

Comparison of Ch. 745, Ch. 744, & 2017 Uniform Guardianship Code

Chapter 745	Section Title	Chapter 744	Uniform Code
Part I	General Provisions		
101	Short Title	101	
102	Legislative Intent	1012	
103	Applicability		
104	Rules of Evidence		
105	Construction Against Implied Repeal		
106	Definitions	102 309	
107	Additional definitions	1025	
108	Verification of documents	104	
109	Costs	105	
110	Notice and Service	106	
111	Recording of hearings	301	
112	Confidentiality of guardianship records	3701 1076	
113	Guardian's and professional's fees and expenses	108	
114	Jurisdiction of the court		
Part II	Venue		
201	Venue	1097	
202	Residence of ward	1096	
203	Change of Venue	1097	
204	Change of ward's residence	1098	
Part III	Incapacity		
301	Petition to determine incapacity	3201	
302	Notice of petition to determine incapacity and for appointment of guardian	331	
303	Rights of persons determined incapacitated	3215	
304	Conduct of hearings	1095	
305	Attorney for the alleged incapacitated person	331	
306	Appointment and qualifications of examiners	331	
307	Examination of alleged incapacitated person	331	
308	Examination reports	331	
309	Consideration of examination reports	331	
310	Adjudicatory hearing	331	
311	Order Determining Incapacity	331	
312	Fees in incapacity proceedings	331	
Part IV	Restoration to Capacity		
401	Suggestion of capacity	464	
402	Examination of ward	464	
403	Objection and hearing	464	
404	Consideration of examination report		

Chapter 745	Section Title	Chapter 744	Uniform Code
405	Order restoring capacity	464	
Part V	Qualifications of Guardians		
501	Who may be appointed guardian of a resident ward	309	
502	Disqualified persons	309	
503	Nonprofit corporate guardian	309	
504	Credit and criminal investigation	3135	
505	Guardian education requirements	3145	
Part VI	Appointment of Guardians		
601	Proposed guardian's information statement	3125	
602	Considerations in appointment of guardian	312	
603	Petition for appointment of guardian; contents	334	
604	Notice of petition for appointment of guardian and hearing	3371	
605	Order on petition for appointment of guardian	2005	
606	Oath of guardian	347	
607	Bond of guardian	351	
608	Validity of bond	354	
609	Liability of surety	357	
610	Alternatives to guardianship	3115	
611	Letters of guardianship	345	
Part VII	Types of Guardianship		
701	Emergency temporary guardianship	3031	
702	Standby guardian of minor	304	
703	Standby guardian of adult	304	
704	Appointment and powers of standby guardian	304	
705	Preneed guardian for adult	3045	
706	Preneed guardian for minor	3046	
707	Voluntary guardianship of property	341	
708	Relocation of ward to Florida	306	
709	Foreign guardian of nonresident ward	307	
710	Resident guardian of property of nonresident ward	308	
711	Guardian advocates	3085	
712	Natural guardians	301	
713	Guardians of minors	3021 342	
714	Claims of minors	3025	
Part VIII	Duties of Guardian		
801	Liability of guardian		
802	Duties of guardian of property	361	
803	Verified inventory	365	
804	Audit fee for inventory	365	
805	Annual accounting	3678	
806	Simplified accounting	3679	

Chapter 745	Section Title	Chapter 744	Uniform Code
807	Audit fee for accounting	3678	
808	Safe-deposit box	365	
809	Duties of guardian of the person	361	
810	Guardianship plan	3675	
811	Annual guardianship report for minor	3675	
812	Annual guardianship report for adults	3675	
813	Annual guardianship report – filing	367	
814	Records retention	365	
Part IX	Guardians Powers		
901	Powers and duties of guardian	361	
902	Power of guardian of property without court approval	444	
903	Powers of guardian of property requiring court approval	441	
904	Petition for authority to act	447	
905	Order authorizing action	451	
906	Conveyance of various property rights by guardians of property	457	
907	Settlement of claims	387	
908	Authority for extraordinary actions	3215	
Part X	Oversight and monitoring		
1001	Duties of the clerk – General	368	
1002	Judicial review of guardianship inventories and accountings	372	
1003	Judicial review of guardianship plans and reports	369	
1004	Order requiring guardianship documents; contempt	3685	
1005	Action on review of guardianship report	371	
1006	Petition for interim judicial review	3715	
1007	Production of property	373	
1008	Guardianship monitors	107	
1009	Emergency guardianship monitor	1075	
Part XI	Resignation and Discharge		
1101	Resignation of guardian	467	
1102	Resignation and discharge of guardian of property	467	
1103	Termination of guardianship of property	521	
1104	Discharge of guardian of property named as personal representative	528	
1105	Termination of guardianship of property on change of residence of ward to foreign jurisdiction	524	
1106	Disposition of unclaimed funds held by guardian	534	
1107	Resignation and discharge of guardian of person	467	
1108	Termination of guardianship of person	521	
1109	Termination of guardianship of person on change of residence of ward to foreign jurisdiction	524	
1110	Order of discharge	531	

Chapter 745	Section Title	Chapter 744	Uniform Code
Part XII	Removal of Guardians		
1201	Reasons for removal of guardian	474	
1202	Proceedings for removal of a guardian	477	
1203	Accounting upon removal	511	
1204	Appointment of successor guardian upon removal		
1205	Surrender of property upon removal	514	
1206	Proceedings for contempt	517	
Part XIII	Miscellaneous		
1301	Suspension of statute of limitation in favor of guardian	394	
1302	Appraisals	381	
1303	Determination regarding alternatives to guardianship	462	
1304	Support of ward's dependents	397	
1305	Petition for support of ward's dependents	421	
1306	Payments to guardian of person	374	
1307	Actions by and against guardian or ward	391	
1308	Guardian forbidden to borrow or purchase; exceptions	454	
1309	Conflicts of interest; prohibited activities; court approval; breach of fiduciary duty	446	
1310	Purchasers and lenders protected	461	
1311	Temporary delegation of authority to surrogate	442	
1312	Multiple guardians		
1313	Effect of power of attorney and trust	331	
1314	Suspension of power of attorney before incapacity determination	3203	
1315	Abuse, neglect, or exploitation by a guardian	359	
Part XIV	Public and Professional Guardians		
1401	Office of Public and Professional Guardians	2001	
1402	Professional guardian registration	2002	
1403	Regulation of professional guardians; application; bond required; educational requirements	2003	
1404	Complaints; disciplinary proceedings; penalties; enforcement	2004	
1405	Grounds for discipline; penalties; enforcement	20041	
1406	Office of Public and Professional Guardians; appointment, notification	2006	
1407	Powers and duties	2007	
1408	Costs of public guardian	2008	
1409	Preparation of budget	2009	
1410	Procedures and rules	2101	
1411	Surety bond	2102	
1412	Reports and standards	2103	
1413	Public records exemption	21031	

Chapter 745	Section Title	Chapter 744	Uniform Code
1414	Access to records by the Office of Public and Professional Guardians; confidentiality	2104	
1415	Direct-support organization; definition; use of property; board of directors; audit; dissolution	2105	
1416	Joining Forces for Public Guardianship grant program; purpose	2106	
1417	Program administration; duties of the Office of Public and Professional Guardians	2107	
1418	Eligibility	2108	
1419	Grant application requirements; review criteria; awards process	2109	
1420	Confidentiality	2111	
Part XV	Veterans' Guardianship		
1501	Short title; scope of part	602	
1502	Definitions	604	
1503	Secretary of Veterans Affairs as party in interest	607	
1504	Procedure for commitment of veteran to United States Department of Veterans Affairs hospital	609	
1505	Appointment of guardian for ward authorized	613	
1506	Petition for appointment of guardian	616	
1507	Notice by court of petition filed by appointment of guardian	617	
1508	Persons who may be appointed guardian	618	
1509	Bond of guardian	619	
1510	Inventory of ward's property; guardian's failure to file inventory; discharge; forfeiture of commissions	621	
1511	Guardian empowered to receive moneys due ward from the United States Government	622	
1512	Guardian's application of estate funds for support and maintenance of person other than ward	624	
1513	Petition for support, or support and education, of ward's dependents; payments of apportioned benefits prohibit contempt action against veteran	625	
1514	Exemption of benefits from claims of creditors	626	
1515	Investment of funds of estate by guardian	627	
1516	Guardian's petition for authority to sell ward's real estate; notice by publication; penalties	631	
1517	Guardian's accounts, filing with court and certification to United States Department of Veterans Affairs; notice and hearing on accounts; failure to account	634	
1518	Certified copies of public records made available	637	
1519	Clerk of the circuit court; fees; duties	638	
1520	Attorney's fee	639	
1521	Guardian's compensation; bond premiums	641	

Chapter 745	Section Title	Chapter 744	Uniform Code
1522	Discharge of guardian of minor or incompetent ward	643	
1523	Final settlement of guardianship; notice required; guardian ad litem fee; papers required by United States Department of Veterans Affairs	646	
1524	Notice of appointment of general guardian; closing veteran's guardianship; transfer of responsibilities and penalties to general guardian	649	
1525	Construction of application of part	652	
1526	Annual guardianship report	653	

1 A bill to be entitled

2 An act relating to the Florida Guardianship Code;
3 creating parts I, II, III, IV, V, VI, VII, VIII, IX,
4 X, XI, XII, XIII, XIV, and XV of chapter 745, F.S.;
5 providing a short title; providing general
6 provisions and definitions; providing for venue;
7 providing for proceedings to determine incapacity;
8 providing for proceeding to restore the rights of an
9 individual no longer incapacitated; providing for
10 the qualifications of a guardian; providing for the
11 appointment of a guardian; providing provisions
12 relating to different types of guardians; providing
13 provisions relating to the duties of guardians;
14 providing provisions relating to the powers of
15 guardians; providing oversight and monitoring of
16 wards and guardians; providing provisions relating
17 to the resignation and discharge of guardians;
18 providing for the removal of guardians; providing
19 for miscellaneous provisions relating to a
20 guardian's authorities, the authority of multiple
21 guardians; the effect of a guardianship proceeding
22 on a power of attorney or trust, and prohibitions on
23 abuse by a guardian; provisions relating to the
24 Office of Public and Professional Guardians;
25 provisions relating to Veteran Guardianships;
26 repealing ch 744; providing an effective date.

27
28 Be It Enacted by the Legislature of the State of Florida:

29
30 Section 1. Part I of chapter 745, Florida Statutes, consisting

BILL

ORIGINAL

YEAR

31 of sections 745.101, 745.102, 745.103, 745.104, 745.105, 745.106,
32 745.107, 745.108, 745.109, 745.110, 745.111, 745.112, 745.113, and
33 745.114, is created to read:

PART I

GENERAL PROVISIONS

36 745.101 Short title.

37 This chapter may be cited as the "Florida Guardianship Code" and
38 for purposes of this chapter is referred to as the "code".

40 745.102 Legislative intent.

41 The Legislature recognizes the importance of protecting vulnerable
42 adults and minors in the state of Florida; and also finds that:

43 (1) Adjudicating an adult totally incapacitated deprives such
44 person of important legal rights and that such deprivation may be
45 unnecessary.

46 (2) It is desirable to make available the least restrictive form of
47 guardianship to assist persons who are only partially incapable of
48 providing for their needs; and that alternatives to guardianship
49 and less restrictive means of assistance be explored.

50 (3) By recognizing that every person has unique needs and differing
51 abilities, it is the purpose of this code to promote the public
52 welfare by establishing a legal system that permits incapacitated
53 persons to participate as fully as possible in decisions affecting
54 them, assists them in meeting the essential requirements for their
55 physical health and safety, protects their rights and dignity,
56 manages their assets and financial resources, provides a mechanism
57 for them to regain their rights and abilities to the maximum extent
58 possible, and provides personal and financial care and protection
59 while preserving their right to privacy of their personal,
60 financial, medical and mental health information to the same extent

61 as persons who are not incapacitated; and that accomplishes these
62 objectives by providing, in each case, the form of assistance that
63 least interferes with their capacity to act on their own behalf.
64 This code shall be liberally construed to accomplish this purpose.

65
66 745.103 Applicability.

67 This code shall take effect on _____. The substantive
68 rights of all persons that vested prior to the effective date of
69 this code shall be determined as provided in Chapter 744 as it
70 existed prior to the effective date of this code. The procedures
71 for enforcement of substantive rights shall be as provided in the
72 Florida Probate Rules.

73
74 745.104 Rules of evidence.

75 The Florida Evidence Code is applicable in incapacity and
76 guardianship proceedings unless otherwise provided by this code.

77
78 745.105 Construction against implied repeal.

79 This code is intended as unified coverage of its subject matter. No
80 part of it shall be impliedly repealed by subsequent legislation if
81 that construction can reasonably be avoided.

82
83 745.106 Definitions.

84 As used in this code, the term:

85 (1) "Accounting" means that verified document filed by a guardian
86 pursuant to s. 745.805 or 745.806.

87 (2) "Attorney for the alleged incapacitated person" means an
88 attorney authorized by court order to represent a person in
89 proceedings for determination of the person's incapacity and
90 guardianship to the extent specified in this code. The attorney

91 shall advocate the preferences expressed by the alleged
92 incapacitated person, to the extent consistent with the rules
93 regulating The Florida Bar.

94 (3) "Audit" means a systematic review of inventories, accountings
95 and substantiating documents to ensure compliance with this code
96 and the Florida Probate Rules.

97 (4) "Clerk" means the clerk or deputy clerk of the court.

98 (5) "Corporate guardian" means a corporation authorized to exercise
99 fiduciary or guardianship powers in this state and includes a
100 nonprofit corporate guardian.

101 (6) "Court" means the circuit court in which the incapacity or
102 guardianship proceeding is pending.

103 (7) "Developmental disability" shall have the meaning specified in
104 s. 393.063.

105 (8) "Emergency temporary guardian" means a guardian appointed in
106 accordance with s. 745.701, to serve until letters of guardianship
107 are issued or until otherwise ordered by the court.

108 (9) "Examiner" means a professional or other person qualified in
109 accordance with s. 745.306 and authorized and directed by the court
110 to assess available information and to conduct an evaluation of a
111 ward or alleged incapacitated person, and render a written opinion
112 in an incapacity or restoration proceeding as provided in this
113 code.

114 (10) "Financial institution" means a trust company, a state banking
115 corporation or state savings association authorized and qualified
116 to exercise fiduciary powers in this state, or a national banking
117 association or federal savings and loan association authorized and
118 qualified to exercise fiduciary powers in this state may act as
119 guardian of the property of the ward.

BILL

ORIGINAL

YEAR

120 (11) "Foreign guardian" means a guardian appointed by a court of
121 another state, territory or country.

122 (12) "Guardian" means an individual or entity appointed by the
123 court to act on behalf of a ward's person or property, or both, and
124 includes an emergency temporary guardian.

125 (a) "Limited guardian" means a guardian of person, property, or
126 both who has been appointed by the court to exercise some, but not
127 all, delegable rights and powers of a ward.

128 (b) "Plenary guardian" means a guardian of person, property, or
129 both who has been appointed by the court to exercise all delegable
130 legal rights and powers of a ward.

131 (13) "Guardian ad litem" means a person who is appointed by the
132 court having jurisdiction of the guardianship, or a court in which
133 a particular legal matter is pending, to represent a ward in a
134 particular proceeding.

135 (14) "Guardian advocate" means a person appointed by the court to
136 represent a person with developmental disabilities under s. 393.12.
137 As used in this chapter, the term does not apply to a guardian
138 advocate appointed for a person determined incompetent to consent
139 to treatment under s. 394.4598.

140 (15) "Guardianship monitor" means a person appointed by the court
141 under s. 745.1008 or 745.1009 to provide the court with information
142 concerning a ward.

143 (16) "Guardianship Plan" means the document filed by a guardian
144 within 60 days after letters of guardianship are issued that
145 provides for the initial plan of care to meet the medical, mental
146 health, social, residential, personal care and other needs of the
147 ward, in accordance with s. 745.810.

148 (17) "Guardianship Report" means the document filed annually by a
149 guardian of person that provides information regarding the

BILL

ORIGINAL

YEAR

150 treatment, services and care provided to the ward during the
151 reporting period and the plan for addressing the ongoing or
152 anticipated needs of the ward, in accordance with s. 745.811,
153 745.812, and 745.813.

154 (18) "Incapacitated person" means a person who has been judicially
155 determined to lack the capacity to manage at least some of the
156 person's property or to provide for at least some of the person's
157 health and safety requirements.

158 (19) "Information Statement" means the verified document filed by a
159 proposed guardian pursuant to s. 745.601.

160 (20) "Interested person" means any person who may reasonably be
161 expected to be affected by the outcome of a guardianship or
162 incapacity proceeding. A guardian is always deemed an interested
163 person in proceedings that affect the ward. A person is not deemed
164 interested solely because of an anticipated expectancy of personal
165 benefit. A person is not deemed interested solely because of
166 having filed a request for copies and notices of proceedings. The
167 meaning may vary from time to time and must be determined according
168 to the particular purpose of, and matter involved in, any
169 proceedings.

170 (21) "Inventory" means the verified document filed by a guardian of
171 property pursuant to s. 745.803.

172 (22) "Letters" means authority granted by the court to a guardian
173 to act on behalf of the ward.

174 (23) "Manage property" means to make lucid decisions necessary to
175 secure, safeguard, administer, and dispose of real and personal
176 property, contractual rights, benefits, and income of a ward.

177 (24) "Meet requirements for health or safety" means to make lucid
178 decisions necessary to provide for a person's health care, food,
179 shelter, clothing, personal hygiene, or other care needs of a ward.

BILL

ORIGINAL

YEAR

180 (25) "Minor" means a person under 18 years of age whose
181 disabilities have not been removed by marriage or otherwise.

182 (26) "Natural guardians." The parents, jointly, are natural
183 guardians of their children (including their adopted children), in
184 accordance with s. 745.712.

185 (27) "Next of kin" means those persons who would be heirs at law of
186 the ward or alleged incapacitated person if that person was
187 deceased and the lineal descendants, per stirpes, of the ward or
188 alleged incapacitated person.

189 (28) "Nonprofit corporate guardian" means a not for profit
190 corporation organized under the laws of this state for religious or
191 charitable purposes and authorized to exercise the powers of a
192 professional guardian.

193 (29) "Preneed guardian" means a guardian designated by a competent
194 adult or by the natural guardian of a minor, to serve as guardian
195 in the event of the adult's incapacity or the need for a court
196 appointed guardian of a minor. The designation and appointment of
197 a preneed guardian shall be as specified in s. 745.705 and s.
198 745.706.

199 (30) "Professional guardian" means a person who is serving as
200 guardian for a non-relative and who has met the requirements of the
201 Office of Public and Professional Guardians to qualify to serve as
202 a guardian for unrelated wards, as specified in this code.

203 (31) "Property" means both real and personal property or any
204 interest in it and anything that may be the subject of ownership.
205 It includes rights of use under contractual arrangements and
206 digital assets as defined in Chapter 740.

207 (32) "Public guardian" means a guardian who has been appointed by,
208 or has a contract with, the Office of the Public and Professional
209 Guardians to provide guardianship services.

BILL

ORIGINAL

YEAR

210 (33) "Relative" of a ward means, for purposes related to
211 professional guardians, a spouse, adopted child, anyone related by
212 lineal or collateral consanguinity or a spouse of any such
213 relative.

214 (34) "Standby guardian" means a guardian designated by a currently
215 serving guardian and appointed by the court to assume the position
216 of guardian if the current guardian ceases to act. The appointment
217 of a standby guardian shall be as specified in s. 745.702 and
218 745.703.

219 (35) "Surrogate guardian" means a guardian appointed for temporary
220 service in accordance with s. 745.1311.

221 (36) "Totally incapacitated" means incapable of exercising any of
222 the rights enumerated in s. 745.303(2) and 745.303(3).

223 (37) "Voluntary guardian" is a guardian of property appointed by
224 the court pursuant to s. 745.707.

225 (38) "Ward" means a person for whom a guardian has been appointed.
226

227 745.107 Additional definitions.

228 The definitions contained in the Florida Probate Code and the
229 Florida Probate Rules shall be applicable to actions under this
230 code, unless the context requires otherwise, insofar as such
231 definitions do not conflict with definitions contained in this
232 code.

233
234 745.108 Verification of documents.

235 When verification of a document is required in this code or by
236 rule, the document filed shall include an oath or affirmation or
237 the following statement: "Under penalties of perjury, I declare
238 that I have read the foregoing and the facts alleged are true to
239 the best of my knowledge and belief." Any person who shall

BILL

ORIGINAL

YEAR

240 willfully include a false statement in the document shall be guilty
241 of perjury and upon conviction shall be punished accordingly.

242
243 745.109 Costs.

244 In all guardianship proceedings, costs may be awarded. When the
245 costs are to be paid out of the property of the ward, the court may
246 direct from what part of the property the costs shall be paid.

247
248 745.110 Notice and service.

249 The methods of providing notice of proceedings under this code are
250 those specified in the Florida Probate Rules except as provided in
251 s. 745.302. When the ward or alleged incapacitated person has an
252 attorney of record in the guardianship or incapacity proceeding,
253 service on the ward or alleged incapacitated person shall be
254 completed by service on the attorney in compliance with the Rules
255 of Judicial Administration.

256
257 745.111 Recording of hearings.

258 (1) All hearings related to appointment or removal of a guardian,
259 adjudication of incapacity, or restoration of capacity must be
260 electronically or stenographically recorded by the clerk.

261 (2) If an appeal is taken from any of these proceedings, a
262 transcript must be furnished to an indigent ward at public expense.

263
264 745.112 Confidentiality of guardianship records.

265 (1) Unless otherwise ordered by the court, all records relating to
266 incapacity, guardianship, or the settlement of a minor's claim if a
267 guardianship has not yet been established, are confidential and
268 exempt from the provisions of s.119.07(1) and s. 24(a), Art. I of

BILL

ORIGINAL

YEAR

269 the State Constitution. The following persons shall have access to
270 the records without court order:

271 (a) The court;

272 (b) The clerk;

273 (c) The guardian;

274 (d) The guardian's attorney;

275 (e) The ward's attorney;

276 (f) A guardian ad litem appointed on behalf of a ward;

277 (g) The Office of Public and Professional Guardians or its designee
278 pursuant to s 745.1414; and

279 (h) A ward who is an adult and has not been adjudicated totally
280 incapacitated.

281 (2) The court may order release of all or part of the record for
282 good cause shown. Unless waived by court order, the confidential
283 status of the court record shall not be lost by either authorized
284 or unauthorized disclosure to any person, organization, or agency.

285 (3) Notwithstanding the provision of subsection (1), letters of
286 guardianship shall be recorded by the clerk.

287

288 745.113 Guardian and professional's fees and expenses.

289 (1) A guardian, attorney, accountant, appraiser, financial advisor
290 or other professional who has rendered services to the ward or to
291 the guardian to assist the guardian in providing services to the
292 ward and complying with this code, is entitled to a reasonable fee
293 for services rendered and to reimbursement for costs incurred on
294 behalf of the ward.

295 (2) Fees, costs and administration expenses may be paid as incurred
296 and shall be itemized on the guardian's annual accounting. Itemized
297 statements of guardian and attorney fees must provide the detail
298 specified in subsection (8). For other professional services, the

BILL

ORIGINAL

YEAR

299 accounting must include statements demonstrating the fee
300 arrangement and method of charging for the services rendered.

301 (3) On audit of the guardian's accounting pursuant to s. 745.1001,
302 the court may require the guardian to justify the fees paid.

303 (4) The court may, on a case by case basis, require a petition for
304 approval of guardian's and professional's fees in advance of
305 payment. The court may not unreasonably limit the frequency of such
306 petitions and shall hear such petitions on an expedited basis.

307 (5) When fees for a guardian or attorney are submitted to the court
308 for determination, the court shall consider the following criteria:

309 (a) The time and labor required;

310 (b) The novelty and difficulty of the questions involved and the
311 skill required to perform the services properly;

312 (c) The likelihood that the acceptance of the particular employment
313 will preclude other employment of the person;

314 (d) The fee customarily charged in the locality for similar
315 services;

316 (e) The nature and value of the incapacitated person's property,
317 the amount of income earned by the estate, and the responsibilities
318 and potential liabilities assumed by the person;

319 (f) The results obtained;

320 (g) The time limits imposed by the circumstances;

321 (h) The nature and length of the relationship with the
322 incapacitated person; and

323 (i) The experience, reputation, diligence, and ability of the
324 person performing the service.

325 (6) In awarding fees to attorney guardians, the court must clearly
326 distinguish between fees and expenses for legal services and fees
327 and expenses for guardian services and must have determined that no
328 conflict of interest exists.

BILL

ORIGINAL

YEAR

329 (7) Fees for legal services may include customary and reasonable
330 charges for work performed by paralegals and legal assistants
331 employed by and working under the direction of the attorney. Fees
332 may not include general clerical and office administrative services
333 and services that are unrelated to the guardianship. A petition for
334 fees may not be approved without prior notice to the guardian and
335 to the ward, unless the ward is a minor or is totally
336 incapacitated.

337 (8) Fees for a professional guardian's services may include
338 customary and reasonable charges for work performed by employees of
339 a guardian for the benefit of the ward. A petition for fees may not
340 be approved without prior notice to the ward, unless the ward is a
341 minor or is totally incapacitated.

342 (9) Unless otherwise ordered by the court, all petitions for
343 guardian's and attorney's fees must be accompanied by an itemized
344 statement of the services performed for the fees sought to be
345 recovered. The itemized statement shall specify the name and title
346 of the person providing the service, the nature of services, date
347 of performance, time spent on each task and the fees for each
348 entry.

349 (10) When court proceedings are instituted to review or determine a
350 guardian's or an attorney's fees pursuant to subsection (4), such
351 proceedings are part of the guardianship administration process and
352 the costs, including fees and costs for the guardian and guardian's
353 attorney, an attorney appointed under s. 745.305, or an attorney
354 who has rendered services to the ward, shall be determined by the
355 court and paid from the assets of the guardianship unless the court
356 finds the requested compensation to be substantially unreasonable.

357 (11) The court may determine that a request for compensation by the
358 guardian, the guardian's attorney, an attorney appointed under s.

BILL

ORIGINAL

YEAR

359 745.305, an attorney who has rendered services to the ward or other
360 professional employed by the guardian is reasonable without
361 receiving expert testimony. An interested person or party may offer
362 expert testimony for or against a request for compensation after
363 giving notice to interested persons. Reasonable expert witness fees
364 shall be awarded by the court and paid from the assets of the
365 guardianship estate using the standards established in subsection
366 (10).

367

368 745.114 Jurisdiction of the court.

369 The circuit court has jurisdiction to adjudicate all matters in
370 incapacity and guardianship proceedings.

371

372 Section 2. Part II of chapter 745, Florida Statutes,
373 consisting of sections 745.201, 745.202, 745.203, and 745.204, is
374 created to read:

375

PART II

376

VENUE

377 745.201 Venue.

378 (1) Venue in proceedings for determination of incapacity shall be
379 the county in which the alleged incapacitated person resides or is
380 located.

381 (2) Venue in proceedings for appointment of a guardian shall be:

382 (a) If the incapacitated person or minor is a resident of this
383 state, the county in which the incapacitated person resides
384 provided, however, that if the adjudication of incapacity occurs in
385 a county other than the county of residence pursuant to subsection
386 (1), venue for appointment of guardian shall be the county in which
387 the adjudication occurred.

BILL

ORIGINAL

YEAR

388 (b) If the incapacitated person or minor is not a resident of this
389 state, any county in this state in which property of the person is
390 located.

391

392 745.202 Residence of ward.

393 The residence of a Florida resident ward is the county in which the
394 ward resides. Residence or domicile shall not be deemed to be
395 changed when a ward is moved to another county for medical care or
396 rehabilitation.

397

398 745.203 Change of venue.

399 When the residence of a ward is changed to another county, the
400 guardian shall petition to have venue of the guardianship changed
401 to the county of the acquired residence, except as provided in s.
402 745.204.

403

404 745.204 Change of ward's residence.

405 (1) A guardian who has power pursuant to this code to determine the
406 residence of a ward may not, without court approval, change the
407 residence of the ward from this state to another, or from one
408 county of this state to another, unless such county is adjacent to
409 the county of the ward's current residence. A guardian who seeks to
410 change the residence of a ward from the ward's current county of
411 residence to another county which is not adjacent to the ward's
412 current county of residence must obtain court approval prior to
413 such change. In considering the petition, the court shall determine
414 that such relocation serves the best interest of the ward.

415 (2) A guardian who changes the residence of a ward from the ward's
416 current county of residence to another county adjacent to the
417 ward's county of residence shall notify the court having

BILL

ORIGINAL

YEAR

418 jurisdiction of the guardianship and next of kin whose addresses
419 are known to the guardian within 15 days after relocation of the
420 ward. Such notice shall state the reasons for the change of the
421 ward's residence. Venue need not be changed unless otherwise
422 ordered by the court.

423 (3) When the residence of a resident ward has changed to another
424 state, in accordance with this section, and the foreign court
425 having jurisdiction over the ward at the ward's new residence has
426 appointed a guardian and that guardian has qualified and posted a
427 bond in an amount required by the foreign court, the guardian in
428 this state may file the final report and close the guardianship in
429 this state, pursuant to s.745.1105.

430
431 Section 3. Part III of chapter 745, Florida Statutes,
432 consisting of sections 745.301, 745.302, 745.303, 745.304, 745.305,
433 745.306, 745.307, 745.308, 745.309, 745.310, 745.311, and 745.312,
434 is created to read:

435 PART III

436 INCAPACITY

437 745.301 Petition to determine incapacity.

438 (1) A petition to determine incapacity of a person may be executed
439 by an adult with personal knowledge of the information specified in
440 the petition.

441 (2) The petition must be verified and must:

442 (a) State the name, and residence address of the petitioner and
443 petitioner's relationship to the alleged incapacitated person;

444 (b) State the name, age, county of residence, residence address and
445 current location of the alleged incapacitated person;

446 (c) Specify the primary language spoken by the alleged

447 incapacitated person, if known, and if the person speaks English;

BILL

ORIGINAL

YEAR

448 (d) Allege that the petitioner believes the alleged incapacitated
449 person to be incapacitated and specify the factual information on
450 which such belief is based;

451 (e) State the name and address of the alleged incapacitated
452 person's attending or primary care physician and other medical and
453 mental health professionals regularly treating the alleged
454 incapacitated person, if known;

455 (f) State which rights enumerated in s. 745.303 the alleged
456 incapacitated person is incapable of exercising, to the best of
457 petitioner's knowledge. If the petitioner has insufficient
458 experience to make such judgment, the petition must so state; and

459 (g) State the names, relationships, and addresses of the next of
460 kin of the alleged incapacitated person, so far as are known,
461 specifying the ages of any who are minors.

462

463 745.302 Notice of petition to determine incapacity and for
464 appointment of guardian.

465 (1) Notice of filing a petition to determine incapacity and a
466 petition for the appointment of a guardian, if any, and copies of
467 the petitions must be personally served on the alleged
468 incapacitated person. The notice and copies of the petitions must
469 be served by the clerk on the attorney for the alleged
470 incapacitated person within 5 days of filing the petitions, and by
471 the petitioner on all next of kin identified in the petition. The
472 notice must state the time and place of the hearing on the
473 petitions; that an attorney has been appointed to represent the
474 alleged incapacitated person; and that, if the person is determined
475 to be incapable of exercising certain rights, a guardian may be
476 appointed to exercise those rights on the person's behalf.

BILL

ORIGINAL

YEAR

477 (2) The attorney for the alleged incapacitated person shall serve
478 the notice and petition on the alleged incapacitated person within
479 5 days of the attorney's appointment.

480

481 745.303 Rights of persons determined incapacitated.

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

484 (a) To have an annual review of guardianship accountings and plans;

485 (b) To have continuing review of the need for restriction of his or
486 her rights;

487 (c) To be restored to capacity at the earliest possible time;

488 (d) To be treated humanely, with dignity and respect, and to be
489 protected against abuse, neglect, and exploitation;

490 (e) To have a qualified guardian;

491 (f) To remain as independent as possible, including having his or
492 her preference as to place and standard of living honored, either
493 as expressed or demonstrated prior to the determination of

494 incapacity or as he or she currently expresses such preference,
495 insofar as such request is reasonable and financially feasible;

496 (g) To be properly educated;

497 (h) To receive prudent financial management for his or her property
498 and to be informed how his or her property is being managed to the
499 extent feasible, if he or she has lost the right to manage
500 property;

501 (i) To receive services and rehabilitation necessary to maximize
502 his or her quality of life;

503 (j) To be free from discrimination because of his or her
504 incapacity;

505 (k) To have access to the courts;

506 (l) To counsel;

BILL

ORIGINAL

YEAR

507 (m) To receive visitors and communicate with others;
508 (n) To notice of all proceedings related to determination of
509 capacity and appointment of a guardian; and
510 (o) To privacy, including privacy of incapacity and guardianship
511 proceedings.

