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*The mission of the Guardianship Task Force is to examine guardianship and incapacity, identify best practices in these very important areas of Florida law and to recommend specific statutory and other changes for achieving citizen access to quality guardianship services.*

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The Guardianship Task Force extends its appreciation to Governor Jeb Bush and Secretary Terry White for the opportunity to effect positive change for the critical and growing needs of the incapacitated population of the state.

**PUBLIC TESTIMONY**

A special thank you goes to the members of the public who passionately testified before the Task Force with their thoughts on improving the incapacity and guardianship process for the state of Florida. Their personal stories make this report a very compelling document.

**TASK FORCE**

Each member of the Guardianship Task Force should be recognized for his or her outstanding commitment to this project. Members took time from their busy schedules to travel around the state for meetings. In addition, they gave of their personal time to assist in the writing of this report. Their knowledge, experiences and devotion to improving the guardianship and incapacity process in Florida are evident in the solid recommendations put forth in the report.

We would also like to thank two former members of the Task Force, Professor Rebecca Morgan and Ed Boyer for their initial contributions.

**SUPPORTING STAFF AND ASSISTANTS**

The Task Force would like to acknowledge the teamwork and significant efforts on the part of many who deserve recognition for their support in the Task Force's work.

**STATEWIDE PUBLIC GUARDIANSHIP OFFICE**

We would like to thank Michelle Hollister, Esq., Executive Director of the Statewide Public Guardianship Office. She prepared the initial draft of this report as well as coordinated the public hearings and provided minutes after each of the meetings. She also provided critical support in managing the project and keeping it on schedule. We would also like to thank her assistants, Robert Bayerl and Pauline Rabinowitz, for their help with this project.

**PASCO COUNTY DEPUTY CLERKS**

We would like to thank Judy Kennedy who provided audio video documentation coverage of each meeting, highlighted the significant parts of each public meeting and of the workshop discussion.

The following individuals were also involved during the process, attending key Task Force events, producing, writing, editing and supplying information for the PowerPoint presentations of significant parts of each

public meeting. This group also assisted with Preliminary Report (<http://elderaffairs.state.fl.us>):

- Rosalyn Fenton
- Judy Kennedy
- Paula O'Neil
- Wally Dye
- Barbara Rulison
- Renita George

**STAFF WHO ASSISTED AT THE FOLLOWING AGENCIES, FACILITIES AND UNIVERSITIES**

The Guardianship Task Force gratefully acknowledges the following agencies, facilities and universities who supported the efforts of the Task Force Committee:

- Pasco County Historic Court House, Dade City, Florida
- Broward County Governmental Center, Commission Chambers
- Florida Supreme Court Building, Tallahassee, Florida
- Adams Mark Hotel, Orlando, Florida
- Stetson University's Great Hall, Gulfport, Florida
- St. Thomas University's Convocation Hall, Miami, Florida
- Collier County Governmental Complex,  
Commission Chambers, Naples, Florida
- Commission Chambers of the Lightner Building,  
St. Augustine, Florida

**DIGNITARIES**

A special thank you to the dignitaries who gave their support:

- Secretary Terry White
- Senator Mike Fasano
- Senator Burt Saunders
- Representative Ken Littlefield
- Harold Sample, City Manager of Dade City

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CLERK OF THE CIRCUIT COURT, PASCO COUNTY, DADE CITY, FLORIDA 33523

**Jed Pittman**

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SUPPORTS THE STATE

LETTER FROM THE CHAIRMAN

Dear Governor Bush:

It has been an honor to serve as the Chairman of the Governor's Guardianship Task Force during the past two years. The Task Force membership is a diversified and distinguished group who represent well over 200 years of accumulative experience in the administration of guardianship services, responsibilities, and projects. I am also grateful to the many citizens, guardians, family members, healthcare professionals and bar members who contributed their time and expertise providing public testimony throughout the State at the many Task Force meetings conducted over the past year.

It has become ever more apparent that the legislature and courts need to take concrete action on behalf of the developmentally disabled and incapacitated citizens of this State. It is anticipated that within the next 15 years there will be approximately 650,000 elderly residents who will be diagnosed with Alzheimer's Disease. Add to this number elderly citizens incapacitated because of other conditions, and one readily appreciates the scope of the challenge we all face in the coming years.

The key issues identified by the Task Force dealt with Indigent Wards, Public Guardians, Training, Examining Committees, Uniformity and Funding. Of all these issues, funding was determined to be the cornerstone upon which the future of guardianship will be built.

The State has historically neglected the adequate funding of guardianships. The Office of the Statewide Public Guardian (SPGO) was established by the legislature in 1996 to provide guardianship services for incapacitated persons when no private guardian is available. Unfortunately, since the inception of the SPGO, the State has been unable to allocate sufficient funds to fully realize the potential of this program.

A mechanism to provide a reliable ongoing funding source must be created by the legislature to meet the needs of our neediest citizens. On behalf of the GTF, I propose that an additional assessment of \$15 be imposed on all civil infraction, criminal traffic and misdemeanor violations for distribution to the Statewide Public Guardianship Office. This revenue would be earmarked to fund Public Guardians, provide training, establish uniform procedures, and meet this growing challenge in our State. This proposed funding source would represent potential revenue of \$48,528,735.

It is my hope that you will find the enclosed GTF Final Report both informative and enlightening, and that you give the recommendations your every consideration.

Best Wishes,

Jed Pittman  
Chairman  
Guardianship Task Force

One quarter of all people in Florida and slightly more than half of people age 75 or older experience disabilities. More than 2.3 million households have at least one person, age 15 or older, with a disability. <sup>1</sup> Persons with a disability who have not executed an advance directive or are not able to may require the services of a guardian. Add these figures to the growing number of baby boomers who have not planned for incapacity, and the numbers skyrocket. These are among the reasons that guardianship is a priority to our state's leadership.

Governor Bush signed Senate Bill 2568 (2003) creating a Guardianship Task Force within the Department of Elder Affairs for the purpose of examining guardianship and incapacity and making recommendations to him, Secretary Terry White and the Legislature.

The Guardianship Task Force quickly realized the numbers of persons who may require guardianship are not the only concern, as the public so eloquently stated numerous times. The issues that Florida needs to look at include: uniform professional guardian education, funding for public guardianship, education of the persons responsible for determining incapacity, safeguarding minor's property, promoting advance directives and much more. Public testimony not only provided the Task Force with real life examples of the issues but also gave the members insight into the differences among the counties and within judicial circuits.

Florida is a diverse state with rural and urban counties each having their own challenges. The Task Force, recognizing regional differences, made an effort to reach everyone. Public testimony was taken in the following locations: the Historic Courthouse in Pasco County, Broward County Commission Chambers in Fort Lauderdale, Florida Supreme Court in Tallahassee, The Adams Mark Hotel in Orlando, Stetson University's School of Law in Gulfport, St. Thomas University's School of Law in Miami-Dade County and the Commission Chambers of St. Augustine. In addition, the Task Force formed three (3) subcommittees to address critical issues. The subcommittees, via conference call, focused on education, guardianship of minors and issues involved with closing guardianships. Each public meeting included working sessions where the members were able to discuss and sometimes debate the merits of current law and procedure and recommendations for best practices.

The result of the Guardianship Task Force's hard work is detailed in this comprehensive report on guardianship and incapacity in Florida. The report addresses incapacity, restoration, education, guardianships of minors, closing of guardianship, surrogate guardians, reporting issues and public guardianship. Each legislative recommendation contains the relevant statutory citation. The last section contains statutory recommendations in bill draft form. The Task Force is hopeful that these recommendations will result in improvements to guardianship and incapacity law.



# OVERVIEW

SECTION ONE

Incapacity, Advance Directives and Emergency Temporary Guardianship

Incapacity

The Task Force began its undertaking by exploring the issues concerning incapacity, restoration and advance directives. With respect to incapacity, the Task Force focused on the premise that the court must consider the least restrictive alternatives to ensure each individual's dignity. After careful consideration, the Task Force determined that although Florida is in the forefront in ensuring the rights of its most vulnerable citizens, there are a few areas where modification would solidify this role.

Currently, Florida law enumerates the rights a person retains after the court determines incapacity. This provision has the right to privacy last on the list. The Task Force determined that it was vital to highlight the importance of an individual's right to privacy and is recommending this right be moved to the top of the list. This would be consistent with the statute preamble and stated legislative intent of Florida's goal of maintaining each individual's dignity. (Florida Statutes 744.3215 (1))

The Task Force addressed an incapacitated person's right to "receive necessary services and rehabilitation." It identified the need to add "to maximize the

quality of life" to this section. The Task Force finds that by adding this language, it strengthens the premise that the incapacitated person's quality of life is of the utmost importance and a finding of incapacity does not mean a person should no longer be entitled to quality of life. Further, the Task Force finds that adding this language will encourage guardians to utilize the ward's assets for the care of the ward and may reduce the risk of exploitation. (Florida Statutes 744.3215)

The Task Force spent a significant amount of time debating the concept of the right to marry being a contractual right. It had been suggested that if the court removes the right to contract then the court must remove the right to marry. The language that was agreed upon provides that if the right to contract is removed from the ward but not the right to marry, the right to marry should be subject to court approval. This is because marriage is a contract and requires that an individual understand the relationship and the rights the spouse will acquire at the time the marriage is solemnized. The right to marry should not be removed, as it is a fundamental right, but should be subject to court approval so that the judge can determine if the ward understands the marriage contract and that the ward is not a likely victim of abuse or financial exploitation. (Florida Statutes 744.3215(2))

The Task Force also recommends clarifying current law by adding the following language: "Rights that may be removed from a person by an order determining incapacity but not delegated to a guardian include the right." This addition would clarify that those rights may not be delegated to the guardian as the rights are personal to the ward. (Florida Statutes 744.3215(2))

The Task Force, in examining the incapacity process, recognized the importance of due process while taking into consideration the regional differences across Florida's urban and rural areas. The Task Force concluded that due process concerns must prevail over regional customs. This recognition factors most prominently in the appointment process for the examining committee and court appointed attorneys in incapacity proceedings. Florida Statutes section 744.331 requires the appointment of an attorney and examining committee for an alleged incapacitated person upon the filing of a Petition to Determine Incapacity. As reflected in the public testimony, the procedure for the appointment of counsel and the committee varies throughout the state. Some jurisdictions have a blind rotating system while others allow the attorney filing the petition to select the counsel for the alleged incapacitated person and the members of the examining committee despite the clear language of the statute that the court is responsible for this duty. As of July 1, 2004, the process for appointment of counsel may have resulted in standardization due to the establishment of registries for court appointed counsel for indigent individuals. The possible drawback is

the use of the registry is only for indigent individuals; however, as it is difficult to determine at the initiation of the incapacity proceedings if the alleged incapacitated person is indigent, the registry should be used for all cases.

