

**20<sup>th</sup> JUDICIAL CIRCUIT ~ COLLIER COUNTY, FLORIDA**



# **GUARDIANSHIP PROCEDURES**

**(Edited and/or amended as of 12/31/2025)**

*These procedures are NOT intended to reiterate all the Statutes and Rules applicable to Guardianships, Guardian Advocates and Conservatorships. Rather, these procedures focus on **reoccurring issues** in the Guardianship-Court system, the applicable law and **office procedures** of which Guardians and Attorneys may not be aware. These procedures will be amended on an on-going basis as issues and questions emerge.*

**Florida Rules of General Practice and Judicial Administration require that each division of court that establishes practices and procedures that apply in that division of court and every judge who establishes practices or procedures that apply only when appearing before that specific judge must publish those practices and procedures on the circuit's website.** *Fla.R.Gen.Prac.&Jud.Admin., Rule 2.215(f)(2025)*

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## **IMPORTANT PRELIMINARY PROCEDURES**

1. **Circuit Court Judges and Magistrates preside over guardianship cases.** All Court proceedings MUST be scheduled through the Offices of the Judge or Magistrate assigned to your Case. There is NO self-scheduling. As of January 1, 2025, **Judge Elizabeth Krier** and **Magistrate Maria Dente** are presiding over all guardianship cases filed and open in Collier County, Florida. **Judge Krier's office prefers email contact for scheduling.** Contact information is:

**Judge Krier's Office:** (239) 252-2783 or [KrierJA@ca.cjis20.org](mailto:KrierJA@ca.cjis20.org)  
**Magistrate's Office:** (239) 252-8670

**REMEMBER** when emailing the Judge's office to include:

- **ALL current attorneys of record as copy-recipients,**
- **The case number(s), and**
- **The subject of the proceeding, such as Petitions for Incapacity and Appointment of Guardian.**

2. **ALL court filing must occur through the e-filing portal accessible at the below link** as required by Rules 2.520 and 2.525 of the *Florida Rules of Judicial Administration*.

The e-filing-Portal link is: <https://www.myflcourtaccess.com/authority/>

- All questions regarding operation of efiling-Portal should be directed to Collier County Clerk's E-filing Help Desk: [Florida Courts E-Filing Portal](#)
- For the few guardians who are permitted to represent themselves without an attorney, see the Collier Clerk's webpage, "DIY" tab for assistance in filing documents via the efiling portal. [Portal-E-Filer-User-Manual-Sept.-2021-1.pdf](#)

3. **Verification of documents** means that the document that is filed must include an oath or affirmation or the following statement:

*Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true to the best of my knowledge and belief.*

Any person signing a Verification who makes a false statement in the document shall be guilty of perjury which is a criminal offense and may have a criminal sentence imposed.

4. **Submitting Orders or Judgements for judges and magistrates to sign, must occur through the e-filing-Portal**, using the above link. Courts no longer accept paper pursuant to Rules 2.520 and 2.525 of the *Florida Rules of Judicial Administration*.

5. **Many Court Orders can be obtained without a hearing in Guardianship Case.** Unless a court hearing is required by Statute or Rule, it is possible for the Court to grant the relief that you want without a hearing. The Court will review your Motion or

Petition and the Court file, and if all of the necessary information and documentation is clearly set forth by such, it will rule on your Motion or Petition. If information is missing or is unclear, the Court may issue an Order setting forth what is missing or schedule a hearing.

- A. Petitions and Motions that don't necessarily require a Court hearing include for:
  - (1) Guardian Fees
  - (2) Attorney Fees
  - (3) Most actions requiring Court authorization as set forth in Section 744.441 of Florida Statutes
  - (4) Authorizing a Sale of Assets
  - (5) Authorizing Abandonment of Assets
  - (6) Authorizing execution of contracts for residential placement
  - (7) Authorizing Change of Residence within Florida
  - (8) Changing Venue
  - (9) Authorizing Change of Residence out of State of Florida
  - (10) Approving Initial Inventory and Initial Plan, Annual Plans and Annual Accountings, and Final Accountings
  - (11) Authorizing Repairs of Property
  - (12) Authorizing Access to and Inventorying of Safe Deposit Boxes
  - (13) Appointment of Guardian of Property for a Minor
  - (14) Appointment of a Guardian to Manage the Property of a Foreign Ward
  - (15) Adoption of Foreign Guardianship upon Change of Ward's Residence to Florida (per Section 744.306 of Florida Statutes)
  - (16) Appointment of Standby Guardians
  - (17) Appointment of Voluntary Guardians
  - (18) Termination of Voluntary Guardianships
  - (19) Waiving of Annual Accountings
  - (20) Withdrawal of Attorney representing Ward AFTER appointment of Guardian
  - (21) Withdrawal of Attorney with signed Consent of Client
  - (22) Do Not Resuscitate Orders that comply with Section 744.4431 unless Subsection (5) and (6) apply (See also Do Not Resuscitate Orders this Summary)
- B. **The Court's review and consideration of your Petition or Motion without a hearing is most often triggered by receipt of an Order through the e-filing Portal.** However, make sure that your Petition or Motion actually appears in the Court file when you submit your Order. You may submit your Orders Approving Initial Inventory and Annual Accountings, and Orders Approving and Adopting Initial Plans and Annual Plans at the time that you file those documents in the Court file IF you submit them to the Guardianship Case Manager
- C. **Any Order or Recommended Order that you submit to a Judge or a Magistrate respectively must specifically refer to the Petition or Motion to which it pertains **AND list the Docket Line number of the Petition or Motion in the preamble of the Order.****

D. **If there is a time deadline for the relief that you are requesting, such as a settlement or closing of a sale**, email the Judge's or Magistrate's office regarding such. The Courts receive hundreds of Orders each month and are often behind in their review and execution.

6. **Most court proceedings occur via Zoom technology in guardianship cases.** Judge Krier's standing-Zoom link is below. If you are reading these procedures on line, you can click on the link. If not, go to Judge Krier's 20<sup>th</sup> Circuit webpage, scroll down slightly, and the link is available for you to click on. We assume most guardianship hearings will occur via Zoom. If you want to appear in person, notify the scheduling secretary when you schedule your court proceeding and indicate such on your Notice of Hearing. Zoom is used for the convenience and cost effectiveness benefiting Alleged Incapacitated Persons (AIPs) and Wards, prospective Guardians and appointed Guardians, the attorneys representing these persons and other interested persons, and witnesses who are frequently experts in areas of medicine, health care, mental health and psychology. Participants are responsible for the operation of their own technology and software. If it is not functioning properly, the Court will NOT be able to assist.

**Judge Krier's Zoom link:**  
<https://zoom.us/j/95618388039?pwd=cWZxUDBLLeHM1Zm9Hall6d1d1WkRFdz09>

7. **If all parties and/or their attorneys agree, your court proceeding may be scheduled before the Magistrate, pursuant to Rule 5.095(c) of Florida Probate Rules.** If you are scheduling a court proceeding before the Magistrate, submit an Order of Referral To the Magistrate to Judge Krier's office via the e-filing-Portal for signature well prior to the hearing. Such an Order must specify the Petition or matter to be heard by the Magistrate as well as the Magistrate's name.

A. Magistrates are empowered to preside over any guardianship issue or court proceeding and most related issues and court proceedings including case management functions. The Collier Magistrate generally presides over most incapacity hearings and Petitions for Appointment of Emergency Temporary Guardians as well as many different miscellaneous other issues. Magistrates cannot preside over Injunctions for Protection Against Exploitation of a Vulnerable Adult filed pursuant to Section 825.1035 of the *Florida Statutes* or Chapter 415 proceedings filed by the Department of Children and Families.

B. Cases and issues are heard and decided by Magistrates by agreement of parties and/or their attorneys because they can object to the use of the Magistrate up to the minute the hearing begins. If you know that are going to object to the Magistrate, tell your opposing attorneys and the Magistrate's office. Then schedule with the Judge's office. Don't wait until the hearing to object to the Magistrate. Similarly, if you know that a Motion must be decided prior to a hearing already scheduled before the Magistrate, don't wait until the Magistrate-hearing to inform everyone. **When attorneys cancel or object at the last minute, it wastes the hearing time that other Cases could have used AND delays YOUR Case.** Zealous and professional representation does NOT include intentional

and/or negligent delays. **Guardianship attorneys are governed by the 20<sup>th</sup> Circuits Rules of Professional Conduct as are all other attorneys.** (See [2024-Amended-Administrative Order 2.20 at ao\\_2\\_20.pdf](#))

- C. If you know or suspect that your case is very contested and there are likely to be Exceptions filed by one or more persons, either agree to waive Exceptions OR have the Case-issues heard by the Circuit Court Judge.
- D. You may want to schedule matters requiring expedited attention before the Circuit Court rather than the Magistrates, unless you can obtain all parties' agreement to waive Exceptions. Otherwise, your issue may be delayed by 45 to 60 days for the Circuit Court to review the Exceptions, a hearing-transcript to be transcribed and filed, and a Review-hearing held before the Judge.
- E. **Exceptions to Magistrate's Ruling:** Magistrate's findings and rulings are subject to "Exceptions" which are objections to all or some part of the Magistrate's Report and Recommended Order. These Exceptions must be filed 10 days from the date that the Report and Recommended Order is "served".<sup>1</sup> When persons are represented by an attorney, the "service" is via email and is considered to be complete on the date of the email.<sup>2</sup> All other parties to the proceeding have 5 days from the date of service of the Exceptions to file Cross-Exceptions.<sup>3</sup> If any party to the proceeding files "Exceptions" to the Magistrate's ruling, then the Circuit Court presiding in that Case will conduct an appellate-review of such ruling. The Court will issue an Order scheduling a SHORT hearing approximately 30 to 45 days in the future and will require the party who filed the Exceptions to obtain a copy of the audio recording from Court Smart via Court Administration, transmit it to a Court Reporter to have it typed up and then file the transcript in the Court file no later than 3 business days prior to the Circuit Court's hearing. At the hearing, the Court will ONLY be considering the transcript of the Magistrate's hearing and legal argument. The Court will NOT generally consider any new evidence. The Court will ONLY determine if the Magistrate abused her discretion in the findings of fact or made errors as a matter of law.
- F. See also Collier County Magistrate's 20<sup>th</sup> Circuit Web page. [Judicial Profile](#)

8. **REGULARLY OCCURRING COURT PROCEEDINGS:** The Court is instituting regularly occurring Case Management Hearings at the time the Annual Reports are due<sup>4</sup> in addition to scheduling hearings when Reports are delinquent or deficient as required by Statute and has scheduled a regularly occurring dedicated time for hearings on Petitions for Emergency Temporary Guardians, Incapacity and Appointment of Guardians.

