



26 by the court in acting on the petition; providing  
 27 exceptions to the requirement for court approval;  
 28 requiring the guardian to provide certain notice to  
 29 the court within a specified timeframe; amending s.  
 30 744.441, F.S.; making technical changes; deleting  
 31 provisions regarding the authority of certain  
 32 guardians to sign an order not to resuscitate;  
 33 providing an effective date.  
 34

35 Be It Enacted by the Legislature of the State of Florida:  
 36

37 Section 1. Paragraph (h) is added to subsection (3) of  
 38 section 744.3215, Florida Statutes, to read:

39 744.3215 Rights of persons determined incapacitated.—

40 (3) Rights that may be removed from a person by an order  
 41 determining incapacity and which may be delegated to the  
 42 guardian include the right:

43 (h) To consent to the withholding or withdrawal of life-  
 44 prolonging procedures as defined in s. 765.101, subject to court  
 45 approval as required in s. 744.4431.

46 Section 2. Subsections (2) through (6) of section 744.363,  
 47 Florida Statutes, are renumbered as subsections (3) through (7),  
 48 respectively, paragraph (f) of subsection (1) is amended,  
 49 paragraph (g) is added to subsection (1), and a new subsection  
 50 (2) is added to that section, to read:

51 744.363 Initial guardianship plan.—

52 (1) The initial guardianship plan shall include all of the  
53 following:

54 (f)1. A list of any preexisting:

55 a. Orders not to resuscitate executed in accordance with  
56 ~~under~~ s. 401.45(3) and the dates such orders were signed; or

57 b. ~~Preexisting~~ Advance directives, as defined in s.  
58 765.101 and, the dates such directives were signed. ~~date an~~  
59 ~~order or directive was signed,~~

60 2. For each item listed under subparagraph 1., the plan  
61 must state whether the such order or directive has been revoked,  
62 modified, or suspended by the court or the extent to which  
63 authority under an order or directive has been transferred by  
64 the court to the guardian, and the date of such action by the  
65 court.

66 (g) ~~and~~ A description of the steps taken to identify and  
67 locate a ~~the~~ preexisting order not to resuscitate or advance  
68 directive.

69 (2) A surrogate designated by the ward in an advance  
70 directive or an agent designated by the ward in a durable power  
71 of attorney who retains authority to make health care decisions  
72 under the guardianship plan may exercise retained authority  
73 without additional approval by the court. Any authority of the  
74 surrogate to carry out the instructions in the advance directive  
75 or authority of the agent under a durable power of attorney

76 which is transferred to the guardian may be exercised by the  
 77 guardian, consistent with the advance directive or durable power  
 78 of attorney, without additional approval by the court.

79 Section 3. Subsections (2), (3), and (4) of section  
 80 744.3675, Florida Statutes, are renumbered as subsections (3),  
 81 (4), and (5), respectively, paragraph (d) of subsection (1) is  
 82 amended, paragraph (e) is added to subsection (1), and a new  
 83 subsection (2) is added to that section, to read:

84 744.3675 Annual guardianship plan.—Each guardian of the  
 85 person must file with the court an annual guardianship plan  
 86 which updates information about the condition of the ward. The  
 87 annual plan must specify the current needs of the ward and how  
 88 those needs are proposed to be met in the coming year.

89 (1) Each plan for an adult ward must, if applicable,  
 90 include:

91 (d) 1. A list of any preexisting:

92 a. Orders not to resuscitate executed in accordance with  
 93 under s. 401.45(3) and the dates such orders were signed; or

94 b. ~~Preexisting~~ Advance directives, as defined in s.  
 95 765.101 and, the dates such directives were signed. ~~date an~~  
 96 ~~order or directive was signed,~~

97 2. For each item listed under subparagraph 1., the plan  
 98 must state whether the ~~such~~ order or directive has been revoked,  
 99 modified, or suspended by the court or the extent to which  
 100 authority under an order or directive has been transferred by

101 the court to the guardian, and the date of such action by the  
 102 court.

