalid; and

548 2. A reasonable factual basis for that belief,

549  
550 the trust, trust amendment, or durable power of attorney shall  
551 not be deemed to be an alternative to the appointment of a

576-04508-15

2015318c2

552 guardian. The appointment of a guardian does not limit the  
553 court's power to determine that certain authority granted by a  
554 durable power of attorney is to remain exercisable by the agent  
555 ~~attorney in fact.~~

556 (7) FEES.—

557 (c) If the petition is dismissed or denied:~~7~~

558 1. The fees of the examining committee shall be paid upon  
559 court order as expert witness fees under s. 29.004(6).

560 2. Costs and attorney ~~attorney's~~ fees of the proceeding may  
561 be assessed against the petitioner if the court finds the  
562 petition to have been filed in bad faith. The petitioner shall  
563 also reimburse the state courts system for any amounts paid  
564 under subparagraph 1. upon such a finding.

565 Section 13. Subsection (4) of section 744.344, Florida  
566 Statutes, is amended to read:

567 744.344 Order of appointment.—

568 (4) If a petition for the appointment of a guardian has not  
569 been filed or ruled upon at the time of the hearing on the  
570 petition to determine capacity, the court may appoint an  
571 emergency temporary guardian in the manner and for the purposes  
572 specified in s. 744.3031.

573 Section 14. Section 744.345, Florida Statutes, is amended  
574 to read:

575 744.345 Letters of guardianship.—Letters of guardianship  
576 shall be issued to the guardian and shall specify whether the  
577 guardianship pertains to the person, or the property, or both,  
578 of the ward. The letters must state whether the guardianship is  
579 plenary or limited, and, if limited, the letters must state the  
580 powers and duties of the guardian. ~~If the guardianship is~~

576-04508-15

2015318c2

581 ~~limited,~~ The letters shall state whether or not and to what  
582 extent the guardian is authorized to act on behalf of the ward  
583 with regard to any advance directive previously executed by the  
584 ward.

585 Section 15. Section 744.359, Florida Statutes, is created  
586 to read:

587 744.359 Abuse, neglect, or exploitation by a guardian.—

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

589 (2) A guardian has committed exploitation when the  
590 guardian:

591 (a) Commits fraud in obtaining appointment as a guardian;

592 (b) Abuses his or her powers; or

593 (c) Wastes, embezzles, or intentionally mismanages the  
594 assets of the ward.

595 (3) A person who believes that a guardian is abusing,  
596 neglecting, or exploiting a ward shall report the incident to  
597 the central abuse hotline of the Department of Children and  
598 Families.

599 (4) This section shall be interpreted in conformity with s.  
600 825.103.

601 Section 16. Section 744.361, Florida Statutes, is amended  
602 to read:

603 744.361 Powers and duties of guardian.—

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

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

576-04508-15

2015318c2

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

611 (4) A guardian may not act in a manner that is contrary to  
612 the ward's best interests under the circumstances.

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

617 ~~(6)(2)~~ The guardian shall file an initial guardianship  
618 report in accordance with s. 744.362.

619 ~~(7)(3)~~ The guardian shall file a guardianship report  
620 annually in accordance with s. 744.367.

621 ~~(8)(4)~~ The guardian of the person shall implement the  
622 guardianship plan.

623 ~~(9)(5)~~ When two or more guardians have been appointed, the  
624 guardians shall consult with each other.

625 ~~(10)(6)~~ A guardian who is given authority over any property  
626 of the ward shall:

627 (a) Protect and preserve the property and invest it  
628 prudently as provided in chapter 518, apply it as provided in s.  
629 744.397, and keep clear, distinct, and accurate records of the  
630 administration of the ward's property ~~account for it faithfully.~~

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

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

634 ~~(11)(7)~~ The guardian shall observe the standards in dealing  
635 with the guardianship property that would be observed by a  
636 prudent person dealing with the property of another, ~~and, if the~~  
637 ~~guardian has special skills or is named guardian on the basis of~~  
638 ~~representations of special skills or expertise, he or she is~~

576-04508-15

2015318c2

639 ~~under a duty to use those skills.~~

640 (12)~~(8)~~ The guardian, if authorized by the court, shall  
641 take possession of all of the ward's property and of the rents,  
642 income, issues, and profits from it, whether accruing before or  
643 after the guardian's appointment, and of the proceeds arising  
644 from the sale, lease, or mortgage of the property or of any  
645 part. All of the property and the rents, income, issues, and  
646 profits from it are assets in the hands of the guardian for the  
647 payment of debts, taxes, claims, charges, and expenses of the  
648 guardianship and for the care, support, maintenance, and  
649 education of the ward or the ward's dependents, as provided for  
650 under the terms of the guardianship plan or by law.

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

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

656 (b) Allow the ward to maintain contact with family and  
657 friends unless the guardian believes that such contact may cause  
658 harm to the ward.

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

662 (d) Assist the ward in developing or regaining capacity, if  
663 medically possible.