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<sup>1</sup> *Fla.R.Civ.P.1.490(i)(2025)*

<sup>2</sup> *Fla.R.Gen.Prac. & Jud.Admin. 2.516(b)(1) & (1)(E)(2025)*

<sup>3</sup> *Fla.R.Civ.P.1.490(i)(2025)*

<sup>4</sup> The Court retains jurisdiction over all Guardianships until they are terminated and the Guardian discharged. *Fla.Stat. §744.371(2025)* The Court may require that Guardians appear before it at the time of that the Annual Reports are filed or such other time as the Court determines. *Fla.Stat. §744.3735(2025)*

**A. Judge Krier's Dedicated Hearing Time for ETG and Incapacity/ Guardianship hearings:** The Magistrate will only conduct Emergency-Temporary-Guardianship-proceedings if the Parties and/or Attorneys agree to using the Magistrate prior to the scheduling of the hearing AND to waive Exceptions. Otherwise, the Court will conduct such hearings. Judge Krier will hear such proceedings beginning at 2PM on alternate Thursdays.

**B. Case Management Hearings:** (See “Case Management” this Summary) As authorized and required by Rules of Judicial Administration 2.545 and 2.215(h), the Court is scheduling Case Management hearings for the purpose of confirming that Guardians and their attorneys are complying with various statutory requirements including time limits. The types of issues addressed at these court proceedings, include, but are not limited to:

- (1) Retaining an attorney
- (2) Changing venue
- (3) Suggestions of capacity
- (4) Repeated failures to timely file Reports
- (5) Failure to open guardianship financial accounts and to deposit Wards assets and income therein.
- (6) Budgeting for future needs of Wards
- (7) Addressing conflicts of interest
- (8) Ordering and/or increasing Bonds

***Courts must scrupulously oversee the handling of the affairs of incompetent persons under their jurisdiction and err on the side of oversupervising rather than indifference.*** *Hayes v. Guardianship of Thompson*, 952 So.2d 498, 508 (Fla. 2006)

**C. Delinquent Reports:** Section 744.3685 of the Florida Statutes REQUIRES the Court to issue an Order requiring a Guardian who fails to file a Report as required by Florida Statutes to file said Report within 15 days of the Order or show cause as to why he/she should not be compelled to do so or determined to be in contempt of Court. *Fla.Stat. §744.3685(1)&(3)(2025)* The Court is authorized to fine a Guardian and require that the he/she pay said fine from his/her own personal funds. *Fla.Stat. §744.3685(3)(2025)* Failure to file Reports may also be a basis to remove a Guardian from his/her appointment. *Fla.Stat. §744.474(5),(13) & (14)(2025)*

- (1) The Collier Auditor’s Office forwards a list to the Court on a monthly basis as to all Guardian-reporting that is delinquent.<sup>5</sup> The Court will be issuing Orders to Show Cause regarding these delinquencies and scheduling them for hearing. If the Reports are then filed no less than 2 business days prior to the scheduled-hearing, the Court will remove such Cases from its Guardianship-Delinquency-Docket.

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<sup>5</sup> The Clerk’s Auditor is required to inform the Court when a Report is not timely. *Fla.Stat. §744.368(4)(2025)*

**D. Deficient Reports:** If a Guardian fails to comply with the Collier Auditor's request for documents in connection with an audit of the Guardian's Report(s), upon the filing of an Affidavit of Good Cause by the Clerk's Auditor, the Court will either issue an Order for the Guardian to produce such records and/or documents within a defined period of time and/or schedule such for a hearing.

(1) The Court may in certain circumstances order a Guardian to obtain records at his/her own expense. *Keithly v. Vance*, 854 So.2d 854 (Fla.2d DCA 2003)

## IMPORTANT APPLICABLE LAW

FLORIDA Statutes	Description
<b>Chapter 744</b>	<b>Florida Guardianship law</b>
<b>Chapter 747</b>	<b>Conservatorships</b>
<b>Chapter 393</b>	<b>Developmental Disabilities – Guardian Advocates</b>
<b>Section 69.031</b>	<b>Actions by Executors, Administrators, Trustees, Etc. (Designated Accounts)</b>
Chapter 415	Adult Protective Services
Chapter 518	Investment of Fiduciary Funds
Chapter 709	Powers of Attorney
Chapter 710	Transfers to Minors
Chapter 717	Disposition of Unclaimed Funds
Chapters 736-740	Trust Code - General Provisions; Principle & Interest; Uniform Disclaimer of Property Interests Act
Chapter 765	Health Care Advance Directives
Chapter 825	Abuse, Neglect and Exploitation of the Elderly Persons and Disabled Adults

### FLORIDA PROBATE RULES

Rules 5.010 – 5.180	Part I. GENERAL -may apply to both guardianship and probate cases
Rules 5.540 – 5.850	Part III. Guardianship
Rule 5.900	Part IV. Expedited Judicial Intervention Concerning Medical Treatment
Rule 5.901 – 5.930	Part V. Forms

## OTHER GUARDIANSHIP RESOURCES

A. **Forms and Downloads** available on **Guardianship Case Management** web page of Collier County's 20<sup>th</sup> Circuit website. <https://www.ca.cjis20.org/Programs/Civil-Case-Management/guardianship.aspx>

B. **Collier County Clerk's Office website** at the "Court Divisions" tab, scroll to "Court Guardianships" tab. Forms for required Reporting are available at the "Forms" tab. At the "Resources" tab, the following information is available:

[Guardianship Brochure](#)

[Florida Department of Children and Families Abuse Hotline](#)

[Florida State Guardianship Association](#)

[National Guardianship Association](#)

[Florida Department of Elder Affairs – Office of Public and Professional Guardians](#)

[Guardianship Training – Florida State Guardianship Association](#)  
[Becoming A Guardian – Florida State Guardianship Association](#)  
[Florida Courts E-filing Portal](#)  
[Guardianship Statutes](#)  
[Florida Probate Rules](#)

- C. **Florida Office of State Court Administration (OSCA)** at the “Self Help” tab, scroll to “Guardianship” under “Other” types of Cases see link: [Guardianship - Florida Courts](#)
- D. **Collier County Guardianship Magistrate, 20<sup>th</sup> Judicial Circuit Webpage** – Magistrate Maria Dente [Judicial Profile](#)

## ATTORNEY REPRESENTATION

1. **Most Guardians and people requesting to be appointed as a guardian **MUST** be represented by an attorney licensed to practice law in Florida**, pursuant to Rule 5.030(a) of the *Florida Probate Rules* that are propounded by the Florida Supreme Court. This requirement extends even AFTER a Guardian is appointed, including when the Guardian files the statutorily-required-Reports. The ONLY exceptions are set forth below.
  - A. This means that even long AFTER the Guardian is appointed, whenever something is required to be filed with the Court or there is a court proceeding held, a Guardian’s ATTORNEY **MUST** sign the document being filed<sup>6</sup> with the Court in **addition to** the Guardian, and **MUST** appear with or for the Guardian at court proceedings.
  - B. If the Guardian’s Attorney wants to terminate his/her representation of a Guardian, he/she may do so, **but the Guardian **MUST** then hire another attorney.**
    - (1) **The Court will consider Petitions to Withdraw as Legal Counsel filed in the Court file without a hearing, IF the Petition to Withdraw attaches a Consent to the attorney withdrawing signed by the Guardian-client or one is filed at or around the time that the Petition is filed.** If this occurs, once the Petition and Consent actually appear in the Court file, the attorney may submit an Order Granting Petition to Withdraw through the e-filing-Portal. Said Order **MUST** list the Guardian’s contact information, including an email address. Attorneys or their staff should REMEMBER to remove the attorney’s e-filing information from the e-filing-Portal page for each Case from which they withdraw. (Otherwise, the withdrawn-attorney will continue to receive copies of every document that is subsequently filed in the Court file.)
      - (a) **Attorneys representing WARDS initially or as appointed by a court during a guardianship, may file Petitions to Withdraw at the conclusion of the proceedings for which they were appointed, or authorization to withdraw may be included in the finalizing orders.**

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<sup>6</sup> *Rule of General Practice & Judicial Procedure 2.515(a)*

- (b) **Attorneys who entered a Limited Appearance when they initially appeared as counsel**, need only file in the court file a “Notice of Completion of Limited Appearance” at the conclusion of that proceeding or matter and serve a copy of it on their client and other interested parties. *Rule 5.030(b)(2025)*
- (c) **Attorneys should REMEMBER that an Order Granting Withdrawal does NOT take them off the e-portal-service-list.** To take themselves off the electronic-filing-service-list, attorney or his/her staff must log in to the e-filing-Portal and into the relevant case, and remove the attorney’s e-service information from that Case IN THE PORTAL. If this does not occur, the attorney and his/her office will continue to receive service of anything filed in the Court file, long after representation has actually ended.

(2) **A hearing is necessary before the Judge or Magistrate** if the Guardian-client won’t consent to the attorney’s withdrawal or the attorney has lost touch with his/her client. It must be scheduled through the office of the Judge or Magistrate AND Notice of such hearing must be mailed and/or emailed to the Guardian-client at his or her last known contact information.

(3) **When a Guardian’s attorney withdraws from his/her representation, the Court will usually allow the Guardian 30 to 60 days to hire a subsequent attorney.** Such does NOT stay proceedings because to do so could harm the Ward at issue. However, non-lawyer/Guardians should not file anything in a court file on behalf of their Ward or attempt to represent their Ward legally in court without a lawyer.