To remedy this situation, the Task Force recommends designating the Chief Judge in each circuit with the responsibility to establish, maintain and provide the list to the Clerk a list of assigned members, on a rotation basis, for the examining committee and for the Chief Judge to ensure court appointed attorneys on the registry are rotated. This systematic approach will avoid any potential conflicts of interest involving the process of determining capacity. In addition, this procedure would (1) standardize how the incapacity process is performed throughout the state; and (2) minimize any conflicts of interest in the process. (Florida Statutes 744.331)

Under current law, an alleged incapacitated person may substitute his or her own attorney for the attorney appointed by the court. Although an individual is only alleged to be incapacitated initially, there are concerns that he or she may not have the capacity to contract with counsel and/or may be pressured from outside influences to hire counsel other than the court appointed attorney. The Task Force is recommending that the alleged incapacitated person may be allowed to substitute her or his own attorney for the attorney appointed by the court subject to approval by the court. A hearing on the issue of capacity to retain counsel might address the problem. (Florida Statutes 744.331)

One difficulty across Florida is finding persons qualified to serve on examining committees that evaluate a person's capacity. There was consensus that professional guardians should be added to the list of persons who may serve on the examining committee. Professional guardians should be included because they are well educated about guardianship and incapacity, the behavior prevents an individual from performing activities of daily living, their legal responsibilities, community resources to maintain persons in their home again and the least restrictive alternatives to guardianship. (Florida Statutes 744.331(3))

On a related note, the Task Force finds it is important to the integrity of the incapacity process that language be added that prohibits members of the examining committee from being associated with the petitioner or with counsel for the petitioner or with counsel for the proposed guardian. Failure to ensure the impartiality of this process leads to a public perception that impartial parties do not protect individuals during the process of determining if rights should be removed. Further, in order to ensure timely completion of the incapacity process, the Task Force recommends that the clerks of court send out notices of appointment to the respective examining committee members within three days of appointment. (Florida Statutes 744.331(3) 744.331(3)(a))

In order to ensure each examining committee member prepares and submits a report to the court, as opposed to a joint report, the Task Force recommends statutory language changes to mandate a report is to be prepared and filed by each member. In addition, each

member should be required to indicate the date he or she conducted the examination. The date of the examination or time of day can be an important factor in determining incapacity, especially if it was determined that there was another medical issue occurring at the same time, for example a change in the alleged incapacitated person's medication. Therefore the signature of each member of the committee and the date and time each member conducted his or her examination should be included in the report. Florida Statutes 744.331(3))

The Task Force also examined the issue of bad faith incapacity filings and determined that requiring the bad faith petitioner to be assessed all attorney's fees would assist alleged incapacitated persons in finding willing counsel to represent them. This provision would also serve as a deterrent to bad faith petitions. (Florida Statutes 744.331)

### **Advance Directives**

The Task Force acknowledges the importance of advance directives as a less restrictive alternative to guardianship and concluded that the advance directives portion of Florida Statutes appears to function as intended and therefore the Task Force focused on guardianship issues. The only recommendation relating to advance directives is in terms of the definition of "health care decision." In keeping with the focus that advance directives should assist people to remain out of the guardianship system, the term "health care decision" should include mental health treatment, unless otherwise stated in the advance directives. In addition, the Task Force recommends adding a reference in the advance

directives section of Florida Statutes to clearly include the definition of health care decision. (Florida Statutes 765.101(5), 744.3115)

**Emergency Temporary Guardianships**

Under current law, emergency temporary guardians may be appointed for sixty (60) days and the appointment maybe extended for an addition thirty (30) days, serving for no more than a total of ninety (90) days. Since there are many cases in which this maximum of ninety (90) days is not sufficient to properly serve the alleged incapacitated person, judges maybe inclined to ignore the time limitation and extend the appointment beyond the ninety (90) days. Therefore, the Task Force recommends a legislative change to allow the initial appointment period to last for up to ninety (90) days, with an additional ninety (90) day extension. This change will allow for an emergency temporary guardianship to last for a maximum of one hundred and eighty (180) days. (Florida Statutes 744.3031)

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***The only recommendation relating to advance directives is in terms of the definition of “health care decision.”***

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**Education Of Court  
Appointed Attorneys,  
Examining Committee  
Members and  
Judiciary**

**U**nder current Florida law, examining committee members, court appointed attorneys and the judiciary are not required to receive continuing education other than what they choose to take as continuing education for their respective professions. The Task Force and members of the public addressed the need for each of these groups to receive education tailored to its role in the incapacity and/or guardianship process.

The examining committee members are those persons who have the responsibility of conducting examinations of the alleged incapacitated person and reporting to the court whether or not a person is incapacitated as alleged in the petition. The court appointed attorney has the responsibility of representing the alleged incapacitated person in these proceedings. The judge who presides over incapacity and guardianship proceedings must make the final determination of incapacity. The Task Force developed recommendations for each category of professional.

**Examining Committee  
Members**

The examining committee is comprised of the professionals who evaluate an alleged incapacitated person and report to the court if the person has or lacks capacity. Most judges do not have a background in mental health and rely heavily on the expertise of the examining committee. It is vital that the persons serving in this capacity maintain the highest degree of knowledge regarding assessing capacity of all populations, including dementia patients and the developmentally disabled. It is for these reasons that the Task Force recommends that all members of the examining committee shall have a minimum of four (4) hours of initial training and two (2) hours of continuing education every two (2) years. The training and continuing education would be developed under the supervision of the Statewide Public Guardianship Office in conjunction with the Conference of Circuit Court Judges, Elder Law Section of the Florida Bar, Real Property Probate & Trust Law Section of the Florida Bar, Florida State Guardianship Association and the Florida Guardianship Foundation. The court would be empowered to waive the initial four (4) hour requirement for persons who have served on an examining committee for a minimum of five (5) years.

The Task Force also recognizes the difficulty courts have finding persons willing to serve on the examining committee and the time commitment of the professionals who give their time.

Therefore, the Task Force finds all examining committee member education should be made available online and/or on video.

Examining committee members should obtain the approval of the Chief Judge prior to taking any online or video course. An

examining committee member would be required to submit an affidavit to every circuit court that appoints him or her, indicating he or she has viewed the required materials. It is preferred that any online courses contain an integrated quiz. (Florida Statutes 744.331)

### **Court Appointed Attorneys**

For reasons identical to those expressed for examining committee members above, the Task Force recommends all court appointed attorneys for incapacity and guardianship proceedings should have a minimum of eight (8) hours of education in guardianship prior to accepting an appointment as court appointed attorney. All court appointed attorneys for incapacity proceedings should have a minimum of four (4) hours of continuing education in guardianship every two (2) years after meeting the initial eight (8) hour requirement. The court may waive the initial eight (8) hour requirement for attorneys who have

served as court appointed counsel in incapacity proceedings or as attorney of record for guardians for a minimum of three (3) years. (Florida Statutes 744.331)

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***The Task Force encourages chief judges to assign specific judges to probate and guardianship cases.***

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### **Judiciary**

A concern relating to the judiciary is that in some circuits in Florida, a criminal, civil, or family court judge may also preside over guardianship cases. Guardianships differ from other judicial divisions in many aspects, including

the fact that guardianship cases remain open, more often than not, for the lifetime of the ward as opposed to a civil case that ends at settlement or trial. In addition, the judge in a guardianship case has the responsibility to ensure the ward's interests are protected. The Task Force encourages chief judges to assign specific judges to probate and guardianship cases.

For any judge presiding over guardianship cases, the Task Force recommends the Florida Supreme Court develop and provide a minimum of eight (8) hours of initial education and four (4) hours of continuing education every two (2) years in the area of guardianship to all judges and hearing officers presiding over guardianship cases.<sup>2</sup>

### **Non-professional Guardians**

The Task Force determined that it is not in the best interest of a ward to allow a guardian a period of up to one (1) year from the date of his or her appointment to obtain the requisite guardian

education. The Task Force is recommending the time period be shortened to four (4) months for non-professional guardians to receive their education. This would assist the court in ensuring that non-professional guardians are aware of their duties and responsibilities in a timely manner and prior to their annual filing deadlines. (Florida Statutes 744.3145)

The Task Force also discussed and passed, only for the purpose of a general recommendation, that the judicial branch in each circuit, with the assistance of the clerks of court of each county in the circuit, develop a local component to non-professional guardian education that would reflect the requirements of that particular jurisdiction.

**Florida Statutes Chapter 393, Guardian Advocate Attorneys and Chapter 415 Attorneys**

Although Florida Statutes Chapter 393 and Chapter 415 are beyond the scope of its work, the Task Force finds it is important for the Legislature to consider continuing education requirements for attorneys who handle guardian advocacy and adult protective services cases. In addition, the Task Force acknowledges the important work completed in 2003 by the Governor's Joint Work Group on Guardianship and the Developmentally Disabled and urges the Legislature to address the recommendations contained in that report.

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## Guardianships of Minors

Guardianship is multi-faceted in its use and structure. However, there is a clear dividing line when dealing with the guardianship of a minor child versus an incapacitated adult. Because of this demarcation, the Task Force chose to revise certain components of the law guiding guardians of minors. While some of these recommended changes are simply for clarification, updating or streamlining of the law, others are to better define the dramatic differences between the planning and caring for a child and that of an adult with a disability or incapacity.

An illustration of these differences is highlighted by the information any monitoring body would need to best determine if the ward is receiving appropriate treatment. Therefore, the Task Force recommends the law be changed to allow for an annual plan specifically designed for a minor. The annual plan for a healthy thirteen-year-old should not request the same information as that for a frail eighty-year-old. Additionally, this will allow the courts to monitor the progress of minors who are not being raised by their natural parents and to identify potential problems at an early stage. (Florida Statutes 744.3675)

In addition, changes regarding settlement values and associated actions have been recommended

to further protect the interests of minors as well as limit the expenses associated with the implementation of the guardianship. (Florida Statutes 744.301, 744.302)

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***Guardianship is multi-faceted in its use and structure.***

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### Voluntary Guardianships

The capacity of voluntary wards may diminish over time, and, as long as they sign consents for the actions that their guardians take, it is unlikely that the courts and the clerk's auditors will be in a position to question those actions. In order to ensure a voluntary guardianship remains voluntary, the Task Force is suggesting language requiring the guardian to submit, with the annual report to the court, a certificate of a licensed physician specifying that he or she has examined the ward, within the previous 90 days. The certificate should include a statement that the ward remains competent to understand the nature of the guardianship and his or her delegation of authority. (Florida Statutes 744.341)

## Closing Guardianships

### Resignation

The issue of primary concern relating to the closing of guardianships was the inability of the professional guardian to resign from a case.

Although Florida law provides for resignation, the reality is that a judge will not sign an order releasing the professional guardian from the case if there is no successor guardian. The majority of the time, if the ward does not have assets, the guardian cannot find a successor guardian willing to serve. The members of the Task Force strongly believe a well-funded public guardianship program would ease this problem. The Task Force urges the Legislature to provide adequate state funds for public guardianship. The issue of public guardianship funding is discussed in depth in a later section of this report.