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

667 (f) To the extent applicable, make provision for the

576-04508-15

2015318c2

668 medical, mental, rehabilitative, or personal care services for  
669 the welfare of the ward.

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

673 (h) Evaluate the ward's medical and health care options,  
674 financial resources, and desires when making residential  
675 decisions that are best suited for the current needs of the  
676 ward.

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

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

684 (14) ~~(9)~~ A professional guardian must ensure that each of  
685 the guardian's wards is personally visited by the guardian or  
686 one of the guardian's professional staff at least once each  
687 calendar quarter. During the personal visit, the guardian or the  
688 guardian's professional staff person shall assess:

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

690 (b) The appropriateness of the ward's current living  
691 situation.

692 (c) The need for any additional services and the necessity  
693 for continuation of existing services, taking into consideration  
694 all aspects of social, psychological, educational, direct  
695 service, health, and personal care needs.

696 (d) The nature and extent of visitation and communication



576-04508-15

2015318c2

697 with the ward's family and friends.

698

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

701 Section 17. Subsection (1) of section 744.367, Florida  
702 Statutes, is amended to read:

703 744.367 Duty to file annual guardianship report.—

704 (1) Unless the court requires filing on a calendar-year  
705 basis, each guardian of the person shall file with the court an  
706 annual guardianship plan at least 60 days, but no more than  
707 ~~within~~ 90 days, before ~~after~~ the last day of the anniversary  
708 month that the letters of guardianship were signed, and the plan  
709 must cover the coming fiscal year, ending on the last day in  
710 such anniversary month. If the court requires calendar-year  
711 filing, the guardianship plan for the forthcoming calendar year  
712 must be filed on or after September 1, but no later than  
713 December 1, of the current year ~~before April 1 of each year.~~

714 Section 18. Subsection (8) of section 744.369, Florida  
715 Statutes, is amended to read:

716 744.369 Judicial review of guardianship reports.—

717 (8) The approved report constitutes the authority for the  
718 guardian to act in the forthcoming year. The powers of the  
719 guardian are limited by the terms of the report. The annual  
720 report may not grant additional authority to the guardian  
721 without a hearing, as provided for in s. 744.331, to determine  
722 that the ward is incapacitated to act in that matter. Unless the  
723 court orders otherwise, the guardian may continue to act under  
724 authority of the last approved report until the forthcoming  
725 year's report is approved.

576-04508-15

2015318c2

726 Section 19. Subsection (1) of section 744.3715, Florida  
727 Statutes, is amended to read:

728 744.3715 Petition for interim judicial review.—

729 (1) At any time, any interested person, including the ward,  
730 may petition the court for review alleging that the guardian is  
731 not complying with the guardianship plan, ~~or~~ is exceeding his or  
732 her authority under the guardianship plan, is acting in a manner  
733 contrary to s. 744.361, is denying visitation between the ward  
734 and his or her relatives in violation of s. 744.361(13), or ~~and~~  
735 ~~the guardian~~ is not acting in the best interest of the ward. The  
736 petition for review must state the nature of the objection to  
737 the guardian's action or proposed action. Upon the filing of any  
738 such petition, the court shall review the petition and act upon  
739 it expeditiously.

740 Section 20. Paragraphs (a) and (b) of subsection (3) of  
741 section 744.464, Florida Statutes, are amended, and subsection  
742 (4) is added to that section, to read:

743 744.464 Restoration to capacity.—

744 (3) ORDER OF RESTORATION.—

745 (a) If no objections are filed, and the court is satisfied  
746 that with the medical examination establishes by a preponderance  
747 of the evidence that restoration of all or some of the ward's  
748 rights is appropriate, the court shall enter an order of  
749 restoration of capacity, restoring all or some of the rights  
750 which were removed from the ward in accordance with those  
751 findings. ~~The order must be issued within 30 days after the~~  
752 ~~medical report is filed.~~

753 (b) At the conclusion of a hearing, conducted pursuant to  
754 s. 744.1095, the court shall make specific findings of fact and,

576-04508-15

2015318c2

755 based on a preponderance of the evidence, enter an order either  
756 denying the suggestion of capacity or restoring all or some of  
757 the rights which were removed from the ward. The ward has the  
758 burden of proving by a preponderance of the evidence that the  
759 restoration of capacity is warranted.

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

763 Section 21. Section 709.2109, Florida Statutes, as amended  
764 by this act, and sections 744.3203 and 744.359, Florida  
765 Statutes, as created by this act, apply to all proceedings filed  
766 on or after July 1, 2015. The amendments made by this act to ss.  
767 744.107, 744.1075, 744.108, 744.3025, 744.3031, 744.309,  
768 744.3115, 744.312, 744.331, 744.344, 744.345, 744.361, 744.367,  
769 744.369, 744.3715, and 744.464, Florida Statutes, apply to all  
770 proceedings pending on July 1, 2015.

771 Section 22. This act shall take effect July 1, 2015.