103 (e) ~~and~~ A description of the steps taken to identify and  
 104 locate a ~~the~~ preexisting order not to resuscitate or advance  
 105 directive.

106 (2) A surrogate designated by the ward in an advance  
 107 directive or an agent designated by the ward in a durable power  
 108 of attorney who retains authority to make health care decisions  
 109 under the guardianship plan may exercise retained authority  
 110 without additional approval by the court. Any authority of the  
 111 surrogate to carry out the instructions in the advance directive  
 112 or authority of the agent under a durable power of attorney  
 113 which is transferred to the guardian may be exercised by the  
 114 guardian, consistent with the advance directive or durable power  
 115 of attorney, without additional approval by the court.

116 Section 4. Section 744.4431, Florida Statutes, is created  
 117 to read:

118 744.4431 Guardianship power regarding life-prolonging  
 119 procedures.—

120 (1) Except as provided in this section, decisions to  
 121 withhold or withdraw life-prolonging procedures for a ward must  
 122 be approved by the court. A guardian appointed to act on behalf  
 123 of a ward's person must petition the court pursuant to the  
 124 Florida Probate Rules for authority to consent to withhold or  
 125 withdraw life-prolonging procedures.

126       (2) The petition by the guardian must contain all of the  
127 following:

128       (a) A description of the proposed action for which court  
129 approval is sought and documentation of any authority for the  
130 guardian to make health care decisions on behalf of the ward.

131       (b) Documentation showing the guardian has notified the  
132 ward's known next of kin and any interested persons of the  
133 guardian's intent to file the petition.

134       (c) A statement regarding any known objections to the  
135 proposed decision or of conflicts between the proposed decision  
136 and the wishes, presently or previously expressed, of the ward,  
137 the ward's next of kin, or any interested person.

138       (d) A description of the circumstances or evidence and  
139 affidavits or supporting documentation showing that the proposed  
140 decision satisfies the criteria in s. 765.305, s. 765.401(3), or  
141 s. 765.404, as applicable.

142       (3) The guardian must serve notice of the petition, and of  
143 any hearing, upon interested persons and the ward's next of kin.

144       (4) The court must hold a hearing on the petition if the  
145 court has been notified of an objection or conflict or if the  
146 court has insufficient information to determine whether the  
147 criteria for granting the petition has been met.

148       (5) If a hearing is required and exigent circumstances are  
149 alleged, the court must hold a preliminary hearing within 72  
150 hours after the petition is filed and do one of the following:

151        (a) Rule on the relief requested immediately after the  
 152 preliminary hearing; or

153        (b) Conduct an evidentiary hearing within 4 days after the  
 154 preliminary hearing and rule on the relief requested immediately  
 155 after the evidentiary hearing.

156        (6) If the decision to withhold or withdraw life-  
 157 prolonging procedures does not involve any known conflicts with  
 158 the wishes, as presently or previously expressed, of the ward,  
 159 the ward's next of kin, or any interested person, then court  
 160 approval is not required for the following decisions:

161        (a) A decision by a surrogate designated by the ward in an  
 162 advance directive or by an agent designated by the ward in a  
 163 durable power of attorney who retains authority to make health  
 164 care decisions under the guardianship plan.

165        (b) A decision by a surrogate designated by the ward in an  
 166 advance directive or by an agent designated by the ward in a  
 167 durable power of attorney who retains authority to make health  
 168 care decisions under the guardianship plan to carry out the  
 169 instructions in, or take actions consistent with, the ward's  
 170 advance directive.

171        (c) A decision by a guardian to whom authority has been  
 172 granted by the court to carry out the instructions in, or to  
 173 take actions consistent with, the ward's advance directive.

174        (7) Court approval is not required for a decision to  
 175 execute an order not to resuscitate, as described in s.