### Restoration

The Task Force is recommending removal of the 90-day ban on filing a petition for restoration because it finds it is not in accordance with the legislative intent of Section 744.1012. A suggestion of capacity should be filed whenever the ward has shown the ability to exercise some or all of the rights that were removed. (Florida Statutes 744.464)

Further, the Task Force determined that the Office of the State's Attorney has no role in the determination of a suggestion of

## *The Task Force urges the Legislature to provide adequate state funds for public guardianship.*

capacity and that notice was unnecessary. Therefore, it is recommended that the provision be modified to eliminate notice to the State's Attorney. (Florida Statutes 744.464)

### Discharge

The Task Force discussed concerns about guardianships remaining open well after the ward has passed away. In response to these concerns, the Task Force recommends language that provides that a final report shall be filed no later than 45 days after service on the guardian of letters of administration or letters of curatorship. The proposed change will allow more flexibility to the guardian who needs to wait until an estate is filed, but at the same time will not allow the guardianship to remain open indefinitely after probate administration has commenced. (Florida Statutes 744.527)

At the present time, only the court can set the hearing. It will also allow the guardian to be discharged after 90 days if the interested person decides not to pursue the objection, without the need for a separate hearing. The proposed change will allow an interested person to set a hear-

ing. This section's proposed modification would place the burden on persons objecting to the guardian's final report to cause the matter to be set for hearing within 90 days of filing such objections. This change is necessary to facilitate the prompt and timely administration of the deceased ward's estate. (Florida Statutes 744.528)

## Surrogate Guardianship

The responsibility of a guardian is a 24-hour, seven day a week undertaking. Because of this, many guardians feel they are unable to take a break or time off, especially if it is on a vacation to a place not easily accessible. At times, the availability of a guardian can change at a moment's notice due to unforeseen emergencies. This becomes all the more acute when speaking of a professional guardian, whose responsibilities may be multiplied by the number of wards he or she is serving.

Professional guardians are always faced with a dilemma when they are unable to carry out their duties as guardian; for example, if they have a death in their family and need to leave town. If they simply want to take a vacation there is nobody who can serve as guardian in their absence. In an effort to fill this void in the statute the Task Force created the concept of a "surrogate guardian." The surrogate guardian would be appointed by the court to act temporarily for the permanent guardian. This concept requires a new statutory provision. The Task Force suggests the creation of Florida Statutes 744.442 allowing for temporary authority under certain circumstances.

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***At times, the availability of a guardian can change at a moment's notice due to unforeseen emergencies.***

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## Reports

### **Audit**

The Task Force recognized that the meaning of the term “audit” may be clear to those in the auditing community, but for many it is synonymous with “review,” and may be interpreted to be nothing more than checking the math on accountings and inventories. Some of the safeguards built into guardianship procedure, such as the requirement of bond and the court’s ability to remove guardians, do not come into play unless a problem is identified.

A problem cannot be identified without a proper audit. Providing a definition for an “audit” will assist the clerks of court and the courts in performing their responsibilities. (Florida Statutes 744.102)

Simplified accountings are to be filed when there are clearly defined limited transactions occurring during the course of the year in a guardianship account. Final accountings are filed prior to discharge in guardianships. Currently the clerks of court do not have authority to audit simplified and final accountings. Testimony was presented to the committee that there is the potential for fraud and exploitation in the cases where simplified and final accountings are filed because there is no provision in statute to audit them. The Task Force

recommends that the clerks of court audit all accountings. (Florida Statutes 744.368, 744.3679)

### **Verified Inventory (Trusts)**

Whether to list a trust on an initial inventory has long been an issue for guardians, attorneys and the court. It has not always been clear if and when the court may have authority over trust assets and what responsibilities a guardian may have over them. The Task Force recommends statutory language that adds the listing of trusts to the verified inventory. (Florida Statutes 744.365, 744.441)

### **Accountings**

Effective October 2004, a new federal regulation known as “Check 21” went into effect. “Check 2”<sup>1</sup> provides that banks no longer need to provide or keep canceled checks. This is an issue for guardians because current Florida law requires they keep canceled checks for a period of three years after being discharged as guardian. The Task Force recommends adding the language “other proof of payment” to the list of acceptable forms of documents that indicate an expenditure was made and thereby keeping Florida law consistent with the new federal regulation. (Florida Statutes 744.3678)

### **Plans**

The Task Force addressed the lack of a required plan to be filed if a guardian serves as guardian of the person and property of a

minor. The Task Force has drafted recommended language to tailor requirements for guardianships of minors. The draft language closely mirrors that of the plan required for adults. The significant difference is its requirement of a school progress report and an assessment of the ward's social skills and interpersonal relationships. (Florida Statutes 744.3675)

#### **Annual Report**

There is an inconsistency in the existing requirement to file an annual report. Currently, in the section requiring this filing, the term "calendar year" and "within 90 days" conflict. The Task Force recommends consistent use of the same term. (Florida Statutes 744.367)

#### **Court Data Elements**

The Task Force also looked at reports from the perspective of the reports generated by the court and clerk in fulfilling their statutory requirements. The Task Force discussed a previous undertaking of the Florida Supreme Court's Joint Application Development (JAD) project. JAD brought together the stakeholders in the court computer system whereupon they developed a blueprint for case management. JAD addressed the issue of lack of uniformity among the clerks and circuit courts across Florida and developed a standard set of data elements to create uniformity for reports and the sharing of information. The Task Force recommends the Florida Supreme Court's Joint Application Development (JAD) project be adopted. Implementation of JAD would greatly assist the court and clerk in performing their statutory duties.

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***The Task Force has drafted recommended language to tailor requirements for guardianships of minors.***

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## Professional Guardians

The definition of a professional guardian concerns many, particularly longstanding professional guardians. The current language implies that persons could act as guardian without receiving compensation and hold themselves out as professional guardians without meeting any of Florida's requirements. The Task Force recommends deleting the language that requires a guardian must receive compensation to be considered a professional. (Florida Statutes 744.102)

The Task Force also recognizes that taking the professional guardian course, competency examination and registering with the Statewide Office may also not be sufficient in protecting Florida's incapacitated persons. It was suggested during public testimony that a professional guardian apprenticeship, internship or mentorship program would enhance the professional guardian's skills. The Task Force requests that the Legislature examine this issue further.

Another recommendation stemming from public testimony focused on the need for professional guardians to receive education on the issues surrounding psychotropic

medications. Many incapacitated persons in Florida require the use of these drugs and professional guardians should be knowledgeable about these drugs and their usage. The Task Force recommends that the Statewide Public Guardianship Office add a requirement to the professional guardian education that encompasses knowledge of psychotropic medications similar to that used in the mental health guardian advocate training.

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***The Task Force recommends deleting the language that requires a guardian must receive compensation to be considered a professional.***

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## Public Guardianship

### Funding

Florida presently has sixteen (16) Offices of Public Guardian. The offices serve 20 of Florida's 67 counties and approximately 1,800 wards. The total state funding was approximately \$831,000 for the 2003-2004 Fiscal Year. The total operating budget of the Offices of Public Guardian for the same fiscal year was estimated at \$4.2 million. This means that eighty percent (80 percent) of the operating budgets were from other sources, such as filing fees that are no longer available as of July 1, 2004. Prior to July 1, 2004 and Article V revisions, Offices of Public Guardian could receive add-on filing fees. What this number fails to account for is the number of professional guardians who provided pro bono guardianship services to indigent wards. It is estimated that some professional guardians average a 40 percent to 50 percent pro bono caseload. Every circuit has a need for an Office of Public Guardian. The average cost for an Office of Public Guardian to provide services to a ward is \$2,363 annually. There is estimated to be 10,000 elderly per year who need the services of a public guardian. The funds required to meet our vulnerable citizens needs are at least \$24 million dollars per year. It is also important to note that the recent hurricane season may significantly impact the need for public guardians.

The Task Force is recommending three funding alternatives for public guardianship:

- (1) A \$15 add on fee to all civil infractions and misdemeanor fines. These monies would go directly to the Statewide Public Guardianship Office to fund public guardianship.
- (2) A \$15 add on fee to all probate, guardianship, and general civil cases to be collected by the clerks of court. The clerk would receive a handling fee and the balance would go to the Statewide Public Guardianship Office to fund public guardianship.
- (3) Governor Bush proposed an initiative for the 2004-2005 Fiscal Year that included \$5 million to fund The Joining Forces for Public Guardianship matching grant program. The matching grant program would allow for the creation of an Office of Public Guardian for every circuit. During the first year of funding, there would be a minimum of \$10 million of state, local and private funds available to establish a statewide system of public guardians, a major step in meeting the needs of our citizens with limited incomes. Unfortunately, this initiative was not funded during the 2004 legislative session.

It is imperative that our elderly and vulnerable citizens, who have already contributed significant amounts to our economy, receive services from an Office of Public Guardian if they become incapacitated and are indigent.

Florida is a leader in protecting individuals who are declared incapacitated. The state needs to remain in the forefront of this effort by ensuring that our low-income citizens have access to a public guardian. The funding of The Joining Forces for Public Guardianship matching grant program is vital to the protection of our incapacitated citizens against neglect, abuse, or exploitation as well as the expansion of Offices of Public Guardianship to every circuit.

Another unintended consequence of Article V is the impact on filing fees. Public guardians were not included in the group of entities exempt from payment. This creates a burden on these programs that serve the indigent and incapacitated. The Task Force recommends that public guardians be added to the organizations (that include judges, State's Attorneys, guardians' ad litem and public defenders, acting in their official capacity, and state agencies) that are exempt from all court-related fees and charges assessed by the clerks of the circuit courts. (Florida Statutes 28.345)

### **Registration**

The duties of the Statewide Public Guardianship Office have increased in the past few years. One of those responsibilities is the registration of professional guardians. Registration provides a central database of guardians in Florida while ensuring certain minimum

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***Florida is a leader in protecting individuals who are declared incapacitated. The state needs to remain in the forefront of this effort by ensuring that our low-income citizens have access to a public guardian.***

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requirements are met. It provides the court and the general public more confidence in working with a professional guardian. In order to ensure the public's confidence in the professional guardianship, the Task Force would request that the Department of Elder Affairs be given the authority to promulgate rules necessary to establish standards of review for professional guardians.

## Proposed Statutory Language

(Words ~~stricken~~ are deletions; words underlined are additions)

**744.102 Definitions**—As used in this chapter, the term:

(1) “Attorney for the alleged incapacitated person” means an attorney who represents the alleged incapacitated person. Such attorney shall represent the expressed wishes of the alleged incapacitated person to the extent it is consistent with the rules regulating The Florida Bar.

(2) “Audit” means a systematic review of financial documents with adherence to generally accepted auditing standards.

~~(2)~~ (3) “Clerk” means the clerk or deputy clerk of the court.

~~(3)~~ (4) “Corporate guardian” means a corporation authorized to exercise fiduciary or guardianship powers in this state and includes a nonprofit corporate guardian.

~~(4)~~ (5) “Court” means the circuit court.

~~(5)~~ (6) “Court monitor” means a person appointed by the court pursuant to s. 744.107 to provide the court with information concerning a ward.

~~(6)~~ (7) “Estate” means the property of a ward subject to administration.

~~(7)~~ (8) “Foreign guardian” means a guardian appointed in another state or country.

~~(8)~~ (9) “Guardian” means a person who has been appointed by the court to act on behalf of a ward’s person or property, or both.

(a) “Limited guardian” means a guardian who has been appointed by the court to exercise the legal rights and powers specifically designated by court order entered after the court has found that the ward lacks the capacity to do some, but not all, of the tasks necessary to care for his or her person or property, or after the person has voluntarily petitioned for appointment of a limited guardian.

(b) “Plenary guardian” means a person who has been appointed by the court to exercise all delegable legal rights and powers of the ward after the court has found that the ward lacks the capacity to perform all of the tasks necessary to care for his or her person or property.

(9) (10) “Guardian ad litem” means a person who is appointed by the court having jurisdiction of the guardianship or a court in which a particular legal matter is pending to represent a ward in that proceeding.