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

515 (a) To marry. If the right to enter into a contract has been
516 removed, the right to marry is subject to court approval;
517 (b) To vote;
518 (c) To have a driver's license and operate motor vehicles;
519 (d) To travel and make decisions concerning travel; and
520 (e) To seek or retain employment.

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

524 (a) To contract;
525 (b) To sue and defend lawsuits;
526 (c) To apply for government benefits and deal with all government
527 entities, including taxing authorities;
528 (d) To exercise all rights with regard to ownership and management
529 of property;
530 (e) To make any gift or disposition of property;
531 (f) To determine his or her residence;
532 (g) To consent to medical and mental health treatment and
533 rehabilitation services;
534 (h) To make decisions about his or her social environment or other
535 social aspects of his or her life; and
536 (i) To make decisions about travel and visitation.

BILL

ORIGINAL

YEAR

537 (4) A person who has been found to be totally incapacitated shall
538 be deemed to have lost all rights other than those specified in
539 subsection (1) and the guardian shall be deemed to have succeeded
540 to all delegable rights, unless otherwise limited by this code or
541 determined by the court.

542

543 745.304 Conduct of Hearing.

544 At any hearing under this code, the alleged incapacitated person or
545 the adjudicated ward has the right to:

546 (1) Testify;

547 (2) Remain silent and refuse to testify. The person may not be held
548 in contempt of court or otherwise penalized for refusing to
549 testify. Refusal to testify may not be used as evidence of
550 incapacity;

551 (3) Present evidence;

552 (4) Call witnesses;

553 (5) Confront and cross-examine all witnesses; and

554 (6) Have the hearing open to the public or closed to the public as
555 she or he may choose. After a person has been determined to be
556 incapacitated, this decision shall be made by the person's
557 guardian, unless otherwise determined by the court.

558

559 745.305 Attorney for the alleged incapacitated person.

560 (1) The court shall appoint a qualified attorney to represent each
561 alleged incapacitated person in all proceedings on petitions for
562 determination of incapacity and appointment of guardian within 5
563 days of filing the petitions. The alleged incapacitated person may
564 substitute an attorney of his or her choice for the court appointed
565 counsel with court approval. At any time prior to entry of an order
566 allowing substitution, the court may hold a hearing to determine

BILL

ORIGINAL

YEAR

567 whether the alleged incapacitated person has the capacity to enter
568 into a contract to retain an attorney and whether the alleged
569 incapacitated person understands the nature and extent of the
570 representation by the proposed attorney. The court may allow the
571 court appointed counsel and private counsel chosen by the alleged
572 incapacitated person to serve as co-counsel. Any attorney seeking
573 to substitute as counsel for the alleged incapacitated person must
574 be qualified pursuant to the requirements of subsection (4).

575 (2) When a court appoints an attorney for an alleged incapacitated
576 person, the court must appoint the office of criminal conflict and
577 civil regional counsel or a private attorney as prescribed in s.
578 27.511(6). A private attorney must be one who is included in the
579 attorney registry compiled pursuant to s. 27.40. Appointments of
580 private attorneys must be made on a rotating basis, taking into
581 consideration conflicts arising under this code.

582 (3) An attorney representing an alleged incapacitated person may
583 not serve as guardian of the alleged incapacitated person or as
584 counsel for the guardian of the alleged incapacitated person or the
585 petitioner.

586 (4) An attorney representing an alleged incapacitated person under
587 this section must have completed a minimum of 8 hours of education
588 in guardianship. A court may waive the initial training
589 requirement.

590 (5) The attorney for the alleged incapacitated person shall be
591 entitled to examine all medical and mental health records of the
592 alleged incapacitated person and consult with the alleged
593 incapacitated person's physicians.

594 (6) Unless extended by the court, the court appointed attorney's
595 duties end upon issuance of letters of guardianship and the
596 attorney shall be deemed discharged without further proceedings.

BILL

ORIGINAL

YEAR

597
598 745.306 Appointment and qualification of examiners.
599 (1) Within 5 days after a petition for determination of incapacity
600 has been filed, the court shall appoint three (3) qualified persons
601 to examine the alleged incapacitated person. One must be a
602 psychiatrist or other physician. The remaining examiners must be
603 either a psychologist, another psychiatrist or other physician, a
604 registered nurse, nurse practitioner, licensed social worker,
605 attorney or a person with an advanced degree in gerontology from an
606 accredited institution of higher education. Examiners must have
607 knowledge, skill, experience, training, or education which, in the
608 court's discretion, qualifies them to render an opinion in an
609 incapacity proceeding. The court shall determine that at least one
610 of the examiners has knowledge of the type of incapacity alleged in
611 the petition to determine incapacity unless waived for good cause.
612 Unless good cause is shown, the alleged incapacitated person's
613 attending or primary care physician may not be appointed as an
614 examiner. Any physician for the alleged incapacitated person shall
615 provide records and information, verbal and written, to an examiner
616 upon the examiner's written request.
617 (2) Examiners may not be related to or associated with one another,
618 with the petitioner, with counsel for the petitioner or the
619 proposed guardian, or with the person alleged to be totally or
620 partially incapacitated. An examiner may not be employed by any
621 private or governmental agency that has custody of, or furnishes
622 services directly or indirectly, to the person or the family of the
623 person alleged to be incapacitated or for whom a guardianship is
624 sought. A petitioner may not serve as an examiner.
625 (3) Examiners must be able to communicate, either directly or
626 through an interpreter, in the language that the alleged

BILL

ORIGINAL

YEAR

627 incapacitated person speaks or in a medium understandable to the
628 alleged incapacitated person if she or he is able to communicate.

629 (4) The examiners shall be appointed from a roster of qualified
630 persons maintained by the clerk of court and may not be chosen or
631 recommended by the petitioner.

632 (5) A person who has been appointed to serve as an examiner may not
633 thereafter be appointed as a guardian for the person who was the
634 subject of the examination.

635 (6) An examiner must complete a minimum of 4 hours of initial
636 training. The examiner must complete 2 hours of continuing
637 education during each 2-year period after the initial education.
638 The initial and continuing education programs must be approved by
639 or developed under the supervision of the Office of Public and
640 Professional Guardians in consultation with the Florida Conference
641 of Circuit Court Judges, the Elder Law and the Real Property,
642 Probate and Trust Law sections of The Florida Bar and the Florida
643 State Guardianship Association. The court may waive the initial
644 education requirement for a person who has served for not less than
645 5 years as an examiner. An examiner who wishes to obtain continuing
646 education on the Internet or by video course, must first obtain the
647 approval of the chief judge in the county of the examiner's
648 residence.

649 (7) Each person appointed for the first time as an examiner must
650 file an affidavit with the court stating that he or she has
651 completed the required courses or will do so no later than 4 months
652 after his or her initial appointment unless waived by the court.
653 Each year, the chief judge of the circuit must prepare a list of
654 persons qualified to be examiners.

655 (8) The clerk shall serve notice of the appointment to each
656 examiner no later than 3 days after appointment.

657
658 745.307 Examination of alleged incapacitated person.
659 (1) Each examiner shall interview the alleged incapacitated person
660 and must determine the alleged incapacitated person's ability to
661 exercise those rights specified in s. 745.303. In addition to the
662 examination, each examiner shall have access to, and may consider,
663 previous medical and mental health examinations of the person,
664 including, but not limited to, habilitation plans, school records,
665 psychological and psychosocial reports and other related
666 information voluntarily offered for use by the alleged
667 incapacitated person or the petitioner. The examiners may
668 communicate among themselves as well as with the attorney for the
669 alleged incapacitated person and the petitioner's counsel. In
670 addition, the examiners shall be provided a copy of the petition to
671 determine incapacity.
672 (2) Each examiner shall, within 15 days after appointment, prepare
673 and file with the clerk a report which describes the manner of
674 conducting the examination and the methodology employed by the
675 examiner. The examination must include:
676 (a) If deemed relevant to the examinations and allowed by the
677 alleged incapacitated person, a physical examination (which shall
678 only be conducted by an examiner who is a physician). An examiner
679 who is not a physician may conduct a visual examination of the
680 alleged incapacitated person's physical appearance to determine if
681 there are any visible signs of abuse, injury or illness;
682 (b) A mental health examination, which may consist of, but not be
683 limited to, questions related to orientation, current events and
684 personal identification; and
685 (c) A functional assessment to evaluate the alleged incapacitated
686 person's ability to perform activities of daily living which

BILL

ORIGINAL

YEAR

687 include: preparing food, eating, bathing, dressing, ambulation,
688 toileting and mobility.

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

692

693 745.308 Examination reports.

694 (1) Each examiner's written report must be verified and include, to
695 the extent of the examiner's skill and experience:

696 (a) A diagnosis, prognosis, and recommended level of care perceived
697 to be appropriate.

698 (b) An evaluation of the ward or alleged incapacitated person's
699 ability to retain her or his rights, including, without limitation,
700 the rights to marry; vote; contract; manage or dispose of property;
701 have a driver's license; determine her or his residence; consent to
702 medical treatment; and make decisions affecting her or his social
703 environment.

704 (c) The results of the examination and the examiner's assessment of
705 information provided by the attending or primary care physician, if
706 any, and of any other reports or written material provided to the
707 examiner. The examiner must consult the alleged incapacitated
708 person's primary care physician or explain the reason why such
709 consultation was not held.

710 (d) A description of any functional areas in which the person lacks
711 the capacity to exercise rights, the extent of that incapacity, and
712 the factual basis for the determination that the person lacks that
713 capacity.

714 (e) The names of all persons present during the time the examiner
715 conducted his or her examination. If a person other than the person
716 who is the subject of the examination supplies answers posed to the

717 | alleged incapacitated person, the report must include the response
718 | and the name of the person supplying the answer. The examiner may
719 | require that no one else be present at the time of the
720 | examinations, unless otherwise ordered by the court.

721 | (f) The date, place and time the examiner conducted his or her
722 | examination. (2) The clerk must serve each examiner's report on the
723 | petitioner and on the attorney for the alleged incapacitated person
724 | within 3 days after the report is filed and at least 10 days before
725 | the hearing on the petition, and shall file a certificate of
726 | service in the incapacity proceeding.

727 | (3) If any examiners' reports are not completed and served timely,
728 | the petitioner and attorney for the alleged incapacitated person
729 | may waive the 10 day service requirement and consent to the
730 | consideration of the report by the court at the adjudicatory
731 | hearing or may seek a continuance of the hearing.

732 |
733 | 745.309 Consideration of examination reports.

734 | (1) Unless there is objection by the alleged incapacitated person
735 | or petitioner, the court shall consider the written examination
736 | reports without requiring testimony of the examiners.

737 | (2) The petitioner and the alleged incapacitated person may object
738 | to the introduction into evidence of all or any portion of the
739 | examination reports by filing and serving a written objection on
740 | the other party no later than 5 days before the adjudicatory
741 | hearing. The objection must state the basis upon which the
742 | challenge to admissibility is made. If an objection is timely filed
743 | and served, the court shall apply the rules of evidence in
744 | determining the reports' admissibility. For good cause shown, the
745 | court may extend the time to file and serve the written objection.

746 (3) If all examiners conclude that the alleged incapacitated person
747 is not incapacitated in any respect, the court shall dismiss the
748 petition unless a verified motion challenging the examiners'
749 conclusions is filed by petitioner within 10 days after the last
750 examination report is filed and served. The verified motion must
751 make a reasonable showing by evidence in the record or proffered,
752 that a hearing on the petition to determine incapacity is
753 necessary. The court shall rule on the verified motion as soon as
754 practicable. The court shall hold a hearing to consider evidence
755 concerning the propriety of dismissal or the need for further
756 examination of the alleged incapacitated person. If the court finds
757 that the verified motion is filed in bad faith, the court may
758 impose sanctions under s. 745.312(3).

759
760 745.310 Adjudicatory hearing.

761 (1) Upon appointment of the examiners, the court shall set the date
762 for hearing of the petition and the clerk shall serve notice of
763 hearing on the petitioner, the alleged incapacitated person, and
764 next of kin identified in the petition for determination of
765 incapacity. The date for the adjudicatory hearing must be set no
766 more than 20 days after the required date for filing the reports of
767 the examiners, unless good cause is shown. The adjudicatory hearing
768 must be conducted in a manner consistent with due process and the
769 requirements of part III of this code.

770 (2) The alleged incapacitated person has the right to be present at
771 the adjudicatory hearing and may waive that right.

772 (3) In the adjudicatory hearing on a petition to determine
773 incapacity, a finding of limited or total incapacity of the person
774 must be established by clear and convincing evidence.

775

BILL

ORIGINAL

YEAR

776 745.311 Order determining incapacity.

777 (1) If the court finds that a person is incapacitated, the court
778 shall enter an order specifying the extent of incapacity. The order
779 shall specify the rights described in s. 745.303 (2) and (3) that
780 the person is incapable of exercising.

781 (2) In determining that a person is totally incapacitated, the
782 order must contain findings of fact demonstrating that the
783 individual is totally without capacity to meet essential
784 requirements for the person's health and safety and manage
785 property.

786 (3) An order adjudicating a person to be incapacitated constitutes
787 proof of such incapacity until further order of the court. To the
788 extent the order finds that a person is incapacitated to make
789 decisions concerning property, it shall constitute a rebuttable
790 presumption that the person is incapacitated to create documents
791 having testamentary effect.

792 (4) After the order determining incapacity has been filed, the
793 clerk must serve the order on the incapacitated person.

794 (5) Orders determining incapacity shall be recorded by the clerk in
795 the public records in the county in which the order was entered.
796 The recording of the order is notice of the incapacity.

797

798 745.312 Fees in incapacity proceedings.

799 (1) The examiners and attorney appointed under this part are
800 entitled to reasonable fees to be determined by the court.

801 (2) If a guardian is appointed, the fees awarded under paragraph
802 (1) shall be paid by the guardian from the property of the ward or,
803 if the ward is indigent, by the state. The state shall have a
804 creditor's claim against the ward's property for any amounts paid
805 under this section. The state may file its claim within 90 days

BILL

ORIGINAL

YEAR

806 after the entry of an order awarding attorney and examiner fees. If
807 the state does not file its claim within the 90-day period, the
808 state is thereafter barred from asserting the claim. Upon petition
809 by the state for payment of the claim, the court shall enter an
810 order authorizing payment by the guardian from the property of the
811 ward in the amount determined by the court, if any. The state shall
812 keep a record of the payments.

813 (3) If the petition to determine incapacity is dismissed, costs and
814 attorney's fees of the proceeding may be assessed against the
815 petitioner if the court finds the petition to have been filed in
816 bad faith. The petitioner shall also reimburse the state courts
817 system for any amounts paid under subparagraph 4 upon a finding of
818 bad faith.

819 (4) If the petition to determine incapacity is dismissed without a
820 finding of bad faith on the part of the petitioner, or there is a
821 finding of incapacity but no guardian is appointed, the emergency
822 temporary guardian, the attorney for emergency temporary guardian,
823 and the court appointed attorney shall be paid a reasonable fee in
824 the same manner as the payment made to private court-appointed
825 counsel set forth in s. 27.5304. The fees of the examiners shall be
826 paid upon court order as expert witness fees under s. 29.004(6).

827
828 Section 4. Part IV of chapter 745, Florida Statutes,
829 consisting of sections 745.401, 745.402, 745.403, 745.404, and
830 745.405, is created to read:

831 PART IV

832 RESTORATION TO CAPACITY

833 745.401 Suggestion of capacity.

834 (1) Venue.--A suggestion of capacity must be filed in the court in
835 which the guardianship is pending.

836 (2) Suggestion of Capacity.--

837 (a) A guardian, the ward, or any other interested person, may file
838 a suggestion of capacity. The suggestion of capacity must describe
839 the changed circumstances which would indicate that the ward is
840 currently capable of exercising some or all of the rights which
841 were removed. If filed by a person other than the ward, the
842 suggestion of capacity must be verified.

843 (b) Within 5 days after a suggestion of capacity is filed, the
844 clerk shall serve notice of the filing of the suggestion of
845 capacity and a copy of the suggestion on the ward, the guardian,
846 the attorney for the ward, if any, the ward's known next of kin,
847 and any other interested persons designated by the court. Notice
848 need not be served on the person who filed the suggestion of
849 capacity.

850 (c) The notice must specify that any objections to the suggestion
851 or to restoration of the ward must be filed within 15 days after
852 the examination report required in s. 745.402 is served.

853

854 745.402 Examination of ward.

855 (1) Within 5 days after a suggestion of capacity is filed, the
856 court shall appoint a physician who is qualified to be an examiner
857 under 745.306 to examine the ward. The physician may have
858 previously served as an examiner in the ward's incapacity
859 proceeding. The physician must examine the ward and file a verified
860 report with the court within 15 days after appointment. The
861 examination shall be conducted and the report prepared in the
862 manner specified under s. 745.307.

863 (2) Within 5 days after filing the report, the clerk shall serve
864 the report on the guardian, the ward and on the ward's known next

865 of kin and interested persons who were served notice of the
866 suggestion of capacity.

867

868 745.403 Objection and hearing.

869 (1) Objection to the examination report or to restoration of the
870 ward must be filed within 10 days after service of the report.

871 (2) If an objection is timely filed, or if the examination report
872 suggests that full restoration is not appropriate, the court shall
873 set the matter to be heard within 30 days after the examination
874 report is filed, unless good cause is shown.

875 (3) If the ward does not have an attorney, the court shall appoint
876 one to represent the ward.

877 (4) Notice of the hearing and copies of the objections and medical
878 examination reports shall be served on the ward, the guardian, the
879 ward's next of kin, and any other interested persons as directed by
880 the court.

881 (5) The court shall give priority to a hearing on suggestion of
882 capacity and shall advance the cause on the calendar.

883

884 745.404 Consideration of examination report.

885 (1) Unless an objection is timely filed by the person who filed the
886 suggestion or the incapacitated person and served on other
887 interested persons, the court may consider the examination report
888 without requiring testimony of the examiner. Any objection must be
889 filed and served on all other interested persons at least 5 days
890 prior to any hearing at which the report is to be considered.

891 (2) The person who filed the suggestion and the incapacitated
892 person may object to the introduction into evidence of all or any
893 portion of the examination report by filing and serving a written
894 objection on the other party no later than 5 days before the

895 adjudicatory hearing. The objection must state the basis upon which
896 the challenge to admissibility is made. If an objection is timely
897 filed and served, the court shall apply the rules of evidence in
898 determining the report's admissibility. For good cause shown, the
899 court may extend the time to file and serve the written objection.

900

901 745.405 Order restoring capacity.

902 (1) If the examination report concludes that the ward should be
903 restored to full capacity, there are no objections timely filed,
904 and the court is satisfied that the examination report establishes
905 by a preponderance of the evidence that restoration of all or some
906 of the ward's rights is appropriate, the court shall enter an order
907 restoring all or some of the rights which were removed from the
908 ward without hearing. The order must be entered within 10 days
909 after expiration of the time for objection.

910 (2) At the conclusion of any hearing to consider restoration of
911 capacity, the court shall make specific findings of fact, and based
912 on a preponderance of the evidence enter an order denying the
913 suggestion of capacity or restoring all or some of the rights of
914 the ward.

915 (3) If only some rights are restored to the ward, the order must
916 state which rights are restored and amended letters shall be issued
917 to reflect the changed authority of the guardian. A guardian of the
918 person shall prepare a new guardianship plan which addresses only
919 the remaining rights retained by the guardian. The guardian must
920 file a copy of the new plan with the court within 60 days after
921 issuance of amended letters.

922 (4) Additional rights may not be removed from a ward in a
923 proceeding to consider a suggestion of capacity.

924

BILL

ORIGINAL

YEAR

925 Section 5. Part V of chapter 745, Florida Statutes, consisting
926 of sections 745.501, 745.502, 745.503, 745.504, and 745.504, is
927 created to read:

PART V

QUALIFICATIONS OF GUARDIANS

930 745.501 Who may be appointed guardian of a resident ward.

931 (1) Unless disqualified as provided in s. 745.502:

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

934 (b) A nonresident of the state may serve as guardian of a resident
935 ward if the non-resident is:

936 1. Related by lineal consanguinity to the ward;

937 2. A legally adopted child or adoptive parent of the ward;

938 3. A spouse, brother, sister, uncle, aunt, niece, or nephew of the
939 ward, or someone related by lineal consanguinity to any such
940 person; or

941 4. The spouse of a person otherwise qualified under this section.

942 (2) No judge shall act as guardian, except when he or she is
943 related to the ward by blood, marriage, or adoption, or has
944 maintained a close relationship with the ward or the ward's family,
945 and serves without compensation.

946
947 745.502 Disqualified persons.

948 (1) No person who has been convicted of a felony or who, due to
949 incapacity or illness, is incapable of discharging guardianship
950 duties shall be appointed to act as guardian. Further, no person
951 who has been judicially determined to have committed abuse,
952 abandonment, or neglect against a child as defined in s. 39.01 or
953 s. 984.03(1), (2), and (37), or who has been found guilty of, or
954 entered a plea of nolo contendere or guilty to, any offense

BILL

ORIGINAL

YEAR

955 prohibited under s. 435.03, chapter 825 or under any similar
956 statutes of another jurisdiction, shall be appointed to act as a
957 guardian.

958 (2) Except as provided in subsection (3) or subsection (4), a
959 person providing substantial services or products to the proposed
960 ward in a professional or business capacity may not be appointed
961 guardian and retain that previous professional or business
962 relationship.

963 (3) A creditor or provider of health care services to the ward,
964 whether direct or indirect, may not be appointed the guardian of
965 the ward, unless the court finds that there is no conflict of
966 interest with the ward.

967 (4) A person may not be appointed a guardian if he or she is in the
968 employ of any person, agency, government, or corporation that
969 provides services to the proposed ward in a professional or
970 business capacity, except that a person so employed may be
971 appointed if he or she is the spouse, adult child, parent, or
972 sibling of the proposed ward or the court determines that any
973 potential conflict of interest is insubstantial and that the
974 appointment would be in the proposed ward's best interest.

975 (5) The court may not appoint a guardian in any other circumstance
976 in which a conflict of interest may occur.

977 (6) Any time a guardian who was qualified to act at the time of
978 appointment knows that the guardian would not be qualified for
979 appointment if application for appointment were then made, the
980 guardian shall within 20 days file a resignation and notice of
981 disqualification. A guardian who fails to comply with this section
982 may be personally liable for costs, including attorney fees,
983 incurred in any removal proceeding if the guardian is removed. This
984 liability extends to a guardian who does not know, but should have

BILL

ORIGINAL

YEAR

985 known, of the facts that would have required the guardian to resign
986 or to file and serve notice as required herein. This liability
987 shall be cumulative to any other provided by law.

988

989 745.503 Nonprofit corporate guardian.

990 A nonprofit corporation organized for religious or charitable
991 purposes and existing under the laws of this state may be appointed
992 guardian for a ward. The corporation must employ at least one
993 professional guardian.

994

995 745.504 Credit and criminal investigation.

996 (1) Within 3 days of filing a petition for appointment of a non-
997 professional guardian, the proposed guardian shall submit to an
998 investigation of the guardian's credit history and a level 2
999 background screening as required under s. 435.04. The court may
1000 consider the credit and background screening reports before
1001 appointing a guardian. (2) For nonprofessional guardians, the court
1002 may require the satisfactory completion of a criminal history
1003 record check as described in this subsection. A nonprofessional
1004 guardian satisfies the requirements of this section by undergoing a
1005 state and national criminal history record check using
1006 fingerprints. A nonprofessional guardian required to submit
1007 fingerprints shall have fingerprints taken and forwarded, along
1008 with the necessary fee, to the Department of Law Enforcement for
1009 processing. The results of the fingerprint criminal history record
1010 check shall be transmitted to the clerk, who shall maintain the
1011 results in the court file of the nonprofessional guardian's case.
1012 (3) For professional and public guardians, the court and Office of
1013 Public and Professional Guardians shall accept the satisfactory
1014 completion of a criminal history record check by any method

BILL

ORIGINAL

YEAR

1015 described in this subsection. A professional guardian satisfies the
1016 requirements of this section by undergoing an electronic
1017 fingerprint criminal history record check. A professional guardian
1018 may use any electronic fingerprinting equipment used for criminal
1019 history record checks. The Office of Public and Professional
1020 Guardians shall adopt a rule detailing the acceptable methods for
1021 completing an electronic fingerprint criminal history record check
1022 under this section. The professional guardian shall pay the actual
1023 costs incurred by the Federal Bureau of Investigation and the
1024 Department of Law Enforcement for the criminal history record
1025 check. The entity completing the record check must immediately
1026 transmit the results of the criminal history record check to the
1027 clerk and the Office of Public and Professional Guardians. The
1028 clerk shall maintain the results in the court file of the
1029 professional guardian's case.

1030 (4)(a) A professional guardian, and each employee of a professional
1031 guardian who has a fiduciary responsibility to a ward, must
1032 complete, at his or her own expense, a level 2 background screening
1033 as set forth in s. 435.04 before and at least once every 5 years
1034 after the date the guardian is registered with the Office of Public
1035 and Professional Guardians. A professional guardian, and each
1036 employee of a professional guardian who has direct contact with the
1037 ward or access to the ward's assets, must complete, at his or her
1038 own expense, a level 1 background screening as set forth in s.
1039 435.03 at least once every 2 years after the date the guardian is
1040 registered. However, a professional guardian is not required to
1041 resubmit fingerprints for a criminal history record check if the
1042 professional guardian has been screened using electronic
1043 fingerprinting equipment and the fingerprints are retained by the

BILL

ORIGINAL

YEAR

1044 Department of Law Enforcement in order to notify the clerk of any
1045 crime charged against the person in this state or elsewhere.

1046 (b) All fingerprints electronically submitted to the Department of
1047 Law Enforcement under this section shall be retained by the
1048 Department in a manner provided by rule and entered in the
1049 statewide automated biometric identification system authorized by
1050 s. 943.05(2)(b). The fingerprints shall thereafter be available for
1051 all purposes and uses authorized for arrest fingerprints entered in
1052 the Criminal Justice Information Program under s. 943.051.

1053 (c) The Department of Law Enforcement shall search all arrest
1054 fingerprints received under s. 943.051 against the fingerprints
1055 retained in the statewide automated biometric identification system
1056 under paragraph (b). Any arrest record that is identified with the
1057 fingerprints of a person described in this paragraph must be
1058 reported to the clerk. The clerk must forward any arrest record
1059 received for a professional guardian to the Office of Public and
1060 Professional Guardians within 5 days of receipt. Each professional
1061 guardian who elects to submit fingerprint information
1062 electronically shall participate in this search process by paying
1063 an annual fee to the Statewide Public Guardianship Office of the
1064 Department of Elderly Affairs. The amount of the annual fee to be
1065 imposed for performing these searches and the procedures for the
1066 retention of professional guardian fingerprints and the
1067 dissemination of search results shall be established by rule of the
1068 Department of Law Enforcement. At least once every 5 years, the
1069 Office of Public and Professional Guardians must request that the
1070 Department of Law Enforcement forward the fingerprints maintained
1071 under this section to the Federal Bureau of Investigation.

1072 (5)(a) A professional guardian, and each employee of a professional
1073 guardian who has direct contact with the ward or access to the

BILL

ORIGINAL

YEAR

1074 ward's assets, must allow, at his or her own expense, an
1075 investigation of his or her credit history before and at least once
1076 every 2 years after the date of the guardian's registration with
1077 the Office of Public and Professional Guardians.

1078 (b) Office of Public and Professional Guardians shall adopt a rule
1079 detailing the acceptable methods for completing a credit
1080 investigation under this section. If appropriate, the office may
1081 administer credit investigations. If the office chooses to
1082 administer the credit investigation, it may adopt a rule setting a
1083 fee, not to exceed \$25, to reimburse the costs associated with the
1084 administration of a credit investigation.

1085 (6) Office of Public and Professional Guardians may inspect, at any
1086 time, the results of any credit or criminal history record check of
1087 a public or professional guardian conducted under this section. The
1088 office shall maintain copies of the credit or criminal history
1089 record check results in the guardian's registration file. If the
1090 results of a credit or criminal investigation of a public or
1091 professional guardian have not been forwarded to the Office of
1092 Public and Professional Guardians by the investigating agency, the
1093 clerk of the court shall forward copies of the results of the
1094 investigations to the office upon receiving them.

1095 (7) The requirements of this section do not apply to a trust
1096 company, a state banking corporation or state savings association
1097 authorized and qualified to exercise fiduciary powers in this
1098 state, or a national banking association or federal savings and
1099 loan association authorized and qualified to exercise fiduciary
1100 powers in this state.

1101 (8) At any time, the court may require a guardian or the guardian's
1102 employees to submit to an investigation of the person's credit
1103 history and complete a level 1 background screening as set forth in

BILL

ORIGINAL

YEAR

1104 s. 435.03. The court may consider the results of any such
1105 investigation when considering removal of a guardian.

1106 (9) The clerk shall maintain a file on each professional guardian
1107 appointed by the court and retain in the file documentation of the
1108 result of any investigation conducted under this section. A
1109 professional guardian must pay the clerk of the court a fee of up
1110 to \$7.50 for handling and processing professional guardian files.
1111 Such documentation for a nonprofessional guardian shall be
1112 maintained as a confidential record in the case file for such
1113 guardianship.

1114
1115 745.505 Guardian education requirements.

1116 (1) Each ward is entitled to a guardian competent to perform the
1117 duties of a guardian necessary to protect the interests of the
1118 ward.

1119 (2) Each person appointed by the court to be a guardian, other than
1120 a parent who is the guardian of the property of a minor child, must
1121 receive a minimum of 8 hours of instruction and training which
1122 covers:

1123 (a) The legal duties and responsibilities of the guardian;

1124 (b) The rights of the ward;

1125 (c) The availability of local resources to aid the ward; and

1126 (d) The preparation of guardianship plans, reports, inventories,
1127 and accountings.

1128 (3) Each person appointed by the court to be the guardian of the
1129 property of his or her minor child must receive a minimum of 4
1130 hours of instruction and training that covers:

1131 (a) The legal duties and responsibilities of a guardian of
1132 property;

BILL

ORIGINAL

YEAR

- 1133 (b) The preparation of an initial inventory and guardianship
1134 accountings; and
- 1135 (c) Use of guardianship assets.
- 1136 (4) Each person appointed by the court to be a guardian must
1137 complete the required number of hours of instruction and education
1138 within 4 months after appointment. The instruction and education
1139 must be completed through a course approved by the chief judge of
1140 the circuit court and taught by a court-approved person or
1141 organization. Court-approved organizations may include, but are not
1142 limited to, community or junior colleges, guardianship
1143 organizations, and local bar associations or The Florida Bar.
- 1144 (5) Expenses incurred by the guardian to satisfy the education
1145 requirement may be paid from the ward's estate, unless the court
1146 directs that such expenses be paid by the guardian individually.
- 1147 (6) The court may waive some or all of the requirements of this
1148 section or impose additional requirements. The court shall make its
1149 decision on a case-by-case basis and, in making its decision, shall
1150 consider the experience and education of the guardian, the duties
1151 assigned to the guardian, and the needs of the ward.
- 1152 (7) The provisions of this section do not apply to professional
1153 guardians.

1154

1155 Section 6. Part VI of chapter 745, Florida Statutes,
1156 consisting of sections 745.601, 745.602, 745.603, 745.604, 745.605,
1157 745.606, 745.607, 745.608, 745.609, 745.610, and 745.611, is
1158 created to read:

1159

PART VI

1160

APPOINTMENT OF GUARDIANS

1161

745.601 Proposed guardian's information statement.

BILL

ORIGINAL

YEAR

1162 (1) At the time of filing a petition for appointment of guardian,
1163 every proposed guardian must file a verified information statement
1164 which provides the following:

1165 (a) details sufficient to demonstrate that the person is qualified
1166 to be guardian pursuant to s. 745.501;

1167 (b) the names of all wards for whom the person is currently acting
1168 as guardian or has acted as guardian in the previous five years,
1169 identifying each ward by court file number and circuit court in
1170 which the case is or was pending, and stating whether the person is
1171 or was acting as limited or plenary guardian of the person or
1172 property or both;

1173 (c) any special experience, education or other skills that would be
1174 of benefit in serving as guardian;

1175 (d) the proposed guardian's relation to the ward, including whether
1176 the person is providing any services to the ward, holds any joint
1177 assets with the ward, or, if known, is beneficiary of any part of
1178 the ward's estate.

1179 (2) Subsection (1) does not apply to nonprofit corporate guardians
1180 and public guardians.

1181 (3) Nonprofit corporate guardians and public guardians must file
1182 quarterly with the clerk statements that contain the information
1183 required under subsection (1), rather than filing an information
1184 statement with each petition to be appointed guardian.