(4) **Failure to hire an attorney may result in the Court removing or suspending a Guardian.** Courts may remove a Guardian as such pursuant to Section 744.474 of the Florida Statutes for:

- (a) Failure to discharge his/her duties, which could include failure to retain an attorney and/or failure of that attorney to sign Reports as required by law;
- (b) Failure to comply with laws and rules for timely filing of Reports;
- (c) Developing a conflict of interest with the Ward which could include practicing law without a license that in itself is a violation of laws.

2. **There are exceptions to legal representation: Guardian Advocates are NOT required to be represented by a lawyer and when Guardians file an Annual Simplified Accounting when a Ward only owns cash or equivalent assets being held in a restricted depository.**

A. **Guardian Advocates:** Rule 5.030 of *Florida Probate Rules* specifically provides that Guardian Advocates are not required to be represented by an attorney unless required by law or a court. Guardian Advocates are specifically appointed as such pursuant to Sections 744.3085 and 393.12 of the *Florida Statutes* and Rule 5.649 of the *Florida Probate Rules*. (See also “Guardian Advocates” below)

B. **No attorney-representation is necessary for Guardians of a Ward’s Property in connection with the filing of “simplified accountings” as defined and described in Section 744.3679 of the *Florida Statutes*.**

(1) Pursuant to Section 744.3679 “simplified accounting” procedures can be used when:

(a) ALL property of a Ward’s estate is held in designated depositories as defined by and pursuant to Section 69.031 of the *Florida Statutes*; AND

(b) The only transactions that occur in such accounts are the accrual of interest, deposits from settlements, or financial institution service charges.”

(2) **Simplified Annual Accountings, require a Guardian of the Property to file a Simplified Accounting form AND the original or certified copy of the year-end statement of the Ward’s account from the financial institution holding the assets.** Simplified Accounting forms are available on the Collier County Clerk’s webpage and include a statement by the filing-Guardian that said Guardian has custody and control of the Ward’s property as set forth on the attached year-end-statement. The Form located on the Collier County Clerk’s webpage is: <https://collierclerk.com/wp-content/uploads/Simplified-Accounting-Adult-or-Minor.pdf>

(3) **Not being required to retain an attorney applies ONLY to the filing of Annual Simplified Accountings of Guardians of PROPERTY, NOT the Person of Wards.** This usually occurs when guardians are natural parents of a Ward who has received a monetary award or settlement from a court case or possible court case and/or an inheritance. Occasionally, a Guardian is appointed of a Ward’s Person AND Property such as when a friend or relative is appointed as a Guardian of a Minor whose parents are deceased. In such a case, the Guardian of the Person must be represented in the filing of the Annual Plans, but not the Annual Accountings IF the assets held for the benefit of such a Ward qualify for the Guardian to file a Simplified Annual Accounting.

3. **Attorneys Representing Guardians have a fiduciary responsibility to the Wards for whom those Guardians are appointed.**<sup>7</sup> This means that it is possible that an attorney representing a Guardian could be determined to be legally responsible for some harm caused to that Guardian’s Ward either through the attorney’s actions or inaction.<sup>8</sup> This indicates that attorneys representing Guardians should properly advise their clients of the necessity of being represented by an attorney, **AND should be monitoring their Guardian-clients and signing court documents. Attorneys representing Guardians are NOT considered to have withdrawn their legal-representation unless they have obtained an Order relieving them of their representation either through filing a Petition to Withdraw or as part of a Final Order such as an Order Appointing a Guardian.**

4. **In the few instances when Guardians are not required to be represented by an attorney and they represent themselves, the Court:**

<sup>7</sup> *Sadeh v. Conners*, 166 So.3d 939 (Fla.DCA 4<sup>th</sup> 2015); Fla. AGO 96-94 1996 WL680981.

<sup>8</sup> *Id.*

- A. Must apply the same laws and rules to such Guardians as it would to those who are represented by attorneys. Such Guardians are EXPECTED to know the law and the rules and abide by them.
- B. Cannot give legal advice. Judges are not allowed to give legal advice to persons appearing before them.
- C. Cannot be a Guardian's secretary. While Judges do occasionally prepare Orders as they are often required by Statutes to make certain specific determinations, Judges do not act as anyone's paralegal, secretary or associate attorney.

5. **Alleged Incapacitated Persons may hire their own attorney in substitution or in addition to whomever a Court appoints UNTIL said AIP is determined to be incapacitated.**<sup>9</sup> They do not however, have a Constitutional right to represent themselves or require a Court to appoint substitute counsel.<sup>10</sup> In incapacity and initial guardianship proceedings, there is no there is no right to pursue a collateral proceeding questioning the competency of court-appointed counsel.<sup>11</sup> Attorneys representing AIPs must represent the expressed wishes of the AIP to the extent it is consistent with the rules regulating The Florida Bar, even if the AIP-attorney believes that the contrary is in the AIP's best interest.<sup>12</sup>

## **ABUSE and EXPLOITATION OF ELDERLY and DISABLED ADULTS**

1. **CRIMINAL Exploitation of Elderly and Disabled Adults is a crime** that can be charged as a 3<sup>rd</sup> degree to a 1<sup>st</sup> degree felony, the punishment for which can range from a possible 5 years to 30 years in Florida State Prison, depending on the amount or value of funds or assets involved in the exploitation. *Fla.Stat. §825.103(2025)*
  - A. This Statute applies to (not exclusive list):
    - (1) Guardians;<sup>13</sup>
    - (2) Persons who stand in positions of trust and confidence;<sup>14</sup>
    - (3) Persons who have business relationships with elderly persons or disabled adults;<sup>15</sup>
    - (4) Persons who know or reasonably should know that the elderly person or disabled adult lacks the capacity to consent;<sup>16</sup>
    - (5) Trustees who are individuals;<sup>17</sup>
    - (6) Agents under Powers of Attorney;<sup>18</sup> and
    - (7) Caregivers.<sup>19</sup>

<sup>9</sup> *Fla.Stat. §744.331(2)(b)(2025);*

<sup>10</sup> *Erlandsson v. Guardianship of Erlandsson*, 296 So.3d 431, 434-435 (Fla. 4<sup>th</sup> DCA 2022)

<sup>11</sup> *Id.*

<sup>12</sup> *Fla.Stat. §744.102(1)(2025); Id. at 437 - 438*

<sup>13</sup> *Fla.Stat. §825.103(1)(c)(2025)*

<sup>14</sup> *Fla.Stat. §825.103(1)(a)(2025)*

<sup>15</sup> *Id.*

<sup>16</sup> *Fla.Stat. §825.103(1)(b)(2025)*

<sup>17</sup> *Fla.Stat. §825.103(1)(c)(2025)*

<sup>18</sup> *Id.*

<sup>19</sup> *Fla.Stat. §825.103(1)(e)(2025)*

B. **The criminal-exploitation-Statute applies to certain types of actions** by some or all of above persons, including, but not limited to:

- (1) **Breach of a fiduciary duty** that results in an unauthorized appropriation, sale, transfer of property, kickback or receipt of an improper benefit.<sup>20</sup>
  - (a) **Unauthorized appropriation** is presumed to have occurred when a Guardian or Trustee:
    - i. Commits fraud in obtaining appointment;
    - ii. Obtains appointment for the purpose of benefiting someone other than the person that is the intended beneficiary of the appointment;
    - iii. Abuses their powers; or
    - iv. Wastes, embezzles or intentionally mismanages the assets of the Ward or Trust beneficiary.
  - (b) **For agents appointed under Power of Attorney or other Chapter 709-instruments**, unauthorized appropriate is assumed to have occurred when the agent:
    - i. Commits fraud in obtaining appointment;
    - ii. Acts contrary to the principal's sole benefit or best interest;
    - iii. Obtains appointment for the purpose of benefiting someone other than the person that is the intended beneficiary of the appointment;
    - iv. Wastes, embezzles or intentionally mismanages the assets of the principal or beneficiary.
- (2) **Knowingly obtaining or using, or endeavoring to obtain or use the funds, assets or property of the elderly or disabled adult with the intent to temporarily or permanently deprive said person of the use, benefit or possession of such;**<sup>21</sup>
- (3) **Intentionally or negligently failing to effectively use the income and assets** of the elderly or disabled adult for that person's support and maintenance.<sup>22</sup>

C. **These crimes are often reported** by: family and friends of the victims; professionals serving the victims including attorneys, doctors, bank employees, and accountants; the Guardianship Auditor of the County Clerk's Inspector General's Office; and the Department of Children and Families (DCF).

- (1) DCF is required by Statute to report findings of exploitation to law enforcement.
- (2) The Collier County Clerk's Office reports suspected exploitation to DCF and the Collier County Sheriff's Office. They do so by obtaining an Order from the Court to share information with these entities.

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<sup>20</sup> Fla.Stat. §825.103(1)(c)(2025)

<sup>21</sup> Fla.Stat. §825.103(1)(a)(2025)

<sup>22</sup> Fla.Stat. §825.103(1)(e)(2025)

- (a) The Court only issues an Order authorizing the Clerk's Office to "share information" as required by Section 744.3701(4) of the Florida Statutes. The Court does NOT make any type of substantive determination regarding the basis for the Order. The Court is NOT authorized to make a probable cause determination in issuing such Orders.
- (3) **While the Court is by law a mandatory reporter of abuse to DCF which can include financial abuse**, it does NOT "refer" information or crimes to the Sheriff's Office or the State Attorney's Office that may be occurring in guardianship-Cases over which it presides. The Court is not a part of the Executive Branch and it is only the Executive Branch that is responsible for and authorized to investigate and charge crimes. The State Attorney's Office, Sheriff's Office, Clerk's Office and Department of Children and Families, are all a part of the Executive Branch of government. The Clerk's Office occasionally applies to the Court for an Order to Share Information to Other Agencies pursuant to Section 744.3701(4) of the Florida Statutes, including law enforcement agencies and DCF. (See Section this Summary regarding "Reporting between Clerk and Court"). The Court does NOT make any probable cause or other-evidence-determinations in connection to issuing such Orders.