(10) (11) “Guardian advocate” means a person appointed by a written order of the court to represent a person with developmental disabilities under s. [393.12](#). As used in this chapter, the term does not apply to a guardian advocate appointed for a person determined incompetent to consent to treatment under s. [394.4598](#).

(11) (12) “Incapacitated person” means a person who has been judicially determined to lack the capacity to manage at least some of the property or to meet at least some of the essential health and safety requirements of such person.

(a) To “manage property” means to take those actions necessary to obtain, administer, and dispose of real and personal property, intangible property, business property, benefits, and income.

(b) To “meet essential requirements for health or safety” means to take those actions necessary to provide the health care, food, shelter, clothing, personal hygiene, or other care without which serious and imminent physical injury or illness is more likely than not to occur.

(12) (13) “Minor” means a person under 18 years of age whose disabilities have not been removed by marriage or otherwise.

(13) (14) “Next of kin” means those persons who would be heirs at law of the ward or alleged incapacitated person if such person were deceased and includes the lineal descendants of such ward or alleged incapacitated person.

(14) (15) “Nonprofit corporate guardian” means a nonprofit corporation organized for religious or charitable purposes and existing under the laws of this state.

(15) (16) “Preneed guardian” means a person named in a written declaration to serve as guardian in the event of the incapacity of the declarant as provided in s. [744.3045](#).

(16) (17) “Professional guardian” means any guardian who ~~receives or~~ has at any time ~~received compensation for services rendered~~ services to three or more than two wards as their guardian. A person serving as a guardian for three or more relatives as defined in s. [744.309\(2\)](#) is not considered a professional guardian. A public guardian shall be considered a professional guardian for purposes of regulation, education, and registration.

(17) (18) “Property” means both real and personal property or any interest in it and anything that may be the subject of ownership.

(18) (19) “Standby guardian” means a person empowered to assume the duties of guardianship upon the death or adjudication of incapacity of the last surviving natural or appointed guardian.

(20) “Surrogate guardian” means a guardian designated in accordance with s. [744.442](#).

~~(20)~~(21) “Totally incapacitated” means incapable of exercising any of the rights enumerated in s. [744.3215](#)(2) and (3).

(22) “Ward” means a person for whom a guardian has been appointed.

### **744.301 Natural guardians**

(1) The mother and father jointly are natural guardians of their own children and of their adopted children, during minority. ~~If one parent dies, the natural guardianship shall pass to the surviving parent, and the right shall continue even though the surviving parent~~ the surviving parent shall remain as sole natural guardian even if he or she remarries. If the marriage between parents is dissolved, the natural guardianship shall belong to the parent to whom ~~the~~ custody of the child is awarded. If the parents are given joint custody, then both shall continue as natural guardians. If the marriage is dissolved and neither the father nor the mother is given custody of the child, neither shall act as natural guardian of the child. The mother of a child born out of wedlock is the natural guardian of the child and is entitled to primary residential care and custody of the child unless a court of competent jurisdiction enters an order ~~stating~~ determining otherwise.

(2) ~~The natural guardian or guardians are authorized, on behalf of any of their minor children, to settle and consummate a settlement of any claim or cause of action accruing to any of their minor children for damages to the person or property of any of said minor children and to collect, receive and manage, and dispose of the proceeds of any such settlement and of any other real or personal property distributed from an estate or trust or proceeds from a life insurance policy to, or otherwise accruing to the benefit of, the child during minority, when the amount involved in any instance does not exceed \$15,000, amounts received, in the aggregate, do not exceed \$15,000.00, without appointment, authority or bond.~~

(3) All instruments executed by a natural guardian for the benefit of the ward under the powers specified provided for in subsection (2) shall be binding on the ward. The natural guardian shall not use the property of the ward for the guardian’s benefit or to satisfy the guardian’s support obligation to the ward without court order.

~~(4)(a) In any case where a minor has a claim for personal injury, property damage, or wrongful death in which the gross settlement for the claim of the minor exceeds \$15,000, the court may, prior to the approval of the settlement of the minor’s claim, appoint a guardian ad litem to represent the minor’s interests. In any case in which the gross~~

~~settlement involving a minor equals or exceeds \$25,000 the court shall, prior to the approval of the settlement of the minor's claim, appoint a guardian ad litem to represent the minor's interests. The appointment of the guardian ad litem must be without the necessity of bond or a notice. The duty of the guardian ad litem is to protect the minor's interests. The procedure for carrying out that duty is as prescribed in the Florida Probate Rules. If a legal guardian of the minor has previously been appointed and has no potential adverse interest to the minor, the court may not appoint a guardian ad litem to represent the minor's interests, unless the court determines that the appointment is otherwise necessary.~~

~~(b) Unless waived, the courts shall award reasonable fees and costs to the guardian ad litem to be paid out of the gross proceeds of the settlement.~~

### **744.302 Claims of Minors**

~~(a) In any case where in which a minor has a claim for personal injury, property damage, or wrongful death or other cause of action in which the gross settlement of the claim of the minor exceeds \$15,000, the court may, prior to the approval of the settlement of the minor's portion of the claim, appoint a guardian ad litem to represent the minor's interests. In any case in which the gross settlement involving a minor equals or exceeds \$25,000 \$50,000 the court shall, prior to the approval of the settlement of the minor's claim, appoint a guardian ad litem to represent the minor's interests. The appointment of the guardian ad litem must be without the necessity of bond or a notice. The duty of the guardian ad litem is to protect the minor's interests. The procedure for carrying out that duty is as prescribed in the Florida Probate Rules. If a legal guardian of the minor has previously been appointed and has no potential adverse interest to the minor, the court may not appoint the appointment of a guardian ad litem to represent the minor's interests is not required, unless the court determines that the appointment is otherwise necessary.~~

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

### **744.3031 Emergency temporary guardianship**

(1) A court, prior to appointment of a guardian but after a petition for determination of incapacity has been filed pursuant to this chapter, may appoint an emergency temporary guardian for the person or property, or both, of an alleged incapacitated person. The court must specifically find that there appears to be imminent danger that the physical or mental health or safety of the person will be seriously impaired or that the person's property is in danger of being wasted, misappropriated, or lost unless immediate action is taken. The subject of the proceeding or any adult interested in the welfare of that person may apply to the court in which the proceeding is pending for the emergency appointment of a tempo-

rary guardian. The powers and duties of the emergency temporary guardian must be specifically enumerated by court order. The court shall appoint counsel to represent the alleged incapacitated person during any such summary proceedings, and such appointed counsel may request that the proceeding be recorded and transcribed.

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

(3) The authority of an emergency temporary guardian expires ~~60~~ 90 days after the date of appointment or when a guardian is appointed, whichever occurs first. The authority of the emergency temporary guardian may be extended for an additional ~~30~~ 90 days upon a showing that the emergency conditions still exist.

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

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

(6) Before exercising authority as guardian, the emergency temporary guardian of the property may be required to file a bond in accordance with s. 744.351.

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

#### **744.304 Standby guardianship**

~~(1) Upon petition or consent of both parents, natural or adoptive, if living, or of the surviving parent, a standby guardian of the person or property of a minor may be appointed by the court. The court may also appoint an alternate to the guardian to act if the standby guardian shall renounce, die, or become incapacitated after the death of the last surviving parent of the minor.~~

(1) Upon petition by the natural guardians or a guardian appointed pursuant to s.744.3021, the court may appoint a standby guardian of the person or property of a minor. The court may also appoint an alternate to act if the standby guardian does not serve or ceases to serve after appointment. Notice of hearing on the petition shall be served on the parents, natural or adoptive, and on any currently serving guardian unless notice is waived in writing by them or waived by the court for good cause shown.

(2) Upon petition of a currently serving guardian, a standby guardian of the person or property of an incapacitated person may be appointed by the court. Notice of hearing on the petition shall be served on the ward's next of kin.

(3) The standby guardian or alternate shall be empowered to assume the duties of his or her office guardianship immediately on the death, removal or resignation of the guardian of a minor, if any, or on the death or incapacity of the last surviving natural guardian or adoptive parent of a minor or upon the death, removal, or resignation of the guardian of an

adult. ~~However,~~ Such a guardian of the ward's property may not be empowered to deal with the ward's property, other than to safeguard it, prior to issuance of letters of guardianship. If the ~~incapacitated person~~ ward is over the age of 18 years, the court shall conduct a hearing as provided in s. 744.331 before confirming the appointment of the standby guardian unless the ward has been previously adjudged to be incapacitated.

(4) Within 20 days after assumption of duties as guardian, a standby guardian shall petition for confirmation of appointment. If the court finds the standby guardian to be qualified to serve as guardian pursuant to ss. 744.309 and 744.312, appointment of the guardian must be confirmed. Each guardian so confirmed shall file an oath in accordance with s. 744.347 and shall file a bond, and 744.3135 if required. Letters of guardianship must then be issued in the manner provided in s. 744.345.

(5) After the assumption of duties by a standby guardian, the court shall have jurisdiction over the guardian and the ward.

#### **744.3115 Advance Directives for Health Care**

In each proceeding in which a guardian is appointed under this chapter, the court shall determine whether the ward, prior to incapacity, has executed any valid advance directive pursuant to chapter 765. If any such advance directive exists, the court shall specify in its order and letters of guardianship what authority, if any, the guardian shall exercise over the surrogate. Pursuant to the grounds listed in s. 765.105, the court, upon its own motion, may, with notice to the surrogate and any other appropriate parties, modify or revoke the authority of the surrogate to make health care decisions for the ward as defined in Section 765.101(5).

#### **744.3145 Guardian education requirements**

(1) Each ward is entitled to a guardian competent to perform the duties of a guardian necessary to protect the interests of the ward.

(2) Each person appointed by the court to be a guardian, other than a parent who is the guardian of the property of a minor child, must receive a minimum of 8 hours of instruction and training which covers:

- (a) The legal duties and responsibilities of the guardian;
- (b) The rights of the ward;
- (c) The availability of local resources to aid the ward; and
- (d) The preparation of habilitation plans and annual guardianship reports, including financial accounting for the ward's property.

(3) Each person appointed by the court to be the guardian of the property of his or her minor child must receive a minimum of 4 hours of instruction and training that covers:

- (a) The legal duties and responsibilities of the guardian of the property;
- (b) The preparation of the initial inventory and annual guardianship accountings for the

ward's property; and

(c) Use of guardianship assets.

(4) Each person appointed by the court to be a guardian must complete the required number of hours of instruction and education within ~~1 year~~ 4 months after his or her appointment as guardian. The instruction and education must be completed through a course approved by the chief judge of the circuit court and taught by a court-approved organization. Court-approved organizations may include, but are not limited to, community or junior colleges, guardianship organizations, and the local bar association or The Florida Bar.

(5) Expenses incurred by the guardian to satisfy the education requirement may be paid from the ward's estate, unless the court directs that such expenses be paid by the guardian individually.

(6) The court may, in its discretion, waive some or all of the requirements of this section or impose additional requirements. The court shall make its decision on a case-by-case basis and, in making its decision, shall consider the experience and education of the guardian, the duties assigned to the guardian, and the needs of the ward.

(7) The provisions of this section do not apply to professional guardians.

#### **744.3215 Rights of persons determined incapacitated**

(1) A person who has been determined to be incapacitated retains the right:

(a) To privacy

~~(a)~~ (b) To have an annual review of the guardianship report and plan.