1185

1186 745.602 Considerations in appointment of guardian.

1187 (1) If the person designated is qualified to serve pursuant to
1188 s.745.501, the court shall appoint any standby guardian or preneed
1189 guardian, unless the court determines that appointing such person
1190 is contrary to the best interest of the ward.

BILL

ORIGINAL

YEAR

1191 (2) If a guardian cannot be appointed under subsection (1), the
1192 court may appoint any person who is fit and proper and qualified to
1193 act as guardian, whether related to the ward or not. The court
1194 shall give preference to the appointment of a person who:

1195 (a) is related by blood or marriage to the ward;

1196 (b) has educational, professional, or business experience relevant
1197 to the nature of the services sought to be provided;

1198 (c) has the capacity to manage the assets involved; or

1199 (d) has the ability to meet the requirements of the law and the
1200 unique needs of the ward.

1201 (3) The court shall also:

1202 (a) consider the wishes expressed by an incapacitated person as to
1203 who shall be appointed guardian.

1204 (b) consider the preference of a minor who is age 14 or over as to
1205 who should be appointed guardian.

1206 (c) consider any person designated as guardian in any will in which
1207 the ward is a beneficiary.

1208 (d) consider the wishes of the ward's next of kin, when the ward
1209 cannot express a preference.

1210 (4) When a guardian is appointed, the court must make findings of
1211 fact to support why the person was selected as guardian. Except
1212 when a guardian is appointed under subsection (1), the court must
1213 consider the factors specified in subsections (2) and (3).

1214 (5) The court may hear testimony on the question of who is
1215 qualified and entitled to preference in the appointment of a
1216 guardian.

1217 (6) The court may not give preference to the appointment of a
1218 person under subsection (2) based solely on the fact that such
1219 person was appointed to serve as an emergency temporary guardian.

1220

BILL

ORIGINAL

YEAR

1221 745.603 Petition for appointment of guardian; contents.
 1222 (1) A petition to appoint a guardian must be verified by an adult
 1223 with personal knowledge of the information in the petition
 1224 alleging:
 1225 (a) the name, age, residence address, and mailing address of the
 1226 alleged incapacitated person or minor and the nature of the
 1227 incapacity, if any;
 1228 (b) the extent of guardianship proposed, either plenary or limited;
 1229 (c) the residence address and mailing address of the petitioner;
 1230 (d) the names and mailing addresses of the next of kin of the
 1231 incapacitated person or minor, if known to the petitioner;
 1232 (e) the name of the proposed guardian and relationship of the
 1233 proposed guardian to the ward;
 1234 (f) the reasons why the proposed guardian should be appointed;
 1235 (g) the nature and value of property subject to the guardianship,
 1236 if any; and
 1237 (h) the identity of any pre-need guardian designation, healthcare
 1238 surrogate designation, and power of attorney, purportedly executed
 1239 by the alleged incapacitated person, the identity and county of
 1240 residence of any person designated to act under such documents, and
 1241 the efforts to locate such documents or persons designated to act.
 1242 (2) If a willing and qualified guardian cannot be located, the
 1243 petition must so state.
 1244 (3) The petition for appointment of a professional guardian must
 1245 comply with the provisions of subsection (1), and must state that
 1246 the nominated guardian is a professional guardian.
 1247
 1248 745.604 Notice of petition for appointment of guardian and hearing.
 1249 (1) When a petition for appointment of guardian for an
 1250 incapacitated person is heard at the conclusion of the hearing in

1251 which the person is determined to be incapacitated, the court shall
1252 hear the petition without further notice provided that notice of
1253 hearing of the petition to appoint guardian was timely served. If
1254 the petition is heard on a later date, reasonable notice of the
1255 hearing must be served on the incapacitated person, any guardian
1256 then serving, the person's next of kin, and such other interested
1257 persons as the court may direct.

1258 (2) When a petition for appointment of guardian of a minor is
1259 filed, formal notice must be served on the minor's parents. When a
1260 parent petitions for appointment as guardian for the parent's minor
1261 child, formal notice shall be served on the other parent, unless
1262 the other parent consents to the appointment. If the proposed
1263 guardian has custody of the minor and the petition alleges that,
1264 after diligent search, a parent cannot be found, the parent may be
1265 served by informal notice, delivered to the parent's last known
1266 address.

1267

1268 745.605 Order on petition for appointment of guardian.

1269 (1) At the hearing on a petition for appointment of guardian, the
1270 court may consider evidence of less restrictive alternatives
1271 available to serve the needs of the incapacitated person, as
1272 grounds for denying the petition in whole or in part.

1273 (2) The order appointing a guardian must state the nature of the
1274 guardianship as either plenary or limited. If limited, the order
1275 must state that the guardian may exercise only those delegable
1276 rights which have been removed from the incapacitated person and
1277 delegated to the guardian. The order shall specify the powers and
1278 duties of the guardian.

1279 (3) A plenary guardian of person shall exercise all delegable
1280 rights and powers of the incapacitated person as it relates to

BILL

ORIGINAL

YEAR

1281 person and a plenary guardian of property shall exercise all
1282 delegable rights and powers of the incapacitated person as it
1283 relates to property.

1284 (4) A ward for whom a limited guardian has been appointed retains
1285 all legal rights except those that have been specifically delegated
1286 to the guardian in the court's written order.

1287 (5) The order appointing a guardian must contain a finding that
1288 guardianship is the least restrictive alternative that is
1289 appropriate for the ward, and must reserve to the incapacitated
1290 person the right to make decisions in all matters commensurate with
1291 the person's ability to do so.

1292 (6) If a petition for appointment of guardian has been filed, the
1293 court shall rule on the petition contemporaneously with the order
1294 adjudicating a person to be incapacitated unless good cause is
1295 shown to defer ruling. If a guardian is not appointed
1296 contemporaneously with the order adjudicating the person to be
1297 incapacitated, the court may appoint an emergency temporary
1298 guardian in the manner and for the purposes specified in s.
1299 745.701.

1300 (7) The order appointing a guardian must specify the amount of bond
1301 to be given by the guardian and must state whether the guardian
1302 must place all, or part, of the property of the ward in a
1303 restricted account in a financial institution designated pursuant
1304 to s. 69.031.

1305
1306 745.606 Oath of guardian.
1307 Before exercising authority as guardian, every guardian shall take
1308 an oath that he or she will faithfully perform the duties as
1309 guardian. This oath is not jurisdictional.

1310

BILL

ORIGINAL

YEAR

1311 745.607 Bond of guardian.

1312 (1) Before exercising authority as guardian, a guardian of the
1313 property of a ward shall file a bond with surety as prescribed in
1314 s. 45.011 to be approved by the clerk or by the court. The bond
1315 shall be payable to the Governor of the state and the Governor's
1316 successors in office, conditioned on the faithful performance of
1317 all duties by the guardian. In form the bond shall be joint and
1318 several. For good cause, the court may waive bond.

1319 (2) When the sureties on a bond are natural persons, the guardian
1320 shall be required to file, with the annual guardianship report,
1321 proof satisfactory to the court that the sureties are alive and
1322 solvent.

1323 (3) All bonds required by this part shall be in the sum that the
1324 court deems sufficient after considering the value and nature of
1325 the assets subject to guardianship.

1326 (4) For good cause, the court may require, or increase or reduce,
1327 the amount of bond or change or release the surety.

1328 (5) When considering bond of professional guardians, the court may
1329 take into account the blanket bond provided by such guardian,
1330 provided that proof of insurance and effectiveness of the bond is
1331 on file with the clerk. Additional bond may be required.

1332 (6) Financial institutions and public guardians authorized by law
1333 to be guardians shall not be required to file bonds.

1334 (7) The premium of a guardian's required bond shall be paid as an
1335 expense of the guardianship.

1336 (8) When it is expedient in the judgment of the court having
1337 jurisdiction of any guardianship property, because the size of the
1338 bond required of the guardian is burdensome, or for other cause,
1339 the court may order, in lieu of a bond or in addition to a lesser
1340 bond, that the guardian place all or part of the property of the

BILL

ORIGINAL

YEAR

1341 ward in a designated financial institution under the same
1342 conditions and limitations as are contained in s. 69.031. A
1343 designated financial institution shall also include a dealer, as
1344 defined in s. 517.021(6), if the dealer is a member of the Security
1345 Investment Protection Corporation and is doing business in the
1346 state.

1347

1348 745.608 Validity of bond.

1349 No bond executed by any guardian shall be invalid because of an
1350 informality in it or because of an informality or illegality in the
1351 appointment of the guardian. The bond shall have the same force and
1352 effect as if the bond had been executed in proper form and the
1353 appointment had been legally made.

1354

1355 745.609 Liability of surety.

1356 No surety for a guardian shall be charged beyond the property of
1357 the ward.

1358

1359 745.610 Alternatives to guardianship.

1360 (1) In each proceeding in which a guardian is appointed under this
1361 chapter, the court shall make a finding whether the ward, prior to
1362 adjudication of incapacity, has executed an advance directive under
1363 chapter 765 or durable power of attorney under chapter 709. If any
1364 advance directive or durable power of attorney exists, the court
1365 shall specify in the order appointing guardian and letters what
1366 authority, if any, the guardian shall exercise over the ward or the
1367 ward's assets and what authority, if any, the surrogate or agent
1368 shall continue to exercise over the ward or the ward's assets.

1369 (2) Upon verified petition by an interested person or if requested
1370 in a petition for appointment of guardian with notice to the

BILL

ORIGINAL

YEAR

1371 surrogate, agent, and interested persons, the court may suspend,
1372 modify, or revoke the authority of the surrogate or agent to make
1373 health care or financial decisions for the ward. Any order
1374 suspending, modifying, or revoking the authority of an agent or
1375 surrogate must be supported by written findings of fact.

1376 (3) If a durable power of attorney, health care surrogate
1377 designation, trust or other relevant financial or personal care
1378 document is discovered after issuance of letters of guardianship,
1379 any interested person may file a petition seeking a determination
1380 of the effect of any such document and what, if any, changes should
1381 be made to the powers of the guardian.

1382

1383 745.611 Letters of guardianship.

1384 (1) Letters of guardianship shall be issued to the guardian and
1385 shall specify whether the guardianship pertains to the ward's
1386 person, property, or both.

1387 (2) The letters shall state whether the guardianship is plenary or
1388 limited. If limited, the letters shall specify the powers and
1389 duties of the guardian.

1390 (3) The letters shall state whether or not, and to what extent, the
1391 guardian is authorized to act on behalf of the ward with regard to
1392 any advance directive under chapter 765 or durable power of
1393 attorney under chapter 709 previously executed by the ward.

1394 (4) The duties and powers of the guardian accrue on the date
1395 letters are issued and not the date the order appointing guardian
1396 is entered.

1397

1398 Section 7. Part VII of chapter 745, Florida Statutes,
1399 consisting of sections 745.701, 745.702, 745.703, 745.704, 745.705,
1400 745.706, 745.707, 745.708, 745.709, 745.710, 745.711, 745.712,

BILL

ORIGINAL

YEAR

1401 745.713, and 745.714, is created to read:

1402 PART VII

1403 TYPES OF GUARDIANSHIP

1404 745.701 Emergency temporary guardianship.

1405 (1) A court, prior to appointment of a guardian but after a
1406 petition for determination of incapacity has been filed, may
1407 appoint an emergency temporary guardian for the person, property,
1408 or both, of an alleged incapacitated person. The court must find
1409 that there appears to be imminent danger that the physical or
1410 mental health or safety of the person will be seriously impaired or
1411 that the person's property is in danger of being wasted,
1412 misappropriated, or lost unless immediate action is taken. The
1413 alleged incapacitated person or an interested person may apply to
1414 the court in which the proceeding is pending for appointment of an
1415 emergency temporary guardian. The powers and duties granted must be
1416 described in the order appointing the emergency temporary guardian
1417 consistent with s. 745.605(2).

1418 (2) The court shall appoint counsel to represent the alleged
1419 incapacitated person during any such proceedings. An emergency
1420 temporary guardian may be appointed only after hearing with at
1421 least 3 days' notice to the alleged incapacitated person, unless
1422 the petitioner demonstrates that substantial harm to the alleged
1423 incapacitated person would occur if the 3 days' notice is given and
1424 that reasonable notice, if any, has been provided.

1425 (3) If no guardian is appointed at the time an order determining
1426 incapacity is entered, the court may appoint an emergency temporary
1427 guardian on its own motion after hearing with notice to the
1428 incapacitated person, and the person's next of kin, and such
1429 interested persons as the court may direct.

BILL

ORIGINAL

YEAR

1430 (4) Upon a filing of notice of resignation by a guardian, if no
1431 petition to appoint a successor has been filed by the time of the
1432 resignation, the court may appoint an emergency temporary guardian
1433 on its own motion after hearing with notice to the ward, the
1434 resigning guardian, and such other interested persons as the court
1435 may direct.

1436 (5) The authority of an emergency temporary guardian expires upon
1437 the issuance of letters to a succeeding guardian, upon a
1438 determination that the ward is not incapacitated as to the rights
1439 and abilities specified in the order appointing emergency temporary
1440 guardian, or upon the death of the ward, whichever occurs first.

1441 (6) An emergency temporary guardian of property whose authority has
1442 expired shall distribute assets only with prior court order
1443 approving distribution.

1444 (7) The emergency temporary guardian shall be discharged and
1445 relieved of further responsibility upon approval of the final
1446 accounting or report as specified in subsection (12) and
1447 distribution of assets, if any, as directed by the court.

1448 (8) The court may issue an injunction, restraining order, or other
1449 appropriate writ to protect the physical or mental health or safety
1450 or property of the person who is the ward of an emergency temporary
1451 guardianship.

1452 (9) The emergency temporary guardian shall take an oath to
1453 faithfully perform the duties of a guardian before letters of
1454 emergency temporary guardianship are issued.

1455 (10) Before exercising authority as guardian, the emergency
1456 temporary guardian of the property may be required to file a bond
1457 in accordance with s. 745.607.

BILL

ORIGINAL

YEAR

1458 (11) An emergency temporary guardian's authority and responsibility
1459 begins upon issuance of letters of emergency temporary guardianship
1460 in accordance with s. 745.611.

1461 (12)(a) An emergency temporary guardian of property shall file a
1462 petition for distribution and discharge and final accounting no
1463 later than 45 days after the issuance of letters to the succeeding
1464 guardian, death of the ward, or entry of an order denying the
1465 petition to appoint guardian. The provisions of s. 745.1102 shall
1466 apply. The final accounting must consist of a verified inventory of
1467 the property, as provided in s. 745.803, as of the date letters of
1468 emergency temporary guardianship were issued and an accounting that
1469 complies with the requirements of the Florida Probate Rules.

1470 (b) An emergency temporary guardian of person shall file a petition
1471 for discharge and a final report no later than 45 days after the
1472 issuance of letters to the succeeding guardian, death of the ward,
1473 or entry of an order denying the petition to appoint guardian. The
1474 provisions of s. 745.1106 shall apply. The final report shall
1475 summarize the activities of the temporary guardian with regard to
1476 residential placement, medical care, mental health and
1477 rehabilitative services, and the social condition of the ward to
1478 the extent of the authority granted to the temporary guardian in
1479 the letters of emergency temporary guardianship. Upon the death of
1480 the ward, s. 745.1107(5) shall apply.

1481 (c) A copy of the final accounting or report of the emergency
1482 temporary guardian shall be served on the succeeding guardian, the
1483 ward if no guardian is appointed, or the personal representative of
1484 the ward's estate.

1485

BILL

ORIGINAL

YEAR

1486 745.702 Standby guardian of minor.

1487 Upon petition by the natural guardians or a guardian appointed
1488 under s. 745.713, the court may appoint a standby guardian of the
1489 person or property of a minor. The court may also appoint an
1490 alternate to the guardian to act if the standby guardian does not
1491 serve or ceases to serve after appointment. Notice of hearing on
1492 the petition must be served on the natural guardians and on any
1493 guardian currently serving unless the notice is waived in writing
1494 by them or waived by the court for good cause shown.

1495

1496 745.703 Standby guardian of adult.

1497 Upon petition by a currently serving guardian, a standby guardian
1498 of the person or property of an incapacitated person may be
1499 appointed by the court. The court may also appoint an alternate to
1500 act if the standby guardian does not serve or ceases to serve after
1501 appointment. Notice of hearing must be served on the ward's next of
1502 kin.

1503

1504 745.704 Appointment and powers of standby guardian.

1505 (1) Upon filing a guardian's oath and designation of resident agent
1506 and acceptance, a standby guardian or alternate may assume the
1507 duties of guardianship immediately on the death, removal, or
1508 resignation of an appointed guardian of a minor, or on the death or
1509 adjudication of incapacity of the last surviving natural guardian
1510 of a minor, or upon the death, removal, or resignation of the
1511 guardian for an adult. A standby guardian of the property may only
1512 safeguard the ward's property before issuance of letters.

1513 (2) A standby guardian shall petition for confirmation of
1514 appointment and shall file an oath, designation of resident agent
1515 and acceptance. Each proposed guardian shall post bond as set forth

BILL

ORIGINAL

YEAR

1516 in 745.607 and shall submit to a credit and a criminal history
1517 record check as set forth in s. 745.504. If the court finds the
1518 standby guardian to be qualified to serve as guardian under s.
1519 745.501, the standby guardian shall be entitled to confirmation of
1520 appointment as guardian. Letters must then be issued in the manner
1521 provided in s. 745.611.

1522 (3) After the assumption of duties by a standby guardian, the court
1523 shall have jurisdiction over the guardian and the ward.

1524

1525 745.705 Preneed guardian for adult.

1526 (1) A competent adult may name a preneed guardian by executing a
1527 written declaration that names a guardian to serve in the event of
1528 the declarant's incapacity.

1529 (2) The declaration must be signed by the declarant in the presence
1530 of two subscribing witnesses as defined in s. 732.504. A declarant
1531 unable to sign the instrument may, in the presence of witnesses,
1532 direct that another person sign the declarant's name as required
1533 herein. The person designated as preneed guardian shall not act as
1534 witness to the execution of the declaration. At least one person
1535 who acts as a witness shall be neither the declarant's spouse nor
1536 blood relative.

1537 (3) The declarant may file the declaration with the clerk in
1538 declarant's county of residence at any time. When a petition for
1539 appointment of guardian is filed, the clerk shall produce the
1540 declaration and serve a copy on the proposed ward and the
1541 petitioner.

1542 (4) Production of the declaration in a proceeding for appointment
1543 of guardian shall constitute a rebuttable presumption that the
1544 preneed guardian is entitled to serve as guardian. The court shall

BILL

ORIGINAL

YEAR

1545 not be bound to appoint the preneed guardian if the person is found
1546 to be disqualified to serve as guardian.

1547 (5) If the preneed guardian is unwilling or unable to serve, a
1548 written declaration appointing an alternate preneed guardian
1549 constitutes a rebuttable presumption that the alternate is entitled
1550 to serve as guardian. The court is not bound to appoint the
1551 alternate preneed guardian if the person is found to be
1552 disqualified to serve as guardian.

1553

1554 745.706 Preneed guardian for minor.

1555 (1) Natural guardians may nominate a preneed guardian of person or
1556 property or both of their minor child by executing a written
1557 declaration that names such guardian to serve if the minor's last
1558 surviving natural guardian becomes incapacitated or dies or if the
1559 natural guardian is disqualified. The declarant may also name an
1560 alternate to the guardian to act if the designated preneed guardian
1561 is unwilling or unable to serve.

1562 (2) The declaration must specify the child's full legal name and
1563 date of birth, the relationship of the declarant to the child, and
1564 the proposed preneed guardian.

1565 (3) The declaration must be signed at the end by all of the natural
1566 guardians or the name of the natural guardians must be subscribed
1567 at the end by another person in the natural guardians' presence and
1568 at the natural guardians' direction. The natural guardians'
1569 signing, or acknowledgement that another person has subscribed his
1570 or her name to the declaration, must be in the presence of all
1571 natural guardians and in the presence of two subscribing witnesses
1572 as defined in s. 732.504. The person designated as preneed guardian
1573 shall not act as witness to the execution of the declaration. At

BILL

ORIGINAL

YEAR

1574 | least one person who acts as a witness shall be neither of the
1575 | natural guardians' spouse nor blood relative.

1576 | (4) The declarant may file the declaration with the clerk in the
1577 | county of the child's residence, at any time. When a petition for
1578 | appointment of guardian for the minor is filed, the clerk shall
1579 | produce the declaration and serve a copy on the minor and
1580 | petitioner.

1581 | (5) The declaration constitutes a rebuttable presumption that the
1582 | designated preneed guardian is entitled to serve as guardian. The
1583 | court is not bound to appoint the designated preneed guardian if
1584 | the person is found to be disqualified to serve as guardian.

1585 | (6) If the preneed guardian is unwilling or unable to serve, a
1586 | written declaration appointing an alternate preneed guardian
1587 | constitutes a rebuttable presumption that the alternate is entitled
1588 | to serve as guardian. The court is not bound to appoint the person
1589 | if the alternate is found to be disqualified to serve as guardian.

1590 | (7) The clerk shall maintain all declarations filed pursuant to
1591 | this section until the minor child named in the declaration has
1592 | reached the age of majority. The clerk may dispose of such written
1593 | declarations in accordance with law.

1594 |
1595 | 745.707 Voluntary guardianship of property.

1596 | (1) Upon petition by the proposed ward, the court shall appoint a
1597 | guardian of property of a resident or nonresident person who,
1598 | though of sufficient mental capacity, chooses to have a guardian
1599 | manage all or part of his or her property. The petition shall be
1600 | accompanied by a written statement from a licensed physician
1601 | specifying that the physician has examined the petitioner and that
1602 | the petitioner has capacity to understand the nature of the
1603 | guardianship and the delegation of authority. The examination must

BILL

ORIGINAL

YEAR

1604 have been conducted within 60 days prior to filing the petition.
1605 Notice of hearing on any petition for appointment shall be served
1606 on the petitioner and on any person to whom the petitioner requests
1607 that notice be given. Such request may be made in the petition for
1608 appointment of guardian or in a subsequent written request for
1609 notice signed by the petitioner.

1610 (2) If requested in the petition for appointment of a guardian
1611 brought under this section, the court may direct the guardian to
1612 take possession of less than all of the ward's property and of the
1613 rents, income, issues, and profits from it. In such case, the court
1614 shall specify in its order the property to be included in the
1615 guardianship. The duties and responsibilities of the guardian
1616 appointed under this section will extend only to such property.

1617 (3) Unless the voluntary guardianship is limited pursuant to
1618 subsection (2), any guardian appointed under this section has the
1619 same duties and responsibilities as are provided by law for plenary
1620 guardians of the property.

1621 (4) The guardian's accounting, any petition for authority to act
1622 and notice of hearing shall be served on the ward and on any person
1623 to whom the ward has requested that notice be given, in a notice
1624 filed with the court.

1625 (5) A guardian must include in the annual accounting filed with the
1626 court a written statement from a licensed physician who examined
1627 the ward not more than 60 days before the accounting is filed with
1628 the court. The certificate must specify whether the ward has
1629 capacity to understand the nature of the guardianship and the
1630 delegation of authority.

1631 (6) If the physician's written statement specifies that the ward no
1632 longer has the capacity to understand the nature of the
1633 guardianship or the ward's delegation of authority, the guardian

BILL

ORIGINAL

YEAR

1634 shall file a petition to determine incapacity and shall continue to
1635 serve as guardian pending further order of the court.

1636 (7) A voluntary guardianship may be terminated by a ward who has
1637 sufficient capacity filing a notice with the court that the
1638 voluntary guardianship is terminated. The notice shall be
1639 accompanied by a written statement from a licensed physician
1640 specifying that the ward has the capacity to understand the nature
1641 of the guardianship and the ward's delegation of authority. A copy
1642 of the notice must be served on the guardian and such other persons
1643 as the ward may specify.

1644 (8) Upon a filing of notice of termination by the ward, the
1645 guardian shall account and petition for discharge as specified in
1646 s. 745.1102.

1647
1648 745.708 Relocation of ward to Florida.

1649 (1) Within 60 days of the residence of an adult ward of a foreign
1650 guardian being moved to this state, the foreign guardian shall file
1651 a petition for determination of incapacity of the ward, a petition
1652 for appointment of guardian, and a certified copy of the guardian's
1653 letters of guardianship or equivalent with the clerk in the county
1654 in which the ward resides.

1655 (2) Within 60 days of the of a minor ward of a foreign guardian
1656 being to this state, the foreign guardian shall file a petition for
1657 appointment of guardian and a certified copy of the guardian's
1658 letters of guardianship or equivalent with the clerk in the county
1659 in which the ward resides.

1660 (3) Until a guardian is appointed in this state for the ward or the
1661 ward is determined to not require a guardian, the foreign
1662 guardian's authority shall be recognized and given full faith and
1663 credit in the courts of this state, provided the guardian is

BILL

ORIGINAL

YEAR

1664 qualified to serve as guardian of a resident ward. A foreign
1665 guardian who fails to comply with the requirements of this section
1666 shall have no authority to act on behalf of the ward in this state.

1667 (4) This section does not foreclose the filing of a petition for
1668 determination of incapacity or petition for appointment of guardian
1669 by persons other than a foreign guardian.

1670

1671 745.709 Foreign guardian of nonresident ward.

1672 (1) A guardian of property of a nonresident ward, is not required
1673 to file a petition under this section in order to manage or secure
1674 intangible personal property.

1675 (2) A guardian of property of a nonresident ward, duly appointed by
1676 a court of another state, territory, or country, who desires to
1677 manage or serve any part or all of the real or tangible personal
1678 property of the ward located in this state, may file a petition
1679 showing his or her appointment, describing the property, stating
1680 its estimated value, and showing the indebtedness, if any, existing
1681 against the ward in this state, to the best of the guardian's
1682 knowledge and belief.

1683 (3) A guardian required to petition under subsection (2) shall
1684 designate a resident agent, as required by the Florida Probate
1685 Rules, file certified copies of letters of guardianship or other
1686 authority and the guardian's bond or other security, if any. The
1687 court shall determine if the foreign bond or other security is
1688 sufficient to guarantee the faithful management of the ward's
1689 property in this state. The court may require a guardian's bond in
1690 this state in the amount it deems necessary and conditioned on the
1691 proper management of the property of the ward coming into the
1692 custody of the guardian in this state.

BILL

ORIGINAL

YEAR

1693 (4) The authority of the guardian of a nonresident ward shall be
1694 recognized and given full faith and credit in the courts of this
1695 state. A guardian appointed in another state, territory, or country
1696 may maintain or defend any action in this state as a representative
1697 of the ward unless a guardian has been appointed in this state.

1698 (5) Thereafter, the guardianship shall be governed by this code.
1699

1700 745.710 Resident guardian of property of nonresident ward.

1701 (1) The court may appoint a person qualified under s. 745.501 as
1702 guardian of a nonresident ward's Florida property upon the petition
1703 of a foreign guardian, next of kin, or creditor of the ward,
1704 regardless of whether the ward has a foreign guardian.

1705 (2) The petition for appointment of a guardian of property of a
1706 nonresident ward shall comply with requirements of s. 745.603.

1707 (3) If it is alleged that the person has been adjudicated to be
1708 incapacitated, the petition shall be accompanied by a certified
1709 copy of the adjudication of incapacity from the court having
1710 jurisdiction in the state, territory, or country in which the
1711 incapacitated person resides and shall state the incapacitated
1712 person's residence and the name and residence of any guardian,
1713 conservator or other fiduciary appointed for the ward.

1714 (4) If a nonresident is temporarily residing in this state and is
1715 not under an adjudication of incapacity made in some other state,
1716 territory, or country, the procedure for determination of
1717 incapacity and appointment of a guardian of the nonresident's
1718 property shall be the same as for a resident of this state.

1719 (5) When the ground for the appointment of a guardian is incapacity
1720 for which the person has been adjudicated in another state,
1721 territory, or country, formal notice of the petition and notice of

BILL

ORIGINAL

YEAR

1722 hearing on the petition shall be served on the foreign guardian or
1723 other fiduciary appointed for the ward, if any, and on the ward.
1724 (6) In the appointment of the guardian, the court shall be governed
1725 by s. 745.602.
1726 (7) The duties, powers, and liabilities of the guardian shall be
1727 governed by this code.
1728
1729 745.711 Guardian advocates.
1730 The court may appoint a guardian advocate, without adjudication of
1731 incapacity, for a person with developmental disabilities if the
1732 person is only partially incapacitated. Unless otherwise specified,
1733 the proceeding shall be governed by the Florida Probate Rules. In
1734 accordance with the legislative intent of this code, courts are
1735 encouraged to consider appointing a guardian advocate, when
1736 appropriate, as a less restrictive alternative to guardianship.
1737
1738 745.712 Natural guardians.
1739 (1) Parents jointly are natural guardians of their minor children
1740 including their adopted children, unless the parents' parental
1741 rights have been terminated pursuant to chapter 39. If a child is
1742 the subject of any proceeding under chapter 39, the parents may act
1743 as natural guardians under this section unless the court division
1744 with jurisdiction over guardianship proceedings finds that it is
1745 not in the child's best interest. If one parent dies, the surviving
1746 parent remains the sole natural guardian even if the parent
1747 remarries. If the marriage between the parents is dissolved, both
1748 parents remain natural guardians unless the court awards sole
1749 custody to one parent, in which case the parent awarded custody
1750 shall be the sole natural guardian. If the marriage is dissolved
1751 and neither parent is given custody of the child, neither shall act

BILL

ORIGINAL

YEAR

1752 as natural guardian of the child. The mother of a child born out of
1753 wedlock is the natural guardian of the child and is entitled to
1754 primary residential care and custody of the child unless the
1755 parents marry or until an order determining paternity is entered by
1756 a court of competent jurisdiction. In such event, the father shall
1757 also be deemed a natural guardian.

1758 (2) Natural guardians are authorized, on behalf of their minor
1759 child if the total net amounts received do not exceed \$25,000.00,
1760 to:

1761 (a) Settle and consummate a settlement of any claim or cause of
1762 action accruing to the minor child for damages to the person or
1763 property of the minor child;

1764 (b) Collect, receive, manage, and dispose of the proceeds of any
1765 such settlement;

1766 (c) Collect, receive, manage, and dispose of any real or personal
1767 property distributed from an estate or trust;

1768 (d) Collect, receive, manage, and dispose of and make elections
1769 regarding the proceeds from a life insurance policy or annuity
1770 contract payable to, or otherwise accruing to the benefit of, the
1771 child; and

1772 (e) Collect, receive, manage, dispose of, and make elections
1773 regarding the proceeds of any benefit plan as defined by s.
1774 710.102, of which the minor is a beneficiary, participant, or
1775 owner, without appointment, authority, or bond.

1776 (3) A guardianship shall be required when the total net amounts
1777 received by, or on behalf of, the minor exceed \$50,000.00. When the
1778 total net amounts received by, or on behalf of, the minor exceed
1779 \$25,000.00 but does not exceed \$50,000.00, the court has the
1780 discretion to determine whether the natural guardians are

BILL

ORIGINAL

YEAR

1781 authorized to take any actions enumerated in subsection (2) of this
1782 statute or whether a guardianship is required.

1783 (4) All instruments executed by a natural guardian for the benefit
1784 of the ward under the powers specified in subsection (2) shall be
1785 binding on the ward. The natural guardian may not, without court
1786 order, use the property of the ward for the guardian's benefit or
1787 to satisfy the guardian's support obligation to the ward.

1788 (5) Prior to taking possession of any funds or other property as
1789 authorized by subsection (2), a natural guardian must file with the
1790 clerk in the county of the ward's residence a verified statement
1791 identifying the child, nature and value of the property, and the
1792 name, relationship, and current residence address of the natural
1793 guardian.

1794
1795 745.713 Guardians of minors.

1796 (1) Upon petition of a parent, brother, sister, next of kin, or
1797 other person interested in the welfare of a minor, a guardian for a
1798 minor may be appointed by the court without the necessity of
1799 adjudication pursuant to chapter 745 Part III.

1800 (2) Upon petition, the court may determine if the appointment of a
1801 guardian of property of a minor is necessary as provided in s.
1802 745.712(3).

1803 (3) A minor is not required to attend the hearing on the petition
1804 for appointment of a guardian, unless otherwise directed by the
1805 court.

1806 (4) In its discretion, the court may appoint an attorney to
1807 represent the interests of a minor at the hearing on the petition
1808 for appointment of a guardian.

1809 (5) A petition to appoint guardian may be filed and a proceeding to
1810 determine incapacity under chapter 745 Part III may be commenced

BILL

ORIGINAL

YEAR

1811 for a minor who is at least 17 years and 6 months of age at the
1812 time of filing. The alleged incapacitated minor under this
1813 subsection shall be provided all the due process rights conferred
1814 upon an alleged incapacitated adult pursuant to this chapter and
1815 applicable court rules. The order determining incapacity, order
1816 appointing guardian, and the letters of guardianship may take
1817 effect on or after the minor's 18th birthday.