D. **Law Enforcement and/or the State Attorney's Office is responsible for investigating and charging these crimes**, not the Court, DCF, or the Guardianship Auditor. These crimes can be investigated and charged even after the death of an elderly or disabled adult victim.

2. **Civil Injunctions for Protection of Elderly or Disabled Adults** can be obtained pursuant to Section 825.1035 of the Florida Statutes. The Petition-Form and pleading requirements are available at Section 825.1035(3) and Rule 5.920 of the Florida Probate Rules as well as on the Collier County Clerk's Webpage at <https://www.collierclerk.com/court-divisions/court-guardianship/guardianship-forms/>

A. **FILING AN INJUNCTION-PETITION: If an incapacity or guardianship proceedings are pending<sup>23</sup> or a guardian has been appointed, the Petition for Injunction for Protection of Elderly or Disabled Adult MUST be filed in those proceedings.** *Fla.Stat. §825.1035((2)(f)(2025))* Even if the Incapacity-Petitions and Petitions for Appointment of a Guardian are filed simultaneously with the Injunction-Petition, the Injunction-Petition MUST be filed in the Incapacity and/or Guardianship court files. *Fla.Stat. §825.1035(2)(f)(2025))* **If no such Court Cases are pending then a new Court Case maybe be opened for the Injunction-action.**

(1) Actions for Injunctions for Protection Against Exploitation ARE adversarial proceedings as listed by Rule 5.025(a)(3) of the Florida Probate Rules and consequently said Rule applies.

*..., Notice and Procedure in Adversary Proceedings.*

*(1) Petitioner must serve formal notice, except as provided in proceedings under section 825.1035, Florida Statutes*

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<sup>23</sup> A Guardianship can be "pending" long after the Incapacity-Petition has been granted and that Case closed if a Guardian was appointed and the Ward is still alive.

**(2) After service of formal notice, the proceedings, as nearly as practicable, must be conducted similar to suits of a civil nature, including entry of defaults. The Florida Rules of Civil Procedure govern, except for rule 1.525.**

(3) The court on its motion or on motion of any interested person may enter orders to avoid undue delay in the main administration.

(4) If a proceeding is already commenced when an order is entered determining the proceeding to be adversary, it must thereafter be conducted as an adversary proceeding. The order must require interested persons to serve written defenses, if any, within 20 days from the date of the order. [NOT required for Injunction proceedings.] It is not necessary to re-serve the petition except as ordered by the court.

(5) When the proceedings are adversary, the caption of subsequent pleadings, as an extension of the probate caption, must include the name of the first petitioner and the name of the first respondent.

*Fla. Prob. R. 5.025(d) [Emphasis added]*

**B. PERSONS WHO MAY FILE AN INJUNCTION-PETITION:** Only persons specifically listed in Section 825.1035 may file a Petition for Protection of an Elderly or Disabled Adult.

- (1) *A vulnerable adult in imminent danger of being exploited;*
- (2) *The guardian of a vulnerable adult in imminent danger of being exploited; [“Guardian” means court appointed Guardian.]*
- (3) *A person or organization acting on behalf of the vulnerable adult with the consent of the vulnerable adult or his or her guardian; [Must have vulnerable person’s CONSENT which means that the vulnerable person must be able to consent.]*
- (4) *An agent under a valid durable power of attorney with the authority specifically granted in the power of attorney; or*
- (5) *A person who simultaneously files a petition for determination of incapacity and appointment of an emergency temporary guardian with respect to the vulnerable adult.*  
Fla.Stat. §825.1035(2)(a)(2025) [Emphasis added]

**C. The procedures for these Injunctions are as follows:**

- (1) A Petition for Injunction is filed with the Collier County Clerk's Office. It MUST list very specific evidence that the Elderly or Disabled Adult has been exploited or is in danger of being exploited. Form available on the Collier County Clerk's webpage at this link:<sup>24</sup> [Injunction-for-Protection-of-a-Vulnerable-Adult.pdf](#)
- (2) A Circuit Court Judge reviews such without a hearing to determine if the Court will:
  - (a) Grant a Temporary Injunction AND schedule it for a hearing,
  - (b) ONLY schedule the Petition for a hearing, OR
  - (c) Deny the Petition.
- (3) The Respondent (person against whom the Injunction is sought) is served by law enforcement;

<sup>24</sup> *Fla. Prob. R.* 5.920 (2025)

(4) A hearing is held within 15 days.

(5) At the hearing, the Court hears testimony and considers evidence and then determines whether to issue an Injunction and for what period of time.

D. **Violations of Injunctions Protecting Elderly or Disabled Adults can be charged by the State Attorney's Office as 1<sup>st</sup> Degree Misdemeanors and Law Enforcement can arrest persons that they have probable cause to believe have violated such injunctions.** *Fla.Stat. §825.1035(10)(2025)* Violations of such Injunctions can alternatively be addressed by direct and indirect civil and/or criminal contempt. *Id.*

3. **Injunction actions filed before or without a guardianship case being filed or pending** are often filed without legal representation by family members or friends of the elderly or disabled adult. These Cases will be heard by the Guardianship-Judge even when an Incapacity and/or Guardianship Case have not been filed prior to the Injunction Case. The same procedures and process apply and occur as described above.

A. **Often such Injunction-actions cannot accomplish the goals of protecting the elderly or disabled adult as well as a Guardianship and an Emergency Temporary Guardian.**

4. **Suspension of Power of Attorney pursuant to 744.3203:** Unless otherwise ordered by a Court, a proceeding to determine incapacity does NOT affect the authority of Agent to make health care decisions for the Principle under a Power of Attorney. *Fla.Stat. §709.2109 (2025)* Therefore, any time during proceedings to determine incapacity, but BEFORE the entry of an Order Determining Incapacity, a Court may suspend the authority granted under an alleged incapacitated person's Power of Attorney to a parent, spouse, child, or grandchild when the petitioner files a Motion stating that a specific Power of Attorney should be so suspended. The Motion must set forth specific facts and be signed under penalties of perjury. *Fla.Stat. §744.3203(2)(2025)*

A. Grounds are:

- (1) The agent's decisions are not in accord with the alleged incapacitated person's known desires.
- (2) The power of attorney is invalid.
- (3) The agent has failed to discharge his or her duties or incapacity or illness renders the agent incapable of discharging duties.
- (4) The agent has abused his/her powers.
- (5) There is a danger that the property of the alleged incapacitated person may be wasted, misappropriated, or lost unless the authority under the power of attorney is suspended.

B. Grounds for suspending a power of attorney do NOT include the existence of a dispute between the Agent and the Petitioner which is more appropriate for resolution in some other forum or a legal proceeding other than a guardianship proceeding.

C. Notice must be given to all interested persons, the Alleged Incapacitated Person and the AIP's attorney.

D. Upon the filing of a response to the motion by the agent under the power of attorney, the court shall schedule the motion for an expedited hearing. **These proceedings should be heard by a Judge versus Magistrate unless ALL Parties and interested Parties agree to waive Exceptions to the Magistrate's Report and Recommended Order.**

E. The Court may determine what powers the agent is permitted to exercise, if any, pending the outcome of the Petition to Determine Incapacity and any other remedy authorized by law, including reasonable attorney fees and costs to an agent who successfully challenges the suspension of the Power of Attorney if the petitioner's motion was made in bad faith.

(1) The Order submitted to the Court must be specific in terms of the exact Powers that are suspended if any.

F. The suspension of authority granted to persons other than a parent, spouse, child, or grandchild shall be as provided in Section 709.2109 of the Florida Statutes.  
("Termination or Suspension of Power of Attorney or Agent's Authority")

5. **Other Protections for Elderly or Disabled adults include:** If you suspect that an elderly or disabled adult is being abused, neglected or exploited, do not hesitate to report such to law enforcement agencies operating in the area in which the elderly or disabled adult is located AND to the Department of Children and Families.

A. **Criminal Charges:** In addition to the financial exploitation described above, there are various crimes that can be charged by law enforcement. (See "**Elder Abuse Bench Card and Exploitation of Vulnerable Adults**" and available at Collier Guardianship Program Tab on Collier County 20<sup>th</sup> Circuit web page and on Supreme Court Web page at below link; See also Florida Criminal Jury Instruction 14.9 regarding Exploitation of an "Elderly Person or Disabled Adult" at below link.)

- [Elder Abuse Benchcard.pdf](#)
- [14.9.docx](#)

B. **Adult Protective Services Act:** DCF is authorized under Chapter 415 to file protective services actions regarding adults. Under this Chapter, DCF is empowered to investigate reports of abuse, neglect and exploitation of elderly adults and disabled persons, provide services, and follow or manage the cases of such "Vulnerable Adults" for a short period of time.

(1) These actions can be filed before or after a guardian has been appointed.

(2) **ALL such actions are instigated by contacting the DCF hotline.** DCF has the discretion to accept or not the "report". (See DCF publication "Reporting Abuse of Children and Vulnerable Adults" available at <https://www.collierclerk.com/court-divisions/court-guardianship/guardianship-resources/>

(a) Judges, attorneys and Clerk's Auditor are mandatory reporters of abuse, neglect and exploitation of vulnerable adults.

- (3) IF DCF “accepts” a report, often its investigations take some time, so **if there's an emergency, CALL LAW ENFORCEMENT**, THEN make a Hotline report to DCF.
- (4) The costs for the services are paid for by the Vulnerable Adult’s benefits, assets or income AND as a part of the Section 415-Case, a Court can order that the perpetrator of the abuse, neglect or exploitation also pay for such.
- (5) The Court is authorized in these legal proceedings to order the filing of guardianship proceedings as part of the relief granted.

**C. Protect your Wards from social and financial predators.** Be aware that when a Ward has decision making authority over social/friend decisions that this can potentially make them vulnerable to on-line predators both financially, emotionally, and in more personal ways.