~~(b)~~ (c) To have continuing review of the need for restriction of his or her rights.

~~(c)~~ (d) To be restored to capacity at the earliest possible time.

~~(d)~~ (e) To be treated humanely, with dignity and respect, and to be protected against abuse, neglect, and exploitation.

~~(e)~~ (f) To have a qualified guardian.

~~(f)~~ (g) To remain as independent as possible, including having his or her preference as to place and standard of living honored, either as he or she expressed or demonstrated his or her preference prior to the determination of his or her incapacity or as he or she currently expresses his or her preference, insofar as such request is reasonable.

~~(g)~~ (h) To be properly educated.

~~(h)~~ (i) To receive prudent financial management for his or her property and to be informed how his or her property is being managed, if he or she has lost the right to manage property.

~~(i)~~ (j) To receive necessary services and rehabilitation necessary to maximize the quality of life.

~~(j)~~ (k) To be free from discrimination because of his or her incapacity.

~~(k)~~ (l) To have access to the courts.

~~(l)~~ (m) To counsel.

~~(m)~~ (n) To receive visitors and communicate with others.

~~(n)~~ (o) To notice of all proceedings related to determination of capacity and guardianship, unless the court finds the incapacitated person lacks the ability to comprehend the notice.

~~(o)~~ ~~To privacy~~

(2) Rights that may be removed from a person by an order determining incapacity but not delegated to a guardian include the right:

(a) To marry. If the right to contract is removed, then the right to marry is subject to court approval.

(b) To vote.

(c) To personally apply for government benefits.

(d) To have a driver's license.

(e) To travel.

(f) To seek or retain employment.

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

(a) To contract.

(b) To sue and defend lawsuits.

(c) To apply for government benefits.

(d) To manage property or to make any gift or disposition of property.

(e) To determine his or her residence.

(f) To consent to medical and mental health treatment.

(g) To make decisions about his or her social environment or other social aspects of his or her life.

(4) Without first obtaining specific authority from the court, as described in s. 744.3725, a guardian may not:

(a) Commit the ward to a facility, institution, or licensed service provider without formal placement proceeding, pursuant to chapter 393, chapter 394, or chapter 397.

(b) Consent on behalf of the ward to the performance on the ward of any experimental biomedical or behavioral procedure or to the participation by the ward in any biomedical or behavioral experiment. The court may permit such performance or participation only if:

1. It is of direct benefit to, and is intended to preserve the life of or prevent serious impairment to the mental or physical health of the ward; or

2. It is intended to assist the ward to develop or regain his or her abilities.

(c) Initiate a petition for dissolution of marriage for the ward.

(d) Consent on behalf of the ward to termination of the ward's parental rights.

(e) Consent on behalf of the ward to the performance of a sterilization or abortion procedure on the ward.

#### **744.331 Procedures to determine incapacity**

(1) Notice of petition to determine incapacity. Notice of the filing of a petition to determine incapacity and a petition for the appointment of a guardian if any and copies of the petitions must be served on and read to the alleged incapacitated person. The notice and copies of the petitions must also be given to the attorney for the alleged incapacitated person, and served upon all next of kin identified in the petition. The notice must state the time and place of the hearing to inquire into the capacity of the alleged incapacitated person and that an attorney has been appointed to represent the person and that, if she or he is determined to be incapable of exercising certain rights, a guardian will be appointed to exercise those rights on her or his behalf.

(2) Attorney for the alleged incapacitated person.

(a) The Court shall use the Circuit's Registry as determined by the Indigent Services Committee to appoint an attorney for the alleged incapacitated person.

(b) The court shall appoint an attorney for each person alleged to be incapacitated in all cases involving a petition for adjudication of incapacity from the list maintained in section (a). Selection shall be on a rotating basis taking into consideration any conflicts pursuant to this section. The alleged incapacitated person may substitute her or his own attorney for the attorney appointed by the court subject to court approval.

(c) All court appointed attorneys for incapacity and guardianship proceedings shall have a minimum of eight (8) hours of continuing education in guardianship prior to accepting an appointment as court appointed attorney. All court appointed attorneys for incapacity proceedings shall have a minimum of four (4) hours of continuing education in guardianship every 2 years after meeting the initial eight (8) hour requirement. The court may waive the initial eight (8) hour requirement for attorneys who have served as court appointed counsel in incapacity proceedings or as attorney of record for guardians for a minimum of three (3) years.

(d) Any attorney representing an alleged incapacitated person may not serve as guardian of the alleged incapacitated person or as counsel for the guardian of the alleged incapacitated person or the petitioner.

(3) Examining committee

(a) Within 5 days after a petition for determination of incapacity has been filed, the court shall appoint an examining committee consisting of three members and the clerk of court shall notice the examining committee members of their appointment within three (3) days. One member must be a psychiatrist or other physician. The remaining members must be either a psychologist, gerontologist, another psychiatrist, or other physician, a registered nurse, nurse practitioner, licensed social worker, a person with an advanced degree in gerontology from an accredited institution of higher education, or other person who by knowledge, skill, experience, training, or education may, in the court's discretion, advise the court in the form of an expert opinion including a professional guardian. One of three members of the committee must have knowledge of the type of incapacity alleged in the petition. Unless good cause is shown, the attending or family physician may not be appointed to the committee. If the attending or family physician is available for consultation, the committee must consult with the physician. Members of the examining committee may not be related to or associated with one another, ~~or~~ with the petitioner, with counsel for the petitioner, with counsel for the proposed guardian, or the person alleged to be totally or partially incapacitated. A member may not be employed by any private or governmental agency that has custody of, or furnishes, services or subsidies, directly or indirectly, to the person or the family of the person alleged to be incapacitated or for whom a guardianship is sought. A petitioner may not serve as a member of the examining committee. Members of the examining committee must be able to communicate, either directly or through an interpreter, in the language that the alleged incapacitated person speaks or to communicate in a medium understandable to the alleged incapacitated person if she or he is able to communicate. The examining committee member shall be required to submit an affidavit to every circuit court which appoints them indicating they have viewed the required course(s). The Chief Judge shall appoint qualified examining committee members on an annual basis pursuant to this section and shall establish and maintain a list of those members.

(b) All members of the examining committee shall have a minimum of four (4) hours of training and two (2) hours of continuing education every two (2) years. The training and continuing education shall be developed under the supervision of the Statewide Public Guardianship Office in conjunction with the Conference of Circuit Court Judges, Elder Law Section of the Florida Bar, Real Property Probate & Trust Law Section of the Florida Bar, Florida State Guardianship Association and the Florida Guardianship Foundation. The court may waive the initial four (4) hour requirement for persons that have served on an examining committee for a minimum of five (5) years. If examining committee members want to obtain their continuing education online or by a video course, they must obtain the approval of the chief judge prior to taking such course.

(b) (c) Each member of the examining committee shall examine the person. The examining committee shall determine the alleged incapacitated person's ability to exercise those rights specified in s. 744.3215. In addition to the examination, the examining committee shall have access to, and may consider, previous examinations of the person, including,

but not limited to, habilitation plans, school records, and psychological and psychosocial reports voluntarily offered for use by the alleged incapacitated person. Each member of the examining committee shall submit a report within 15 days after appointment.

(e) (d) The examination of the alleged incapacitated person must include a comprehensive examination, a report of which shall be filed by the examining committee as part of its written report. The comprehensive examination report should be an essential element, but not necessarily the only element, used in making a capacity and guardianship decision. The comprehensive examination must include, if indicated:

1. A physical examination;
2. A mental health examination; and
3. A functional assessment.

If any of these three aspects of the examination is not indicated or cannot be accomplished for any reason, the written report must explain the reasons for its omission.

(d) (e) The committee's written report must include:

1. To the extent possible, a diagnosis, prognosis, and recommended course of treatment.
2. An evaluation of the alleged incapacitated person's ability to retain her or his rights, including, without limitation, the rights to marry; vote; contract; manage or dispose of property; have a driver's license; determine her or his residence; consent to medical treatment; and make decisions affecting her or his social environment.
3. The results of the comprehensive examination and the committee members' assessment of information provided by the attending or family physician, if any.
4. A description of any matters with respect to which the person lacks the capacity to exercise rights, the extent of that incapacity, and the factual basis for the determination that the person lacks that capacity.
5. The signature of each member of the committee and the date and time each member conducted his or her examination.

(e) (f) A copy of the report must be served on the petitioner and on the attorney for the alleged incapacitated person within 3 days after the report is filed and at least 5 days before the hearing on the petition.

(4) Dismissal of petition If the examining committee concludes that the alleged incapacitated person is not incapacitated in any respect, the court shall dismiss the petition.

(5) Adjudicatory hearing

(a) Upon appointment of the examining committee, the court shall set the date upon which the petition will be heard. The date for the adjudicatory hearing must be set no more than 14 days after the filing of the report of the examining committee, unless good cause is

shown. The adjudicatory hearing must be conducted at the time and place specified in the notice of hearing and in a manner consistent with due process.

(b) The alleged incapacitated person must be present at the adjudicatory hearing, unless waived by the alleged incapacitated person or the person's attorney or unless good cause can be shown for her or his absence. Determination of good cause rests in the sound discretion of the court.

(c) In the adjudicatory hearing on a petition alleging incapacity, the partial or total incapacity of the person must be established by clear and convincing evidence.

(6) Order determining incapacity If, after making findings of fact on the basis of clear and convincing evidence, the court finds that a person is incapacitated with respect to the exercise of a particular right, or all rights, the court shall enter a written order determining such incapacity. A person is determined to be incapacitated only with respect to those rights specified in the order.

(a) The court shall make the following findings:

1. The exact nature and scope of the person's incapacities;
2. The exact areas in which the person lacks capacity to make informed decisions about care and treatment services or to meet the essential requirements for her or his physical or mental health or safety;
3. The specific legal disabilities to which the person is subject; and
4. The specific rights that the person is incapable of exercising.

(b) In any order declaring a person incapacitated the court must find that alternatives to guardianship were considered and that no alternative to guardianship will sufficiently address the problems of the ward.

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

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

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

(f) When an order is entered which determines that a person is incapable of exercising delegable rights, a guardian must be appointed to exercise those rights.

(7) Fees

(a) The examining committee and any attorney appointed under subsection (2) are entitled to reasonable fees to be determined by the court.

(b) The fees awarded under paragraph (a) shall be paid by the guardian from the property of the ward or, if the ward is indigent, by the petitioner, if the court determines it to be appropriate, or by the state. The state shall have a creditor's claim against the guardianship property for any amounts paid under this section. The state may file its claim within 90 days after the entry of an order awarding attorney ad litem fees. If the state does not file its claim within the 90-day period, the state is thereafter barred from asserting the claim. Upon petition by the state for payment of the claim, the court shall enter an order authorizing immediate payment out of the property of the ward. The state shall keep a record of such payments.

(c) If the petition is dismissed, costs and attorney's fees of the proceeding may be assessed against the petitioner if the court finds the petition to have been filed in bad faith.

#### **744.341 Voluntary guardianship**

(1) Without adjudication of incapacity, the court shall appoint a guardian of the property of a resident or nonresident person who, though mentally competent, is incapable of the care, custody, and management of his or her estate by reason of age or physical infirmity and who has voluntarily petitioned for the appointment. The petition shall be accompanied by a certificate of a licensed physician specifying that he or she has examined the petitioner and that the petitioner is competent to understand the nature of the guardianship and his or her delegation of authority. Notice of hearing on any petition for appointment and for authority to act shall be given to the petitioner and to any person to whom the petitioner requests that notice be given. Such request may be made in the petition for appointment of guardian or in a subsequent written request for notice signed by the petitioner.