176 401.45(3) (a), if the ward is in a hospital and both of the  
 177 following occur:

178 (a) The ward's primary physician and at least one other  
 179 consulting physician document that:

180 1. There is no reasonable medical probability for recovery  
 181 from or a cure of the ward's underlying medical condition;

182 2. The ward is in an end-stage condition or that the  
 183 ward's medical condition is in an inexorable and irreversible  
 184 decline and that the ward's death is likely to occur in the near  
 185 future; and

186 3. Resuscitation will cause the ward physical harm or  
 187 pain.

188 (b) The guardian has notified the ward's known next of kin  
 189 and any interested persons and the decision does not involve any  
 190 known conflicts with the wishes, as presently or previously  
 191 expressed, of the ward, the ward's next of kin, or any  
 192 interested person.

193  
 194 The guardian must notify the court of the execution of an order  
 195 not to resuscitate within 2 business days after such execution.

196 Section 5. Section 744.441, Florida Statutes, is amended  
 197 to read:

198 744.441 Powers of guardian upon court approval.—After  
 199 obtaining approval of the court pursuant to a petition for  
 200 authorization to act, ÷



201           ~~(1)~~ a plenary guardian of the property, or a limited  
202 guardian of the property within the powers granted by the order  
203 appointing the guardian or an approved annual or amended  
204 guardianship report, may do all of the following:

205           (1)~~(a)~~ Perform, compromise, or refuse performance of a  
206 ward's contracts that continue as obligations of the estate, as  
207 he or she may determine under the circumstances.

208           (2)~~(b)~~ Execute, exercise, or release any powers as  
209 trustee, personal representative, custodian for minors,  
210 conservator, or donee of any power of appointment or other power  
211 that the ward might have lawfully exercised, consummated, or  
212 executed if not incapacitated, if the best interest of the ward  
213 requires such execution, exercise, or release.

214           (3)~~(c)~~ Make ordinary or extraordinary repairs or  
215 alterations in buildings or other structures; demolish any  
216 improvements; or raze existing, or erect new, party walls or  
217 buildings.

218           (4)~~(d)~~ Subdivide, develop, or dedicate land to public use;  
219 make or obtain the vacation of plats and adjust boundaries;  
220 adjust differences in valuation on exchange or partition by  
221 giving or receiving consideration; or dedicate easements to  
222 public use without consideration.

223           (5)~~(e)~~ Enter into a lease as lessor or lessee for any  
224 purpose, with or without option to purchase or renew, for a term  
225 within, or extending beyond, the period of guardianship.

226        (6)~~(f)~~ Enter into a lease or arrangement for exploration  
 227 and removal of minerals or other natural resources or enter into  
 228 a pooling or unitization agreement.

229        (7)~~(g)~~ Abandon property when, in the opinion of the  
 230 guardian, it is valueless or is so encumbered or in such  
 231 condition that it is of no benefit to the estate.

232        (8)~~(h)~~ Pay calls, assessments, and other sums chargeable  
 233 or accruing against, or on account of, securities.

234        (9)~~(i)~~ Borrow money, with or without security, to be  
 235 repaid from the property or otherwise and advance money for the  
 236 protection of the estate.

237        (10)~~(j)~~ Effect a fair and reasonable compromise with any  
 238 debtor or obligor or extend, renew, or in any manner modify the  
 239 terms of any obligation owing to the estate.

240        (11)~~(k)~~ Prosecute or defend claims or proceedings in any  
 241 jurisdiction for the protection of the estate and of the  
 242 guardian in the performance of his or her duties. Before  
 243 authorizing a guardian to bring an action described in s.  
 244 736.0207, the court shall first find that the action appears to  
 245 be in the ward's best interests during the ward's probable  
 246 lifetime. There shall be a rebuttable presumption that an action  
 247 challenging the ward's revocation of all or part of a trust is  
 248 not in the ward's best interests if the revocation relates  
 249 solely to a devise. This subsection ~~paragraph~~ does not preclude  
 250 a challenge after the ward's death. If the court denies a

251 request that a guardian be authorized to bring an action  
252 described in s. 736.0207, the court must ~~shall~~ review the  
253 continued need for a guardian and the extent of the need for  
254 delegation of the ward's rights.