1818

1819 745.714 Claims of minors.

1820 (1)(a) If no guardian has been appointed pursuant to this code, the
1821 court having jurisdiction over a claim may appoint a guardian ad
1822 litem to represent the minor's interest before approving a
1823 settlement of the minor's portion of the claim in any case in which
1824 a minor has a claim for personal injury, property damage, wrongful
1825 death, or other cause of action in which the proposed gross
1826 settlement of the claim for all claimants, including immediate and
1827 deferred benefits, exceeds \$25,000.

1828 (b) The court shall appoint a guardian ad litem to represent the
1829 minor's interest before approving a settlement of the minor's claim
1830 in any case in which the proposed gross settlement of the claim,
1831 for all claimants, including immediate and deferred benefits,
1832 exceeds \$50,000.

1833 (2) No bond shall be required of the guardian ad litem.

1834 (3) The duty of a guardian ad litem is to protect the minor's
1835 interests as described in this code.

1836 (4) A court shall not appoint a guardian ad litem for the minor if
1837 a guardian of the minor has previously been appointed and the
1838 guardian has no potential adverse interest to the minor.

1839 (5) The court shall award reasonable fees and costs to the guardian
1840 ad litem to be paid out of the gross proceeds of the settlement.

BILL

ORIGINAL

YEAR

1841 (6) All records relating to settlement of a claim pursuant to this
1842 section is subject to the confidentiality provisions of s. 745.112.

1843
1844 Section 8. Part VIII of chapter 745, Florida Statutes,
1845 consisting of sections 745.801, 745.802, 745.803, 745.804, 745.805,
1846 745.806, 745.807, 745.808, 745.809, 745.810, 745.811, 745.812,
1847 745.813, and 745.814, is created to read:

1848 PART VIII

1849 DUTIES OF GUARDIAN

1850 745.801 Liability of guardian.

1851 A guardian is not personally liable for the debts, contracts or
1852 torts of the ward. A guardian may be liable to the ward for failure
1853 to protect the ward within the scope of the guardian's authority.

1854
1855 745.802 Duties of guardian of property.

1856 (1) A guardian of property is a fiduciary and may exercise only
1857 those rights that have been removed from the ward and delegated to
1858 the guardian. The guardian of a minor's property shall exercise the
1859 powers of a plenary guardian of property.

1860 (2) A guardian of property of the ward shall:

1861 (a) Protect and preserve the property and invest it prudently as
1862 provided in chapter 518.

1863 (b) Apply the property as provided in s. 745.1304.

1864 (c) Keep clear, distinct, and accurate records of the
1865 administration of the ward's property.

1866 (d) Perform all other duties required of a guardian of property by
1867 law.

1868 (e) At the termination of the guardianship, deliver the property of
1869 the ward to the person lawfully entitled to it.

BILL

ORIGINAL

YEAR

1870 (3) A guardian is a fiduciary who must observe the standards in
1871 dealing with guardianship property that would be observed by a
1872 prudent person dealing with the property of another, and, if the
1873 guardian has special skills or is appointed guardian on the basis
1874 of representations of special skills or expertise, the guardian is
1875 under a duty to use those skills.

1876 (4) A guardian of property, if authorized by the court, shall take
1877 possession of the ward's property and of the income from it,
1878 whether accruing before or after the guardian's appointment, and of
1879 the proceeds arising from the sale, lease, or mortgage of the
1880 property. All of the property and the income from it are assets in
1881 the hands of the guardian for the payment of debts, taxes, claims,
1882 charges, and expenses of the guardianship and for the care,
1883 support, maintenance, and education of the ward or the ward's
1884 dependents, as provided by law.

1885 (5) A guardian of property shall file a verified inventory of the
1886 ward's property as required by s. 745.803 and annual accountings in
1887 accordance with s. 745.805. This requirement also applies to a
1888 guardian who previously served as emergency temporary guardian for
1889 the ward.

1890 (6) A guardian shall act within the scope of the authority granted
1891 by the court and as provided by law.

1892 (7) A guardian shall act in good faith.

1893 (8) When making decisions on behalf of a ward, a guardian of
1894 property shall exercise reasonable care, diligence, and prudence.
1895 The guardian of property shall base all decisions on substituted
1896 judgment if there is evidence of what the ward would have wanted
1897 and the decision promotes the ward's best interest. If there is no
1898 evidence to support substituted judgment or the decision does not

BILL

ORIGINAL

YEAR

1899 promote the ward's best interest, then the decision shall be made
1900 based on the ward's best interest.

1901 (9) When two or more guardians have been appointed, the guardians
1902 shall consult with each other on matters of mutual responsibility.
1903

1904 745.803 Verified inventory.

1905 (1) A guardian of property shall file a verified inventory of the
1906 ward's property within 60 days of issuance of letters.

1907 (2) The verified inventory must specify and describe the following:
1908 (a) All property of the ward, real and personal, that has come into
1909 the guardian's control or knowledge, including a statement of all
1910 encumbrances, liens, and other claims on any item, including any
1911 cause of action accruing to the ward, and any trusts of which the
1912 ward is a beneficiary.

1913 (b) The location of the real and personal property in sufficient
1914 detail so that it may be identified and located.

1915 (c) A description of all sources of income, including, without
1916 limitation, social security benefits and pensions.

1917 (d) The location of any safe-deposit boxes held by the ward
1918 individually or jointly with any other person.

1919 (e) identification by name, address, and occupation, of witnesses
1920 present, if any, during the initial examination of the ward's
1921 tangible personal property.

1922 (3) Along with the verified inventory, the guardian must file a
1923 copy of statements of all of the ward's cash assets from all
1924 institutions in which funds are deposited. Statements must be for
1925 the period ending closest in time to the issuance of letters.

1926 (4) If the ward is a beneficiary of a trust, the inventory must
1927 identify the trust and the trustee.

BILL

ORIGINAL

YEAR

1928 (5) The inventory shall specify whether the guardian of property
 1929 will file the annual accounting on a designated fiscal year or
 1930 calendar year basis. .

1931 (6) If a guardian of property learns of any property that is not
 1932 included in the inventory, the guardian shall file an amended or
 1933 supplemental inventory to report such property within 60 days after
 1934 the discovery.

1935
 1936 745.804 Audit fee for inventory.

1937 (1) When the value of the ward's property, excluding real property,
 1938 equals or exceeds \$25,000, a guardian shall pay from the ward's
 1939 property to the clerk an audit fee of up to \$75, at the time of
 1940 filing the verified inventory. Upon petition by the guardian, the
 1941 court may waive the audit fee upon a showing of insufficient cash
 1942 assets in the ward's estate or other good cause.

1943 (2) An audit fee may not be charged to any ward whose property,
 1944 excluding real property, has a value of less than \$25,000.

1945
 1946 745.805 Annual accounting.

1947 (1) A guardian of property must file an annual accounting with the
 1948 court.

1949 (2) An annual accounting must include:

1950 (a) A full and correct itemization of the receipts and
 1951 disbursements of all of the ward's property in the guardian's
 1952 control or knowledge at the end of the accounting period and a
 1953 statement of the ward's property in the guardian's control or
 1954 knowledge at the end of the accounting period. If the guardian does
 1955 not have control of an asset, the accounting must describe the
 1956 asset and the reason it is not in the guardian's control. If the
 1957 ward is a beneficiary of a trust, the accounting must identify the

BILL

ORIGINAL

YEAR

1958 trust and the trustee, but they need not list the receipts and
 1959 disbursements of the trust.

1960 (b) A copy of statements demonstrating all receipts and
 1961 disbursements for each of the ward's cash accounts from each of the
 1962 institutions in which cash is deposited.

1963 (3) A guardian must obtain a receipt, canceled check, or other
 1964 proof of payment for all expenditures and disbursements made on
 1965 behalf of the ward. A guardian must preserve all evidence of
 1966 payment, along with other substantiating papers, for a period of 7
 1967 years after the end of the accounting year. The receipts, proofs of
 1968 payment, and substantiating papers need not be filed with the court
 1969 but shall be made available for inspection at such time and place
 1970 and before such persons as the court may order for cause, after
 1971 hearing with notice to the guardian.

1972 (4) Unless otherwise directed by the court, a guardian of property
 1973 may file the first annual accounting on either a fiscal year or
 1974 calendar year basis. The guardian must notify the court as to the
 1975 guardian's filing intention on the guardian's inventory. All
 1976 subsequent annual accountings must be filed for the same accounting
 1977 period as the first annual accounting. The first accounting period
 1978 must end within 1 year after the end of the month in which the
 1979 letters were issued to the guardian of property.

1980 (5) The annual accounting must be filed on or before the first day
 1981 of the fourth month after the end of the accounting year.

1982 (6) Unless the guardian is a plenary guardian of property or the
 1983 requirement is otherwise waived by the court, the annual accounting
 1984 must be served on the ward. The guardian shall serve a copy of the
 1985 annual accounting on interested persons as the court may authorize
 1986 or require.

BILL

ORIGINAL

YEAR

1987 (7) The court may waive the filing of an accounting if it
 1988 determines the ward receives income only from social security
 1989 benefits and the guardian is the ward's representative payee for
 1990 the benefits.
 1991
 1992 745.806 Simplified accounting.
 1993 (1) In a guardianship of property, when all assets of the estate
 1994 are in designated depositories under s. 69.031 and the only
 1995 transactions that occur in that account are interest accrual,
 1996 deposits from a settlement, financial institution service charges
 1997 and court authorized expenditures, the guardian may elect to file
 1998 an accounting consisting of:
 1999 (a) Statements demonstrating all receipts and disbursements of the
 2000 ward's account from the financial institution; and
 2001 (b) A statement made by the guardian under penalty of perjury that
 2002 the guardian has custody and control of the ward's property as
 2003 shown in the year-end statement.
 2004 (2) The accounting allowed by subsection (1) is in lieu of the
 2005 accounting and auditing procedures under s. 745.805. However, any
 2006 interested party may seek judicial review as provided in s.
 2007 745.1002.
 2008
 2009 745.807 Audit fee for accounting.
 2010 (1) A guardian shall pay, from the ward's property, to the clerk an
 2011 audit fee based upon the following graduated fee schedule at the
 2012 time of filing the annual accounting:
 2013 (a) For property having a value of \$25,000 or less, there shall be
 2014 no audit fee.
 2015 (b) For property with total value of more than \$25,000 up to and
 2016 including \$100,000 the clerk may charge a fee of up to \$100.

BILL

ORIGINAL

YEAR

2017 (c) For property with total value of more than \$100,000 up to and
 2018 including \$500,000 the clerk may charge a fee of up to \$200.

2019 (d) For property with a value in excess of \$500,000 the clerk may
 2020 charge a fee of up to \$400.

2021 (2) Upon petition by the guardian, the court may waive the auditing
 2022 fee upon a showing of insufficient cash assets in the ward's
 2023 estate.

2024

2025 745.808 Safe-deposit box.

2026 (1) A guardian's initial access to any safe-deposit box leased or
 2027 co-leased by the ward must be conducted in the presence of an
 2028 employee of the institution where the box is located. A written
 2029 inventory of the contents of the safe-deposit box also must be
 2030 compiled in the presence of the employee. The employee and guardian
 2031 must then confirm the contents of the safe-deposit box by executing
 2032 the safe-deposit box inventory in accordance with Florida Probate
 2033 Rule 5.020. The contents must then be replaced in the safe-deposit
 2034 box and the guardian must file the verified safe-deposit box
 2035 inventory within 10 days after the box is opened.

2036 (2) A guardian of property must provide any co-lessee a copy of
 2037 each signed safe-deposit box inventory. A copy of each verified
 2038 safe deposit box inventory must also be provided to the ward unless
 2039 the guardian is a plenary guardian of property or unless otherwise
 2040 directed by the court.

2041 (3) Nothing may be removed from the ward's safe-deposit box by the
 2042 guardian of property without court order.

2043

2044 745.809 Duties of guardian of person.

2045 (1) A guardian of the person is a fiduciary and may exercise only
 2046 those rights that have been removed from the ward and delegated to

BILL

ORIGINAL

YEAR

2047 the guardian. A guardian of a minor shall exercise the powers of a
2048 plenary guardian.

2049 (2) A guardian of the person shall make decisions necessary to
2050 provide medical, mental health, personal and residential care for
2051 the ward, to the extent of the guardian's authority.

2052 (3) A guardian of the person must ensure that each of the
2053 guardian's wards is personally visited by the guardian or, in the
2054 case of a professional guardian, by one of the guardian's
2055 professional staff at least once each calendar quarter. During the
2056 personal visit, the guardian or the guardian's professional staff
2057 person shall assess:

2058 (a) The ward's physical appearance and condition.

2059 (b) The appropriateness of the ward's current residence.

2060 (c) The need for any additional services and for continuation of
2061 existing services, taking into consideration all aspects of the
2062 ward's social, psychological, educational, direct service, health,
2063 and personal care needs.

2064 (d) The nature and extent of visitation and communication with the
2065 ward's family and others.

2066 (4) A guardian of the person shall file an initial guardianship
2067 plan as required by s. 745.810 and annual plans as required by s.
2068 745.813.

2069 (5) A guardian shall act within the scope of the authority granted
2070 by the court and as provided by law.

2071 (6) A guardian shall act in good faith.

2072 (7) When making decisions on behalf of a ward, a guardian of person
2073 shall act in a manner consistent with the ward's constitutional
2074 rights of privacy and self-determination, making health care
2075 decisions based on substituted judgment if there is evidence of
2076 what the ward would have wanted. If there is no evidence of what

BILL

ORIGINAL

YEAR

2077 the ward would have wanted, health care decisions shall be based on
2078 the ward's best interest.

2079 (8) A guardian of person is a fiduciary who must observe the
2080 standards that would be observed by a prudent person making
2081 decisions on behalf of another, and, if the guardian has special
2082 skills or expertise, or is appointed in reliance upon the
2083 guardian's representation that the guardian has special skills or
2084 expertise, the guardian is under a duty to use those special skills
2085 or expertise when acting on behalf of the ward.

2086 (9) A guardian of the person shall implement the guardianship plan.

2087 (10) When two or more guardians have been appointed, the guardians
2088 shall consult with each other on matters of mutual responsibility.

2089 (11) Recognizing that every individual has unique needs and
2090 abilities, a guardian who is given authority over a ward's person
2091 shall, as appropriate under the circumstances: (a) Consider the
2092 expressed desires of the ward as known by the guardian when making
2093 decisions that affect the ward.

2094 (b) Allow the ward to maintain contact with family and friends
2095 unless the guardian believes that such contact may cause harm to
2096 the ward.

2097 (c) Not restrict the physical liberty of the ward more than
2098 reasonably necessary to protect the ward or another person from
2099 serious physical injury, illness, or disease.

2100 (d) Assist the ward in developing or regaining capacity, if
2101 medically possible.

2102 (e) Notify the court if the guardian believes that the ward has
2103 regained capacity and that one or more of the rights that have been
2104 removed should be restored to the ward.

BILL

ORIGINAL

YEAR

2105 (f) To the extent applicable, make provision for the medical,
2106 mental, rehabilitative, or personal care services for the welfare
2107 of the ward.

2108 (g) To the extent applicable, acquire a clear understanding of the
2109 risks and benefits of a recommended course of health care treatment
2110 before making a health care decision.

2111 (h) Evaluate the ward's medical and health care options, financial
2112 resources, and desires when making residential decisions that are
2113 best suited for the current needs of the ward.

2114 (i) Advocate on behalf of the ward in institutional and other
2115 residential settings and regarding access to home and community-
2116 based services.

2117 (j) When not inconsistent with the person's goals, needs, and
2118 preferences, acquire an understanding of the available residential
2119 options and give priority to home and other community-based
2120 services and settings.

2121

2122 745.810 Guardianship plan.

2123 (1) Each guardian of person, including a guardian who served as
2124 emergency temporary guardian, shall file a guardianship plan within
2125 60 days after letters of guardianship are issued.

2126 (2) The guardianship plan shall include the following:

2127 (a) The needed medical, mental health, rehabilitative and personal
2128 care services for the ward;

2129 (b) The social and personal services to be provided for the ward;

2130 (c) The kind of residential setting best suited for the needs of
2131 the ward;

2132 (d) The ward's residence at the time of issuance of the letters of
2133 guardianship, any anticipated change of residence and the reason
2134 therefor;

BILL

ORIGINAL

YEAR

2135 (e) The health and accident insurance and any other private or
2136 governmental benefits to which the ward may be entitled to meet any
2137 part of the costs of medical, mental health, or other services
2138 provided to the ward; and

2139 (f) Any physical and mental examinations necessary to determine the
2140 ward's medical and mental health treatment needs.

2141 (3) The guardianship plan for an incapacitated person must consider
2142 any recommendations specified in the court appointed examiners'
2143 written reports or testimony.

2144 (4) Unless the ward has been found to be totally incapacitated or
2145 is a minor, the guardianship plan must contain an attestation that
2146 the guardian has consulted with the ward and, to the extent
2147 reasonable, has honored the ward's wishes consistent with the
2148 rights retained by the ward.

2149 (5) The guardianship plan may not contain requirements which
2150 restrict the physical liberty of the ward more than reasonably
2151 necessary to protect the ward from decline in medical and mental
2152 health, physical injury, illness, or disease and to protect others
2153 from injury, illness or disease.

2154 (6) A guardianship plan continues in effect until it is amended or
2155 replaced by an annual guardianship report, until the restoration of
2156 capacity or death of the ward, or until the ward, if a minor,
2157 reaches the age of 18 years whichever first occurs. If there are
2158 significant changes in the capacity of the ward to meet the
2159 essential requirements for the ward's health or safety, the
2160 guardian may modify the guardianship plan and shall serve the
2161 amended plan on all persons who served with the plan.

2162

2163 745.811 Annual guardianship report for minor.

BILL

ORIGINAL

YEAR

2164 (1) An annual guardianship report for a minor ward shall provide
2165 current information about ward. The report must specify the current
2166 needs of the ward and how those needs are proposed to be met in the
2167 coming year.

2168 (2) Each report filed by the guardian of person of a minor must
2169 include:

2170 (a) Information concerning the residence of the ward, including the
2171 ward's address at the time of filing the plan, name and address of
2172 each location where the ward resided during the preceding year and
2173 the length of stay of the ward at each location.

2174 (b) A statement of whether the present residential setting is best
2175 suited for the current needs of the ward.

2176 (c) Plans for ensuring that the ward is in the best residential
2177 setting to meet the ward's needs.

2178 (d) Information concerning the medical and mental health condition
2179 and treatment and rehabilitation needs of the minor, including:

2180 1. A description of any professional medical treatment given to the
2181 minor during the preceding year, including names of health care
2182 providers, types of care and dates of service.

2183 2. A report from the physician who examined the minor no more than
2184 180 days before the beginning of the applicable reporting period
2185 that contains an evaluation of the minor's physical and medical
2186 conditions.

2187 (e) Anticipated medical care needs and the plan for providing
2188 medical services in the coming year.

2189 (f) Information concerning education of the minor, including:

2190 1. A summary of the minor's educational progress report.

2191 2. The social development of the minor, including a statement of
2192 how well the minor communicates and maintains interpersonal
2193 relationships.

BILL

ORIGINAL

YEAR

2194
2195 745.812 Annual guardianship report for adults.
2196 (1) An annual guardianship report for an adult ward shall provide
2197 current information about the condition of the ward. The report
2198 must specify the current needs of the ward and how those needs are
2199 proposed to be met in the coming year.
2200 (2) Each report for an adult ward must, if applicable, include:
2201 (a) Information concerning the residence of the ward, including the
2202 ward's address at the time of filing the plan, name and address of
2203 each location where the ward resided during the preceding year, and
2204 the length of stay of the ward at each location.
2205 (b) A statement of whether the present residential setting is best
2206 suited for the current needs of the ward.
2207 (c) Plans for ensuring that the ward is in the best residential
2208 setting to meet the ward's needs.
2209 (d) Information concerning the medical and mental health condition
2210 and treatment and rehabilitation needs of the ward, including:
2211 1. A description of any professional medical and mental health
2212 treatment given to the ward during the preceding year, including
2213 names of health care providers, types of care, and dates of
2214 service.
2215 2. The report of a physician who examined the ward no more than 120
2216 days before the beginning of the applicable reporting period. The
2217 report must contain an evaluation of the ward's condition and a
2218 statement of the current level of capacity of the ward. If the
2219 guardian makes a statement in the report that a physician was not
2220 reasonably available to examine the ward, the report may be
2221 prepared and signed by a physician's assistant acting pursuant to
2222 s. 458.347(4)(d) or s. 459.022(4)(d) or an advanced practice
2223 registered nurse acting pursuant to s. 464.012(3).

BILL

ORIGINAL

YEAR

2224 (e) The plan for providing medical, mental health, and
 2225 rehabilitative services for the ward in the coming year.

2226 (f) Information concerning the social activities of the ward,
 2227 including:

2228 1. The social and personal services currently used by the ward.
 2229 2. The social skills of the ward, including a statement of the
 2230 ward's ability to communicate and maintain interpersonal
 2231 relationships.

2232 (g) Each report for an adult ward must address the issue of
 2233 restoration of rights to the ward and include:

2234 1. A summary of activities during the preceding year that were
 2235 designed to improve the abilities of the ward.

2236 2. A statement of whether the ward can have any rights restored.
 2237 3. A statement of whether restoration of any rights will be sought.
 2238 4. The court, in its discretion, may require reexamination of the
 2239 ward by an appointed examiner at any time.

2240

2241 745.813 Annual guardianship report - filing.
 2242 Unless the court requires filing on a calendar-year basis, each
 2243 guardian of person shall file an annual guardianship report on or
 2244 before the first day of the fourth month after the last day of the
 2245 anniversary month the letters of guardianship were issued, and the
 2246 report must cover the coming plan year, ending on the last day in
 2247 such anniversary month. If the court requires calendar-year filing,
 2248 the guardianship report must be filed on or before April 1 of each
 2249 year.

2250

2251 745.814 Records retention.

2252 (1) A guardian of property shall maintain documents and records
 2253 sufficient to demonstrate the accuracy of the initial inventory for

BILL

ORIGINAL

YEAR

2254 a period of 7 years after filing the inventory. The documents need
2255 not be filed but must be available for inspection at such time and
2256 place and before such persons as the court may order for cause,
2257 after hearing with notice to the guardian. The guardian of property
2258 shall also maintain documents and records sufficient to demonstrate
2259 the accuracy of the annual accounting for a period of 7 years after
2260 filing the accounting.

2261 (2) A guardian of person shall maintain documents and records
2262 sufficient to demonstrate the accuracy of the annual report for a
2263 period of 4 years after the filing of the respective annual report.
2264

2265 Section 9. Part IX of chapter 745, Florida Statutes,
2266 consisting of sections 745.901, 745.902, 745.903, 745.904, 745.905,
2267 745.906, 745.907, and 745.908, is created to read:

PART IX

GUARDIAN POWERS

2270 745.901 Powers and duties of guardian.

2271 The guardian of an incapacitated person may exercise only those
2272 rights that have been removed from the ward and delegated to the
2273 guardian. A guardian of a minor shall exercise the powers of a
2274 plenary guardian.
2275

2276 745.902 Power of guardian of property without court approval.

2277 Without obtaining court approval, a plenary guardian of the
2278 property, or a limited guardian of the property within the powers
2279 granted by the letters of guardianship, may:

2280 (1) Take possession or control of property owned by the ward;

2281 (2) Obtain the ward's legal and financial documents and tax records
2282 from persons, financial institutions and other entities;

BILL

ORIGINAL

YEAR

2283 (3) Obtain a copy of any trust or any other instrument in which the
2284 ward has a beneficial interest, obtain benefits due the ward as a
2285 beneficiary of any trust or other instruments, and bind the ward
2286 with regard to any trust consistent with Florida Statutes chapter
2287 736.0303;

2288 (4) Vote stocks or other securities in person or by general or
2289 limited proxy or not vote stocks or other securities;

2290 (5) Insure the assets of the estate against damage, loss, and
2291 liability and insure himself or herself against liability as to
2292 third persons;

2293 (6) Execute and deliver in the guardian's name, as guardian, any
2294 instrument necessary or proper to carry out and give effect to this
2295 section;

2296 (7) Pay taxes and assessments on the ward's property;

2297 (8) Pay valid encumbrances against the ward's property in
2298 accordance with their terms, but no prepayment may be made without
2299 prior court approval;

2300 (9) Pay reasonable living expenses for the ward, taking into
2301 consideration the accustomed standard of living, age, health, and
2302 financial resources of the ward. This subsection does not authorize
2303 the guardian of a minor to expend funds for the ward's living
2304 expenses if one or both of the ward's parents are alive;

2305 (10) Exercise the ward's right to an elective share. The guardian
2306 must comply with the requirements of s. 732.2125(2). The guardian
2307 may assert any other right or choice available to a surviving
2308 spouse in the administration of a decedent's estate;

2309 (11) Deposit or invest liquid assets of the estate, including money
2310 received from the sale of other assets, in federally insured
2311 interest-bearing accounts, readily marketable secured loan
2312 arrangements, money market mutual funds, or other prudent

BILL

ORIGINAL

YEAR

2313 investments. The guardian may redeem or sell such deposits or
2314 investments to pay the reasonable living expenses of the ward as
2315 provided herein;

2316 (12) When reasonably necessary, employ attorneys, accountants,
2317 property managers, auditors, investment advisers, care managers,
2318 agents, and other persons and entities to advise or assist the
2319 guardian in the performance of guardianship duties;

2320 (13) Sell or exercise stock subscription or conversion rights and
2321 consent, directly or through a committee or other agent, to the
2322 reorganization, consolidation, merger, dissolution, or liquidation
2323 of a corporation or other business enterprise;

2324 (14) Execute and deliver any instrument that is necessary or proper
2325 to carry out the orders of the court;

2326 (15) Hold a security in the name of a nominee or in other form
2327 without disclosure of the interest of the ward, but the guardian is
2328 liable for any act of the nominee in connection with the security
2329 so held;

2330 (16) Pay and reimburse incidental expenses in the administration of
2331 the guardianship and for provision of services to the ward
2332 including reasonable compensation to persons employed by the
2333 guardian pursuant to subsection (12) from the assets of the ward.
2334 These payments shall be reported on the guardian's annual
2335 accounting, accompanied by itemized statements describing services
2336 rendered and the method of charging for such services;

2337 (17) Provide confidential information about a ward that is related
2338 to an investigation arising under s. 745.1001 to the clerk, part
2339 XIV of this chapter to an Office of Public and Professional
2340 Guardians investigator, or part I of chapter 400 to a local or
2341 state ombudsman council member conducting that investigation. Any
2342 such clerk, Office of Public and Professional Guardians

BILL

ORIGINAL

YEAR

2343 investigator, or ombudsman shall have a duty to maintain the
2344 confidentiality of the information provided;

2345 (18) Fulfill financial obligations under the ward's contracts that
2346 predate the guardianship;

2347 (19) Maintain and repair the ward's property and purchase
2348 furnishings, clothing, appliances and furniture for the ward;

2349 (20) Pay calls, assessments and other sums chargeable against
2350 securities owned by the ward that are obligations predating the
2351 guardianship;

2352 (21) Contract for residential care and placement for the ward and
2353 for services pursuant to subsection (12); and

2354 (22) Receive payment and satisfy judgments in favor of the ward.
2355

2356 745.903 Powers of guardian of property requiring court approval.
2357 After obtaining approval of the court pursuant to a petition for
2358 authorization to act, a plenary guardian of the property, or a
2359 limited guardian of the property within the powers granted by the
2360 letters of guardianship, may:

2361 (1) Compromise, or refuse performance of a ward's contracts that
2362 predate the guardianship, as the guardian may determine under the
2363 circumstances;

2364 (2) Execute, exercise, or release any non-fiduciary powers that the
2365 ward might have lawfully exercised, consummated, or executed if not
2366 incapacitated, if the best interest of the ward requires such
2367 execution, exercise, or release;

2368 (3) Make extraordinary repairs or alterations in buildings or other
2369 structures; demolish any improvements; raze existing walls or erect
2370 new, party walls or buildings;

2371 (4) Subdivide, develop, or dedicate land to public use; make or
2372 obtain the vacation of plats and adjust boundaries; adjust

BILL

ORIGINAL

YEAR

2373 differences in valuation on exchange or partition by giving or
2374 receiving consideration; or dedicate easements to public use
2375 without consideration;

2376 (5) Enter into a lease as lessor of the ward's property for any
2377 purpose, with or without option to purchase or renew, for a term
2378 within, or extending beyond, the period of guardianship;

2379 (6) Enter into a lease or arrangement for exploration and removal
2380 of minerals or other natural resources or enter into a pooling or
2381 unitization agreement;

2382 (7) Abandon property when it is valueless or is so encumbered or in
2383 such condition that it is of no benefit to the ward;

2384 (8) Borrow money, with or without security, and advance money for
2385 the protection of the ward;

2386 (9) Effect a fair and reasonable compromise or settlement with any
2387 debtor or obligor or extend, renew, or in any manner modify the
2388 terms of any obligation owing to the ward;

2389 (10) Prosecute or defend claims or proceedings in any jurisdiction
2390 for the protection of the ward and of a guardian in the performance
2391 of guardianship duties, including the filing of a petition for
2392 dissolution of marriage. Before authorizing a guardian to bring an
2393 action described in s. 736.0207, the court shall first find that
2394 the action appears to be in the ward's best interest during the
2395 ward's probable lifetime. There shall be a rebuttable presumption
2396 that an action challenging the ward's revocation of all or part of
2397 a trust is not in the ward's best interests if the revocation
2398 relates solely to a post-death distribution. This subsection does
2399 not preclude a challenge after the ward's death. Any judicial
2400 proceeding specified in 736.0201 must be brought as an independent
2401 proceeding and is not a part of the guardianship action;

BILL

ORIGINAL

YEAR

2402 (11) Sell, mortgage, or lease any real or personal property of the
2403 ward, including homestead property, or any interest therein for
2404 cash or credit, or for part cash and part credit, and with or
2405 without security for unpaid balances;

2406 (12) Continue any unincorporated business or venture in which the
2407 ward was engaged;

2408 (13) Purchase, in the name of the ward, real property in this state
2409 in which the guardian has no interest;

2410 (14) If the ward is married with property owned by the ward and
2411 spouse as an estate by the entirety and the property is sold, the
2412 proceeds shall retain the same entirety character as the original
2413 asset, unless otherwise determined by the court;

2414 (15) Exercise any option contained in any policy of insurance
2415 payable to, or inuring to the benefit of, the ward;

2416 (16) Prepay reasonable funeral, interment, and grave marker
2417 expenses for the ward from the ward's property;

2418 (17) Make gifts of the ward's property to members of the ward's
2419 family for estate and income tax planning purposes or to continue
2420 the ward's prior pattern of gifting;

2421 (18) When the ward's will evinces an objective to obtain a United
2422 States estate tax charitable deduction by use of a split interest
2423 trust (as that term is defined in s. 736.1201), but the maximum
2424 charitable deduction otherwise allowable will not be achieved in
2425 whole or in part, execute a codicil on the ward's behalf amending
2426 the will to obtain the maximum charitable deduction allowable
2427 without diminishing the aggregate value of the benefits of any
2428 beneficiary under the will;

2429 (19) Create or amend revocable trusts or create irrevocable trusts
2430 of property of the ward that may extend beyond the disability or
2431 life of the ward in connection with estate, gift, income, or other

BILL

ORIGINAL

YEAR

2432 tax planning or to carry out other estate planning purposes. The
2433 court shall retain oversight of the assets transferred to a trust,
2434 unless otherwise ordered by the court. Before entering an order
2435 authorizing creation or amendment of a trust, the court shall
2436 appoint counsel to represent the ward in that proceeding. To the
2437 extent this provision conflicts with provisions of Chapter 736,
2438 Chapter 736 shall prevail;

2439 (20) Renounce or disclaim any interest of the ward received by
2440 testate or intestate succession, insurance benefit, annuity,
2441 survivorship, or inter vivos transfer;

2442 (21) Enter into contracts that are appropriate for, and in the best
2443 interest of, the ward; and

2444 (22) Pay for a minor ward's support, health, maintenance, and
2445 education, if the ward's parents, or either of them, are alive.

2446

2447 745.904 Petition for authority to act.

2448 (1) Requests by a guardian for authority to perform, or
2449 confirmation of, any acts under s. 745.903 or s. 745.1309 shall be
2450 by petition stating facts showing the expediency or necessity for
2451 the action; a description of any property involved; and the price
2452 and terms of a sale, mortgage, or other contract. The petition must
2453 state whether or not the ward has been adjudicated incapacitated to
2454 act with respect to the rights to be exercised.