(2) If requested in the petition for appointment of a guardian brought under this section, the court may direct the guardian to take possession of less than all of the ward's property and of the rents, income, issues, and profits from it. In such case, the court shall specify in its order the property to be included in the guardianship estate, and the duties and responsibilities of the guardian appointed under this section will extend only to such property.

(3) Unless the voluntary guardianship is limited pursuant to subsection (2), any guardian appointed under this section has the same duties and responsibilities as are provided by law for plenary guardians of the property, generally.

(4) The guardian must submit with the annual report to the court a certificate of a licensed physician specifying that he or she has examined the ward within the previous 90 days and that the ward is competent to understand the nature of the guardianship and his or her delegation of authority.

~~(4)~~ (5) A voluntary guardianship may be terminated by the ward by filing a notice with the court that the voluntary guardianship is terminated along with a certificate of a licensed physician specifying that he or she has examined the ward within the previous 30 days and that the ward is competent to understand the implications of terminating the guardianship.

A copy of the notice must be served on all interested persons.

**744.363 Initial guardianship plan**

(1) The initial guardianship plan shall include the following:

- (a) The provision of medical, mental, or personal care services for the welfare of the ward;
- (b) The provision of social and personal services for the welfare of the ward;
- (c) The place and kind of residential setting best suited for the needs of the ward;
- (d) The application of health and accident insurance and any other private or governmental benefits to which the ward may be entitled to meet any part of the costs of medical, mental health, or related services provided to the ward; and
- (e) Any physical and mental examinations necessary to determine the ward's medical and mental health treatment needs.

(2) The initial guardianship plan for an incapacitated person must be based on the recommendations of the examining committee's examination, as incorporated into the order determining incapacity.

(3) Unless the ward has been found to be totally incapacitated or is a minor, ~~under the age of 14 years~~, the initial guardianship plan must contain an attestation that the guardian has consulted with the ward and, to the extent reasonable, has honored the ward's wishes consistent with the rights retained by the ward under the plan. To the maximum extent reasonable, the plan must be in accordance with the wishes of the ward.

(4) The guardianship plan may not restrict the physical liberty of the ward more than reasonably necessary to protect the ward or others from serious physical injury, illness, or disease and to provide the ward with medical care and mental health treatment for the ward's physical and mental health.

(5) An initial guardianship plan continues in effect until it is amended or replaced by the approval of an annual guardianship plan, until the restoration of capacity or death of the ward, or until the ward, if a minor, reaches the age of 18 years. If there are significant changes in the capacity of the ward to meet the essential requirements for his or her health or safety, the guardian may file a petition to modify the guardianship plan and shall serve notice on all persons who received notice of the plan. At the hearing on such petition, the court may modify the guardianship plan and specify the effective date of such amendment.

(6) In exercising his or her powers, the guardian shall recognize any rights retained by the ward

**744.365 Verified inventory**

(1) **FILING.**—A guardian of the property shall file a verified inventory of the ward's property.

(2) CONTENTS.—The verified inventory must include the following:

(a) All property of the ward, real and personal, that has come into the guardian's possession or knowledge, including a statement of all encumbrances, liens, and other secured claims on any item, any claims against the property, and any cause of action accruing to the ward and any trusts of which the ward is a beneficiary;

(b) The location of the real and personal property in sufficient detail so that it may be clearly identified or located; and

(c) A description of all sources of income, including, without limitation, social security benefits and pensions.

(3) CASH ASSETS.—Along with the verified inventory, the guardian must file a copy of the most current statement of all of the ward's cash assets from all institutions where the cash is on deposit.

(4) SAFE-DEPOSIT BOX.—

(a) The initial opening of any safe-deposit box of the ward must be conducted in the presence of an employee of the institution where the box is located. The inventory of the contents of the box also must be conducted in the presence of the employee, who must verify the contents of the box by signing a copy of the inventory. This safe-deposit box inventory shall be filed with the court within 10 days after the box is opened.

(b) The guardian shall provide the ward with a copy of each signed safe-deposit box inventory unless the ward is a minor or has been adjudicated totally incapacitated or unless the order appointing the guardian states otherwise.

(c) Nothing may be removed from the ward's safe-deposit box without specific court approval.

(5) RECORDS RETENTION.—

(a) The guardian shall maintain substantiating papers and records sufficient to demonstrate the accuracy of the initial inventory for a period of 3 years after her or his discharge. The substantiating papers need not be filed with the court but must be made available for inspection and review at such time and place and before such persons as the court may order.

(b) As part of the substantiating papers, the guardian must identify by name, address, and occupation, the witness or witnesses, if any, who were present during the initial inventory of the ward's personal property.

(6) AUDIT FEE.—

(a) Where the value of the ward's property exceeds \$25,000, a guardian shall pay from the ward's property to the clerk of the circuit court a fee of up to \$75, upon the filing of the verified inventory, for the auditing of the inventory. Upon petition by the guardian, the court may waive the auditing fee upon a showing of insufficient funds in the ward's estate. Any

guardian unable to pay the auditing fee may petition the court for waiver of the fee. The court may waive the fee after it has reviewed the documentation filed by the guardian in support of the waiver.

(b) An audit fee may not be charged to any ward whose property has a value of less than \$25,000.

**744.367 Duty to file annual guardianship report**

(1) Unless the court requires filing on a calendar-year basis, each guardian of the person shall file with the court an annual guardianship plan within 90 days after the last day of the anniversary month the letters of guardianship were signed, and the plan must cover the coming fiscal year, ending on the last day in such anniversary month. If the court requires calendar-year filing, the guardianship plan must be filed ~~within 90 days after the end of the calendar year~~ on or before April 1 of each year.

(2) Unless the court requires or authorizes filing on a fiscal-year basis, each guardian of the property shall file with the court an annual accounting on or before April 1 of each year. The annual accounting must cover the preceding calendar year. If the court authorizes or directs filing on a fiscal-year basis, the annual accounting must be filed on or before the first day of the fourth month after the end of the fiscal year.

(3) The annual guardianship report of a guardian of the property must consist of an annual accounting, and the annual report of a guardian of the person ~~of an incapacitated person~~ must consist of an annual guardianship plan. The annual report shall be served on the ward, unless the ward is a minor ~~under the age of 14 years~~ or is totally incapacitated, and on the attorney for the ward, if any. The guardian shall provide a copy to any other person as the court may direct.

(4) Unless the ward is a minor or has been determined to be totally incapacitated, the guardian shall review a copy of the annual report with the ward, to the extent possible. Within 30 days after the annual report has been filed, any interested person, including the ward, may file written objections to any element of the report, specifying the nature of the objection.

(5) If the guardian fails to timely file the annual guardianship report, the judge may impose sanctions which may include contempt, removal of the guardian, or other sanctions provided by law in s. 744.3685.

(6) Notwithstanding any other requirement of this section or unless otherwise directed by the court, the guardian of the property may file the first annual accounting on either a fiscal-year or calendar-year basis. Unless the court directs otherwise, the guardian shall notify the court as to the guardian's filing intention within 30 days from the date the guardian was issued the letter of guardianship. All subsequent annual accountings must be filed on the same accounting period as the first annual accounting unless the court authorizes or directs otherwise. The first accounting period must end within 1 year after the end of the

month in which the letters of guardianship were issued to the guardian of the property.

**744.3675 Annual guardianship plan**

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

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

(a) Information concerning the residence of the ward, including:

1. The ward's address at the time of filing the plan;
2. The name and address of each place where the ward was maintained during the preceding year;
3. The length of stay of the ward at each place;
4. A statement of whether the current residential setting is best suited for the current needs of the ward; and
5. Plans for ensuring during the coming year that the ward is in the best residential setting to meet his or her needs.

(b) Information concerning the medical and mental health condition and treatment and rehabilitation needs of the ward, including:

1. A resume of any professional medical treatment given to the ward during the preceding year;
2. The report of a physician who examined the ward no more than 90 days before the beginning of the applicable reporting period. Such report must contain an evaluation of the ward's condition and a statement of the current level of capacity of the ward; and
3. The plan for provision of medical, mental health, and rehabilitative services in the coming year.

(c) Information concerning the social condition of the ward, including:

1. The social and personal services currently utilized by the ward;
2. The social skills of the ward, including a statement of how well the ward communicates and maintains interpersonal relationships with others; and
- ~~3. A description of the ward's activities at communication and visitation; and~~
- ~~4.~~ 3. The social needs of the ward.

(2) Each plan for a minor must include:

(a) Information concerning the residence of the ward, including:

1. The minor's address at the time of filing the plan;
2. The name and address of each place where the minor lived during the preceding year;

(b) Information concerning the medical and mental health condition and treatment and rehabilitation needs of the minor including:

1. A resume of any professional medical treatment given to the minor during the preceding year;
2. The report of a physician who examined the minor no more than 180 days before the beginning of the applicable reporting period. Such report must contain an evaluation of the minor's physical condition; and
3. The plan for provision of medical and education services in the coming year.

(c) Information concerning the education of the minor, including:

1. A summary of the school progress report;
2. The social development of the minor, including a statement of how well the minor communicates and maintains interpersonal relationships with others;
3. The social needs of the minor.

~~(2)~~ (3) Each plan for an adult ward must address the issue of restoration of rights to the ward and include:

- (a) A summary of activities during the preceding year which were designed to increase enhance the capacity of the ward;
- (b) A statement of whether or not the ward can have any rights restored; and
- (c) A statement of whether restoration of any rights will be sought.

~~(3)~~ (4) The court, in its discretion, may require reexamination of the ward by a physician at any time.

#### **744.3678 Annual accounting**

- (1) Each guardian of the property must file an annual accounting with the court.
- (2) The annual accounting must include:
  - (a) A full and correct account of the receipts and disbursements of all of the ward's property over which the guardian has control and a statement of the ward's property on hand at the end of the accounting period.

(b) A copy of the annual or year-end statement of all of the ward's cash accounts from each of the institutions where the cash is deposited.

(3) The guardian must obtain a receipt, ~~or canceled check or other proof of payment~~ for all expenditures and disbursements made on behalf of the ward. The guardian must preserve ~~the receipts and canceled checks~~ all evidence of payment, along with other substantiating papers, for a period of 3 years after his or her discharge. The receipts, ~~checks~~ proof of payment, and substantiating papers need not be filed with the court but shall be made available for inspection and review at such time and in such place and before such persons as the court may from time to time order.

(4) The guardian shall pay from the ward's estate to the clerk of the circuit court a fee based upon the following graduated fee schedule, upon the filing of the annual financial return, for the auditing of the return:

(a) For estates with a value of \$25,000 or less the clerk of the court may charge a fee of up to \$15.

(b) For estates with a value of more than \$25,000 up to and including \$100,000 the clerk of the court may charge a fee of up to \$75.

(c) For estates with a value of more than \$100,000 up to and including \$500,000 the clerk of the court may charge a fee of up to \$150.

(d) For estates with a value in excess of \$500,000 the clerk of the court may charge a fee of up to \$225.