## **ATTORNEY FEES**

- 1. **A Guardian may retain and pay attorneys to represent him/her and pay such attorneys without seeking Court authorization OR may seek court pre-payment-authorization via a Petition for Attorney Fees.** *Fla.Stat. §744.444(13)(2025); Fla.Stat. §744.108(2025)*. If a guardian pays attorney fees without first seeking court authorization or review of their fees and costs, not only must such expenditures be reflected on the Guardian’s Annual Accountings, but also the bills or invoices for such **MUST** be included in the documentation attributed to the Annual Accounting.
- A. **All attorney fee billings submitted in connection with Annual Accountings by the Court will be reviewed by the Court pursuant to Section 744.108 of the Florida Statutes.** As such, these fee-bills must set forth an itemized description of the services performed for the fees and expenses that were paid. *Fla.Stat. §744.108(5) (2025)* When the Guardian chooses to submit attorney-fee-bills in this manner, the bills paid during the accounting period **MUST** be submitted with the Annual Accounting AND should be grouped together in the documents submitted with the Annual Accounting, NOT interspersed among other such submitted-documents.
  - (1) The Collier County Clerk-Guardianship-Auditor includes in its Report to the Court filed in the Court file an indication as to whether attorney fees were paid pursuant to prepayment-authorization and Court-Orders and may request that Guardians submit the attorney-fee-billing-statements if such were not included at the time that an Annual Accounting was filed.
- B. If the Court determines that any of the fees or costs charged by and paid to the Guardian’s attorneys were unreasonable based on the criteria set forth in Sections 744.108(2) and (8) or not within the scope of Sections 744.361 and 744.444(13), the Court can disallow such and require reimbursement to the guardianship-estate by said

Guardian personally or the Guardian's surety via surcharge upon proper notice and hearing.<sup>25</sup>

2. When a Guardian seeks authorization from the Court to pay attorney fees and costs prior to their payment, the Court will review the Petition for Guardian-Attorney Fees pursuant to the criteria set forth in Section 744.108.
  - A. PLEASE set forth the amounts that are being requested on the first page of the Petition for Fees and list the amounts that have previously been requested, the Fee-Petition-dates and the dates of the Orders Granting Fees.
  - B. The Petition must set forth an itemized description of the services performed for the fees and expenses that are to be paid. *Fla.Stat. §744.108(5) (2025)*
  - C. A hearing is NOT necessary on such Petitions nor expert testimony as to the reasonableness of the fees and costs, unless the Court orders otherwise. Even if a hearing on such Petitions is required by the Court, expert testimony as to reasonableness is not required unless specifically ordered by the Court or the Guardian chooses to provide such **with notice to all interested parties**.
3. ACCEPTANCE OF PAYMENTS FROM THIRD-PARTIES INCLUDING HEALTH CARE FACILITIES FOR GUARDIAN-ATTORNEY FEES. Guardians as well as their attorneys are prohibited from engaging in activity that constitutes a conflict of interest with their Wards. This prohibition is explicit for Guardians throughout Chapter 744, including Sections 744.446 and 744.309(6) of the *Florida Statutes*. For Guardian-attorneys this prohibition is subsumed by their fiduciary legal-duty to Wards and as set forth in the *Rules Regulating the Florida Bar*. Attorneys accepting compensation for representing Guardians from hospitals or other health care facilities risk a conflict of interest.
  - A. Conflicts of interest are or may be created for Attorneys by accepting compensation from a health care provider for representing an appointed Guardian or Emergency Temporary Guardian as follows:
    - (1) The health care providers that generally are involved in these transactions are hospitals and residential facilities such as retirement or assisted care facilities, in which Alleged Incapacitated Persons (AIP) are patients or residents. These facilities have a particular purpose in obtaining a Guardian for their incapacitated patients and/or residents that may or may not be entirely in the best interest of their patients/residents. Both providers understandably want to be paid and hospitals want to use their facilities for patients who need hospital care. Paying a Guardian's attorney fees is the responsibility of the Ward's estate if a Public Guardian is not appointed. When a health care provider does so, they are providing a benefit to the Guardian and the Ward. This may mean that the Guardian-Attorney may be more

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<sup>25</sup> Courts clearly have discretion to reduce claims and/or requests for Guardian-attorney-fees whether yet paid or in the pre-authorization phase. *Fla.Stat. §744.108 (2025)*; *Nelson & La Femina, P.A. v. Guardianship of Platsky*, 745 So.2d 1057 (Fla.3d DCA 1999); Guardians can be surcharged for excessive fees that they have paid because the purpose of a surcharge award against a Guardian is to make the Ward's estate whole when the Guardian's actions cause loss or damage to the Ward. *Reed v. Long*, 111 So.3d 237. 239-240 (Fla. 4<sup>th</sup> DCA 2013)

likely to advise the Guardian in alignment with the goals of who is paying his/her fees. The *Rules of Professional Conduct* of the *Rules Regulating the Florida Bar* provide:

**Rule 4-1.7 Conflict of Interest; Current Clients**

- (a) Representing Adverse Interests. Except as provided in subdivision (b) a lawyer must not represent a client if:
  - (1) the representation of 1 client will be directly adverse to another client; or
  - (2) there is a substantial risk that the representation of 1 or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
- (b) Informed Consent. Notwithstanding the existence of a conflict of interest under subdivision (a), a lawyer may represent a client if:
  - (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
  - (2) the representation is not prohibited by law;
  - (3) the representation does not involve the assertion of a position adverse to another client when the lawyer represents both clients in the same proceeding before a tribunal; and
  - (4) each affected client gives informed consent, confirmed in writing or clearly stated on the record at a hearing
- (c) Explanation to Clients. When representation of multiple clients in a single matter is undertaken, the consultation must include an explanation of the implications of the common representation and the advantages and risks involved.

- B. While conflicts of interest can be waived by clients, in Guardianships while the direct-client is the Guardian, the person benefiting from the representation is the AIP or Ward. Such persons cannot consent or waive such conflicts if they have had their rights to so consent removed.
- C. If a third-party, including friends, family members and health care facilities, is paying a Guardian's attorney-fees after appointment of a Guardian or Emergency Temporary Guardian, such should be reflected in the Annual Accountings as a benefit or income and a reciprocal attorney-fee expense to the Ward.
  - (1) Guardians should be aware that such third-party-payments of Guardian-attorney fees may create taxable events for a Ward and/or affect a Ward's eligibility for Government-benefits.
- D. Health care providers can initiate guardianships as petitioners and hire their own attorneys to do so. However, **Florida attorneys should NOT accept direct or indirect compensation or benefits as a Guardian's Attorney from a health care provider for their representation of the Guardian, due to Florida-Bar-ethical and possible liability considerations.**

4. **The Court closely scrutinizes attorney fees and costs** as follows:

- A. **Alleged travel time for court events and/or mileage:** The Court will not award travel time in addition to mileage for attorneys or guardians. The Court will award travel time and Guardians can use their mileage on their income taxes. However, most guardianship proceedings are on Zoom. There shouldn't be any travel time. Occasionally, Attorneys representing Wards travel to the Ward's location to Zoom in for hearings with them or to meet with their clients. Travel time WILL be considered for these purposes.
- B. **Excessive hourly rates of attorneys and staff:** Petitions for Fees and/or the billings attached thereto should CLEARLY set forth the hourly rates being charged for ALL billers. This Court will usually not question attorney-hourly-rates unless they clearly exceed the customary rate charged in Collier County-Florida for an attorney of the attorney's experience and expertise. However, the Court does scrutinize attorney-staff rates, including paralegals and administrative assistants and/or work that qualifies as such. For example:
  - (1) Contacting a Judge's Judicial Assistant for hearing time, is NOT a paralegal function. Similarly, scheduling depositions or mediations are NOT paralegal functions.
  - (2) Telephone calls with Guardian-clients may or may not be paralegal functions depending on the subject of the call – taking a message for an attorney is NOT.
  - (3) Preparing a "Notices" and first drafts of pleadings may be paralegal functions.
  - (4) Organizing documents and information may be paralegal functions.
  - (5) Assisting in preparing Inventories and Accountings may be paralegal functions.

C. **Duplicative attorney time:**

- (1) Occasionally attorneys are involved in multiple cases on behalf of a Guardian-client. Be warned, the Court does its best to closely scrutinize attorney-fee requests in conjunction with the Guardianship Case as well as any other Cases to which the Court has access, including probate cases.
- (2) Occasionally attorneys represent Guardians who are the Guardians of the Person and/or Property of several related Wards, such as children of deceased parents who receive inheritances and/or injury/death awards. Attorneys are encouraged to carefully bill in these cases as charging fees for each Ward's case in the same manner as if they were the only Ward may not be appropriate or ethical.
- (3) Duplicative attorney time can also be evident in more than one attorney or staff person performing the same activity at or around the time of that the attorney is performing it.

5. **Payment of Fees by third-parties:** This includes health care service providers. An attorney may be required to provide a statement as to whether he/she has received compensation from such an entity as a part of his/her representation of a Guardian.