2455 (2) No notice of a petition to authorize sale or repair of
2456 perishable or deteriorating property shall be required. Notice of a
2457 petition to perform any other acts under s. 745.903 or s. 745.1309
2458 shall be given to the ward, to the next of kin, if any, and to
2459 those interested persons whom the court has found to be entitled to
2460 notice, as provided in the Florida Probate Rules, unless waived by

BILL

ORIGINAL

YEAR

2461 the court for good cause. Notice need not be given to a ward who is
2462 a minor or who has been determined to be totally incapacitated.

2463

2464 745.905 Order authorizing action.

2465 (1) If a sale or mortgage is authorized, the order shall:

2466 (a) Describe the property;

2467 (b) If the property is authorized for sale at private sale, the
2468 price and the terms of sale; and

2469 (c) If the sale is to be by public auction, the order shall state
2470 that the sale shall be made to the highest bidder but that the
2471 guardian reserves the right to reject all bids.

2472 (2) An order for any other act permitted under s. 745.903 or s.
2473 745.1309 shall describe the permitted act and authorize the
2474 guardian to perform it.

2475

2476 745.906 Conveyance of various property rights by guardians of
2477 property.

2478 (1)(a) All legal or equitable interests in property owned as an
2479 estate by the entirety by an incapacitated person for whom a
2480 guardian of the property has been appointed may be sold,
2481 transferred, conveyed, or mortgaged in accordance with s. 745.903,
2482 if the spouse who is not incapacitated joins in the sale, transfer,
2483 conveyance, or mortgage. When both spouses are incapacitated, the
2484 sale, transfer, conveyance, or mortgage shall be by the guardians
2485 only. The sale, transfer, conveyance, or mortgage may be
2486 accomplished by one instrument or by separate instruments.

2487 (b) In authorizing or confirming the sale and conveyance of real or
2488 personal property owned by the ward and the ward's spouse as an
2489 estate by the entirety or as joint tenants with right of
2490 survivorship, the court may provide that one-half of the net

BILL

ORIGINAL

YEAR

2491 proceeds of the sale shall go to the guardian of the ward and the
2492 other one-half to the ward's spouse, or the court may provide for
2493 the proceeds of the sale to retain the same character as to
2494 survivorship as the original asset.

2495 (c) A guardian of property shall collect all payments coming due on
2496 intangible property, such as notes and mortgages and other
2497 securities owned by the ward and the ward's spouse as an estate by
2498 the entirety or as joint tenants with right of survivorship, and
2499 shall retain one-half of all principal and interest payments so
2500 collected and shall pay the other one-half of the collections to
2501 the spouse who is not incapacitated. If both spouses are
2502 incapacitated, the guardian of either shall collect the payments,
2503 retain one-half of the principal and interest payments, and pay the
2504 other one-half to the guardian of the other spouse. The court may
2505 direct that such payments retain their status as to survivorship or
2506 specify that such receipts be allocated in a manner other than
2507 equal division.

2508 (d) The guardian of an incapacitated person shall collect all
2509 payments of rents on real estate held as an estate by the
2510 entirety and, after paying all charges against the property, such
2511 as taxes, insurance, maintenance, and repairs, shall retain one-
2512 half of the net rents so collected and pay the other one-half to
2513 the spouse who is not incapacitated. If both spouses are
2514 incapacitated, the guardian of the property of either may collect
2515 the rent, pay the charges, retain one-half of the net rent, and pay
2516 the other one-half to the guardian of the other spouse. The court
2517 may direct that such payments retain their status as to
2518 survivorship or specify that such receipts be allocated in a manner
2519 other than equal division.

BILL

ORIGINAL

YEAR

2520 (2) In determining the value of life estates or remainder
2521 interests, the American Experience Mortality Tables may be used.

2522 (3) Nothing in this section shall prohibit the court in its
2523 discretion from appointing a sole guardian to serve as guardian for
2524 both spouses.

2525 (4) Any contingent or expectant interest in property, including
2526 marital property rights and any right of survivorship incident to
2527 joint tenancy or tenancy by the entireties, may be conveyed or
2528 released in accordance with s. 745.903.

2529

2530 745.907 Settlement of claims

2531 (1) When a settlement of any claim by or against an adult ward,
2532 whether arising as a result of personal injury or otherwise, and
2533 whether arising before or after appointment of a guardian, is
2534 proposed, but before an action to enforce it is begun, on petition
2535 by the guardian of the property stating the facts of the claim or
2536 dispute and the proposed settlement, and on evidence that is
2537 introduced, the court may enter an order authorizing the settlement
2538 if satisfied that the settlement will be in the best interest of
2539 the ward. The order shall relieve the guardian from any further
2540 responsibility in connection with the claim or dispute when
2541 settlement has been made in accordance with the order. The order
2542 authorizing the settlement may also determine whether an additional
2543 bond is required and, if so, shall fix the amount of it.

2544 (2) In the same manner as provided in subsection (1) or as
2545 authorized by s. 745.713, the natural guardians or guardian of a
2546 minor may settle any claim by or on behalf of a minor that does not
2547 exceed \$25,000.00 without bond. A guardianship shall be required
2548 when the amount of the net settlement to the ward exceeds
2549 \$50,000.00. When the amount of the net settlement to the ward

BILL

ORIGINAL

YEAR

2550 exceeds \$25,000.00 but does not exceed \$50,000.00, the court has
2551 the discretion to determine whether the natural guardians may
2552 settle the claim or whether a guardianship shall be required. No
2553 guardianship of the minor is required when the amount of the net
2554 settlement is less than \$25,000.00.

2555 (3) No settlement after an action has been commenced by or on
2556 behalf of a ward shall be effective unless approved by the court
2557 having jurisdiction of the guardianship.

2558 (4) In making a settlement under court order as provided in this
2559 section, the guardian is authorized to execute any instrument that
2560 may be necessary to effect the settlement. When executed, the
2561 instrument shall be a complete release of the guardian.

2562
2563 745.908 Authority for extraordinary actions.

2564 (1) Without first obtaining authority from the court, as described
2565 in this section, a guardian shall not:

2566 (a) Commit a ward with developmental disabilities to a facility,
2567 institution, or licensed service provider without formal placement
2568 proceeding, pursuant to chapters 393.

2569 (b) Consent on behalf of the ward to the performance on the ward of
2570 any experimental biomedical or behavioral procedure or to the
2571 participation by the ward in any biomedical or behavioral
2572 experiment. The court may permit such performance or participation
2573 only if:

2574 1. It is of direct benefit to, and is intended to preserve the life
2575 of or prevent serious impairment to the mental or physical health,
2576 of the ward; or

2577 2. It is intended to assist the ward to develop or regain the
2578 ward's abilities.

BILL

ORIGINAL

YEAR

2579 (c) Consent on behalf of the ward to termination of the ward's
2580 parental rights;

2581 (d) Consent on behalf of the ward to the performance of a
2582 sterilization or abortion procedure on the ward.

2583 (2) Before the court may grant authority to a guardian to exercise
2584 any of the powers specified in this section, the court must:

2585 (a) Appoint an attorney to represent the ward. The attorney must
2586 have the opportunity to meet with the ward and present evidence and
2587 cross-examine witnesses at any hearing on the petition for
2588 authority to act;

2589 (b) Consider independent medical, psychological, and social
2590 evaluations with respect to the ward presented by competent
2591 professionals. The court may appoint experts to assist in the
2592 evaluations. Unless an objection is filed by the ward or
2593 petitioner, the court may consider at the hearing written
2594 evaluation reports without requiring testimony. Any objection to
2595 such consideration must be filed and served on interested persons
2596 at least 3 days prior to the hearing;

2597 (c) Find by clear and convincing evidence that the ward lacks the
2598 capacity to make a decision about the issues before the court and
2599 that the ward's capacity is not likely to change in the foreseeable
2600 future; and

2601 (d) Find by clear and convincing evidence that the authority being
2602 requested is consistent with the ward's intentions expressed prior
2603 to incapacity or, in the absence of evidence of the ward's
2604 intentions, is in the best interests of the ward.

2605
2606 Section 10. Part X of chapter 745, Florida Statutes,
2607 consisting of sections 745.1001, 745.1002, 745.1003, 745.1004,
2608 745.1005, 745.1006, 745.1007, 745.1008, and 745.1009, is created to

BILL

ORIGINAL

YEAR

2609 read:

2610 PART X

2611 OVERSIGHT AND MONITORING

2612 745.1001 Duties of the clerk - General.

2613 In addition to the duty to serve as custodian of guardianship
2614 files, the clerk shall have the duties specified below:

2615 (1) Within 30 days after the date of filing an initial guardianship
2616 plan or annual report of a guardian of person, the clerk shall
2617 examine the initial guardianship plan or annual report to assess
2618 whether it provides information required by this code and the
2619 Florida Probate Rules. Within such time, the clerk shall provide
2620 the court and the guardian a written statement of the clerk's
2621 findings.

2622 (2) Within 60 days after the filing of an inventory or annual
2623 accounting by a guardian of property, the clerk shall audit the
2624 inventory or accounting to assess whether it provides information
2625 required by this code and the Florida Probate Rules. Within such
2626 time, the clerk shall provide the court and the guardian a written
2627 audit report of the clerk's findings.

2628 (3) The clerk shall provide written notice to the court and
2629 guardian when an inventory, accounting, plan or report is not
2630 timely filed.

2631 (4) If the clerk has reason to believe further review is
2632 appropriate, the clerk may request and review records and documents
2633 that reasonably impact guardianship assets, including, but not
2634 limited to, the beginning inventory balance and any fees charged to
2635 the guardianship. As a part of this review, the clerk may conduct
2636 audits and may cause the plan and annual guardianship report and
2637 accounting to be audited. The clerk shall advise the court of the
2638 results of any such audit. Any fee or cost incurred by the guardian

BILL

ORIGINAL

YEAR

2639 in responding to the review or audit may not be paid or reimbursed
2640 by the ward's assets if there is a finding of wrongdoing by the
2641 guardian.

2642 (5) If a guardian fails to produce records and documents to the
2643 clerk upon request, the clerk may request that the court enter an
2644 order pursuant to s. 745.1004 by filing an affidavit that
2645 identifies the records and documents requested and shows good cause
2646 as to why the documents and records requested are needed to
2647 complete the audit.

2648 (6) Upon application to the court pursuant to subsection (5), the
2649 clerk may issue subpoenas to nonparties to compel production of
2650 books, papers, and other documentary evidence. Before issuance of a
2651 subpoena, the clerk must serve notice on the guardian and the ward,
2652 unless the ward is a minor or totally incapacitated, of the intent
2653 to serve subpoenas to nonparties.

2654 (a) The clerk must attach the affidavit and the proposed subpoena
2655 to the notice, and the subpoena must:

- 2656 1. State the time, place, and method for production of the
2657 documents or items, and the name and address of the person who is
2658 to produce the documents or items, if known, or, if not known, a
2659 general description sufficient to identify the person or the
2660 particular class or group to which the person belongs;
- 2661 2. Include a description of the items to be produced;
- 2662 3. State that the person who will be asked to produce the documents
2663 or items has the right to object to the production under this
2664 section and that if an objection is filed the person is not
2665 required to surrender the documents or items.

2666 (b) A copy of the notice and proposed subpoena may not be furnished
2667 to the person upon whom the subpoena is to be served.

BILL

ORIGINAL

YEAR

2668 (c) If the guardian or ward serves an objection to production under
2669 this subsection within 10 days after service of the notice, the
2670 subpoena may not be served on the nonparty until resolution of the
2671 objection. If an objection is not made within 10 days after service
2672 of the notice, the clerk may issue the subpoena to the nonparty.
2673 The court may shorten the period within which a guardian or ward is
2674 required to file an objection upon a showing by the clerk by
2675 affidavit that the ward's property is in imminent danger of being
2676 wasted, misappropriated, or lost unless immediate action is taken.

2677

2678 745.1002 Judicial review of guardianship inventories and
2679 accountings.

2680 (1) Within 60 days after the filing of the clerk's audit report,
2681 the court shall review guardianship inventories and accountings to
2682 ensure that they comply with the requirements of law. The court may
2683 appoint a general or special magistrate to assist the court in its
2684 review function. Upon examining a guardianship inventory or
2685 accounting, the court shall enter an order approving or
2686 disapproving such document or requiring the guardian to provide
2687 more information or cure deficiencies found in the inventory or
2688 accounting.

2689 (2) If the court finds, upon review of the inventory or accounting
2690 and the clerk's audit report, that the document complies with the
2691 requirements of law, the court may approve the inventory or
2692 accounting. If the audit report indicates that there are
2693 deficiencies in the inventory or accounting, the court shall notify
2694 the guardian, in writing, of the deficiencies determined by the
2695 clerk and provide a reasonable time within which the guardian must
2696 correct such deficiencies or otherwise respond by written response
2697 to the court. If the guardian does not respond within the time

BILL

ORIGINAL

YEAR

2698 specified by the court, or if the guardian's response indicates a
2699 need for further action, the court may conduct a hearing, with
2700 notice to the guardian, to determine if a revised inventory or
2701 accounting must be filed or if the guardian should provide proof of
2702 any matter specified therein.

2703 (3) After a guardian has cured any deficiencies in the inventory or
2704 accounting to the satisfaction of the court, the guardian's
2705 inventory or accounting may be approved.

2706 (4) If an objection to an inventory or accounting is filed by a
2707 person determined to be an interested person, the objector may set
2708 the matter for hearing with appropriate notice to the guardian. At
2709 the conclusion of the hearing, the court shall enter an order either
2710 approving the inventory or accounting or ordering modifications to
2711 it. If an objection is found to be substantially without merit, the
2712 court may award taxable costs as in chancery actions, including
2713 reasonable attorney's fees.

2714

2715 745.1003 Judicial review of guardianship plans and reports.

2716 (1) Within 60 days after the filing of the clerk's written
2717 statement, the court shall review guardianship plans and reports to
2718 ensure that they comply with the requirements of law. The court may
2719 appoint a general or special magistrate to assist the court in its
2720 review function. Upon examining a guardianship plan or report, the
2721 court shall enter an order approving or disapproving such document
2722 or requiring the guardian to provide more information or cure
2723 deficiencies found in the plan or report.

2724 (2) If the court finds, upon review of the plan or report and the
2725 clerk's written statement, that the document complies with the
2726 requirements of law, the court may approve the plan or report. If
2727 the clerk's written statement indicates that there are deficiencies

BILL

ORIGINAL

YEAR

2728 in the plan or report, the court shall notify the guardian, in
2729 writing, of the deficiencies determined by the clerk and provide a
2730 reasonable time within which the guardian must correct such
2731 deficiencies or otherwise respond by written response to the court.
2732 If the guardian does not respond within the time specified by the
2733 court, or if the guardian's response indicates a need for further
2734 action, the court may conduct a hearing, with notice to the
2735 guardian, to determine if a revised plan or report must be filed or
2736 if the guardian should provide proof of any matter specified
2737 therein.

2738 (3) After a guardian has cured any deficiencies in the plan or
2739 report to the satisfaction of the court, the guardian's plan or
2740 report may be approved.

2741 (4) If an objection to a plan or report is filed by an interested
2742 person, the objector may set the matter for hearing with
2743 appropriate notice to the guardian. At the conclusion of the
2744 hearing, the court shall enter an order either approving the plan
2745 or report or ordering modifications to it. If an objection is found
2746 to be substantially without merit, the court may award taxable
2747 costs as in chancery actions, including reasonable attorney's fees.
2748

2749 745.1004 Order requiring guardianship documents; contempt.
2750 When a guardian fails to file a plan, report, inventory or
2751 accounting, the court shall order the guardian to file such
2752 document within 15 days after the service of the order on the
2753 guardian or show cause, in writing, why the guardian should not be
2754 compelled to do so. A copy of the order shall be served on the
2755 guardian. If the guardian fails to file the document within the
2756 time specified by the order without good cause, the court shall
2757 order the guardian to show cause why the guardian should not be

BILL

ORIGINAL

YEAR

2758 held in contempt of court. At the conclusion of the hearing, the
2759 court may sanction the guardian, if good cause is not demonstrated.
2760 No fine may be paid from property of the ward.

2761

2762 745.1005 Action on review of guardianship report.

2763 If it appears from the annual guardianship report that:

2764 (1) The condition of the ward requires further examination;

2765 (2) Any change in the proposed care, maintenance, or treatment of
2766 the ward is needed;

2767 (3) The ward is qualified for restoration of some or all rights;

2768 (4) The condition or maintenance of the ward requires the

2769 performance or doing of any other thing for the best interest of
2770 the ward which is not indicated in the plan; or

2771 (5) There is any other action necessary to protect the interests of
2772 the ward

2773 the court may direct the guardian to appear at a hearing with
2774 appropriate notice to the guardian, to address such issues. The
2775 court may enter such order as it finds appropriate to protect the
2776 ward.

2777

2778 745.1006 Petition for interim judicial review

2779 (1) At any time, any interested person may petition the court for
2780 review alleging that the guardian is not complying with a
2781 guardianship plan or report, is exceeding the guardian's authority
2782 under such document, or is acting in a manner contrary to s.

2783 745.809. The petition for review must state the interest of the
2784 petitioner, nature of the objection to the guardian's action or
2785 proposed action, and facts in support of the petition. Upon the
2786 filing of any such petition, the guardian or any interested person
2787 may set the petition for hearing, with notice to the guardian.

BILL

ORIGINAL

YEAR

2788 Upon hearing, the court may prohibit or enjoin any action that is
2789 contrary to the guardian's obligations under s. 745.809.

2790 (2) The court may award taxable costs and attorney's fees as in
2791 chancery actions.

2792

2793 745.1007 Production of property.

2794 On the petition of an interested person, the court may require a
2795 guardian of property to produce satisfactory evidence that the
2796 property of the ward for which the guardian is responsible is in
2797 the guardian's possession or under the guardian's control. The
2798 court may order the guardian to produce the property for inspection
2799 by the court or under the court's direction.

2800

2801 745.1008 Guardianship monitors.

2802 (1) The court may, upon petition by an interested person or upon
2803 its own motion, appoint a monitor after hearing with notice to the
2804 guardian and the ward. The court shall not appoint as a monitor an
2805 employee of the court, the clerk, a family member of the ward, or
2806 any person with a personal interest in the proceedings.

2807 (2) The order of appointment shall be served on the guardian, the
2808 ward, and such interested persons as the court may direct.

2809 (3) The order of appointment shall specify the facts supporting the
2810 order, scope of the investigation, powers and duties of the monitor
2811 and time frame within which the investigation must be completed.

2812 (4) The monitor shall be deemed an interested person until
2813 discharged and may not have ex parte communications with the court.

2814 (5) The monitor may investigate, seek information, examine
2815 documents, and interview the ward and guardian and shall file a
2816 written report of the monitor's findings and recommendations. The
2817 report shall be verified and may be supported by documents or other

BILL

ORIGINAL

YEAR

2818 evidence. Copies of the report and all documents shall be served on
2819 the guardian, the ward, unless the ward is a minor or is totally
2820 incapacitated, and such other interested persons as the court may
2821 determine. The guardian and the ward may seek information from the
2822 monitor using discovery methods authorized in the Florida Probate
2823 Rules.

2824 (6) If it appears from the monitor's report that further action by
2825 the court to protect the interests of the ward is necessary, the
2826 court shall, after a hearing with notice, enter any order necessary
2827 to protect the ward or the ward's property, including requiring the
2828 guardian to amend a plan or report, requiring an accounting or
2829 amended accounting, ordering production of assets, freezing assets,
2830 suspending a guardian, or initiating proceedings to remove a
2831 guardian.

2832 (7) Unless otherwise prohibited by law, a monitor may be allowed a
2833 reasonable fee as determined by the court and paid from the
2834 property of the ward. No full-time state, county, or municipal
2835 employee or officer shall be paid a fee for such investigation and
2836 report. If the court finds a petition to appoint a monitor or a
2837 written communication by a third party which results in appointment
2838 of a monitor to have been filed in bad faith, the costs of the
2839 proceeding and attorney's fees shall be awarded as in chancery
2840 actions.

2841 (8) The court may appoint the office of criminal conflict and civil
2842 regional counsel as monitor if the ward is indigent.

2843
2844 745.1009 Emergency guardianship monitor.

2845 (1) The court may, upon petition by an interested person or upon
2846 its own motion, appoint a guardianship monitor qualified under s.
2847 745.1008(1) on an emergency basis without notice. The court must

BILL

ORIGINAL

YEAR

2848 find that there appears to be imminent danger that the physical or
2849 mental health or safety of the ward will be seriously impaired or
2850 that the ward's property is in danger of being wasted,
2851 misappropriated, or lost unless immediate action is taken.

2852 (2) The order appointing an emergency guardianship monitor shall
2853 specify the facts supporting the order, scope of the investigation,
2854 powers and duties of the monitor and the time frame within which
2855 the investigation must be completed.

2856 (3) The monitor shall file a report of the monitor's findings and
2857 recommendations. The report shall be verified and may be supported
2858 by documents or other evidence.

2859 Copies of the report and all documents shall be served on:

2860 (a) the guardian,

2861 (b) attorney for the ward, if any, and

2862 (c) such other interested persons as the court may determine
2863 appropriate after the court has made a determination under
2864 subsection (4).

2865 (4) Upon review of the report, the court shall determine whether
2866 further action is necessary to protect the person or property of
2867 the ward.

2868 (5)(a) If the court finds that further action is necessary to
2869 protect the person or property of the ward, the court shall issue an
2870 order to show cause directed to the guardian or other respondent
2871 stating the essential facts constituting the conduct charged
2872 action. The notice of hearing shall be served on the guardian,
2873 other respondent, if any, and attorney for the ward, if any, and
2874 shall provide a reasonable time for the hearing after service of
2875 the order.

2876 (b) At any time prior to the hearing on the order to show cause,
2877 the court may issue a temporary injunction, a restraining order, or

BILL

ORIGINAL

YEAR

2878 an order freezing assets; may suspend the guardian; may appoint a
2879 guardian ad litem; or may issue any other appropriate order to
2880 protect the health, safety, or property of the ward. A copy of all
2881 such orders or injunctions shall be transmitted by the court or
2882 under its direction to all parties at the time of entry of the
2883 order or injunction.

2884 (c) Following a hearing on the order to show cause, the court may
2885 impose sanctions on the guardian or other respondent or take any
2886 other action authorized by law, including entering a judgment of
2887 contempt; ordering an accounting or amended accounting; freezing
2888 assets; referring the case to local law enforcement agencies or the
2889 state attorney; filing an abuse, neglect, or exploitation complaint
2890 with the Department of Children and Family Services; or initiating
2891 proceedings to remove the guardian.

2892 Nothing in subsection (5) shall be construed to preclude the
2893 mandatory reporting requirements of chapter 39.

2894 (6) Unless otherwise prohibited by law, a monitor may be allowed a
2895 reasonable fee as determined by the court and paid from the
2896 property of the ward. No full-time state, county, or municipal
2897 employee or officer shall be paid a fee for such investigation and
2898 report. If the court finds the petition to appoint a court monitor
2899 or a written communication by a third party which results in
2900 appointment of a monitor to have been filed in bad faith, the costs
2901 of the proceeding and attorney's fees, shall be awarded as in
2902 chancery.

2903 (7) The court may appoint the office of criminal conflict and civil
2904 regional counsel as monitor if the ward is indigent.

2905

2906 Section 11. Part XI of chapter 745, Florida Statutes,
2907 consisting of sections 745.1101, 745.1102, 745.1103, 745.1104,

BILL

ORIGINAL

YEAR

2908 745.1105, 745.1106, 745.1107, 745.1108, 745.1109, and 745.1110, is
 2909 created to read:

2910 PART XI

2911 RESIGNATION AND DISCHARGE

2912 745.1101 Resignation of guardian.

2913 (1) A guardian may resign at any time.

2914 (2) A resigning guardian shall retain the duties and
 2915 responsibilities of a guardian until discharged by the court as
 2916 specified in this part.

2917 (3) A resigning guardian shall file a resignation with the court
 2918 and, unless waived, serve a notice of resignation on:

2919 (a) next of kin of the ward;

2920 (b) the ward, unless the ward has been found to be totally
 2921 incapacitated or is a minor; and

2922 (c) a successor or proposed successor guardian, if any.

2923
 2924 745.1102 Resignation and discharge of guardian of property.

2925 (1) A successor guardian of property shall be appointed if a
 2926 guardian dies, becomes incapacitated, resigns or is removed.

2927 (2) A resigning guardian of property shall file a petition for
 2928 distribution and discharge and final accounting and shall serve
 2929 such documents and a notice of filing petition for distribution and
 2930 discharge and final accounting on the persons specified in s.

2931 745.1101. The guardian's final accounting shall be subject to audit
 2932 by the clerk in the manner and within the time specified in s.

2933 745.1001, unless waived by an appointed successor guardian. The
 2934 petition for distribution and discharge shall include a schedule of
 2935 unpaid expenses of the ward and administration expenses to be paid
 2936 prior to discharge.

BILL

ORIGINAL

YEAR

2937 (3) The notice of filing petition for distribution and discharge
2938 and final accounting shall specify that interested persons have 30
2939 days from the date of receipt of the notice to file any objections
2940 with the court. If no objections are timely filed, the court may
2941 enter an order authorizing distribution of assets without further
2942 notice or hearing. If objections are timely filed, the objections
2943 shall be resolved as provided in the Florida Probate Rules.

2944 (4) Upon approval of a resigned guardian's final accounting and
2945 petition for distribution and discharge, the guardian is entitled
2946 to distribute assets and be discharged, regardless of whether a
2947 successor guardian has been appointed.

2948 (5) If no successor guardian is appointed at the time the petition
2949 for distribution and discharge is heard, the court may appoint an
2950 emergency temporary guardian.

2951 (6) Prior to discharge, a resigning guardian shall deliver all
2952 assets of the ward and copies of all asset records to a successor
2953 guardian, an emergency temporary guardian or as otherwise directed
2954 by the court.

2955 (7) Upon petition by an interested person or on the court's own
2956 motion, an attorney may be appointed to represent the ward in the
2957 discharge proceedings. When a court appoints an attorney for the
2958 ward, the court must appoint the office of criminal conflict and
2959 civil regional counsel or a private attorney as prescribed in s.
2960 27.511(6). A private attorney must be one who is included in the
2961 attorney registry compiled pursuant to s. 27.40. Appointments of
2962 private attorneys must be made on a rotating basis, taking into
2963 consideration conflicts arising under this code. The attorney for
2964 the ward shall represent the preferences expressed by the ward, to
2965 the extent consistent with the rules regulating the Florida Bar.

BILL

ORIGINAL

YEAR

2966 The attorney for the ward may assist in locating a successor
2967 guardian.

2968 (8) A successor guardian may be appointed and have letters issued
2969 after a guardian has resigned and before an order of discharge of
2970 the resigned guardian has been entered. The successor guardian
2971 succeeds to the powers specified in the letters of guardianship and
2972 such guardian's authority shall inure as of the date of issuance of
2973 letters.

2974

2975 745.1103 Termination of guardianship of property

2976 (1) When a ward becomes sui juris, has been restored to capacity as
2977 to all rights related to the ward's property, or the guardianship
2978 has been relocated to an out-of-state jurisdiction, the guardian
2979 shall file a final accounting and petition for discharge. The
2980 accounting and petition, together with a notice of filing the final
2981 accounting and petition for discharge, shall be served on the ward.
2982 The ward may waive audit of the guardian's final accounting.

2983 (2) When the ward's property has been exhausted except for clothing
2984 and minimal personal effects and the guardian receives no income on
2985 behalf of the ward, the guardian may file a final accounting and
2986 petition for discharge. The final accounting and petition for
2987 discharge, together with a notice of filing the final accounting
2988 and petition for discharge, shall be served on the ward, the ward's
2989 next of kin, and such persons as the court may direct.

2990 (3) When a ward dies, the guardian must file a final accounting and
2991 petition for distribution and discharge within 45 days after the
2992 guardian has been served with letters of administration or letters
2993 of curatorship of the ward's estate. The petition for distribution
2994 and discharge and final accounting and notice of filing shall be
2995 served on the personal representative or curator. The personal

BILL

ORIGINAL

YEAR

2996 representative or curator may waive audit of the guardian's final
 2997 accounting.

2998 (4) If no objections are timely filed by the ward, in the case of a
 2999 ward who has become sui juris or has been restored to capacity, or
 3000 by the personal representative or curator, in the case of a
 3001 deceased ward, the guardian may distribute the ward's assets as
 3002 directed by the court and, upon proof of such distribution, shall
 3003 be entitled to discharge.

3004 (5) If objections to the final accounting or petition for discharge
 3005 are timely filed, the objections shall be resolved as provided in
 3006 the Florida Probate Rules.

3007 (6) The guardian applying for discharge may retain from the funds
 3008 in the guardian's
 3009 possession a sufficient amount to pay the final costs of
 3010 administration, including guardian and attorney's fees.

3011 (7) The court retains jurisdiction over the guardian until the
 3012 guardian is discharged.

3013
 3014 745.1104 Discharge of guardian of property named as personal
 3015 representative.

3016 (1) A guardian of property who is subsequently appointed sole
 3017 personal representative of a deceased ward's estate must serve a
 3018 copy of the guardian's final accounting and petition for
 3019 distribution and discharge, together with a notice of filing the
 3020 final accounting and petition for distribution and discharge, on
 3021 the beneficiaries of the ward's estate who will be affected by the
 3022 report. If the beneficiary of the estate is a trust of which the
 3023 guardian is sole trustee, the final accounting must be served on
 3024 qualified beneficiaries of the trust as defined in s. 736.0103.

BILL

ORIGINAL

YEAR

3025 (2) All such beneficiaries shall have 30 days from receipt of the
3026 final accounting and petition for distribution and discharge to
3027 file objections thereto. If objections are timely filed, the
3028 objections shall be resolved as provided in the Florida Probate
3029 Rules.

3030 (3) The guardian may not be discharged until:

3031 (a) All objections have been resolved;

3032 (b) The final accounting of the guardian is approved by the court
3033 or waived by the persons entitled to notice under subsection (1);
3034 and

3035 (c) All property has been distributed to the ward's estate or the
3036 persons entitled to it.

3037

3038 745.1105 Termination of guardianship of property on change of
3039 residence of ward to foreign jurisdiction.

3040 (1) When the residence of a ward has changed to another state or
3041 country, and the foreign court having jurisdiction over the ward at
3042 the ward's new residence has issued letters or the equivalent, the
3043 guardian of the property in this state may file a final accounting
3044 and petition for discharge.

3045 (2) The guardian shall serve the petition for discharge and final
3046 accounting on the new guardian, the ward's next of kin and all
3047 known creditors of the ward with a notice directing that any
3048 objections must be filed within 30 days. If an objection is timely
3049 filed, any interested person may set the objection for hearing. If
3050 no notice of hearing is served within 60 days after filing the
3051 objection, the objection is deemed abandoned.

3052 (3) Upon disposition of all objections, or if no objection is
3053 filed, distribution shall be made by the Florida guardian. On proof
3054 that the remaining property in the guardianship has been received

BILL

ORIGINAL

YEAR

3055 by the foreign guardian, the Florida guardian of property shall be
3056 discharged. The entry of the order discharging the Florida guardian
3057 previously incurred.

3058 (4) The Florida guardian's final accounting shall not be subject to
3059 audit.

3060

3061 745.1106 Disposition of unclaimed funds held by guardian.

3062 (1) When a ward dies and the guardian cannot distribute the ward's
3063 property because no estate proceeding has been instituted, the
3064 guardian of property shall be considered an interested person
3065 pursuant to s. 733.202 and may, after a reasonable time, petition
3066 for appointment of a personal representative or curator. In the
3067 alternative, the guardian may follow the procedures set forth in
3068 subsection (3).

3069 (2) When a guardian is unable to locate the ward after diligent
3070 search, the guardian may file a petition pursuant to s. 731.103(3)
3071 and, upon a determination of death, may proceed under subsections
3072 (1) or (3).

3073 (3) The court may order the guardian of property to sell the
3074 property of the ward and deposit the proceeds and cash on hand
3075 after retaining the amounts provided for in paragraph (d) with the
3076 clerk. The clerk shall acknowledge receipt of the funds and deposit
3077 them in the registry of the court, to be disposed of as follows:

3078 (a) If the value of the funds is \$500 or less, the clerk shall post
3079 a notice for 30 days at the courthouse specifying the amount, the
3080 name of the ward, the guardianship court file number, the name and
3081 mailing address of the guardian, and other pertinent information
3082 that will put interested persons on notice.

BILL

ORIGINAL

YEAR

3083 (b) If the value of the funds is over \$500, the clerk shall publish
3084 the notice once a month for 2 consecutive months in a newspaper of
3085 general circulation in the county.

3086 (4) Pursuant to subsection (3), after the expiration of 6 months
3087 from the posting or first publication, the clerk shall deposit the
3088 funds with the Chief Financial Officer after deducting the clerk's
3089 fees and the costs of publication.