Upon petition by the guardian, the court may waive the auditing fee upon a showing of insufficient funds in the ward's estate. Any guardian unable to pay the auditing fee may petition the court for a waiver of the fee. The court may waive the fee after it has reviewed the documentation filed by the guardian in support of the waiver.

(5) This section does not apply if the court determines that the ward receives income only from social security benefits and the guardian is the ward's representative payee for the benefits.

#### **744.3679 Simplified accounting procedures in certain cases**

(1) In a guardianship of property, when all assets of the estate are in designated depositories under s. 69.031 and the only transactions that occur in that account are interest accrual, deposits pursuant to settlement, or financial institution service charges, the guardian may elect to file an accounting consisting of:

(a) The original or a certified copy of the year-end statement of the ward's account from the financial institution; and

(b) A statement by the guardian under penalty of perjury that the guardian has custody and control of the ward's property as shown in the year-end statement.

~~(2) The clerk has no responsibility to monitor or audit the accounts and may not accept a fee for doing so.~~

~~(3)~~ (2) The accounting allowed by subsection (1) is in lieu of the accounting ~~and auditing~~ procedures under ss. ~~744.3678 (2) and 744.368(1)(f)~~. However, any interested party may seek judicial review as provided in s. 744.3685.

~~(4)~~ (3) The guardian need not be represented by an attorney in order to file the annual accounting allowed by subsection (1).

#### **744.368 Responsibilities of the clerk of the circuit court**

(1) In addition to the duty to serve as the custodian of the guardianship files, the clerk shall review each initial and annual guardianship report to ensure that it contains information about the ward addressing, as appropriate:

- (a) Physical and mental health care;
- (b) Personal and social services;
- (c) The residential setting;
- (d) The application of insurance, private benefits, and government benefits;
- (e) The physical and mental health examinations; and
- (f) The initial verified inventory or the annual accounting.

(2) The clerk shall, within 30 days after the date of filing of the initial or annual report of the guardian of the person, complete his or her review of the report.

(3) Within 90 days after the filing of the ~~initial or annual guardianship report~~ verified inventory and accountings by a guardian of the property, the clerk shall audit the verified inventory or the ~~annual accountings~~. The clerk shall advise the court of the results of the audit.

(4) The clerk shall report to the court when a report is not timely filed.

#### **744.387 Settlement of claims**

(1) When a settlement of any claim by or against the guardian, whether arising as a result of personal injury or otherwise, and whether arising before or after appointment of a guardian, is proposed, but before an action to enforce it is begun, on petition by the guardian of the property stating the facts of the claim, question, or dispute and the proposed settlement, and on any evidence that is introduced, the court may enter an order authorizing the settlement if satisfied that the settlement will be for the best interest of the ward. The order shall relieve the guardian from any further responsibility in connection with the claim or dispute when the settlement has been made in accordance with the order. The order authorizing the settlement may also determine whether an additional bond is required and, if

so, shall fix the amount of it.

~~2) In the same manner as provided in subsection (1) or as authorized by s. 744.301, the natural guardians or guardian of a minor may settle any claim by or on behalf of a minor that does not exceed \$15,000 without bond. A legal guardianship shall be required when the amount of the net settlement to the ward exceeds \$15,000.~~

~~(2)(3)(a)~~ No settlement after an action has been commenced by or on behalf of a ward shall be effective unless approved by the court having jurisdiction of the action.

(b) In the event of settlement or judgment in favor of the ward or minor, the court may authorize the natural guardians or guardian, or a guardian of the property appointed by a court of competent jurisdiction, to collect the amount of the settlement or judgment and to execute a release or satisfaction. When the amount of net settlement to the ward or judgment exceeds \$15,000 and no guardian has been appointed, the court shall require the appointment of a guardian for the property.

~~(3) (4)~~ In making a settlement under court order as provided in this section, the guardian is authorized to execute any instrument that may be necessary to effect the settlement. When executed, the instrument shall be a complete release of the person making the settlement.

#### **744.441 Powers of guardian upon court approval**

After obtaining approval of the court pursuant to a petition for authorization to act, a plenary guardian of the property, or a limited guardian of the property within the powers granted by the order appointing the guardian or an approved annual or amended guardianship report, may:

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

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

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

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

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

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

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

- (8) Pay calls, assessments, and other sums chargeable or accruing against, or on account of, securities.
- (9) Borrow money, with or without security, to be repaid from the property or otherwise and advance money for the protection of the estate.
- (10) Effect a fair and reasonable compromise with any debtor or obligor or extend, renew, or in any manner modify the terms of any obligation owing to the estate.
- (11) Prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the guardian in the performance of his or her duties.
- (12) Sell, mortgage, or lease any real or personal property of the estate, including home-stead property, or any interest therein for cash or credit, or for part cash and part credit, and with or without security for unpaid balances.
- (13) Continue any unincorporated business or venture in which the ward was engaged.
- (14) Purchase the entire fee simple title to real estate in this state in which the guardian has no interest, but the purchase may be made only for a home for the ward, to protect the home of the ward or the ward's interest, or as a home for the ward's dependent family. If the ward is a married person and the home of the ward or of the dependent family of the ward is owned by the ward and spouse as an estate by the entirety and the home is sold pursuant to the authority of subsection (12), the court may authorize the investment of any part or all of the proceeds from the sale toward the purchase of a fee simple title to real estate in this state for a home for the ward or the dependent family of the ward as an estate by the entirety owned by the ward and spouse. If the guardian is authorized to acquire title to real estate for the ward or dependent family of the ward as an estate by the entirety in accordance with the preceding provisions, the conveyance shall be in the name of the ward and spouse and shall be effective to create an estate by the entirety in the ward and spouse.
- (15) Exercise any option contained in any policy of insurance payable to, or inuring to the benefit of, the ward.
- (16) Pay reasonable funeral, interment, and grave marker expenses for the ward from the ward's estate, up to a maximum of \$6,000.
- (17) Make gifts of the ward's property to members of the ward's family in estate and income tax planning procedures.
- (18) When the ward's will evinces an objective to obtain a United States estate tax charitable deduction by use of a split interest trust (as that term is defined in s. 737.501), but the maximum charitable deduction otherwise allowable will not be achieved in whole or in part, execute a codicil on the ward's behalf amending said will to obtain the maximum charitable deduction allowable without diminishing the aggregate value of the benefits of any beneficiary under such will.
- (19) Create or amend revocable or irrevocable trusts of property of the ward's estate

which may extend beyond the disability or life of the ward in connection with estate, gift, income, or other tax planning or in connection with estate planning. The court shall retain oversight of the assets transferred to a trust unless otherwise ordered by the court.

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

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

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

#### **744.442 Delegation of Authority (new)**

(1) With approval of the court upon petition, a guardian may designate a surrogate to exercise the guardian's powers when the guardian is unavailable to act. A surrogate appointed pursuant to this section must be a professional guardian.

(2) The order appointing a surrogate guardian must specify the name, business address of the surrogate and the duration of appointment, which shall not exceed 30 days unless extended for good cause shown. The surrogate shall have authority to exercise all powers of the guardian unless limited by court order. Bond may be required in the courts' discretion and the surrogate shall file an oath swearing or affirming that he or she will faithfully perform the duties delegated.

(3) Nothing herein shall limit the responsibility of the guardian to the ward and to the court. The guardian shall remain liable for acts of the surrogate. The guardian may terminate the surrogate's authority by written notice to the court.

(4) The surrogate shall be subject to the jurisdiction of the court as if appointed to serve as guardian.

#### **744.464 Restoration to capacity**

(1) VENUE.—A suggestion of capacity must be filed with the court in which the guardianship is pending.

(2) SUGGESTION OF CAPACITY.—

(a) Any interested person, including the ward, may file a suggestion of capacity. The suggestion of capacity must state that the ward is currently capable of exercising some or all of the rights which were removed.

(b) Upon the filing of the suggestion of capacity, the court shall immediately appoint a physician to examine the ward. The physician must examine the ward and file his or her report with the court within 20 days after the appointment.

(c) The court shall immediately send notice of the filing of the suggestion of capacity to the ward, the guardian, the attorney for the ward, if any, ~~the state attorney~~, and any other interested persons designated by the court. Formal notice must be served on the guardian. Informal notice may be served on other persons. Notice need not be served on the person who filed the suggestion of capacity.

(d) Any objections to the suggestion of capacity must be filed within 20 days after service of the notice.

(e) If an objection is timely filed, or if the medical examination suggests that full restoration is not appropriate, the court shall set the matter for hearing. If the ward does not have an attorney, the court shall appoint one to represent the ward.

(f) Notice of the hearing and copies of the objections and medical examination reports shall be served upon the ward, the ward's attorney, the guardian, ~~the state attorney~~, the ward's next of kin, and any other interested persons as directed by the court.

**(3) ORDER OF RESTORATION.—**

(a) If no objections are filed, and the court is satisfied with the medical examination, the court shall enter an order of restoration of capacity, restoring all or some of the rights which were removed from the ward. The order must be issued within 30 days after the medical report is filed.

(b) At the conclusion of a hearing, conducted pursuant to s. 744.1095, the court shall enter an order either denying the suggestion of capacity or restoring all or some of the rights which were removed from the ward.

(c) If only some rights are restored to the ward, the order must state which rights are restored, and the guardian shall prepare a new guardianship report which addresses only the remaining rights retained by the guardian. The guardian must file a copy of the new report with the court within 60 days after the entry of the order.

~~(4) TIME LIMITATION FOR FILING SUGGESTION OF CAPACITY.—Notwithstanding this section, a suggestion of capacity may not be filed within 90 days after an adjudication of incapacity or denial of restoration, unless good cause is shown.~~

**744.511 Accounting upon removal**

A removed guardian shall file with the court a true, complete, and final report of his or her guardianship within 20 days after removal and shall serve a copy on the successor guardian and the ward, unless the ward ~~is under 14 years of age~~ a minor or has been determined to be totally incapacitated

**744.527 Final reports and application for discharge; hearing.**

(1) When the court terminates the guardianship, in accordance with the reasons set forth in S. 744.521, the guardian shall promptly file his or her final report. In the event of the death of the ward, the final report shall be filed no later than 45 days after service on the guard-

ian of letters of administration or letters of curatorship. If no objections are filed and if it appears that the guardian has made full and complete distribution to the person entitled and has otherwise faithfully discharged his or her duties, the court shall approve the final report. If objections are filed, the court shall conduct a hearing in the same manner as provided for a hearing on objections to annual guardianship reports.

(2) The guardian applying for discharge is authorized to retain from the funds in his or her possession a sufficient amount to pay the final costs of administration, including guardian and attorney's fees regardless of the death of the ward, accruing between the filing of his or her final returns and the order of discharge.

#### **744.528 Discharge of guardian named as personal representative.**

(1) A guardian authorized to manage property, who is subsequently appointed personal representative, must serve a copy of the guardian's final report and petition for discharge upon the beneficiaries of the ward's estate who will be affected by the report.

(2) All such beneficiaries shall have 30 days to file objections to the final report and petition for discharge.

(3) ~~The court shall~~ Any interested persons may set a hearing on any objections filed by the beneficiaries. Notice of the hearing shall be served upon the guardian, beneficiaries of the ward's estate, and any other person to whom the court directs service. If a notice of hearing on the objections is not served within 90 days of filing of the objections, the objections will be deemed abandoned.