255 (12) ~~(1)~~ Sell, mortgage, or lease any real or personal  
256 property of the estate, including homestead property, or any  
257 interest therein for cash or credit, or for part cash and part  
258 credit, and with or without security for unpaid balances.

259 (13) ~~(m)~~ Continue any unincorporated business or venture in  
260 which the ward was engaged.

261 (14) ~~(n)~~ Purchase the entire fee simple title to real  
262 estate in this state in which the guardian has no interest, but  
263 the purchase may be made only for a home for the ward, to  
264 protect the home of the ward or the ward's interest, or as a  
265 home for the ward's dependent family. If the ward is a married  
266 person and the home of the ward or of the dependent family of  
267 the ward is owned by the ward and spouse as an estate by the  
268 entirety and the home is sold pursuant to the authority of  
269 subsection (12) ~~paragraph (1)~~, the court may authorize the  
270 investment of any part or all of the proceeds from the sale  
271 toward the purchase of a fee simple title to real estate in this  
272 state for a home for the ward or the dependent family of the  
273 ward as an estate by the entirety owned by the ward and spouse.  
274 If the guardian is authorized to acquire title to real estate  
275 for the ward or dependent family of the ward as an estate by the

276 entirety in accordance with the preceding provisions, the  
277 conveyance must ~~shall~~ be in the name of the ward and spouse and  
278 ~~shall~~ be effective to create an estate by the entirety in the  
279 ward and spouse.

280 (15) ~~(e)~~ Exercise any option contained in any policy of  
281 insurance payable to, or inuring to the benefit of, the ward.

282 (16) ~~(p)~~ Pay reasonable funeral, interment, and grave  
283 marker expenses for the ward from the ward's estate.

284 (17) ~~(q)~~ Make gifts of the ward's property to members of  
285 the ward's family in estate and income tax planning procedures.

286 (18) ~~(r)~~ When the ward's will evinces an objective to  
287 obtain a United States estate tax charitable deduction by use of  
288 a split interest trust (as that term is defined in s. 736.1201),  
289 but the maximum charitable deduction otherwise allowable will  
290 not be achieved in whole or in part, execute a codicil on the  
291 ward's behalf amending said will to obtain the maximum  
292 charitable deduction allowable without diminishing the aggregate  
293 value of the benefits of any beneficiary under such will.

294 (19) ~~(s)~~ Create or amend revocable trusts or create  
295 irrevocable trusts of property of the ward's estate which may  
296 extend beyond the disability or life of the ward in connection  
297 with estate, gift, income, or other tax planning or in  
298 connection with estate planning. The court shall retain  
299 oversight of the assets transferred to a trust, unless otherwise  
300 ordered by the court.

301        (20) ~~(t)~~ Renounce or disclaim any interest by testate or  
 302        intestate succession or by inter vivos transfer.

303        (21) ~~(u)~~ Enter into contracts that are appropriate for, and  
 304        in the best interest of, the ward.

305        (22) ~~(v)~~ As to a minor ward, pay expenses of the ward's  
 306        support, health, maintenance, and education, if the ward's  
 307        parents, or either of them, are alive.

308        ~~(2) A plenary guardian or a limited guardian of a ward may  
 309        sign an order not to resuscitate as provided in s. 401.45(3).  
 310        When a plenary guardian or a limited guardian of a ward seeks to  
 311        obtain approval of the court to sign an order not to  
 312        resuscitate, if required by exigent circumstances, the court  
 313        must hold a preliminary hearing within 72 hours after the  
 314        petition is filed, and:~~

315        ~~(a) Rule on the relief requested immediately after the  
 316        preliminary hearing; or~~

317        ~~(b) Conduct an evidentiary hearing not later than 4 days  
 318        after the preliminary hearing and rule on the relief requested  
 319        immediately after the evidentiary hearing.~~

320        Section 6. This act shall take effect July 1, 2023.