3090 (a) Upon receipt of the funds, the Chief Financial Officer shall
3091 deposit them in a separate fund devoted to the provision of
3092 guardianship services to indigent wards. All interest and all
3093 income that may accrue from the money while so deposited shall
3094 belong to the fund. The funds so deposited shall constitute and be
3095 a permanent appropriation for payments by the Chief Financial
3096 Officer as required by court orders entered as provided by
3097 paragraph (b).

3098 (b) On petition to the court that directed deposit of the funds and
3099 informal notice to the Department of Legal Affairs and the ward's
3100 next of kin, any person claiming entitlement to the funds may
3101 petition for a court order directing the payment of the funds to the
3102 petitioner. Such petition must be filed within 5 years after
3103 deposit of the funds with the Chief Financial Officer. All funds
3104 deposited with the Chief Financial Officer and not claimed within 5
3105 years from the date of deposit shall escheat to the state to be
3106 deposited in the Department of Elder Affairs Administrative Trust
3107 Fund to be used solely for the provision of guardianship services
3108 for indigent wards as determined by the Secretary of the Department
3109 of Elder Affairs.

3110 (c) Upon depositing the funds with the clerk, a guardian of
3111 property may file a final accounting and petition for discharge
3112 under s. 745.1103.

3113 (d) A guardian depositing assets with the clerk is permitted to
3114 retain from the assets in the guardian's possession a sufficient
3115 amount to pay the final costs of administration, including guardian
3116 and attorney's fees accruing prior to the order of discharge. Any
3117 surplus funds so retained must be deposited with the clerk prior to
3118 discharge of the guardian of property.

3119

3120 745.1107 Resignation and discharge of guardian of person.

3121 (1) A successor guardian of person shall be appointed if a guardian
3122 dies, becomes incapacitated, resigns or is removed.

3123 (2) A resigning guardian of person shall file a resignation and
3124 petition for discharge and shall serve the resignation, petition,
3125 and a notice of filing on the persons specified in s. 745.1101. The
3126 guardian is entitled to discharge upon proof that the guardian has
3127 fully discharged the guardian's duties and proof of delivery to a
3128 successor guardian or emergency temporary guardian of copies of all
3129 records of medical, personal and residential care for the ward.

3130 (3) Upon petition by an interested person or on the court's own
3131 motion, an attorney may be appointed to represent the ward in the
3132 discharge proceedings. When a court appoints an attorney for a
3133 ward, the court must appoint the office of criminal conflict and
3134 civil regional counsel or a private attorney as prescribed in s.
3135 27.511(6). A private attorney must be one who is included in the
3136 attorney registry compiled pursuant to s. 27.40. Appointments of
3137 private attorneys must be made on a rotating basis, taking into
3138 consideration conflicts arising under this code. The attorney for
3139 the ward shall represent the preferences expressed by the ward, to
3140 the extent consistent with the rules regulating the Florida Bar.
3141 The attorney for the ward may assist in locating a successor
3142 guardian.

3143 (4) A successor guardian of person may be appointed and have
3144 letters issued after a guardian has resigned and before an order of
3145 discharge of the resigned guardian has been entered. The successor
3146 guardian shall exercise the powers specified in the letters of
3147 guardianship and such guardian's authority inures as of the date of
3148 issuance of letters.

3149

3150 745.1108 Termination of guardianship of person.

3151 (1) When a ward becomes sui juris or is restored to capacity, a
3152 guardian of person may file a petition for discharge, specifying
3153 the grounds therefor.

3154 (2) When the guardian has been unable to locate the ward after
3155 diligent search, a guardian of person may file a petition for
3156 discharge, specifying the guardian's attempts to locate the ward.

3157 (3) In the case of a ward who has become sui juris or has been
3158 restored to capacity, a copy of the petition for discharge and a
3159 notice of hearing on said petition shall be served on the ward,
3160 unless waived.

3161 (4) If a guardian has been unable to locate the ward, the guardian
3162 shall serve the petition for discharge and a notice of hearing on
3163 the ward's next of kin and such other persons as the court may, in
3164 its discretion, direct.

3165 (5) A guardian of person is discharged without further proceedings
3166 upon filing a certified copy of the ward's death certificate,
3167 together with a notice of discharge.

3168 (6) The court retains jurisdiction over the guardian until the
3169 guardian is discharged.

3170

3171 745.1109 Termination of guardianship of person on change of
3172 residence of ward to foreign jurisdiction.

BILL

ORIGINAL

YEAR

3173 (1) When the residence of a ward has changed to another state or
3174 country and the foreign court having jurisdiction of the ward at
3175 the ward's new place of residence has issued letters or the
3176 equivalent, the guardian of person in this state may file a
3177 petition for discharge and serve it on the new foreign guardian and
3178 the ward's next of kin with a notice directing that any objections
3179 must be filed within 30 days.

3180 (2) If an objection is timely filed, any interested person may set
3181 the objection for hearing. If no notice of hearing is served within
3182 60 days after filing the objection, the objection is deemed
3183 abandoned.

3184 (3) Upon disposition of all objections, or if no objection is
3185 filed, the guardian of person shall be discharged.

3186

3187 745.1110 Order of discharge.

3188 (1) If the court is satisfied that the guardian has faithfully
3189 discharged the guardian's duties and, in the case of a guardian of
3190 property, has delivered the property of the ward to the person
3191 entitled, and that the interests of the ward are protected, the
3192 court shall enter an order discharging the guardian from any
3193 further duties and liabilities as guardian. The discharge shall
3194 also act as a bar to any action against the guardian, as such and
3195 individually, or the guardian's surety, as to matters adequately
3196 disclosed to interested persons.

3197 (2) As to matters not adequately disclosed to interested persons,
3198 any action against the guardian, as such and individually, shall be
3199 barred unless commenced within 2 years of entry of the order of
3200 discharge.

3201

3202 Section 12. Part XII of chapter 745, Florida Statutes,

BILL

ORIGINAL

YEAR

3203 consisting of sections 745.1201, 745.1202, 745.1203, 745.1204,
3204 745.1205, and 745.1206, is created to read:

3205 PART XII

3206 REMOVAL OF GUARDIANS

3207 745.1201 Reasons for removal of guardian.

3208 A guardian may be removed for any of the following reasons, and the
3209 removal shall be in addition to any other penalties prescribed by
3210 law:

3211 (1) Fraud in obtaining appointment.

3212 (2) Failure to discharge guardianship duties.

3213 (3) Abuse of guardianship powers.

3214 (4) An incapacity or illness, including substance abuse, which
3215 renders the guardian incapable of discharging the guardian's
3216 duties.

3217 (5) Willful failure to comply with any order of the court.

3218 (6) Failure to account for property sold or to produce the ward's
3219 property when so required.

3220 (7) Waste, embezzlement, or other mismanagement of the ward's
3221 property.

3222 (8) Failure to give bond or security when required by the court or
3223 failure to file with the annual guardianship plan the evidence
3224 required by s. 745.607 that the sureties on the guardian's bond are
3225 alive and solvent.

3226 (9) Conviction of a felony.

3227 (10) Appointment of a receiver, trustee in bankruptcy, or
3228 liquidator for any corporate guardian.

3229 (11) Development of a conflict of interest between the ward and the
3230 guardian.

3231 (12) Having been found guilty of, regardless of adjudication, or
3232 entered a plea of nolo contendere or guilty to, any offense

BILL

ORIGINAL

YEAR

3233 described in s. 435.04(2), s. 741.28 or under any similar statute
3234 of another jurisdiction.

3235 (13) A failure to fulfill the guardianship education requirements.

3236 (14) A material change in the ward's financial circumstances so
3237 that the guardian is no longer qualified to manage the finances of
3238 the ward, or the previous degree of management is no longer
3239 required.

3240 (15) After appointment, the guardian becomes a disqualified person
3241 as specified in s. 745.502.

3242 (16) Upon a showing that removal of the current guardian is in the
3243 best interest of the ward.

3244

3245 745.1202 Proceedings for removal of a guardian.

3246 A petition to remove a guardian may be filed by any surety,
3247 interested person, or by the ward. Formal notice shall be served on
3248 the guardian. After hearing, the court may enter an order that is
3249 proper considering the pleadings and the evidence.

3250

3251 745.1203 Accounting upon removal.

3252 A removed guardian of property shall file with the court a true,
3253 complete, and final accounting of the ward's property within 30
3254 days after removal and shall serve a copy on the successor
3255 guardian, if any; the attorney for the ward, if any; and the ward,
3256 unless the ward is a minor or has been determined to be totally
3257 incapacitated to manage or dispose of property.

3258

3259 745.1204 Appointment of successor guardian upon removal.

3260 (1) If there is still the need for a guardian of the ward, the
3261 court must appoint a successor guardian as permitted under s.

3262 745.501.

BILL

ORIGINAL

YEAR

3263 (2) If no successor guardian has been appointed when a guardian is
3264 removed, the court shall appoint an attorney to represent the ward
3265 and the accounting shall be served on the ward. The ward may
3266 propose a successor guardian and the court may appoint an emergency
3267 temporary guardian to serve until letters are issued to a successor
3268 guardian.

3269

3270 745.1205 Surrender of property upon removal.

3271 A removed guardian of property shall deliver to the successor or
3272 emergency temporary guardian all property of the ward and copies of
3273 all records under the guardian's control within 30 days after
3274 notice of issuance of letters to the successor or emergency
3275 temporary guardian, unless otherwise ordered by the court.

3276

3277 745.1206 Proceedings for contempt.

3278 If a removed guardian of property fails to file a true, complete,
3279 and final accounting or turn over to the successor or emergency
3280 temporary guardian the property of the ward and copies of all
3281 guardianship records that are in the guardian's control, the court
3282 shall issue an order requiring the guardian to show cause for such
3283 failure. If reasonable cause is shown by the guardian, the court
3284 shall set a reasonable time within which to comply, and, on failure
3285 to comply with this or any subsequent order, the removed guardian
3286 may be held in contempt. Proceedings for contempt may be instituted
3287 by the court, by any interested person, including the ward, or by a
3288 successor or emergency temporary guardian.

3289

3290 Section 13. Part XIII of chapter 745, Florida Statutes,
3291 consisting of sections 745.1301, 745.1302, 745.1303, 745.1304,
3292 745.1305, 745.1306, 745.1307, 745.1308, 745.1309, 745.1310,

BILL

ORIGINAL

YEAR

3293 745.1311, 745.1312, 745.1313, 745.1314, and 745.1315, is created to
3294 read:

3295 PART XIII

3296 MISCELLANEOUS

3297 745.1301 Suspension of statutes of limitation in favor of guardian.
3298 If a person entitled to bring an action is declared incapacitated
3299 before expiration of the time limited for the commencement of the
3300 action and the cause of the action survives, the action may be
3301 commenced by a guardian of property after such expiration and
3302 within 1 year from the date of the issuance of letters or the time
3303 otherwise limited by law, whichever is longer.

3304

3305 745.1302 Appraisals.

3306 Upon motion by an interested person, the court may appoint
3307 appraisers to appraise property of the ward that is subject to the
3308 guardianship. This section does not limit the power of a guardian
3309 of property to employ appraisers without court order pursuant to s.
3310 745.902(12).

3311

3312 745.1303 Determination regarding alternatives to guardianship.

3313 (1) Any judicial determination concerning the validity or effect of
3314 the ward's power of attorney, durable power of attorney, trust or
3315 trust amendment shall be promptly reported in the guardianship
3316 proceeding by the guardian of property.

3317 (2) Any judicial determination concerning the validity or effect of
3318 the ward's health care surrogate shall be promptly reported in the
3319 guardianship proceeding by the guardian of person.

3320 (3) During the guardianship, an interested person may file a
3321 petition alleging that, due to a change in circumstances or the
3322 discovery of an alternative not previously considered by the court,

BILL

ORIGINAL

YEAR

3323 | there is an alternative to guardianship which will sufficiently
3324 | address the problems of the ward and the court shall consider the
3325 | continued need for a guardian and the extent of the continued need
3326 | for delegation of the ward's rights, if any.

3327

3328 | 745.1304 Support of ward's dependents.

3329 | (1) A guardian of property shall first apply the ward's income to
3330 | the ward's care, support, education, maintenance, health care and
3331 | cost of funeral and burial or cremation. The guardian shall not use
3332 | the ward's property for support of the ward's dependents unless
3333 | approved by the court. The court may approve the guardian to use
3334 | the ward's income for the care, support, education, maintenance,
3335 | cost of final illness, and cost of funeral and burial or cremation
3336 | of the spouse or dependents of the ward, to the extent funds are
3337 | available for such use, without jeopardizing the needs of the ward,
3338 | taking into consideration the resources of the spouse or
3339 | dependents. If the income is not sufficient for these purposes, the
3340 | court may approve the expenditure of principal for such purposes.

3341 | (2) The word "dependents," as used in subsection (1) means, in
3342 | addition to those persons who are legal dependents of a ward under
3343 | existing law, the ward's parents, and persons to whom the ward was
3344 | providing support prior to the ward's incapacity.

3345

3346 | 745.1305 Petition for support of ward's dependents.

3347 | (1) A spouse or dependent of the ward, as defined in s. 745.1304,
3348 | may petition for an order directing the guardian of property to
3349 | contribute to the support of the person from the income or property
3350 | of the ward. The court may enter an order for support of the spouse
3351 | or dependent out of the ward's income and property that is subject
3352 | to the guardianship. The grant or denial of an order for support

BILL

ORIGINAL

YEAR

3353 shall not preclude a further petition for support or for increase,
3354 decrease, modification, or termination of allowance for support by
3355 either the petitioner or the guardian. Delivery to the recipient
3356 shall be a release of the guardian for payments made pursuant to
3357 the order.

3358 (2) If the property of the ward is derived in whole or in part from
3359 payments of compensation, adjusted compensation, pension,
3360 insurance, or other benefits made directly to the guardian by the
3361 United States Department of Veterans Affairs, notice of the
3362 petition for support shall be given by the petitioner to the office
3363 of the United States Department of Veterans Affairs having
3364 jurisdiction over the area in which the court is located and the
3365 chief attorney for the Department of Veterans' Affairs in this
3366 state at least 15 days before the hearing on the petition.

3367 (3) The court may not authorize payments from an incapacitated
3368 ward's income or property unless the ward has been adjudicated
3369 incapacitated to manage such income or property in accordance with
3370 s. 745.311.

3371 (4) In a voluntary guardianship, a petition for support may be
3372 granted only upon the written consent of the ward.

3373
3374 745.1306 Payments to guardian of person.

3375 If there is more than one guardian, either guardian may petition
3376 for an order directing the guardian of property to pay to the
3377 guardian of person periodic amounts for the support, care,
3378 maintenance, education, and other needs of the ward. The amount may
3379 be increased or decreased from time to time. If an order is
3380 entered, proof of delivery to the guardian of person for payments
3381 made shall be a sufficient release of the guardian who makes the
3382 payments pursuant to the order. The guardian of property shall not

BILL

ORIGINAL

YEAR

3383 | be bound to see to the application of the payments and the guardian
3384 | of person shall not be required to file an accounting for the funds
3385 | received, unless otherwise ordered to do so by the court.

3386

3387 | 745.1307 Actions by and against guardian or ward.

3388 | If an action is brought by a guardian against the ward, by a ward
3389 | against the guardian, or in which the interest of the guardian is
3390 | adverse to that of the ward, a guardian ad litem shall be appointed
3391 | to represent the ward in that proceeding. In any litigation between
3392 | the guardian and the ward, the guardian ad litem may petition the
3393 | court, as defined by this code, for removal of the guardian.

3394

3395 | 745.1308 Guardian forbidden to borrow or purchase; exceptions.

3396 | (1) A professional guardian may not purchase property or borrow
3397 | money from the ward.

3398 | (2) A guardian who is not a professional guardian may purchase
3399 | property from the ward if the property is to be purchased at fair
3400 | market value and the court gives prior authorization for the
3401 | transaction.

3402 | (3) A guardian who is not a professional guardian may borrow money
3403 | from the ward if the loan is to be made at the prevailing interest
3404 | rate, with adequate security, and the court gives prior
3405 | authorization for the transaction.

3406

3407 | 745.1309 Conflicts of interest; prohibited activities; court
3408 | approval; breach of fiduciary duty.

3409 | (1) The fiduciary relationship which exists between the guardian
3410 | and the ward may not be used for the private gain of the guardian
3411 | other than the remuneration for services rendered for the ward. The
3412 | guardian may not incur any obligation on behalf of the ward which

BILL

ORIGINAL

YEAR

3413 conflicts with the proper discharge of the guardian's duties.
3414 (2) Unless prior court approval is obtained, or unless such
3415 relationship existed prior to appointment of the guardian, a
3416 guardian may not:

- 3417 (a) Have any interest, financial or otherwise, direct or indirect,
3418 in any business transaction or activity with the ward;
- 3419 (b) Acquire an ownership, possessory, security, or other pecuniary
3420 interest adverse to the ward;
- 3421 (c) Be designated as a beneficiary, co-owner or recipient of any
3422 property or benefit of the ward unless such designation or transfer
3423 was made by the ward prior to the ward's incapacity; or
- 3424 (d) Directly or indirectly purchase, rent, lease, or sell any
3425 property or services from or to any business entity of which the
3426 guardian or the guardian's spouse or any of the guardian's lineal
3427 heirs, or collateral kindred, is an officer, partner, director,
3428 shareholder, or proprietor, or has any financial interest.

3429 (3) Any activity prohibited by this section is voidable during the
3430 term of the guardianship or by the personal representative of the
3431 ward's estate, and the guardian is subject to removal and to
3432 imposition of personal liability through a proceeding for
3433 surcharge, in addition to any other remedies otherwise available.

3434 (4) In the event of a breach by the guardian of the guardian's
3435 fiduciary duty, the court shall take action to protect the ward and
3436 the ward's assets upon petition by an interested person.
3437

3438 745.1310 Purchasers and lenders protected.
3439 No person or entity purchasing, leasing, or taking a mortgage,
3440 pledge, or other lien from a guardian shall be bound to see that
3441 the money or other things of value paid to the guardian are
3442 actually needed or properly applied. The person or entity is not

BILL

ORIGINAL

YEAR

3443 otherwise bound as to the proprieties or expediciencies of the acts
3444 of the guardian.

3445

3446 745.1311 Temporary delegation of authority to surrogate.

3447 (1) A guardian may designate a surrogate guardian to exercise the
3448 powers of the guardian if the guardian is unavailable to act. A
3449 person designated as a surrogate guardian under this section must
3450 be a professional guardian or a member of the Florida Bar qualified
3451 to act under s. 745.501.

3452 (2)(a) A guardian must file a petition with the court requesting
3453 permission to designate a surrogate guardian.

3454 (b) If the court approves the designation, the order must specify
3455 the name and business address of the surrogate guardian and the
3456 duration of appointment, which may not exceed 30 days. The court
3457 may extend the appointment for good cause shown. The surrogate
3458 guardian may exercise all powers of the guardian unless limited by
3459 court order. The surrogate guardian must file with the court an
3460 oath swearing or affirming that the surrogate guardian will
3461 faithfully perform the duties delegated. The court may require the
3462 surrogate guardian to post a bond.

3463 (3) This section does not limit the responsibility of the guardian
3464 to the ward and to the court. The guardian is liable for the acts
3465 of the surrogate guardian. The guardian may terminate the authority
3466 of the surrogate guardian by filing a written notice of termination
3467 with the court.

3468 (4) The surrogate guardian is subject to the jurisdiction of the
3469 court as if appointed to serve as guardian.

3470

3471 745.1312 Multiple guardians.

3472 (1) When separate guardians of person and property have been

BILL

ORIGINAL

YEAR

3473 appointed, the guardians must consult with each other when the
3474 decision of one may affect the duties and responsibilities of the
3475 other. If there is disagreement as to a proposed action, the
3476 decision of the guardian within whose authority the decision lies
3477 shall prevail. The other guardian may petition for judicial review
3478 pursuant to s. 745.1006.

3479 (2) If there are two guardians of person or two guardians of
3480 property and there are disagreements between the co-guardians as to
3481 a proposed action, neither may act as to such proposed action
3482 without court order.

3483 (3) If there are three or more guardians of person or property, a
3484 majority of them may act. A guardian who serves on all other
3485 guardians a written objection to a proposed action shall not be
3486 liable for the action taken. Any guardian may petition the court
3487 for direction as to such matter.

3488

3489 745.1313 Effect of power of attorney and trust.

3490 (1) An interested person may file a verified petition in a
3491 guardianship proceeding seeking authority to file an action to have
3492 a ward's trust, trust amendment or power of attorney determined to
3493 be invalid pursuant to s. 745.802(10). The petition must allege
3494 that the petitioner has a good faith belief that the ward's trust,
3495 trust amendment, or durable power of attorney is invalid, and state
3496 a reasonable factual basis for that belief.

3497 (2) The petition shall be served on all interested persons by the
3498 petitioner.

3499 (3) The court shall consider such petition at a hearing with notice
3500 to all interested persons and may, for cause, find that such trust,
3501 trust amendment or durable power of attorney is not an appropriate
3502 alternative to guardianship of property.

BILL

ORIGINAL

YEAR

3503 (4) The appointment of a guardian does not limit the court's power
3504 to determine that certain authority granted under a durable power
3505 of attorney is to remain exercisable by the agent.

3506

3507 745.1314 Suspension of power of attorney before incapacity
3508 determination.

3509 (1) At any time during proceedings to determine incapacity but
3510 before the entry of an order determining incapacity, the authority
3511 granted under an alleged incapacitated person's power of attorney
3512 to a parent, spouse, child, or grandchild is suspended when an
3513 interested person files a verified petition stating that a specific
3514 power of attorney should be suspended for any of the following
3515 grounds:

3516 (a) The agent's decisions are not in accord with the alleged
3517 incapacitated person's known desires;

3518 (b) The power of attorney is invalid;

3519 (c) The agent has failed to discharge the agent's duties or
3520 incapacity or illness renders the agent incapable of discharging
3521 the agent's duties;

3522 (d) The agent has abused the agent's powers; or

3523 (e) There is a danger that the property of the alleged
3524 incapacitated person may be wasted, misappropriated, or lost unless
3525 the authority under the power of attorney is suspended.

3526 Grounds for suspending a power of attorney do not include the
3527 existence of a dispute between the agent and the petitioner which
3528 is more appropriate for resolution in some other forum or a legal
3529 proceeding other than a guardianship proceeding.

3530 (2) The verified petition must:

3531 (a) Identify one or more of the grounds in subsection (1);

BILL

ORIGINAL

YEAR

3532 (b) Include specific statements of fact showing that grounds exist
3533 to justify the relief sought; and

3534 (3) Upon the earlier of (a) the filing of a response to the
3535 petition by the agent under the power of attorney, or (b) 10 days
3536 after the service of the petition on the agent under the power of
3537 attorney, the court shall schedule the petition for an expedited
3538 hearing. Unless an emergency arises and the agent's response sets
3539 forth the nature of the emergency, the property or matter involved,
3540 and the power to be exercised by the agent, notice must be given to
3541 all interested persons, the alleged incapacitated person, and the
3542 alleged incapacitated person's attorney. The court order following
3543 the hearing must set forth what powers the agent is permitted to
3544 exercise, if any, pending the outcome of the petition to determine
3545 incapacity.

3546 (4) In addition to any other remedy authorized by law, a court may
3547 award reasonable attorney fees and costs to an agent who
3548 successfully challenges the suspension of the power of attorney if
3549 the petitioner's petition was made in bad faith.

3550 (5) The suspension of authority granted to persons other than a
3551 parent, spouse, child, or grandchild shall be as provided in
3552 s. 709.2109.

3553

3554 745.1315 Abuse, neglect, or exploitation by a guardian.

3555 (1) A guardian may not abuse, neglect, or exploit a ward.

3556 (2) A guardian has committed exploitation when the guardian:

3557 (a) Commits fraud in obtaining appointment as a guardian;

3558 (b) Abuses his or her powers; or

3559 (c) Wastes, embezzles, or intentionally mismanages the assets of
3560 the ward.

BILL

ORIGINAL

YEAR

3561 (3) A person who believes that a guardian is abusing, neglecting,
 3562 or exploiting a ward shall report the incident to the central abuse
 3563 hotline of the Department of Children and Families.

3564 (4) This section shall be interpreted in conformity with s.
 3565 825.103.

3566
 3567 Section 14. Part XIV of chapter 745, Florida Statutes,
 3568 consisting of sections 745.1401, 745.1402, 745.1403, 745.1404,
 3569 745.1405, 745.1406, 745.1407, 745.1408, 745.1409, 745.1410,
 3570 745.1411, 745.1412, 745.1413, 745.1414, 745.1415, 745.1416,
 3571 745.1417, 745.1418, 745.1419, and 745.1420, is created to read:

3572 PART XIV

3573 PUBLIC AND PROFESSIONAL GUARDIANS

3574 745.1401 Office of Public and Professional Guardians.

3575 There is created the Office of Public and Professional Guardians
 3576 within the Department of Elderly Affairs.

3577 (1) The Secretary of Elderly Affairs shall appoint the executive
 3578 director, who shall be the head of the Office of Public and
 3579 Professional Guardians. The executive director must be a member of
 3580 The Florida Bar, knowledgeable of guardianship law and of the
 3581 social services available to meet the needs of incapacitated
 3582 persons, shall serve on a full-time basis, and shall personally, or
 3583 through a representative of the office, carry out the purposes and
 3584 functions of the Office of Public and Professional Guardians in
 3585 accordance with state and federal law. The executive director shall
 3586 serve at the pleasure of and report to the secretary.

3587 (2) The executive director shall, within available resources:

3588 (a) Have oversight responsibilities for all public and professional
 3589 guardians.

BILL

ORIGINAL

YEAR

3590 (b) Establish standards of practice for public and professional
3591 guardians by rule, in consultation with professional guardianship
3592 associations and other interested stakeholders, no later than
3593 October 1, 2016. The executive director shall provide a draft of
3594 the standards to the Governor, the Legislature, and the secretary
3595 for review by August 1, 2016.

3596 (c) Review and approve the standards and criteria for the
3597 education, registration, and certification of public and
3598 professional guardians in Florida.

3599 (3) The executive director's oversight responsibilities of
3600 professional guardians must be finalized by October 1, 2016, and
3601 shall include, but are not limited to:

3602 (a) Developing and implementing a monitoring tool to ensure
3603 compliance of professional guardians with the standards of practice
3604 established by the Office of Public and Professional Guardians.
3605 This monitoring tool may not include a financial audit as required
3606 by the clerk of the circuit court under s. 745.1001.

3607 (b) Developing procedures, in consultation with professional
3608 guardianship associations and other interested stakeholders, for
3609 the review of an allegation that a professional guardian has
3610 violated the standards of practice established by the Office of
3611 Public and Professional Guardians governing the conduct of
3612 professional guardians.

3613 (c) Establishing disciplinary proceedings, conducting hearings, and
3614 taking administrative action pursuant to chapter 120.

3615 (4) The executive director's oversight responsibilities of public
3616 guardians shall include, but are not limited to:

3617 (a) Reviewing the current public guardian programs in Florida and
3618 other states.

BILL

ORIGINAL

YEAR

3619 (b) Developing, in consultation with local guardianship offices and
3620 other interested stakeholders, statewide performance measures.

3621 (c) Reviewing various methods of funding public guardianship
3622 programs, the kinds of services being provided by such programs,
3623 and the demographics of the wards. In addition, the executive
3624 director shall review and make recommendations regarding the
3625 feasibility of recovering a portion or all of the costs of
3626 providing public guardianship services from the assets or income of
3627 the wards.

3628 (d) By January 1 of each year, providing a status report and
3629 recommendations to the secretary which address the need for public
3630 guardianship services and related issues.

3631 (e) Developing a guardianship training program curriculum that may
3632 be offered to all guardians, whether public or private.

3633 (5) The executive director may provide assistance to local
3634 governments or entities in pursuing grant opportunities. The
3635 executive director shall review and make recommendations in the
3636 annual report on the availability and efficacy of seeking Medicaid
3637 matching funds. The executive director shall diligently seek ways
3638 to use existing programs and services to meet the needs of public
3639 wards.

3640 (6) The executive director may conduct or contract for
3641 demonstration projects authorized by the Department of Elderly
3642 Affairs, within funds appropriated or through gifts, grants, or
3643 contributions for such purposes, to determine the feasibility or
3644 desirability of new concepts of organization, administration,
3645 financing, or service delivery designed to preserve the civil and
3646 constitutional rights of persons of marginal or diminished
3647 capacity. Any gifts, grants, or contributions for such purposes

BILL

ORIGINAL

YEAR

3648 shall be deposited in the Department of Elderly Affairs
3649 Administrative Trust Fund.
3650
3651 745.1402 Professional guardian registration.
3652 (1) A professional guardian must register with the Office of Public
3653 and Professional Guardians established in part XIV of this chapter.
3654 (2) Annual registration shall be made on forms furnished by the
3655 Office of Public and Professional Guardians and accompanied by the
3656 applicable registration fee as determined by rule. The fee may not
3657 exceed \$100.
3658 (3) Registration must include the following:
3659 (a) Sufficient information to identify the professional guardian,
3660 as follows:
3661 1. If the professional guardian is a natural person, the name,
3662 address, date of birth, and employer identification or social
3663 security number of the person.
3664 2. If the professional guardian is a partnership or association,
3665 the name, address, and employer identification number of the
3666 entity.
3667 (b) Documentation that the bonding and educational requirements of
3668 s. 745.1403 have been met.
3669 (c) Sufficient information to distinguish a guardian providing
3670 guardianship services as a public guardian, individually, through
3671 partnership, corporation, or any other business organization.
3672 (4) Prior to registering a professional guardian, the Office of
3673 Public and Professional Guardians must receive and review copies of
3674 the credit and criminal investigations conducted under s. 745.504.
3675 The credit and criminal investigations must have been completed
3676 within the previous 2 years.

BILL

ORIGINAL

YEAR

3677 (5) The executive director of the office may deny registration to a
3678 professional guardian if the executive director determines that the
3679 guardian's proposed registration, including the guardian's credit
3680 or criminal investigations, indicates that registering the
3681 professional guardian would violate any provision of this chapter.
3682 If a guardian's proposed registration is denied, the guardian has
3683 standing to seek judicial review of the denial pursuant to chapter
3684 120.

3685 (6) The Department of Elderly Affairs may adopt rules necessary to
3686 administer this section.

3687 (7) A trust company, a state banking corporation or state savings
3688 association authorized and qualified to exercise fiduciary powers
3689 in this state, or a national banking association or federal savings
3690 and loan association authorized and qualified to exercise fiduciary
3691 powers in this state, may, but is not required to, register as a
3692 professional guardian under this section. If a trust company, state
3693 banking corporation, state savings association, national banking
3694 association, or federal savings and loan association described in
3695 this subsection elects to register as a professional guardian under
3696 this subsection, the requirements of subsections (3) and (4) do not
3697 apply and the registration must include only the name, address, and
3698 employer identification number of the registrant, the name and
3699 address of its registered agent, if any, and the documentation
3700 described in paragraph (3)(b).

3701 (8) The Department of Elderly Affairs may contract with the Florida
3702 Guardianship Foundation or other not-for-profit entity to register
3703 professional guardians.

3704 (9) The department or its contractor shall ensure that the clerks
3705 of the court and the chief judge of each judicial circuit receive
3706 information about each registered professional guardian.

BILL

ORIGINAL

YEAR

3707 (10) A state college or university or an independent college or
3708 university that is located and chartered in Florida, that is
3709 accredited by the Commission on Colleges of the Southern
3710 Association of Colleges and Schools or the Accrediting Council for
3711 Independent Colleges and Schools, and that confers degrees as
3712 defined in s. 1005.02(7) may, but is not required to, register as a
3713 professional guardian under this section. If a state college or
3714 university or independent college or university elects to register
3715 as a professional guardian under this subsection, the requirements
3716 of subsections (3) and (4) do not apply and the registration must
3717 include only the name, address, and employer identification number
3718 of the registrant.

3719
3720 745.1403 Regulation of professional guardians; application; bond
3721 required; educational requirements.

3722 (1) The provisions of this section are in addition to and
3723 supplemental to any other provision of this code, except s.
3724 745.505.