(4) The guardian may not be discharged until:

(a) All objections have been judicially resolved;

(b) The report of the guardian is approved by the court; and

(c) In the case of a guardian of the property, all property has been distributed to the ward's estate or the persons entitled to it.

#### **765.101 Definitions**

As used in this chapter:

(1) "Advance directive" means a witnessed written document or oral statement in which instructions are given by a principal or in which the principal's desires are expressed concerning any aspect of the principal's health care, and includes, but is not limited to, the designation of a health care surrogate, a living will, or an anatomical gift made pursuant to part X of chapter 732.

(2) "Attending physician" means the primary physician who has responsibility for the treatment and care of the patient.

(3) "Close personal friend" means any person 18 years of age or older who has exhibited special care and concern for the patient, and who presents an affidavit to the health care

facility or to the attending or treating physician stating that he or she is a friend of the patient; is willing and able to become involved in the patient's health care; and has maintained such regular contact with the patient so as to be familiar with the patient's activities, health, and religious or moral beliefs.

(4) "End-stage condition" means an irreversible condition that is caused by injury, disease, or illness which has resulted in progressively severe and permanent deterioration, and which, to a reasonable degree of medical probability, treatment of the condition would be ineffective.

(5) "Health care decision" means:

(a) Informed consent, refusal of consent, or withdrawal of consent to any and all health care, including life-prolonging procedures and mental health treatment, unless otherwise stated in the advance directives.

(b) The decision to apply for private, public, government, or veterans' benefits to defray the cost of health care.

(c) The right of access to all records of the principal reasonably necessary for a health care surrogate to make decisions involving health care and to apply for benefits.

(d) The decision to make an anatomical gift pursuant to part X of chapter 732.

(6) "Health care facility" means a hospital, nursing home, hospice, home health agency, or health maintenance organization licensed in this state, or any facility subject to part I of chapter 394.

(7) "Health care provider" or "provider" means any person licensed, certified, or otherwise authorized by law to administer health care in the ordinary course of business or practice of a profession.

(8) "Incapacity" or "incompetent" means the patient is physically or mentally unable to communicate a willful and knowing health care decision. For the purposes of making an anatomical gift, the term also includes a patient who is deceased.

(9) "Informed consent" means consent voluntarily given by a person after a sufficient explanation and disclosure of the subject matter involved to enable that person to have a general understanding of the treatment or procedure and the medically acceptable alternatives, including the substantial risks and hazards inherent in the proposed treatment or procedures, and to make a knowing health care decision without coercion or undue influence.

(10) "Life-prolonging procedure" means any medical procedure, treatment, or intervention, including artificially provided sustenance and hydration, which sustains, restores, or supplants a spontaneous vital function. The term does not include the administration of medication or performance of medical procedure, when such medication or procedure is deemed necessary to provide comfort care or to alleviate pain.

(11) "Living will" or "declaration" means:

(a) A witnessed document in writing, voluntarily executed by the principal in accordance with s. 765.302; or

(b) A witnessed oral statement made by the principal expressing the principal's instructions concerning life-prolonging procedures.

(12) "Persistent vegetative state" means a permanent and irreversible condition of unconsciousness in which there is:

(a) The absence of voluntary action or cognitive behavior of any kind.

(b) An inability to communicate or interact purposefully with the environment.

(13) "Physician" means a person licensed pursuant to chapter 458 or chapter 459.

(14) "Principal" means a competent adult executing an advance directive and on whose behalf health care decisions are to be made.

(15) "Proxy" means a competent adult who has not been expressly designated to make health care decisions for a particular incapacitated individual, but who, nevertheless, is authorized pursuant to s. 765.401 to make health care decisions for such individual.

(16) "Surrogate" means any competent adult expressly designated by a principal to make health care decisions on behalf of the principal upon the principal's incapacity.

(17) "Terminal condition" means a condition caused by injury, disease, or illness from which there is no reasonable medical probability of recovery and which, without treatment, can be expected to cause death.

#### **28.345 Exemption from court-related fees and charges**

Notwithstanding any other provision of this chapter or law to the contrary, judges, state attorneys, guardians ad litem, public guardians, and public defenders, acting in their official capacity, and state agencies, are exempt from all court-related fees and charges assessed by the clerks of the circuit courts.

A. Public Testimony

1. October 4, 2003 Historic Courthouse,  
Dade City
2. October 22, 2003 Broward County  
Commission Chamber,  
Fort Lauderdale
3. December 4, 2004 Florida Supreme Court,  
Tallahassee
4. March 2, 2004 Adams Mark Hotel,  
Orlando
5. April 23, 2004 Stetson University School  
of Law, Gulfport
6. May 21, 2004 St. Thomas University  
School of Law, Miami
7. July 9, 2004 Collier County Commission  
Chambers, Naples
8. September 22, 2004 St. Augustine Commission  
Chambers, St. Augustine
9. October 21 and 22, 2004 Florida Supreme Court,  
Tallahassee

*Public Testimony*

*October 4, 2003  
Historic Courthouse  
Dade City*

The Honorable Susan Sexton  
Probate Judge, Thirteenth Judicial Circuit, Hillsborough County

W.C. Jim Grimes  
Long-term Care Ombudsman

Paul McClintock  
Citizen Advocate

Dr. Betty Davis  
Office of the Public Guardian, Volusia County Council on Aging

Idella Valcourt  
Professional Guardian

Keela Samis  
General Master, Probate Division, Sixth Judicial Circuit, Pinellas County

The Honorable Patricia Thomas  
Circuit Court Judge, Fifth Judicial Circuit, Citrus County

Karen Patterson  
Office of the Public Guardian, Pasco County

Karl Littlefield,  
Department of Children & Families, Suncoast Region

Cindy McCormick  
General Master, Probate Division, Sixth Judicial Circuit, Pinellas County

Patti Jerrell  
Professional Guardian & Guardian Advocate, Seminole County

Tonya Baker Taft  
Medicaid Waiver Provider for the Developmentally Disabled

Nick Barton  
Professional Guardian

Renita George  
Supervisor, Pasco County Clerk of the Court

*Public Testimony*

*October 22, 2003  
Broward County Commission Chambers  
Fort Lauderdale*

The Honorable Maria Korvick  
Administrative Judge, Probate Division, Eleventh Judicial Circuit, Miami-Dade County

Stephanie Schneider, Esq.  
Chairperson, Elder Law Section of the Florida Bar  
Attorney in Private Practice

Stephen Margoulis, Esq.  
Professional Guardian and Representative of the Broward County Guardianship  
Association

Rosalyn K. Rudolph  
MA Therapeutic Recreation, Boca Raton

Bruce Brister  
Court Auditor, Collier County

Eloisa Roses Ramos  
Barry University, Office of the Public Guardian for the Seventeenth Judicial Circuit,  
Broward County

Howard Booser  
Associate Director, Ann Stork Center, Fort Lauderdale

Pamela Kelley  
Alzheimer's Association

Pamela Kylennon  
Department of Children & Families  
Developmental Disabilities Program, Tallahassee

Susan Whetherby  
Court Monitor, Palm Beach County

Knyvett Lee  
Professional Guardian & Vice President Florida Guardianship Foundation

Barbara Reiser,  
Professional Guardian, Miami-Dade County

*Public Testimony*

*December 4, 2003  
Florida Supreme Court  
Tallahassee*

Terry F. White, Secretary  
Department of Elder Affairs

Aleisa C. McKinley, JD, MA  
Director of Advocacy Center for Persons for Disabilities, Tallahassee

Toni Nelson-Huff  
President-elect, Florida State Guardianship Association

Twyla Sketchley, Esq.  
Sketchley Law Firm, Tallahassee  
Board member of Florida State Guardianship Association

Karen Campbell, Esq.  
Office of the Public Guardian, Inc., Tallahassee

*Public Testimony*

*March 2, 2004  
Adams Mark Hotel  
Orlando*

Patti Jerrell  
Professional Guardian & Guardian Advocate

Barbara Whitley  
Office of the Public Guardian, Brevard County

Jenny Shuff-Dowd,  
Office of the Public Guardian, Orange County

Ivan Maldonado  
Director of Case Management for the Osceola County Council of Aging, Office of Public  
Guardian

*Public Testimony*

*April 23, 2004  
Stetson University School of Law  
Gulfport*

Alexandra Rieman, Esq.  
Probate and Guardianship Counsel Seventeenth Judicial Circuit, Broward County

Karleen F. DeBlaker  
Clerk of Court Pinellas County

Robert Melton  
Internal Auditor, Clerk of the Court Pinellas County

Nicky Valentini  
Professional Guardian

Bruce Wallace  
Professional Guardian

Gary Vitucci  
Adult Protective Services,  
Addressed Task Force as representative of the Pinellas TRIAD committee

Laura Arasmo  
Advocate

Patty Johnson  
Professional Guardian

Cindy McCormick  
General Master, Probate Division, Sixth Judicial Circuit, Pinellas County

Keela Samis  
General Master, Probate Division, Sixth Judicial Circuit, Pinellas County

Eileen Nave  
Family Member Advocate

Carolyn Dempsey  
Professional Guardian

Lynn Miles  
CPA from Southwest Florida

Correy Pastore  
President Pinellas County Guardianship Association

*Public Testimony*

*May 21, 2004  
St. Thomas University School of Law  
Miami*

The Honorable Maria Korvick  
Administrative Probate Judge, Eleventh Judicial Circuit, Miami-Dade County

Miriam Spiegel  
Family Member Advocate

Robert Spiegel  
Family Member Advocate

Josefina Quintans  
Department of Children & Families, Miami

Jeannette Tristani  
Family Member Advocate

Michael Tristani  
Family Member Advocate

Barbara Reiser  
Office of the Public Guardian, Guardianship Care Group, Miami-Dade County

Knyvett Lee  
Professional Guardian

Eloisa Roses Ramos  
Office of the Public Guardian, Barry University, Seventeenth Judicial Circuit, Broward County

*Public Testimony*

*July 9, 2004  
Collier County Commission Chambers  
Naples*

The Honorable Burt Saunders, Senator  
Naples

Hal Foy  
Professional Guardian, Cape Coral

Robert Talley  
Professional Guardian, Punta Gorda

Belle DeKoff  
Professional Guardian

Sunny Dowling  
Professional Guardian

Patricia Leitgeb  
Family Member Advocate , North Fort Myers

*Public Testimony*

*September 22, 2004  
St. Augustine Commission Chambers*

Shannon Miller, Esq.  
Guardianship Attorney, Gainesville

Patti Jerrell  
Professional Guardian & Guardian Advocate

Dr. Betty Davis  
Office of the Public Guardian, Volusia County Council on Aging

Terri Barton  
Director, Urban Jacksonville

*Public Testimony*

*October 21 & 22, 2004  
Florida Supreme Court  
Tallahassee*

Ron Moran  
CEO Florida Silver-Haired Legislature & Chairman Brevard County Public Guardianship  
Funding Task Force

Karen Campbell  
Director, Office of the Public Guardian, Inc.

<sup>1</sup> Housing Needs and Household Characteristics of Persons with Disabilities in Florida: An Analysis of 2000 Census Data; Shimberg Center for Affordable Housing, University of Florida.

<sup>2</sup> This recommendation is directed to the Florida Supreme Court as the entity responsible for judicial education. This recommendation will not be a legislative recommendation.