## ALTERNATIVES TO GUARDIANSHIP AFTER APPOINTMENT OF GUARDIAN

1. **Less-Restrictive-Means Determined After Guardian Appointed.** Section 744.462 of the Florida Statutes requires that the Court review the need for a guardian and the extent of said need even after a Guardian has been appointed, if there is a Petition filed in the Court file alleging that there is an alternative to guardianship that sufficiently meets the needs of the Ward. This Section further requires that any judicial determination of the validity of a Ward's durable power of attorney, trust, or trust amendment be promptly reported in the guardianship-Case by the Guardian, presumably because such might indicate less-restrictive-means are available other than the guardianship.
  - A. This Court interprets the above Section 744.462 to allow it upon Notice and hearing, to make this determination on its own Motion/Petition or instigation.
    - (1) **This Court has made the above determination in Cases in extreme Court-file inactivity:** Where there is clear evidence in the Court file that a Guardian has been designated as the payee of the Ward's Social Security and/or Disability benefits AND fails to file mandatory Reports over an extended period of time and does not respond to Court Orders to Show Cause and/or Notices to Appear this Court will terminate the guardianship pursuant to Section 744.462. The conclusion of the Court is that the Guardian has found less-restrictive means than a Guardianship to address the Ward's needs. The Court therefore terminates such a guardianship on this basis and closes the Case. However, this means that such a Guardian no longer has the authority to make decisions for the Ward as a Court-appointed-Guardian or manage the Ward's property other than being the designated-payee for the Ward's Social Security and/or Disability Benefits.
2. **Suggestions of Capacity** also require the Court to review the need for a Guardian based on the provisions of Section 744.464. (See "Restoration of Capacity" this Summary)

## BONDS

1. **Section 744.351 of the Florida Statutes requires that Guardians post a bond before beginning to exercise their Guardianship-authority.** The Court may waive this requirement or require the use of a designated depository.  
*Fla.Stat.744.351(3)(2025)*
2. The amount of the Bond MUST at least be in an amount not less than the full amount of cash or liquid-assets in any accounts belonging to the Ward, such as stocks and bonds.  
*Fla.Stat.744.351(3)(2025)*
3. **Bonds must be renewed.** Most Bonds only last for a definite period of time. In addition, Bond amounts might change as a Ward's assets increase or decrease or with the sale of a home. Bonds and Bond-amounts should be kept current. *Fla.Stat.744.351(4)(2025)* **The Collier County Clerk's Guardianship Auditor's Office and the Court have begun scrutinizing whether Bonds have been posted as has been ordered and whether those Bonds are still current at the time that they review Annual Accountings.**

4. If the Guardian agrees to deposit amounts in a restricted account pursuant to Section 69.031 of the Florida Statutes, the Court may waive the Bond-requirement. *Fla.Stat.744.351(1)(2025)*
  - A. Section 69.031 requires that the Guardian not only designated a financial institution that will act as the “restricted depository”, but also such a financial institution is required to file a Notice of Acceptance in the Court file. If this does not occur within the time period specified by the Court and/or a reasonable time period and the Court cannot clearly see that the Ward’s funds have been deposited in such a restricted account, the Court may order that a Bond be posted even months after the Guardian has been appointed. **The Collier County Clerk’s Office, Collier Guardianship Case Management and the Judge assigned to these Cases have begun to specifically monitor whether and when a Ward’s funds are deposited into such accounts and/or a bond posted.**

## CASE MANAGEMENT

1. **Need for Case Management:** The Collier County Case Management program began in January of 2025 and is still forming and formulating its processes and procedures as of the end of that year. It was established because it became apparent to the 20<sup>th</sup> Circuit Court system in 2024 that case management of incapacity and guardianship-Cases was needed to protect Alleged Incapacitated Persons and Wards.
  - A. Guardians, potential Guardians, guardianship-attorneys, and judges were not complying with the Florida guardianship Statutes and Rules resulting in harm or the potential for harm to Wards and/or Alleged Incapacitated Persons.
  - B. Incapacity Cases were languishing causing or resulting in requests for re-examination of AIP’s and for extensions of Emergency Temporary Guardian Appointments long past the time allowed by law.
  - C. A minimum of 1000 guardianship-cases existed as open cases in Collier County as of January 2025. In some of these Cases, the Wards and/or Guardians had died or moved out of Collier County or the State of Florida.
  - D. Guardians were not complying with Statutory-reporting-requirements.
2. **Legal Mandates and Authorization for Case Management-Court-Proceedings:**
  - A. **Rules of Judicial Administration require Judges to manage their litigation-Case-load**, including taking charge of all cases early and throughout the cases, controlling the court calendar, identifying priority cases, and advancing priority cases. *Fla.R.Gen.Prac.&Jud.Admin.2.215(h) & 2.545.*
    - (1) **Rule 2.215(h) of Florida General Practice and Judicial Administration Rules** requires that all judges expedite priority cases to the extent reasonably possible. This Rule defines “priority cases” as those that have been assigned a priority status or assigned an expedited disposition schedule by statute, rule, case law or otherwise or directly concern a vulnerable population as in dependency, termination of parental rights and CINS/FINS cases that are specifically listed in this Rule. Florida Statutes

and Rules are replete with expedited deadlines for most of the activity that occurs in incapacity and guardianship cases and are directly concerned with a vulnerable population – those that are disabled by age, lack of intellectual ability, and/or lack of ability to communicate their intellectual ability.

*Courts must scrupulously oversee the handling of the affairs of incompetent persons under their jurisdiction and err on the side of over-supervising rather than indifference. Sunbank and Trust Company v. Jones, 645 So.2d 1008, 1017 (Fla. 5<sup>th</sup> DCA 1994)*

(2) **Judicial-Administration-Rule 2.545** requires Judges manage “litigation.” Most Incapacity-proceedings are not conducted litigiously. However, “litigation” can occur at any point and throughout a Guardianship-Case including in regard to determining incapacity and who will be appointed as Guardian and as issues arise with a Guardian’s statutory-reporting, authorization for certain actions by Guardians, a Ward regaining capacity, and removal of Guardians. Therefore, this Court applies Rule 2.545 to all Incapacity and Guardianship Cases.

3. **Court Responsibilities regarding Statutory-Reporting explicitly and implicitly requires Courts to schedule court proceedings:** Sections 744.3685 and 744.369 of the Florida Statutes require Courts to take certain actions regarding the Reports that a Guardian is required to file.

- A. If a Guardian fails to file a Report that the Guardian is required to file, the Court MUST issue an Order to Show Cause requiring the Guardian to file the Report within 15 days of the Order or show cause as to why he or she may not be compelled to do so and be held in contempt of court. *Fla.Stat. §744.3685(1)(2025)* Orders to Show Cause require the scheduling of a hearing. Contempt of court can eventually result in the Court imposing monetary fines against a Guardian personally that may not be paid from Guardianship assets or income or in extreme cases, cause criminal proceedings to be initiated.
- B. If a Guardian fails to comply with a request for records or documents from the Clerk’s Office pertaining to required-Reports, the Court may issue an Order to Show Cause requiring the Guardian to submit the requested records or documents within a specified period of time or show cause as to why the Guardian may not be compelled to do so. *Fla.Stat. §744.3685(2)(2025)* Orders to Show Cause require the scheduling of a hearing.
- C. Courts are required to review Initial and Annual Reports within 60 and 30 days after the Clerk’s filing of its Audit-Reports regarding Guardian-Reports, respectively. *Fla.Stat. §744.369(1)(2025)* If the Court disapproves of a Report or an Objection is filed in connection with a Report, a Court is required to schedule a court proceeding to address the Objection and/or to ensure compliance with the Statutory-reporting-requirements if the Court is unable to compel compliance through an Order without a hearing. *Fla.Stat. §744.369(5)-(7)(2025)*

4. **Case Management court proceedings and procedures:** This Court has designated at least one Wednesday during each 5-week period of its docket for Guardianship-Case-Management proceedings that also include status hearings, hearings on Guardians delinquencies or deficiencies in their Statutorily-required-reporting, and hearings to address failures to comply with other Statutory requirements. **All participants including Guardians and attorneys**

**may appear via Zoom-conference.** Collier's case-management-plan includes the actions and projects set forth below.

- A. **Collier Court Administration is working with the Collier County Clerk's Office to create Forms for their own use as well as Guardians and efficient methods to:**
  - (1) **Accurately identify all open and pending cases on an on-going basis.** As of 9/1/25, the Clerk's Office believes that we have between 900 and 950 open guardianship and incapacity cases, but this is not yet a reliable number yet.
  - (2) **Accurately identify the types of guardianships** are being filed and remain open, including: Incapacity-guardianships; guardian advocacies; minor-guardianships of property; and foreign-guardianships.
  - (3) **Case-triggers** for minors in guardianship cases reaching 18 years of age, annual reporting deadlines and the filing of certain documents such as Suggestions of Capacity and Death Certificates.
- B. Collier County was able to hire a **Guardianship Case Manager** to assist in managing these dockets and bringing the Judges, attorneys and participants into compliance with applicable Florida statutes and rules.
- C. **One judge and one magistrate** have been assigned to all Guardianship Cases in order to bring more consistency to procedures and application of the law. This is consistent with the family law principle of 'one-family-one-judge' that has benefited the lawyers and participants in that area of law across the State of Florida.
- D. **Development of written procedures** is on-going, including this Summary.
- E. **Providing access to resources including Forms and Procedures.** Unfortunately, for Guardianship and Incapacity Cases, a Form-system is not as well developed in Florida as it is for Family law cases. Each Florida Circuit and often the counties within them, have created or provide some or a large number of forms and procedures that vary slightly or greatly from one another. There are few forms for required court filings provided for in the Probate and Guardianship Rules or by the Florida Supreme Court. Collier County is in the process of creating and providing access to forms for use in the Cases filed in this County and the procedures that it has implemented. The completed-initial stage of this is anticipated in January of 2026.

## **CHANGING WARD'S COUNTY OR STATE OF RESIDENCE**

- 1. **Guardians MUST comply with Florida Statutes in changing the county or State of residence of their Wards.** Guardians of the Person of their Wards are empowered to determine where their Wards reside as Plenary Guardians or as Limited Guardians specifically designated to do so. *Fla.Stat. §744.3215(3)(e)(2025)* Guardians can therefore change the Ward's county or State of residence as long as they comply with Florida Statutes and Rules. Failure to do so may result in the Court on its own initiative transferring the

Guardianship to the appropriate venue, removing the Guardian and/or holding the Guardian in contempt of Court which can include monetary sanctions. Venue is only proper in the Florida-County in which the Ward is residing. *Fla.Stat. §744.1097(1) (2025)* **These Statutes and Rules apply to Guardians AND Guardian Advocates.** *Fla.Stat. §744.3085(2025)*

2. **Changing Wards' Counties of Residence** is governed by Sections 744.1098 and 744.1097 of the *Florida Statutes* and Rule 5.050 of the *Florida Probate Rules*.