3725 (2) Each professional guardian who files a petition for appointment
3726 after October 1, 1997, shall post a blanket fiduciary bond with the
3727 clerk of the circuit court in the county in which the guardian's
3728 primary place of business is located. The guardian shall provide
3729 proof of the fiduciary bond to the clerks of each additional
3730 circuit court in which the guardian is serving as a professional
3731 guardian. The bond shall be maintained by the guardian in an amount
3732 not less than \$50,000. The bond must cover all wards for whom the
3733 guardian has been appointed at any given time. The liability of the
3734 provider of the bond is limited to the face amount of the bond,
3735 regardless of the number of wards for whom the professional
3736 guardian has been appointed. The act or omissions of each employee

BILL

ORIGINAL

YEAR

3737 of a professional guardian who has direct contact with the ward or
3738 access to the ward's assets is covered by the terms of such bond.
3739 The bond must be payable to the Governor of the State of Florida
3740 and the Governor's successors in office and conditioned on the
3741 faithful performance of all duties by the guardian. In form the
3742 bond must be joint and several. The bond is in addition to any
3743 bonds required under s. 745.607. This subsection does not apply to
3744 any attorney who is licensed to practice law in this state and who
3745 is in good standing, to any financial institution as defined in s.
3746 745.106, or a public guardian. The expenses incurred to satisfy the
3747 bonding requirements prescribed in this section may not be paid
3748 with the assets of any ward.

3749 (3) Each professional guardian defined in s. 745.106(28) and public
3750 guardian must receive a minimum of 40 hours of instruction and
3751 training. Each professional guardian must receive a minimum of 16
3752 hours of continuing education every 2 calendar years after the year
3753 in which the initial 40-hour educational requirement is met. The
3754 instruction and education must be completed through a course
3755 approved or offered by the Office of Public and Professional
3756 Guardians. The expenses incurred to satisfy the educational
3757 requirements prescribed in this section may not be paid with the
3758 assets of any ward. This subsection does not apply to any attorney
3759 who is licensed to practice law in this state or an institution
3760 acting as guardian under s. 745.1402(7).

3761 (4) Each professional guardian must allow, at the guardian's
3762 expense, an investigation of the guardian's credit history, and the
3763 credit history of employees of the guardian, in a manner prescribed
3764 by the Department of Elderly Affairs.

BILL

ORIGINAL

YEAR

3765 (5) As required in s. 745.504, each professional guardian shall
3766 allow a level 2 background screening of the guardian and employees
3767 of the guardian in accordance with the provisions of s. 435.04.

3768 (6) Each professional guardian is required to demonstrate
3769 competency to act as a professional guardian by taking an
3770 examination approved by the Department of Elderly Affairs.

3771 (a) The Department of Elderly Affairs shall determine the minimum
3772 examination score necessary for passage of guardianship
3773 examinations.

3774 (b) The Department of Elderly Affairs shall determine the procedure
3775 for administration of the examination.

3776 (c) The Department of Elderly Affairs or its contractor shall
3777 charge an examination fee for the actual costs of the development
3778 and the administration of the examination. The examination fee for
3779 a guardian may not exceed \$500.

3780 (d) The Department of Elderly Affairs may recognize passage of a
3781 national guardianship examination in lieu of all or part of the
3782 examination approved by the Department of Elderly Affairs, except
3783 that all professional guardians must take and pass an approved
3784 examination section related to Florida law and procedure.

3785 (7) The Department of Elderly Affairs shall set the minimum score
3786 necessary to demonstrate professional guardianship competency.

3787 (8) The Department of Elderly Affairs shall waive the examination
3788 requirement in subsection (6) if a professional guardian can
3789 provide:

3790 (a) Proof that the guardian has actively acted as a professional
3791 guardian for 5 years or more; and

3792 (b) A letter from a circuit judge before whom the professional
3793 guardian practiced at least 1 year which states that the

BILL

ORIGINAL

YEAR

3794 professional guardian had demonstrated to the court competency as a
3795 professional guardian.

3796 (9) The court may not appoint any professional guardian who is not
3797 registered by the Office of Public and Professional Guardians.

3798 (10) This section does not apply to a professional guardian or the
3799 employees of that professional guardian when that guardian is a
3800 trust company, a state banking corporation, state savings
3801 association authorized and qualified to exercise fiduciary powers
3802 in this state, or a national banking association or federal savings
3803 and loan association authorized and qualified to exercise fiduciary
3804 powers in this state.

3805

3806 745.1404 Complaints; disciplinary proceedings; penalties;
3807 enforcement.

3808 (1) By October 1, 2016, the Office of Public and Professional
3809 Guardians shall establish procedures to:

3810 (a) Review and, if determined legally sufficient, investigate any
3811 complaint that a professional guardian has violated the standards
3812 of practice established by the Office of Public and Professional
3813 Guardians governing the conduct of professional guardians. A
3814 complaint is legally sufficient if it contains ultimate facts that
3815 show a violation of a standard of practice by a professional
3816 guardian has occurred.

3817 (b) Initiate an investigation no later than 10 business days after
3818 the Office of Public and Professional Guardians receives a
3819 complaint.

3820 (c) Complete and provide initial investigative findings and
3821 recommendations, if any, to the professional guardian and the
3822 person who filed the complaint within 60 days after receipt.

BILL

ORIGINAL

YEAR

3823 (d) Obtain supporting information or documentation to determine the
3824 legal sufficiency of a complaint.

3825 (e) Interview a ward, family member, or interested party to
3826 determine the legal sufficiency of a complaint.

3827 (f) Dismiss any complaint if, at any time after legal sufficiency
3828 is determined, it is found there is insufficient evidence to
3829 support the allegations contained in the complaint.

3830 (g) Coordinate, to the greatest extent possible, with the clerks of
3831 court to avoid duplication of duties with regard to the financial
3832 audits prepared by the clerks pursuant to s. 745.1001.

3833 (2) The Office of Public and Professional Guardians shall establish
3834 disciplinary proceedings, conduct hearings, and take administrative
3835 action pursuant to chapter 120. Disciplinary actions may include,
3836 but are not limited to, requiring a professional guardian to
3837 participate in additional educational courses provided or approved
3838 by the Office of Public and Professional Guardians, imposing
3839 additional monitoring by the office of the guardianships to which
3840 the professional guardian is appointed, and suspension or
3841 revocation of a professional guardian's registration.

3842 (3) In any disciplinary proceeding that may result in the
3843 suspension or revocation of a professional guardian's registration,
3844 the Department of Elderly Affairs shall provide the professional
3845 guardian and the person who filed the complaint:

3846 (a) A written explanation of how an administrative complaint is
3847 resolved by the disciplinary process.

3848 (b) A written explanation of how and when the person may
3849 participate in the disciplinary process.

3850 (c) A written notice of any hearing before the Division of
3851 Administrative Hearings at which final agency action may be taken.

BILL

ORIGINAL

YEAR

3852 (4) If the office makes a final determination to suspend or revoke
3853 the professional guardian's registration, it must provide such
3854 determination to the court of competent jurisdiction for any
3855 guardianship case to which the professional guardian is currently
3856 appointed.

3857 (5) If the office determines or has reasonable cause to suspect
3858 that a vulnerable adult has been or is being abused, neglected, or
3859 exploited as a result of a filed complaint or during the course of
3860 an investigation of a complaint, it shall immediately report such
3861 determination or suspicion to the central abuse hotline established
3862 and maintained by the Department of Children and Families pursuant
3863 to s. 415.103.

3864 (6) By October 1, 2016, the Department of Elderly Affairs shall
3865 adopt rules to implement the provisions of this section.

3866

3867 745.1405 Grounds for discipline; penalties; enforcement.

3868 (1) The following acts by a professional guardian shall constitute
3869 grounds for which the disciplinary actions specified in subsection

3870 (2) may be taken:

3871 (a) Making misleading, deceptive, or fraudulent representations in
3872 or related to the practice of guardianship.

3873 (b) Violating any rule governing guardians or guardianships adopted
3874 by the Office of Public and Professional Guardians.

3875 (c) Being convicted or found guilty of, or entering a plea of
3876 guilty or nolo contendere to, regardless of adjudication, a crime
3877 in any jurisdiction which relates to the practice of or the ability
3878 to practice as a professional guardian.

3879 (d) Failing to comply with the educational course requirements
3880 contained in s. 745.1403.

BILL

ORIGINAL

YEAR

3881 (e) Having a registration, a license, or the authority to practice
3882 a regulated profession revoked, suspended, or otherwise acted
3883 against, including the denial of registration or licensure, by the
3884 registering or licensing authority of any jurisdiction, including
3885 its agencies or subdivisions, for a violation under Florida law or
3886 similar law under a foreign jurisdiction. The registering or
3887 licensing authority's acceptance of a relinquishment of
3888 registration or licensure, stipulation, consent order, or other
3889 settlement offered in response to or in anticipation of the filing
3890 of charges against the registration or license shall be construed
3891 as an action against the registration or license.

3892 (f) Knowingly filing a false report or complaint with the Office of
3893 Public and Professional Guardians against another guardian.

3894 (g) Attempting to obtain, obtaining, or renewing a registration or
3895 license to practice a profession by bribery, by fraudulent
3896 misrepresentation, or as a result of an error by the Office of
3897 Public and Professional Guardians which is known by the
3898 professional guardian and not disclosed to the Office of Public and
3899 Professional Guardians.

3900 (h) Failing to report to the Office of Public and Professional
3901 Guardians any person who the professional guardian knows is in
3902 violation of this chapter or the rules of the Office of Public and
3903 Professional Guardians.

3904 (i) Failing to perform any statutory or legal obligation placed
3905 upon a professional guardian.

3906 (j) Making or filing a report or record that the professional
3907 guardian knows to be false, intentionally or negligently failing to
3908 file a report or record required by state or federal law, or
3909 willfully impeding or obstructing another person's attempt to do

BILL

ORIGINAL

YEAR

3910 so. Such reports or records shall include only those that are
3911 signed in the guardian's capacity as a professional guardian.
3912 (k) Using the position of guardian for the purpose of financial
3913 gain by a professional guardian or a third party, other than the
3914 funds awarded to the professional guardian by the court pursuant to
3915 s. 745.113.
3916 (l) Violating a lawful order of the Office of Public and
3917 Professional Guardians or failing to comply with a lawfully issued
3918 subpoena of the Office of Public and Professional Guardians.
3919 (m) Improperly interfering with an investigation or inspection
3920 authorized by statute or rule or with any disciplinary proceeding.
3921 (n) Using the guardian relationship to engage or attempt to engage
3922 the ward, or an immediate family member or a representative of the
3923 ward, in verbal, written, electronic, or physical sexual activity.
3924 (o) Failing to report to the Office of Public and Professional
3925 Guardians in writing within 30 days after being convicted or found
3926 guilty of, or entered a plea of nolo contendere to, regardless of
3927 adjudication, a crime in any jurisdiction.
3928 (p) Being unable to perform the functions of a professional
3929 guardian with reasonable skill by reason of illness or use of
3930 alcohol, drugs, narcotics, chemicals, or any other type of
3931 substance or as a result of any mental or physical condition.
3932 (q) Failing to post and maintain a blanket fiduciary bond pursuant
3933 to s. 745.1403.
3934 (r) Failing to maintain all records pertaining to a guardianship
3935 for a reasonable time after the court has closed the guardianship
3936 matter.
3937 (s) Violating any provision of this chapter or any rule adopted
3938 pursuant thereto.

BILL

ORIGINAL

YEAR

3939 (2) When the Office of Public and Professional Guardians finds a
3940 professional guardian guilty of violating subsection (1), it may
3941 enter an order imposing one or more of the following penalties:
3942 (a) Refusal to register an applicant as a professional guardian.
3943 (b) Suspension or permanent revocation of a professional guardian's
3944 registration.
3945 (c) Issuance of a reprimand or letter of concern.
3946 (d) Requirement that the professional guardian undergoes treatment,
3947 attends continuing education courses, submits to reexamination, or
3948 satisfies any terms that are reasonably tailored to the violations
3949 found.
3950 (e) Requirement that the professional guardian pay restitution to a
3951 ward or the ward's estate, if applicable, of any funds obtained or
3952 disbursed through a violation of any statute, rule, or other legal
3953 authority.
3954 (f) Requirement that the professional guardian undergo remedial
3955 education.

3956 (3) In determining what action is appropriate, the Office of Public
3957 and Professional Guardians must first consider what sanctions are
3958 necessary to safeguard wards and to protect the public. Only after
3959 those sanctions have been imposed may the Office of Public and
3960 Professional Guardians consider and include in the order
3961 requirements designed to mitigate the circumstances and
3962 rehabilitate the professional guardian.

3963 (4) The Office of Public and Professional Guardians shall adopt by
3964 rule and periodically review the disciplinary guidelines applicable
3965 to each ground for disciplinary action that may be imposed by the
3966 Office of Public and Professional Guardians pursuant to this
3967 chapter.

BILL

ORIGINAL

YEAR

3968 (5) It is the intent of the Legislature that the disciplinary
3969 guidelines specify a meaningful range of designated penalties based
3970 upon the severity and repetition of specific offenses and that
3971 minor violations be distinguished from those which endanger the
3972 health, safety, or welfare of a ward or the public; that such
3973 guidelines provide reasonable and meaningful notice to the public
3974 of likely penalties that may be imposed for proscribed conduct; and
3975 that such penalties be consistently applied by the Office of Public
3976 and Professional Guardians.

3977 (6) The Office of Public and Professional Guardians shall by rule
3978 designate possible mitigating and aggravating circumstances and the
3979 variation and range of penalties permitted for such circumstances.

3980 (a) An administrative law judge, in recommending penalties in any
3981 recommended order, must follow the disciplinary guidelines
3982 established by the Office of Public and Professional Guardians and
3983 must state in writing any mitigating or aggravating circumstance
3984 upon which a recommended penalty is based if such circumstance
3985 causes the administrative law judge to recommend a penalty other
3986 than that provided in the disciplinary guidelines.

3987 (b) The Office of Public and Professional Guardians may impose a
3988 penalty other than those provided for in the disciplinary
3989 guidelines upon a specific finding in the final order of mitigating
3990 or aggravating circumstances.

3991 (7) In addition to, or in lieu of, any other remedy or criminal
3992 prosecution, the Office of Public and Professional Guardians may
3993 file a proceeding in the name of the state seeking issuance of an
3994 injunction or a writ of mandamus against any person who violates
3995 any provision of this chapter or any provision of law with respect
3996 to professional guardians or the rules adopted pursuant thereto.

BILL

ORIGINAL

YEAR

3997 (8) Notwithstanding chapter 120, if the Office of Public and
 3998 Professional Guardians determines that revocation of a professional
 3999 guardian's registration is the appropriate penalty, the revocation
 4000 is permanent.

4001 (9) If the Office of Public and Professional Guardians makes a
 4002 final determination to suspend or revoke the professional
 4003 guardian's registration, the office must provide the determination
 4004 to the court of competent jurisdiction for any guardianship case to
 4005 which the professional guardian is currently appointed.

4006 (10) The purpose of this section is to facilitate uniform
 4007 discipline for those actions made punishable under this section
 4008 and, to this end, a reference to this section constitutes a general
 4009 reference under the doctrine of incorporation by reference.

4010 (11) The Office of Public and Professional Guardians shall adopt
 4011 rules to administer this section.

4012
 4013 745.1406 Office of Public and Professional Guardians; appointment,
 4014 notification.

4015 (1) The executive director of the Office of Public and Professional
 4016 Guardians, after consultation with the chief judge and other
 4017 circuit judges within the judicial circuit and with appropriate
 4018 advocacy groups and individuals and organizations who are
 4019 knowledgeable about the needs of incapacitated persons, may
 4020 establish, within a county in the judicial circuit or within the
 4021 judicial circuit, one or more offices of public guardian and, if so
 4022 established, shall create a list of persons best qualified to serve
 4023 as the public guardian, who have been investigated pursuant to s.
 4024 745.504. The public guardian must have knowledge of the legal
 4025 process and knowledge of social services available to meet the
 4026 needs of incapacitated persons. The public guardian shall maintain

BILL

ORIGINAL

YEAR

4027 a staff or contract with professionally qualified individuals to
4028 carry out the guardianship functions, including an attorney who has
4029 experience in probate areas and another person who has a master's
4030 degree in social work, or a gerontologist, psychologist, registered
4031 nurse, or nurse practitioner. A public guardian that is a nonprofit
4032 corporate guardian under s. 745.503 must receive tax-exempt status
4033 from the United States Internal Revenue Service.

4034 (2) The executive director shall appoint or contract with a public
4035 guardian from the list of candidates described in subsection (1). A
4036 public guardian must meet the qualifications for a guardian as
4037 prescribed in s. 745.501(1)(a). Upon appointment of the public
4038 guardian, the executive director shall notify the chief judge of
4039 the judicial circuit and the Chief Justice of the Supreme Court of
4040 Florida, in writing, of the appointment.

4041 (3) If the needs of the county or circuit do not require a full-
4042 time public guardian, a part-time public guardian may be appointed
4043 at reduced compensation.

4044 (4) A public guardian, whether full-time or part-time, may not hold
4045 any position that would create a conflict of interest.

4046 (5) The public guardian is to be appointed for a term of 4 years,
4047 after which the public guardian's appointment must be reviewed by
4048 the executive director, and may be reappointed for a term of up to
4049 4 years. The executive director may suspend a public guardian with
4050 or without the request of the chief judge. If a public guardian is
4051 suspended, the executive director shall appoint an acting public
4052 guardian as soon as possible to serve until such time as a
4053 permanent replacement is selected. A public guardian may be removed
4054 from office during the term of office only by the executive
4055 director who must consult with the chief judge prior to said

BILL

ORIGINAL

YEAR

4056 removal. A recommendation of removal made by the chief judge must
4057 be considered by the executive director.

4058 (6) Public guardians who have been previously appointed by a chief
4059 judge prior to the effective date of this act pursuant to this
4060 section may continue in their positions until the expiration of
4061 their term pursuant to their agreement. However, oversight of all
4062 public guardians shall transfer to the Office of Public and
4063 Professional Guardians upon the effective date of this act. The
4064 executive director of the Office of Public and Professional
4065 Guardians shall be responsible for all future appointments of
4066 public guardians pursuant to this act.

4067

4068 745.1407 Powers and duties.

4069 (1) A public guardian may serve as a guardian of a person
4070 adjudicated incapacitated under this chapter if there is no family
4071 member or friend, other person, bank, or corporation willing and
4072 qualified to serve as guardian.

4073 (2) The public guardian shall be vested with all the powers and
4074 duties of a guardian under this chapter, except as otherwise
4075 provided by law.

4076 (3) The public guardian shall primarily serve incapacitated persons
4077 who are of limited financial means, as defined by contract or rule
4078 of the Department of Elderly Affairs. The public guardian may serve
4079 incapacitated persons of greater financial means to the extent the
4080 Department of Elderly Affairs determines to be appropriate.

4081 (4) The public guardian shall be authorized to employ sufficient
4082 staff to carry out the duties of the public guardian's office.

4083 (5) The public guardian may delegate to assistants and other
4084 members of the public guardian's staff the powers and duties of the
4085 office of public guardian, except as otherwise limited by law. The

BILL

ORIGINAL

YEAR

4086 public guardian shall retain ultimate responsibility for the
4087 discharge of the public guardian's duties and responsibilities.

4088 (6) Upon appointment as guardian of an incapacitated person, a
4089 public guardian shall endeavor to locate a family member or friend,
4090 other person, bank, or corporation who is qualified and willing to
4091 serve as guardian. Upon determining that there is someone qualified
4092 and willing to serve as guardian, either the public guardian or the
4093 qualified person shall petition the court for appointment of a
4094 successor guardian.

4095 (7) A public guardian may not commit a ward to a treatment
4096 facility, as defined in s. 394.455(47), without an involuntary
4097 placement proceeding as provided by law.

4098 (8) When a person is appointed successor public guardian, the
4099 successor public guardian immediately succeeds to all rights,
4100 duties, responsibilities, and powers of the preceding public
4101 guardian.

4102 (9) When the position of public guardian is vacant, subordinate
4103 personnel employed under subsection (4) shall continue to act as if
4104 the position of public guardian were filled.

4105

4106 745.1408 Costs of public guardian.

4107 (1) All costs of administration, including filing fees, shall be
4108 paid from the budget of the office of public guardian. No costs of
4109 administration, including filing fees, shall be recovered from the
4110 assets or the income of the ward.

4111 (2) In any proceeding for appointment of a public guardian, or in
4112 any proceeding involving the estate of a ward for whom a public
4113 guardian has been appointed guardian, the court shall waive any
4114 court costs or filing fees.

4115

BILL

ORIGINAL

YEAR

4116 745.1409 Preparation of budget.

4117 Each public guardian, whether funded in whole or in part by money
4118 raised through local efforts, grants, or any other source or
4119 whether funded in whole or in part by the state, shall prepare a
4120 budget for the operation of the office of public guardian to be
4121 submitted to the Office of Public and Professional Guardians. As
4122 appropriate, the Office of Public and Professional Guardians will
4123 include such budgetary information in the Department of Elderly
4124 Affairs' legislative budget request. The office of public guardian
4125 shall be operated within the limitations of the General
4126 Appropriations Act and any other funds appropriated by the
4127 Legislature to that particular judicial circuit, subject to the
4128 provisions of chapter 216. The Department of Elderly Affairs shall
4129 make a separate and distinct request for an appropriation for the
4130 Office of Public and Professional Guardians. However, this section
4131 may not be construed to preclude the financing of any operations of
4132 the office of public guardian by moneys raised through local effort
4133 or through the efforts of the Office of Public and Professional
4134 Guardians.

4135

4136 745.1410 Procedures and rules.

4137 The public guardian, subject to the oversight of the Office of
4138 Public and Professional Guardians, is authorized to:

- 4139 (1) Formulate and adopt necessary procedures to assure the
4140 efficient conduct of the affairs of the ward and general
4141 administration of the office and staff.
- 4142 (2) Contract for services necessary to discharge the duties of the
4143 office.
- 4144 (3) Accept the services of volunteer persons or organizations and
4145 provide reimbursement for proper and necessary expenses.

BILL

ORIGINAL

YEAR

4146

4147 745.1411 Surety bond.

4148 Upon taking office, a public guardian shall file a bond with surety
4149 as prescribed in s. 45.011 to be approved by the clerk. The bond
4150 shall be payable to the Governor and the Governor's successors in
4151 office, in the penal sum of not less than \$5,000 nor more than
4152 \$25,000, conditioned on the faithful performance of all duties by
4153 the guardian. The amount of the bond shall be fixed by the majority
4154 of the judges within the judicial circuit. In form the bond shall
4155 be joint and several. The bond shall be purchased from the funds of
4156 the local office of public guardian.

4157

4158 745.1412 Reports and standards.

4159 (1) The public guardian shall keep and maintain proper financial,
4160 case control, and statistical records on all matters in which the
4161 public guardian serves as guardian.

4162 (2) No report or disclosure of the ward's personal and medical
4163 records shall be made, except as authorized by law.

4164 (3) A public guardian shall file an annual report on the operations
4165 of the office of public guardian, in writing, by September 1 for
4166 the preceding fiscal year with the Office of Public and
4167 Professional Guardians, which shall have responsibility for
4168 supervision of the operations of the office of public guardian.

4169 (4) Within 6 months of appointment as guardian of a ward, the
4170 public guardian shall submit to the clerk of the court for
4171 placement in the ward's guardianship file and to the executive
4172 director of the Office of Public and Professional Guardians a
4173 report on the public guardian's efforts to locate a family member or
4174 friend, other person, bank, or corporation to act as guardian of

BILL

ORIGINAL

YEAR

4175 the ward and a report on the ward's potential to be restored to
4176 capacity.

4177 (5)(a) Each office of public guardian shall undergo an independent
4178 audit by a qualified certified public accountant at least once
4179 every 2 years. A copy of the audit report shall be submitted to the
4180 Office of Public and Professional Guardians.

4181 (b) In addition to regular monitoring activities, the Office of
4182 Public and Professional Guardians shall conduct an investigation
4183 into the practices of each office of public guardian related to the
4184 managing of each ward's personal affairs and property. If feasible,
4185 the investigation shall be conducted in conjunction with the
4186 financial audit of each office of public guardian under paragraph
4187 (a).

4188 (6) A public guardian shall ensure that each of the guardian's
4189 wards is personally visited by the public guardian or by one of the
4190 guardian's professional staff at least once each calendar quarter.
4191 During this personal visit, the public guardian or the professional
4192 staff person shall assess:

4193 (a) The ward's physical appearance and condition;

4194 (b) The appropriateness of the ward's current living situation; and

4195 (c) The need for any additional services and the necessity for
4196 continuation of existing services, taking into consideration all
4197 aspects of social, psychological, educational, direct service,
4198 health, and personal care needs.

4199 (7) The ratio for professional staff to wards shall be 1
4200 professional to 40 wards. The Office of Public and Professional
4201 Guardians may increase or decrease the ratio after consultation
4202 with the local public guardian and the chief judge of the circuit
4203 court. The basis for the decision to increase or decrease the

BILL

ORIGINAL

YEAR

4204 prescribed ratio must be included in the annual report to the
4205 secretary.
4206
4207 745.1413 Public records exemption.
4208 The home addresses, telephone numbers, dates of birth, places of
4209 employment, and photographs of current or former public guardians
4210 and employees with fiduciary responsibility; the names, home
4211 addresses, telephone numbers, dates of birth, and places of
4212 employment of the spouses and children of such persons; and the
4213 names and locations of schools and day care facilities attended by
4214 the children of such persons are exempt from s. 119.07(1) and s.
4215 24(a), Art. I of the State Constitution. As used in this section,
4216 the term "employee with fiduciary responsibility" means an employee
4217 of a public guardian who has the ability to direct any transactions
4218 of a ward's funds, assets, or property; who under the supervision
4219 of the guardian, manages the care of the ward; or who makes any
4220 health care decision, as defined in s. 765.101, on behalf of the
4221 ward. This exemption applies to information held by an agency
4222 before, on, or after July 1, 2018. An agency that is the custodian
4223 of the information specified in this section shall maintain the
4224 exempt status of that information only if the current or former
4225 public guardians and employees with fiduciary responsibility submit
4226 to the custodial agency a written request for maintenance of the
4227 exemption. This section is subject to the Open Government Sunset
4228 Review Act in accordance with s. 119.15 and shall stand repealed on
4229 October 2, 2023, unless reviewed and saved from repeal through
4230 reenactment by the Legislature.
4231
4232 745.1414 Access to records by the Office of Public and Professional
4233 Guardians; confidentiality.

BILL

ORIGINAL

YEAR

4234 (1) Notwithstanding any other provision of law to the contrary, any
4235 medical, financial, or mental health records held by an agency, or
4236 the court and its agencies, or financial audits prepared by the
4237 clerk of the court pursuant to s. 745.1001 and held by the court,
4238 which are necessary as part of an investigation of a guardian as a
4239 result of a complaint filed with the Office of Public and
4240 Professional Guardians to evaluate the public guardianship system,
4241 to assess the need for additional public guardianship, or to
4242 develop required reports, shall be provided to the Office of Public
4243 and Professional Guardians or its designee upon that office's
4244 request. Any confidential or exempt information provided to the
4245 Office of Public and Professional Guardians shall continue to be
4246 held confidential or exempt as otherwise provided by law.

4247 (2) All records held by the Office of Public and Professional
4248 Guardians relating to the medical, financial, or mental health of
4249 vulnerable adults as defined in chapter 415, persons with a
4250 developmental disability as defined in chapter 393, or persons with
4251 a mental illness as defined in chapter 394, shall be confidential
4252 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
4253 Constitution.

4254
4255 745.1415 Direct-support organization; definition; use of property;
4256 board of directors; audit; dissolution.

4257 (1) DEFINITION.— As used in this section, the term "direct-support
4258 organization" means an organization whose sole purpose is to
4259 support the Office of Public and Professional Guardians and is:

4260 (a) A not-for-profit corporation incorporated under chapter 617 and
4261 approved by the Department of State;

4262 (b) Organized and operated to conduct programs and activities; to
4263 raise funds; to request and receive grants, gifts, and bequests of

BILL

ORIGINAL

YEAR

4264 moneys; to acquire, receive, hold, invest, and administer, in its
4265 own name, securities, funds, objects of value, or other property,
4266 real or personal; and to make expenditures to or for the direct or
4267 indirect benefit of the Office of Public and Professional
4268 Guardians; and

4269 (c) Determined by the Office of Public and Professional Guardians
4270 to be consistent with the goals of the office, in the best
4271 interests of the state, and in accordance with the adopted goals
4272 and mission of the Department of Elderly Affairs and the Office of
4273 Public and Professional Guardians.

4274 (2) CONTRACT.— The direct-support organization shall operate under
4275 a written contract with the Office of Public and Professional
4276 Guardians. The written contract must provide for:

4277 (a) Certification by the Office of Public and Professional
4278 Guardians that the direct-support organization is complying with
4279 the terms of the contract and is doing so consistent with the goals
4280 and purposes of the office and in the best interests of the state.
4281 This certification must be made annually and reported in the
4282 official minutes of a meeting of the direct-support organization.

4283 (b) The reversion of monies and property held in trust by the
4284 direct-support organization:

- 4285 1. To the Office of Public and Professional Guardians if the
4286 direct-support organization is no longer approved to operate for
4287 the office;
- 4288 2. To the Office of Public and Professional Guardians if the
4289 direct-support organization ceases to exist;
- 4290 3. To the Department of Elderly Affairs if the Office of Public and
4291 Professional Guardians ceases to exist; or
- 4292 4. To the state if the Department of Elderly Affairs ceases to
4293 exist.

BILL

ORIGINAL

YEAR

4294 The fiscal year of the direct-support organization shall begin on
4295 July 1 of each year and end on June 30 of the following year.

4296 (c) The disclosure of the material provisions of the contract, and
4297 the distinction between the Office of Public and Professional
4298 Guardians and the direct-support organization, to donors of gifts,
4299 contributions, or bequests, including such disclosure on all
4300 promotional and fundraising publications.

4301 (3) BOARD OF DIRECTORS.—The Secretary of Elderly Affairs shall
4302 appoint a board of directors for the direct-support organization
4303 from a list of nominees submitted by the executive director of the
4304 Office of Public and Professional Guardians.

4305 (4) USE OF PROPERTY.—The Department of Elderly Affairs may permit,
4306 without charge, appropriate use of fixed property and facilities of
4307 the department or the Office of Public and Professional Guardians
4308 by the direct-support organization. The department may prescribe
4309 any condition with which the direct-support organization must
4310 comply in order to use fixed property or facilities of the
4311 department or the Office of Public and Professional Guardians.

4312 (5) MONIES.—Any monies may be held in a separate depository account
4313 in the name of the direct-support organization and subject to the
4314 provisions of the written contract with the Office of Public and
4315 Professional Guardians. Expenditures of the direct-support
4316 organization shall be expressly used to support the Office of
4317 Public and Professional Guardians. The expenditures of the direct-
4318 support organization may not be used for the purpose of lobbying as
4319 defined in s. 11.045.

4320 (6) PUBLIC RECORDS.—Personal identifying information of a donor or
4321 prospective donor to the direct-support organization who desires to
4322 remain anonymous is confidential and exempt from s. 119.07(1) and
4323 s. 24(a), Art. I of the State Constitution.

BILL

ORIGINAL

YEAR

4324 (7) AUDIT.—The direct-support organization shall provide for an
4325 annual financial audit in accordance with s. 215.981.

4326 (8) DISSOLUTION.—A not-for-profit corporation incorporated under
4327 chapter 617 that is determined by a circuit court to be
4328 representing itself as a direct-support organization created under
4329 this section, but that does not have a written contract with the
4330 Office of Public and Professional Guardians in compliance with this
4331 section, is considered to meet the grounds for a judicial
4332 dissolution described in s. 617.1430(1)(a). The Office of Public
4333 and Professional Guardians shall be the recipient for all assets
4334 held by the dissolved corporation which accrued during the period
4335 that the dissolved corporation represented itself as a direct-
4336 support organization created under this section.

4337
4338 745.1416 Joining Forces for Public Guardianship grant program;
4339 purpose.

4340 The Legislature establishes the Joining Forces for Public
4341 Guardianship matching grant program for the purpose of assisting
4342 counties to establish and fund community-supported public
4343 guardianship programs. The Joining Forces for Public Guardianship
4344 matching grant program shall be established and administered by the
4345 Office of Public and Professional Guardians within the Department
4346 of Elderly Affairs. The purpose of the program is to provide
4347 startup funding to encourage communities to develop and administer
4348 locally funded and supported public guardianship programs to
4349 address the needs of indigent and incapacitated residents.

4350 (1) The Office of Public and Professional Guardians may distribute
4351 the grant funds as follows:

4352 (a) As initial startup funding to encourage counties that have no
4353 office of public guardian to establish an office, or as initial

BILL

ORIGINAL

YEAR

4354 startup funding to open an additional office of public guardian
4355 within a county whose public guardianship needs require more than
4356 one office of public guardian.

4357 (b) As support funding to operational offices of public guardian
4358 that demonstrate a necessity for funds to meet the public
4359 guardianship needs of a particular geographic area in the state
4360 which the office serves.

4361 (c) To assist counties that have an operating public guardianship
4362 program but that propose to expand the geographic area or
4363 population of persons they serve, or to develop and administer
4364 innovative programs to increase access to public guardianship in
4365 this state.

4366 Notwithstanding this subsection, the executive director of the
4367 office may award emergency grants if the executive director
4368 determines that the award is in the best interests of public
4369 guardianship in this state. Before making an emergency grant, the
4370 executive director must obtain the written approval of the
4371 Secretary of Elderly Affairs. Subsections (2), (3), and (4) do not
4372 apply to the distribution of emergency grant funds.

4373 (2) One or more grants may be awarded within a county. However, a
4374 county may not receive an award that equals, or multiple awards
4375 that cumulatively equal, more than 20 percent of the total amount
4376 of grant funds appropriated during any fiscal year.

4377 (3) If an applicant is eligible and meets the requirements to
4378 receive grant funds more than once, the Office of Public and
4379 Professional Guardians shall award funds to prior awardees in the
4380 following manner:

4381 (a) In the second year that grant funds are awarded, the cumulative
4382 sum of the award provided to one or more applicants within the same

BILL

ORIGINAL

YEAR

4383 county may not exceed 75 percent of the total amount of grant funds
 4384 awarded within that county in year one.

4385 (b) In the third year that grant funds are awarded, the cumulative
 4386 sum of the award provided to one or more applicants within the same
 4387 county may not exceed 60 percent of the total amount of grant funds
 4388 awarded within that county in year one.

4389 (c) In the fourth year that grant funds are awarded, the cumulative
 4390 sum of the award provided to one or more applicants within the same
 4391 county may not exceed 45 percent of the total amount of grant funds
 4392 awarded within that county in year one.

4393 (d) In the fifth year that grant funds are awarded, the cumulative
 4394 sum of the award provided to one or more applicants within the same
 4395 county may not exceed 30 percent of the total amount of grant funds
 4396 awarded within that county in year one.

4397 (e) In the sixth year that grant funds are awarded, the cumulative
 4398 sum of the award provided to one or more applicants within the same
 4399 county may not exceed 15 percent of the total amount of grant funds
 4400 awarded within that county in year one.

4401 The Office of Public and Professional Guardians may not award grant
 4402 funds to any applicant within a county that has received grant
 4403 funds for more than 6 years.

4404 (4) Grant funds shall be used only to provide direct services to
 4405 indigent wards, except that up to 10 percent of the grant funds may
 4406 be retained by the awardee for administrative expenses.

4407 (5) Implementation of the program is subject to a specific
 4408 appropriation by the Legislature in the General Appropriations Act.

4409
 4410 745.1417 Program administration; duties of the Office of Public and
 4411 Professional Guardians.

BILL

ORIGINAL

YEAR

4412 The Office of Public and Professional Guardians shall administer
4413 the grant program. The office shall:

4414 (1) Publicize the availability of grant funds to entities that may
4415 be eligible for the funds.

4416 (2) Establish an application process for submitting a grant
4417 proposal.

4418 (3) Request, receive, and review proposals from applicants seeking
4419 grant funds.

4420 (4) Determine the amount of grant funds each awardee may receive
4421 and award grant funds to applicants.

4422 (5) Develop a monitoring process to evaluate grant awardees, which
4423 may include an annual monitoring visit to each awardee's local
4424 office.

4425 (6) Ensure that persons or organizations awarded grant funds meet
4426 and adhere to the requirements of this act.

4427

4428 745.1418 Eligibility.

4429 (1) Any person or organization that has not been awarded a grant
4430 must meet all of the following conditions to be eligible to receive
4431 a grant:

4432 (a) The applicant must meet or directly employ staff that meet the
4433 minimum qualifications for a public guardian under this chapter.

4434 (b) The applicant must have already been appointed by, or is
4435 pending appointment by, the Office of Public and Professional
4436 Guardians to become an office of public guardian in this state.

4437 (2) Any person or organization that has been awarded a grant must
4438 meet all of the following conditions to be eligible to receive
4439 another grant:

4440 (a) The applicant must meet or directly employ staff that meet the
4441 minimum qualifications for a public guardian under this chapter.

BILL

ORIGINAL

YEAR

4442 (b) The applicant must have been appointed by, or is pending
4443 reappointment by, the Office of Public and Professional Guardians
4444 to be an office of public guardian in this state.

4445 (c) The applicant must have achieved a satisfactory monitoring
4446 score during the applicant's most recent evaluation.

4447

4448 745.1419 Grant application requirements; review criteria; awards
4449 process.

4450 Grant applications must be submitted to the Office of Public and
4451 Professional Guardians for review and approval.

4452 (1) A grant application must contain:

4453 (a) The specific amount of funds being requested.

4454 (b) The proposed annual budget for the office of public guardian
4455 for which the applicant is applying on behalf of, including all
4456 sources of funding, and a detailed report of proposed expenditures,
4457 including administrative costs.

4458 (c) The total number of wards the applicant intends to serve during
4459 the grant period.

4460 (d) Evidence that the applicant has:

4461 1. Attempted to procure funds and has exhausted all possible other
4462 sources of funding; or

4463 2. Procured funds from local sources, but the total amount of the
4464 funds collected or pledged is not sufficient to meet the need for
4465 public guardianship in the geographic area that the applicant
4466 intends to serve.

4467 (e) An agreement or confirmation from a local funding source, such
4468 as a county, municipality, or any other public or private
4469 organization, that the local funding source will contribute
4470 matching funds to the public guardianship program totaling not less
4471 than \$1 for every \$1 of grant funds awarded. For purposes of this

BILL

ORIGINAL

YEAR

4472 section, an applicant may provide evidence of agreements or
4473 confirmations from multiple local funding sources showing that the
4474 local funding sources will pool their contributed matching funds to
4475 the public guardianship program for a combined total of not less
4476 than \$1 for every \$1 of grant funds awarded. In-kind contributions,
4477 such as materials, commodities, office space, or other types of
4478 facilities, personnel services, or other items as determined by
4479 rule shall be considered by the office and may be counted as part
4480 or all of the local matching funds.

4481 (f) A detailed plan describing how the office of public guardian
4482 for which the applicant is applying on behalf of will be funded in
4483 future years.

4484 (g) Any other information determined by rule as necessary to assist
4485 in evaluating grant applicants.

4486 (2) If the Office of Public and Professional Guardians determines
4487 that an applicant meets the requirements for an award of grant
4488 funds, the office may award the applicant any amount of grant funds
4489 the executive director deems appropriate, if the amount awarded
4490 meets the requirements of this act. The office may adopt a rule
4491 allocating the maximum allowable amount of grant funds which may be
4492 expended on any ward.

4493 (3) A grant awardee must submit a new grant application for each
4494 year of additional funding.

4495 (4)(a) In the first year of the Joining Forces for Public
4496 Guardianship program's existence, the Office of Public and
4497 Professional Guardians shall give priority in awarding grant funds
4498 to those entities that:

4499 1. Are operating as appointed offices of public guardians in this
4500 state;

BILL

ORIGINAL

YEAR

4501 2. Meet all of the requirements for being awarded a grant under
4502 this act; and

4503 3. Demonstrate a need for grant funds during the current fiscal
4504 year due to a loss of local funding formerly raised through court
4505 filing fees.

4506 (b) In each fiscal year after the first year that grant funds are
4507 distributed, the Office of Public and Professional Guardians may
4508 give priority to awarding grant funds to those entities that:

4509 1. Meet all of the requirements of this section and ss. 745.1416,
4510 745.1417, and 745.1418 for being awarded grant funds; and

4511 2. Submit with their application an agreement or confirmation from
4512 a local funding source, such as a county, municipality, or any
4513 other public or private organization, that the local funding source
4514 will contribute matching funds totaling an amount equal to or
4515 exceeding \$2 for every \$1 of grant funds awarded by the office. An
4516 entity may submit with its application agreements or confirmations
4517 from multiple local funding sources showing that the local funding
4518 sources will pool their contributed matching funds to the public
4519 guardianship program for a combined total of not less than \$2 for
4520 every \$1 of grant funds awarded. In-kind contributions allowable
4521 under this section shall be evaluated by the Office of Public and
4522 Professional Guardians and may be counted as part or all of the
4523 local matching funds.

4524

4525 745.1420 Confidentiality.

4526 (1) The following are confidential and exempt from the provisions
4527 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
4528 when held by the Department of Elderly Affairs in connection with a
4529 complaint filed and any subsequent investigation conducted pursuant
4530 to this part, unless the disclosure is required by court order:

BILL

ORIGINAL

YEAR

- 4531 (a) Personal identifying information of a complainant or ward.
4532 (b) All personal health and financial records of a ward.
4533 (c) All photographs and video recordings.
- 4534 (2) Except as otherwise provided in this section, information held
4535 by the department is confidential and exempt from s. 119.07(1) and
4536 s. 24(a), Art. I of the State Constitution until the investigation
4537 is completed or ceases to be active, unless the disclosure is
4538 required by court order.
- 4539 (3) This section does not prohibit the department from providing
4540 such information to any law enforcement agency, any other
4541 regulatory agency in the performance of its official duties and
4542 responsibilities, or the clerk of the circuit court pursuant to s.
4543 745.1001.
- 4544 (4) The exemption under this section applies to all documents
4545 received by the department in connection with a complaint before,
4546 on, or after July 1, 2017.
- 4547 (5) This section is subject to the Open Government Sunset Review
4548 Act in accordance with s. 119.15 and shall stand repealed on
4549 October 2, 2022, unless reviewed and saved from repeal through
4550 reenactment by the Legislature.

4551 Section 15. Part XV of chapter 745, Florida Statutes,
4552 consisting of sections 745.1501, 745.1502, 745.1503, 745.1504,
4553 745.1505, 745.1506, 745.1507, 745.1508, 745.1509, 745.1510,
4554 745.1511, 745.1512, 745.1513, 745.1514, 745.1515, 745.1516,
4555 745.1517, 745.1518, 745.1519, 745.1520, 745.1521, 745.1522,
4556 745.1523, 745.1524, 745.1525, and 745.1526, is created to read:

PART XV

VETERANS' GUARDIANSHIP

4557
4558
4559 745.1501 Short title; scope of part.

BILL

ORIGINAL

YEAR

4560 (1) This part shall be known and may be cited as the "Veterans'
4561 Guardianship Law."

4562 (2) The application of this part is limited to veterans and other
4563 persons who are entitled to receive benefits from the United States
4564 Department of Veterans Affairs. This part is not intended to
4565 replace the general law relating to guardianship except insofar as
4566 this part is inconsistent with the general law relating to
4567 guardianship; in which event, this part and the general law
4568 relating to guardianship shall be read together, with any conflict
4569 between this part and the general law of guardianship to be
4570 resolved by giving effect to this part.

4571

4572 745.1502 Definitions.

4573 As used in this part, the term:

4574 (1) "Adjudication by a court of competent jurisdiction" means a
4575 judicial decision or finding that a person is or is not
4576 incapacitated as provided in chapter 745 Part III.

4577 (2) "Adjudication by the United States Department of Veterans
4578 Affairs" means a determination or finding that a person is
4579 competent or incompetent on examination in accordance with the laws
4580 and regulations governing the United States Department of Veterans
4581 Affairs.

4582 (3) "Secretary" means the Secretary of Veterans Affairs as head of
4583 the United States Department of Veterans Affairs or her or his
4584 successor.

4585 (4) "Benefits" means arrears of pay, bonus, pension, compensation,
4586 insurance, and all other moneys paid or payable by the United
4587 States through the United States Department of Veterans Affairs by
4588 reason of service in the Armed Forces of the United States.

BILL

ORIGINAL

YEAR

4589 (5) "Estate" means income on hand and assets acquired in whole or
4590 in part with income.

4591 (6) "Guardian" means any person acting as a fiduciary for a ward's
4592 person or the ward's estate, or both.

4593 (7) "Income" means moneys received from the United States
4594 Department of Veterans Affairs as benefits, and revenue or profit
4595 from any property acquired in whole or in part with such moneys.

4596 (8) "Person" means an individual, a partnership, a corporation, or
4597 an association.

4598 (9) "United States Department of Veterans Affairs" means the United
4599 States Department of Veterans Affairs or its predecessors or
4600 successors.

4601 (10) "Ward" means a beneficiary of the United States Department of
4602 Veterans Affairs.

4603

4604 745.1503 Secretary of Veterans Affairs as party in interest.

4605 The Secretary of Veterans Affairs shall be a party in interest in
4606 any proceeding for the appointment or removal of a guardian or for
4607 the removal of the disability of minority or mental incapacity of a
4608 ward, and in any suit or other proceeding affecting in any manner
4609 the administration by the guardian of the estate of any present or
4610 former ward whose estate includes assets derived in whole or in
4611 part from benefits heretofore or hereafter paid by the United
4612 States Department of Veterans Affairs. Not less than 15 days prior
4613 to hearing in such matter, notice in writing of the time and place
4614 thereof shall be given by mail (unless waived in writing) to the
4615 office of the United States Department of Veterans Affairs having
4616 jurisdiction over the area in which any such suit or any such
4617 proceeding is pending.

4618

BILL

ORIGINAL

YEAR

4619 745.1504 Procedure for commitment of veteran to United States
4620 Department of Veterans Affairs hospital.

4621 The procedure for the placement into a United States Department of
4622 Veterans Affairs hospital of a ward hereunder shall be the
4623 procedure prescribed in s. 394.4672.

4624

4625 745.1505 Appointment of guardian for ward authorized.

4626 (1) Whenever, pursuant to any law of the United States or
4627 regulation of the United States Department of Veterans Affairs, the
4628 secretary requires, prior to the payment of benefits, that a
4629 guardian be appointed for a ward, the appointment may be made in
4630 the manner hereinafter provided.

4631 (2) When a petition is filed for the appointment of a guardian of a
4632 minor ward, a certificate of the secretary or the secretary's
4633 authorized representative setting forth the age of such minor, as
4634 shown by the records of the United States Department of Veterans
4635 Affairs, and a statement that the appointment of a guardian is a
4636 condition precedent to the payment of any moneys due to the minor
4637 by the United States Department of Veterans Affairs are prima facie
4638 evidence of the necessity for such appointment.

4639 (3) When a petition is filed for the appointment of a guardian of a
4640 mentally incompetent ward, a certificate of the secretary or the
4641 secretary's authorized representative, setting forth the fact that
4642 the person has been found incompetent and has been rated
4643 incompetent by the United States Department of Veterans Affairs, on
4644 examination in accordance with the laws and regulations governing
4645 the United States Department of Veterans Affairs, and that the
4646 appointment of a guardian is a condition precedent to the payment
4647 of any moneys due to such person by the United States Department of

BILL

ORIGINAL

YEAR

4648 Veterans Affairs, is prima facie evidence of the necessity for such
4649 appointment.

4650

4651 745.1506 Petition for appointment of guardian.

4652 (1) A petition for the appointment of a guardian may be filed in
4653 any court of competent jurisdiction by, or on behalf of, any person
4654 who under existing law is entitled to priority of appointment. If
4655 no person is so entitled, or if the person so entitled neglects or
4656 refuses to file such a petition within 30 days after the mailing of
4657 notice by the United States Department of Veterans Affairs to the
4658 last known address of such person, indicating the necessity for
4659 filing the petition, a petition for such appointment may be filed
4660 in any court of competent jurisdiction by, or on behalf of, any
4661 responsible person residing in this state.

4662 (2)(a) The petition for appointment shall set forth:

- 4663 1. The name, age, and place of residence of the ward;
- 4664 2. The names and places of residence of the nearest relative, if
4665 known;
- 4666 3. The fact that the ward is entitled to receive moneys payable by
4667 or through the United States Department of Veterans Affairs;
- 4668 4. The amount of moneys then due and the amount of probable future
4669 payments;
- 4670 5. The name and address of the person or institution, if any,
4671 having actual custody of the ward; and
- 4672 6. The name, age, relationship, if any, occupation, and address of
4673 the proposed guardian.

4674 (b) In the case of a mentally incompetent ward, the petition shall
4675 show that the ward has been found incompetent and has been rated
4676 incompetent on examination by the United States Department of

BILL

ORIGINAL

YEAR

4677 Veterans Affairs, in accordance with the laws and regulations
4678 governing the United States Department of Veterans Affairs.

4679
4680 745.1507 Notice by court of petition filed for appointment of
4681 guardian.

4682 (1) When a petition for the appointment of a guardian has been
4683 filed pursuant to s. 745.1506, the court shall cause such notice to
4684 be given as provided by the general guardianship law. In addition,
4685 notice of the petition shall be given to the office of the United
4686 States Department of Veterans Affairs having jurisdiction over the
4687 area in which the court is located.

4688 (2) A copy of the petition provided for in s. 745.1506 shall be
4689 mailed by the clerk of the court to the person or persons for whom
4690 a guardian is to be appointed, the clerk of court mailing the copy
4691 of the petition to the last known address of such person or persons
4692 not less than 5 days prior to the date set for the hearing of the
4693 petition by the court.

4694
4695 745.1508 Persons who may be appointed guardian.

4696 (1) Notwithstanding any law with respect to priority of persons
4697 entitled to appointment, or nomination in the petition, the court
4698 may appoint some other individual or a bank or trust company as
4699 guardian if the court determines that the appointment of the other
4700 individual or bank or trust company would be in the best interest
4701 of the ward.

4702 (2) It is unlawful for a circuit judge to appoint either herself or
4703 himself, or a member of her or his family, as guardian for any
4704 person entitled to the benefits provided for in 38 U.S.C., as
4705 amended, except in a case when the person entitled to such benefits
4706 is a member of the family of the circuit judge involved.

BILL

ORIGINAL

YEAR

4707

4708 745.1509 Bond of guardian.

4709 When the appointment of a guardian is made, the guardian shall
4710 execute and file a bond to be approved by the court in an amount
4711 not less than the sum of the amount of moneys then due to the ward
4712 and the amount of moneys estimated to become payable during the
4713 ensuing year. The bond shall be in the form, and shall be
4714 conditioned, as required of guardians appointed under the general
4715 guardianship laws of this state. The court has the power to
4716 require, from time to time, the guardian to file an additional
4717 bond.

4718

4719 745.1510 Inventory of ward's property; guardian's failure to file
4720 inventory; discharge; forfeiture of commissions.

4721 Every guardian shall, within 30 days after his or her qualification
4722 and whenever subsequently required by the circuit judge, file in
4723 the circuit court a complete inventory of all the ward's personal
4724 property in his or her hands and, also, a schedule of all real
4725 estate in the state belonging to his or her ward, describing it and
4726 its quality, whether it is improved or not, and, if it is improved,
4727 in what manner, and the appraised value of same. The failure on the
4728 part of the guardian to conform to the requirements of this section
4729 is a ground for the discharge of the guardian, in which case the
4730 guardian shall forfeit all commissions.

4731

4732 745.1511 Guardian empowered to receive moneys due ward from the
4733 United States Government.

4734 A guardian appointed under the provisions of s. 745.1506 may
4735 receive income and benefits payable by the United States through
4736 the United States Department of Veterans Affairs and also has the

BILL

ORIGINAL

YEAR

4737 right to receive for the account of the ward any moneys due from
4738 the United States Government in the way of arrears of pay, bonus,
4739 compensation or insurance, or other sums due by reason of his or
4740 her service (or the service of the person through whom the ward
4741 claims) in the Armed Forces of the United States and any other
4742 moneys due from the United States Government, payable through its
4743 agencies or entities, together with the income derived from
4744 investments of these moneys.

4745
4746 745.1512 Guardian's application of estate funds for support and
4747 maintenance of person other than ward.

4748 A guardian shall not apply any portion of the estate of her or his
4749 ward to the support and maintenance of any person other than her or
4750 his ward, except upon order of the court after a hearing, notice of
4751 which has been given to the proper office of the United States
4752 Department of Veterans Affairs as provided in s. 745.1513.

4753
4754 745.1513 Petition for support, or support and education, of ward's
4755 dependents; payments of apportioned benefits prohibit contempt
4756 action against veteran.

4757 (1) Any person who is dependent on a ward for support may petition
4758 a court of competent jurisdiction for an order directing the
4759 guardian of the ward's estate to contribute from the estate of the
4760 ward to the support, or support and education, of the dependent
4761 person, when the estate of the ward is derived in whole or in part
4762 from payments of compensation, adjusted compensation, pension,
4763 insurance, or other benefits made directly to the guardian of the
4764 ward by the United States Department of Veterans Affairs. A notice
4765 of the application for support, or support and education, shall be
4766 given by the applicant to the office of the United States

BILL

ORIGINAL

YEAR

4767 Department of Veterans Affairs having jurisdiction over the area in
4768 which the court is located at least 15 days before the hearing on
4769 the application.

4770 (2) The grant or denial of an order for support, or support and
4771 education, does not preclude a further petition for an increase,
4772 decrease, modification, or termination of the allowance for such
4773 support, or support and education, by either the petitioner or the
4774 guardian.

4775 (3) The order for the support, or support and education, of the
4776 petitioner is valid for any payment made pursuant to the order, but
4777 no valid payment can be made after the termination of the
4778 guardianship. The receipt of the petitioner shall be a sufficient
4779 release of the guardian for payments made pursuant to the order.

4780 (4) When a claim for apportionment of benefits filed with the
4781 United States Department of Veterans Affairs on behalf of a
4782 dependent or dependents of a disabled veteran is approved by the
4783 United States Department of Veterans Affairs, subsequent payments
4784 of such apportioned benefits by the United States Department of
4785 Veterans Affairs prohibit an action for contempt from being
4786 instituted against the veteran.

4787
4788 745.1514 Exemption of benefits from claims of creditors.
4789 Except as provided by federal law, payments of benefits from the
4790 United States Department of Veterans Affairs or the Social Security
4791 Administration to or for the benefit of a disabled veteran or the
4792 veteran's surviving spouse or dependents are exempt from the claims
4793 of creditors and shall not be liable to attachment, levy, or
4794 seizure by or under any legal or equitable process whatever, either
4795 before or after the receipt of the payments by the guardian or the
4796 beneficiary.

BILL

ORIGINAL

YEAR

4797

4798 745.1515 Investment of funds of estate by guardian.

4799 Every guardian shall invest the funds of the estate in such manner
4800 or in such securities, in which the guardian has no interest, as
4801 allowed by chapter 518.

4802

4803 745.1516 Guardian's petition for authority to sell ward's real
4804 estate; notice by publication; penalties.

4805 (1) When a guardian of the estate of a minor or an incompetent
4806 ward, which guardian has the control or management of any real
4807 estate that is the property of such minor or incompetent, deems it
4808 necessary or expedient to sell all or part of the real estate, the
4809 guardian shall apply, either in term time or in vacation by
4810 petition to the judge of the circuit court for the county in which
4811 the real estate is situated, for authority to sell all or part of
4812 the real estate. If the prayer of the petition appears to the judge
4813 to be reasonable and just and financially beneficial to the estate
4814 of the ward, the judge may authorize the guardian to sell the real
4815 estate described in the petition under such conditions as the
4816 interest of the minor or incompetent may, in the opinion of the
4817 judge, seem to require.

4818 (2) The authority to sell the real estate described in the petition
4819 shall not be granted unless the guardian has given previous notice,
4820 published once a week for 4 successive weeks in a newspaper
4821 published in the county where the application is made, of his or
4822 her intention to make application to the judge for authority to
4823 sell such real estate, the guardian setting forth in the notice the
4824 time and place and to what judge the application will be made. If
4825 the lands lie in more than one county, the application for such
4826 authority shall be made in each county in which the lands lie.

BILL

ORIGINAL

YEAR

4827 (3) The failure on the part of the guardian to comply with the
4828 provisions of this section makes the guardian and the guardian's
4829 bond agents individually responsible for any loss that may accrue
4830 to the estate of the ward involved, and is a ground for the
4831 immediate removal of such guardian as to his or her functions, but
4832 does not discharge the guardian as to his or her liability or
4833 discharge the liabilities of his or her sureties.

4834

4835 745.1517 Guardian's accounts, filing with court and certification
4836 to United States Department of Veterans Affairs; notice and hearing
4837 on accounts; failure to account.

4838 (1) Every guardian who receives on account of his or her ward any
4839 moneys from the United States Department of Veterans Affairs shall
4840 annually file with the court on the anniversary date of the
4841 appointment, in addition to such other accounts as may be required
4842 by the court, a full, true, and accurate account under oath, which
4843 account is an account of all moneys so received by him or her and
4844 of all disbursements from such moneys, and which account shows the
4845 balance of the moneys in his or her hands at the date of such
4846 filing and shows how the moneys are invested. A certified copy of
4847 each of such accounts filed with the court shall be sent by the
4848 guardian to the office of the United States Department of Veterans
4849 Affairs having jurisdiction over the area in which such court is
4850 located. If the requirement of certification is waived in writing
4851 by the United States Department of Veterans Affairs, an uncertified
4852 copy of each of such accounts shall be sent.

4853 (2) The court, at its discretion or upon the petition of an
4854 interested party, shall fix a time and place for the hearing on
4855 such account; and notice of the hearing shall be given by the court

BILL

ORIGINAL

YEAR

4856 to the United States Department of Veterans Affairs not less than
4857 15 days prior to the date fixed for the hearing.

4858 (3) The court need not appoint a guardian ad litem to represent the
4859 ward at the hearing provided for in subsection (2). If the
4860 residence of the next kin of the ward is known, notice by
4861 registered mail shall be sent to such relative. Notice also shall
4862 be served on the ward; or, if the ward is mentally incapable of
4863 understanding the matter at issue, the notice may be served on the
4864 person in charge of the institution where the ward is detained, or
4865 on the person having charge or custody of the ward.

4866 (4) When a hearing on an account is required by the court or
4867 requested in the petition of an interested party as provided in
4868 subsection (2), the judge of the court on the day of the hearing as
4869 provided for in subsection (2) shall carefully examine the vouchers
4870 and audit and state the account between the guardian and ward.
4871 Proper evidence shall be required in support of any voucher or item
4872 of the account that may appear to the court not to be just and
4873 proper, such evidence to be taken by affidavit or by any other
4874 legal mode. If any voucher is rejected, the item or items covered
4875 by the disapproval of any voucher or vouchers shall be taxed
4876 against the guardian personally. After such examination, the court
4877 shall render a decree upon the account, which shall be entered on
4878 the record, and the account and vouchers shall be filed. Such
4879 partial settlement shall be taken and presumed as correct on final
4880 settlement of the guardianship.

4881 (5) If a guardian fails to file any account of the moneys received
4882 by him or her from the United States Department of Veterans Affairs
4883 on account of his or her ward within 30 days after such account is
4884 required by either the court or the United States Department of
4885 Veterans Affairs, or fails to furnish the United States Department

BILL

ORIGINAL

YEAR

4886 of Veterans Affairs a copy of his or her accounts as required by
4887 subsection (1), such failure shall be a ground for the removal of
4888 the guardian.

4889

4890 745.1518 Certified copies of public records made available.

4891 When a copy of any public record is required by the United States

4892 Department of Veterans Affairs to be used in determining the

4893 eligibility of any person to participate in benefits made available

4894 by the United States Department of Veterans Affairs, the official

4895 charged with the custody of such public record shall, without

4896 charge, provide to the applicant for such benefits or any person

4897 acting on her or his behalf, or to the authorized representative of

4898 the United States Department of Veterans Affairs, a certified copy

4899 of such record. For each and every certified copy so furnished by

4900 the official, the official shall be paid by the board of county

4901 commissioners the fee provided by law for copies.

4902

4903 745.1519 Clerk of the circuit court; fees; duties.

4904 Upon the filing of the petition for guardianship, granting of same,

4905 and entering decree thereon, the clerk of the circuit court is

4906 entitled to the service charge as provided by law, which shall

4907 include the cost of recording the petition, bond, and decree and

4908 the issuing of letters of guardianship. The certificate of the

4909 secretary or the secretary's authorized representative provided for

4910 in s. 745.1505 need not be recorded but must be kept in the file.

4911 Upon issuing letters of guardianship or letters appointing a

4912 guardian for the estate of a minor or incompetent, the clerk of the

4913 circuit court shall send to the regional office of the United

4914 States Department of Veterans Affairs having jurisdiction in this

4915 state two certified copies of the letters and two certified copies

BILL

ORIGINAL

YEAR

4916 of the bond approved by the court, without charge or expense to the
4917 estate involved. The clerk of the circuit court shall also send a
4918 certified copy of such letters to the property appraiser and to the
4919 tax collector in each county in which the ward owns real property.

4920

4921 745.1520 Attorney's fee.

4922 The fee for the attorney filing the petition and conducting the
4923 proceedings shall be fixed by the court in an amount as small as
4924 reasonably possible, not to exceed \$250. However, this section is
4925 not to be interpreted to exclude a petition for extraordinary
4926 attorney's fees, properly filed, and if approved by the United
4927 States Department of Veterans Affairs, does not necessitate a
4928 hearing before the court for approval, but the court shall enter
4929 its order for withdrawal of said attorney's fees from the ward's
4930 guardianship account accordingly.

4931

4932 745.1521 Guardian's compensation; bond premiums.

4933 The amount of compensation payable to a guardian shall not exceed 5
4934 percent of the income of the ward during any year and may be taken,
4935 by the guardian, on a monthly basis. In the event of extraordinary
4936 services rendered by such guardian, the court may, upon petition
4937 and after hearing on the petition, authorize additional
4938 compensation for the extraordinary services, payable from the
4939 estate of the ward. Provided that extraordinary services approved
4940 by the United States Department of Veteran's Affairs do not require
4941 a court hearing for approval of the fees, but shall require an
4942 order authorizing the guardian to withdraw the amount from the
4943 guardianship account. No compensation shall be allowed on the
4944 corpus of an estate received from a preceding guardian. The
4945 guardian may be allowed from the estate of her or his ward

BILL

ORIGINAL

YEAR

4946 reasonable premiums paid by the guardian to any corporate surety
4947 upon the guardian's bond.

4948

4949 745.1522 Discharge of guardian of minor or incompetent ward.

4950 When a minor ward, for whom a guardian has been appointed under the
4951 provisions of this part or other laws of this state, attains his or
4952 her majority and, if such minor ward has been incompetent, is
4953 declared competent by the United States Department of Veterans
4954 Affairs and the court, or when an incompetent ward who is not a
4955 minor is declared competent by the United States Department of
4956 Veterans Affairs and the court, the guardian shall, upon making a
4957 satisfactory accounting, be discharged upon a petition filed for
4958 that purpose.

4959

4960 745.1523 Final settlement of guardianship; notice required;
4961 guardian ad litem fee; papers required by United States Department
4962 of Veterans Affairs.

4963 On the final settlement of the guardianship, the notice provided
4964 herein for partial settlement must be given and the other
4965 proceedings conducted as in the case of partial settlement, except
4966 that a guardian ad litem may be appointed to represent the ward,
4967 the fee of which guardian ad litem shall in no case exceed \$150.
4968 However, if the ward has been pronounced competent, is shown to be
4969 mentally sound, appears in court, and is 18 years of age, the
4970 settlement may be had between the guardian and the ward under the
4971 direction of the court without notice to the next of kin, or the
4972 appointment of a guardian ad litem. A certified copy of the final
4973 settlement so made in every case must be filed with the United
4974 States Department of Veterans Affairs by the clerk of the court.

4975

BILL

ORIGINAL

YEAR

4976 745.1524 Notice of appointment of general guardian; closing of
4977 veteran's guardianship; transfer of responsibilities and penalties
4978 to general guardian.
4979 When the appointment of a general guardian has been made in the
4980 proper court and such guardian has qualified and taken charge of
4981 the other property of the ward, the general guardian shall file
4982 notice of such appointment in the court in which the veteran's
4983 guardianship is pending and have the veteran's guardianship settled
4984 up and closed so that the general guardian may take charge of the
4985 moneys referred to and described in ss. 745.1505(2) and (3) and
4986 745.1511. When the appointment of a general guardian, whether for
4987 an incompetent or minor child or another beneficiary entitled to
4988 the benefits provided in 38 U.S.C., as amended, has been confirmed
4989 by the court having jurisdiction, such general guardian is
4990 responsible and is subject to the provisions and penalties
4991 contained in 38 U.S.C., as amended, as well as the requirements
4992 pertaining to guardians as set forth in this part.
4993
4994 745.1525 Construction and application of part.
4995 This part shall be construed liberally to secure the beneficial
4996 intents and purposes of this part and applies only to beneficiaries
4997 of the United States Department of Veterans Affairs. It shall be so
4998 interpreted and construed as to effectuate its general purpose of
4999 making the welfare of such beneficiaries the primary concern of
5000 their guardians and of the court.
5001
5002 745.1526 Annual guardianship report.
5003 Guardians appointed under the Veterans' Guardianship Law shall not
5004 be required to comply with the provisions of s. 745.805 or s.
5005 745.813.

BILL

ORIGINAL

YEAR

5006

5007 Section 16. Chapter 744 is repealed.

5008

5009 Section 17. This act shall take effect on July 1, 2020 and
5010 shall apply to all proceedings pending before such date and all
5011 proceedings commenced on or after the effective date.

5012