**A. Moving a Ward from Collier County to a Florida County that is contiguous to Collier**, requires the following:

- (1) **A Notice MUST be filed in the Court file within 15 days of moving the Ward that reflects the change of residence.** *Fla.Stat. §744.1098(2)(2025)* Just reflecting a new address in the Annual Plan is NOT sufficient and constitutes a violation of Florida Statutes. The Notice must list the compelling reasons for the Ward's relocation and how long the Guardian expects the Ward to remain in the receiving county.
- (2) **Venue or location of the Court-Case must be changed at or around the time of changing a Ward's residence** even though pre-move authorization is not required when a Ward's residence is moved to a contiguous county. This occurs through a Petition for Change of Venue.<sup>26</sup>
- (3) **The Court will likely enter an Order Changing the Venue on its own initiative**, if it determines from reviewing a Court file including the Annual Plans filed therein that a Ward has been moved without Notice or a Petition for Change of Venue. Often this occurs in connection with review and approval of an Annual Plan or the Court will schedule the Case for a hearing. The Guardian MUST then comply with the Court's orders and effectuate the venue-transfer. (See "Venue Transfer Instructions" below and Forms for Orders Transferring Venue on the Collier Guardianship Case Management web page)
- (4) Florida Counties that are contiguous to Collier are: **Lee, Dade, Monroe, Broward and Hendry.**

**B. Moving the Ward to a Florida County NOT contiguous to Collier requires that:**

- (1) The Guardian or his/her attorney if such representation is required, MUST file a Petition to Change the Ward's Residence pursuant to Section 744.1098(1) of the *Florida Statutes* **BEFORE** moving the Ward **AND** a Petition for Change of Venue pursuant to Sections 744.1097 and Rule 5.050(b) of the *Florida Probate Rules*. The Petition to Move or Change the Ward's Residence must set forth the reason for the move and the expected duration of the Ward residing in the new residence. *Fla.Stat. 744. §1098(a)(2025)*
- (2) **The Petition for Change of Venue must comply with the requirements for effectuating the transfer as set forth below AND indicate if the Guardian will be remaining as such after the transfer.** It should be filed at the time that the Ward is

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<sup>26</sup> *Fla.Stat. §744.1097(3)(2025); Fla.Prob.R.5.050(b)*

moved and can be combined with the Petition for Authorization. *Fla.Prob.R. 5.050(b)(2025)*

(3) The Guardian must comply with the Court's orders to effectuate the transfer, as described below.

**C. Effectuating Venue-Transfers in Florida requires that the Guardian take certain actions as follows:**

- (1) **Contact the Clerk of the receiving Florida-County and determine the amount of the “transfer fee”.** If the Ward is indigent, the Guardian should complete a Civil Indigency Application and file it in the Court file. The receiving County may require a Petition to Waive Transfer Fee.
- (2) **The Guardian must deliver a check to the Collier Clerk of Courts in the amount of the transfer-fee made payable to the Clerk of the receiving County along with the Order Transferring Venue.** The Collier Clerk will then transfer the case file along with the check to the receiving Florida County.
- (3) **Resignation and appointment of a Successor Guardian if one is necessary should occur in the receiving Florida County** if the Guardian is not willing to remain appointed as such because of the venue-transfer.
- (4) **This Court assumes that the Public Guardian will remain as the appointed Guardian for all venue transfers to counties of the 20<sup>th</sup> Circuit – Collier, Lee, Charlotte, Hendry and Glades.**

**3. Changing Wards' States of Residence** is governed by Sections 744.1098 and 744.524 of the *Florida Statutes* and Rule 5.670 of the *Florida Probate Rules*.

A. The procedure for changing a Ward's residence to a State outside of Florida is NOT a change of “venue”. It is not a matter of just transferring a Florida-Guardianship to another State. Moving a Ward's residence who is under a Guardianship in the State of Florida requires that the Guardian/ Guardian's Attorney take certain steps in the following sequence:

- (1) **File a Petition for Authorization to Move Ward's Residence out of Florida BEFORE moving the Ward out of State.** *Fla.Stat. §744.1098(1)(2025); Fla.Prob.R.5.670(2025);*
- (2) **Establish a new Guardianship, Guardian Advocacy or similar legal-construct for the Ward in the receiving-State** under that State's laws, likely attaching certified copies of the Florida-Guardianship documents *Fla.Stat. §744.524(2025); Fla.Prob.R.5.670(2025);*
- (3) **For Florida-Guardianships only of the Person, Guardian Advocacies, and Guardianships of the Property in which there are not any assets and the Guardian is the Representative Payee for the Ward's Social Security benefits,** the Florida Guardianship-Case can be terminated upon the Guardian filing a Final

Report<sup>27</sup> and a Petition for Discharge of the Guardian that ATTACHES copies of the documents establishing the NEW Guardianship in the receiving State. *Fla.Stat. §744.524(2025); Fla.Prob.R.5.670(a)(2025);*

(4) **Florida-Guardians of Property which actually own assets and property are required to take additional actions prior to their discharge and termination of the Florida-Guardianship.** *Fla.Stat. §744.524(2025); Fla.Prob.R.5.670(b)-(h)(2025).* The term “property” is not limited to only real property. Once a Guardianship or similar legal-construct has been established in the receiving-State:

- (a) **The Florida-Guardian must file a Final Report including a Final Accounting and a Petition for Discharge attaching documents evidencing the new receiving-State-Guardianship;**
- (b) **The Florida-Guardian of the Ward’s Property must cause “notice” to be published** for 2 consecutive weeks in a newspaper of general circulation published in the Florida-county in which the Guardian has filed his/her Final Accounting. Said “Notice” must state the information and time frames as required by Rule 6.570(b) of the Florida Probate Rules;
- (c) **Interested parties may file written Objections to the Florida-Guardianship-termination** in the Florida/Collier County Court file in conformance with the requirements of Rule 5.670(f) of the Florida Probate Rules within 30 days from the later of the service-date on the receiving-State-Guardian or the first date of publication; *Fla.Prob.R.5.670(b)-(h)(2025)*
- (d) **If the objecting-interested-party files a Notice of Hearing within 90 days after filing his/her/their Objection, the Court must hear said Objection and rule on it.** If no Notice of Hearing is filed within this 90-day-period, the Objection will be deemed abandoned; *Fla.Prob.R.5.670(d)(12),(g)(h) (2025)*
  - i. **If the objecting-interested-party fails to file a Notice of Hearing within 90 days, this Court requires a Petition to Strike said Objection be filed and ruled on which can occur without a hearing, prior to discharging the Florida-Guardian;**
- (e) **The Florida-Guardian must transfer the Ward’s assets to the receiving-State-Guardian** when all objections are disposed, abandoned or no objections are filed,. *Fla.Stat. §744.524(2025)*
- (f) **When proof of receipt of the assets by the receiving-State-Guardian is filed in the Florida-Court-file, the Florida-Guardian may be discharged if** the Florida Court is satisfied that the Florida Guardian has “...faithfully discharged his/her duties as Guardian.” *Fla.Prob.R.5.670(h) (2025)*

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<sup>27</sup> Section 744.524 provides that BOTH Guardians of the Person and Property must file a “Final Report”. Rule 5.670 seems to imply that this final-reporting requirement pertains to Guardians of Property. **This Court finds that the Statute is controlling.**

4. **The Statutes and Rules addressing changing Wards' residences apply to all Guardian Advocates.** Except as specifically provided in Chapters 744 (*Guardianships*) and 393 (*Developmental Disabilities*) and the Florida Probate Rules and Rules of Civil Procedure, all Statutes and Rules that apply to Guardians, apply also to Guardian Advocates.
5. **Attorneys SHOULD inform their Guardian-clients upon their appointment as Guardians of these requirements.** There can be significant effects of not complying with the Statutes and Rules regarding changing a Ward's residence without the proper legal procedures. If such is a part of a larger problem of non-compliance with legal requirements, a Guardian may be removed from his/her appointment, such reported to OPPG if they are professional guardian and the Guardian sanctioned. When a Guardian moves his/her Ward out of Collier County and especially when Guardian-contact information appears to not be current such as when U.S. Mail is returned to the Court or Clerks' Office and Reports are not being filed, the Court might assume that something nefarious has occurred regarding a Ward. **The Court is a mandatory reporter of elder abuse and neglect and may report such a Ward's disappearance to legal authorities.**

## **CONFLICTS OF INTEREST**

1. **Conflicts of interest are BAD for Wards!** Throughout Florida's Chapter 744 and Florida's Probate Rules, it is clear that the legislature finds conflicts of interest between Guardians and Wards to negatively impact Wards. Florida law provides general and specific prohibitions of such conflicts, especially for Professional Guardians versus family-member-Guardians. **Some conflicts of interest CAN BE approved by the Court IF the proper procedures are used.**
  - A. **General and specific LEGAL prohibitions of conflicts of interest applying to ALL Guardians including Guardians of minor-Wards, voluntary-guardianship-Wards and Guardian Advocates:**
    - (1) **Persons who provide substantial services to proposed-Wards** or persons who are employed by persons, agencies, governments or corporations in a professional or business capacity or a creditor of a proposed-Ward, may NOT be appointed as a Guardian and also retain that previous professional or business relationship, unless that person is the spouse, adult-child, parent or sibling of the proposed-Ward or the a Court has determined that the conflict is insubstantial and that the appointment of such person would clearly be in the proposed-Ward's best interest.<sup>28</sup> **This category of persons and employees of businesses can include hospitals and residential care facilities.**
      - (a) "Court determination" means that the conflict of interest is clearly set forth in a Petition filed in the relevant Court file and a Judge or Magistrate makes a decision either at a court hearing or upon review of the Petition and the Court file that the "...conflict is insubstantial and that the appointment of the person with the conflict would clearly be in the proposed-Ward's best interest."

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<sup>28</sup> Fla.Stat. §744.309(3)(2025)

(2) Courts are specifically admonished from appointing Guardians in any circumstances in which a conflict of interest exists other than in which it makes the determinations that the conflict is ‘...insubstantial and that the appointment of such person would clearly be in the proposed-Ward’s best interest.’

*Fla.Stat. §744.309(3)(2025)*

(3) Providers of health care services to a Ward either directly or indirectly, may not be appointed as a Guardian, unless a Court specifically determines that no conflict of interest exists that conflicts with a Ward’s best interest.

*Fla.Stat. §744.309(8)(2025)*

(4) Guardians are specifically prohibited from abusing, neglecting or exploiting their Wards. *Fla.Stat. §744.359 (2025)*

(5) Guardians are prohibited from using their fiduciary relationship with their Wards in any manner for the Guardian’s private gain OTHER THAN the payment of guardian fees and expenses as provided by law in Section 744.108 of the Florida Statutes. *Fla.Stat. §744.446(1) (2025)* This prohibition includes:

(a) A Guardian shall not offer, pay, solicit or receive a commission, benefit, bonus, rebate, or kickback, either directly or indirectly, overtly or covertly, in cash or in kind, or engage in a split-fee-arrangement in return for referring, soliciting or engaging in a transaction for goods or services on behalf of an Alleged Incapacitated Person or Ward for past or future goods or services. *Fla.Stat. §744.446(2) (2025)*

(b) A Guardian shall not have any interest in any business transaction or activity with his/her Ward, any Examining Committee Member, attorney representing said Ward, or court employee involved in the guardianship process. *Fla.Stat. §744.446(3)(a) (2025)*

(c) A Guardian shall not acquire an ownership, possessory, security, or other pecuniary interest adverse to the his/her Wards. *Fla.Stat. §744.446(3)(b) (2025)*

(d) A Guardian shall not be designated as a beneficiary on any life insurance policy, pension or benefit plan of his/her Ward unless such occurred prior to such Ward being determined to be incapacitated. *Fla.Stat. §744.446(3)(c) (2025)*

(e) A Guardian on behalf of his/her Ward shall not directly or indirectly purchase, rent, lease or sell any property or services from or to any business entity of which the Guardian or his/her spouse or any of the Guardian’s lineal descendants or collateral kindred, is an officer, partner, director, shareholder, or proprietor, or has any financial interest.

*Fla.Stat. §744.446(3)(d) (2025)*

(f) A Guardian cannot pay their own expenses or take or enjoy anything of benefit from his/her Ward’s assets or income except by filing a Petition for

**Fees and/or Cost Reimbursement** as prescribed by Section 744.108 of the Florida Statutes. *Fla.Stat. §744.446(3)(d) (2025)*

**B. Examples of Conflicts of Interest:** Some examples of impermissible conflict of interests are:

- (1) **Guardians paying their own expenses directly from a Ward’s cash accounts including for personal hygiene, meals, clothing, cash, entertainment, car payments, utilities housing and educational expenses.** While Guardians are entitled to be paid fees and reimbursed for costs of doing their job such as copying and postage, such fees must be reviewed PRIOR TO PAYMENT by the Court so that the Court can review a Guardian’s fee-generating-activity, assess whether it is or was beneficial to a Ward, and whether the hourly rate charged is reasonable;
- (2) **Guardians buying vehicles allegedly for transporting a Ward when the Ward does not drive and does not have any need for a specially equipped vehicle;**
- (3) **Guardians paying for all or most of a vehicle’s expenses such as insurance, maintenance and gas when the Ward does not drive and the Guardian does not maintain their own vehicle and uses the vehicle for his/her own transportation in addition to transporting the Ward;**
- (4) **A Guardian buying a residence allegedly for the benefit of his/her Ward when the Ward does not need for a specially equipped living space and the Guardian is not paying any rent to the Guardianship;**
- (5) **Guardians personally receiving benefits such as points or discounts due to referring a Ward for services** including: medical and dental service discounts for the Guardian personally; receipt of “points” or airline miles for use of a Guardian’s own credit cards; cell phone plan discounts from which the Guardian benefits from personally by including all his/her Wards on his/her own phone plan. There is a difference between all of a Guardian’s Wards receiving a benefit because a Guardian refers more than one to a service provider and the **GUARDIAN personally receiving a benefit for doing so;**
- (6) **A Guardian continuing to pay expenses and/or debt on his/her Ward’s property that is not being used by the Ward that either the Guardian is living in without paying rent and/or the Guardian hopes to receive as an inheritance;**
- (7) **A Guardian receiving a commission or kick back on sale of his/her Ward’s property, through a close relative;**
- (8) **Managing the Ward’s assets to benefit the Guardian’s future inheritance from the Ward rather than providing the best level of care possible for the longest period of time for the Ward.**
- (9) **Guardians who are the natural parents of a minor-Ward using the Ward’s inheritance or personal injury settlement to pay or purchase items for the Ward for which the Parents would normally be responsible**, including vehicles, summer

camps, prom dresses, sporting equipment for school sports and rent for larger apartments that benefit themselves and other family members.

**2. Certain conflicts or possible conflicts can be authorized IF a Guardian or perspective Guardian seeks Court-authorization PRIOR TO accepting appointment as a Guardian and/or the activity that creates the conflict:**

A. If a potential-Guardian obtains PRIOR approval from a Court by written-Court-ORDER or if a relationship existed prior to being appointed as a Guardian AND the potential-Guardian disclosed it to the Court in a Petition for Appointment, a Court may authorize the following types of conflicts of interest:

- (1) A Guardian owning an interest in a business transaction or activity with the Ward or court personnel;
- (2) A Guardian owning or acquiring an interest adverse to a Ward;
- (3) A Guardian being designated as a beneficiary on a life insurance policy, pension or benefit plan IF such designation occurred prior to a Ward being determined to be incapacitated; and
- (4) A Guardian purchasing, leasing, renting or selling any property or services from or to any business of which a Guardian or any relation of the Guardian is involved in any manner. *Fla.Stat. §744.446(3)(d) (2025)*

B. Persons employed directly or indirectly by health care providers that are providing services to a Ward can be approved as Guardians IF a Court makes a specific determination that there is NO conflict of interest with the Ward's best interest. *Fla.Stat. §744.309(6) (2025)*

- (1) If a Court determines that a potential conflict of interest is "insubstantial and that the appointment would clearly be in the proposed Ward's best interest", a Court may appoint a Guardian who is employed by a person, agency or organization that provides services to a Ward in a professional or business capacity. *Fla.Stat. §744.309(3) (2025)*

**3. Consequences to the Guardian of NOT seeking Court authorization of conflicts of interests PRIOR to the activity or appointment are that the activity can be voided and the Court can take any action necessary to protect the Ward and his/her assets. *Fla.Stat. §744.446(4)&(5) (2025)***

A. Such Court actions can include:

- (1) Removal of the Guardian;
- (2) Surcharging the Guardian personally for voided activity or damages; and
- (3) Reporting to OPPG and/or DCF if required by law.

B. Additional consequences may be that the Clerk-Auditor's Office refers the matter to law enforcement for prosecution of the Guardian for exploitation of the elderly. (See "Exploitation of the Elderly" and "Removal of Guardians" addressed in this Summary)

## COURT MONITORS

1. **Court Monitors**, the timing of and their appointment, their function, notice to parties and scope of and reports generated by their investigations are governed by Sections 744.102(6), 744.107, 744.1075, and 744.1076 of the Florida Statutes and Florida Probate Rules 5.720 and 5.725.
  - A. Court Monitors may be appointed on the request of “any interested party” or on the Court’s own initiative, including pursuant to a request by the Ward, Guardian or the next of kin of either.<sup>29</sup>
  - B. The Court may appoint any adult person as a Court Monitor as long as said person is not a family member connected to the situation, circumstances or persons at issue or a person who might benefit from said situation or circumstances.<sup>30</sup>
  - C. Court Monitors maybe appointed with or without notice to the Guardian, Ward and interested persons, the latter on an emergency basis pursuant to Section 744.1075.<sup>31</sup>
  - D. Court Monitors are appointed to investigate circumstances or situations pertaining to a Ward and/or a Guardian in a guardianship case that may be causing the Ward harm and/or may be contrary to law.<sup>32</sup> Court Monitors may “...investigate, seek information, examine documents or [and] interview the Ward.”<sup>33</sup> [Emphasis added] The powers of an Emergency Court Monitor appointed without notice must be specified by the Court appointing such a Monitor in the Order of Appointment.<sup>34</sup> The length of time of a Court Monitor’s investigation is not limited unless the Monitor is appointed as an Emergency Court Monitor. Such investigation is limited to the sooner of 60 days or a Court finding that there is not probable cause to proceed on the Emergency Court Monitor’s Report, Such term may be extended for one 30 day period.
  - E. Court Monitors must file verified Reports in the Court file unless they are appointed as Emergency Court Monitors in which case their Reports are only forwarded to the Court.<sup>35</sup> When filing Reports in the Court file, copies must be forwarded to the Guardian, Ward and interested parties.
  - F. Court Monitors are entitled to be paid fees for their work.
2. In order to protect Wards, Courts have wide latitude in addressing the situation and/or circumstances giving rise to Court Monitor appointments including: removing Guardians and appointing Successor Guardians; imposing costs and/or fines on Guardians; and, requiring that such costs or fines be paid by a Guardian personally, not from their Ward’s assets.<sup>36</sup>

<sup>29</sup> *Fla.Stat. §744.107(1)(2025); Fla.Stat. §744.1075(1)(a)(2025)*

<sup>30</sup> *Fla.Stat. §744.107(1)(2025)*

<sup>31</sup> *Fla.Stat. §744.107(1)(2025); Fla.Stat. §744.1075 (2025); Fla.Prob.R.5.720(b) & 5.725*

<sup>32</sup> *Fla.Stat. §744.107(2025); Fla.Stat. §744.1075 (2025)*

<sup>33</sup> *Fla.Stat. §744.107(2)(2025)*

<sup>34</sup> *Fla.Stat. §744.1075(1)(a)(2025)*

<sup>35</sup> *Fla.Stat. §744.107(2)(2025); Fla.Stat. §744.1075(2)(2025)*

<sup>36</sup> *Fla.Stat. §744.107(3)(2025); Fla.Stat. §744.1075(4)(c)(2025)*

3. **This Court finds that appointing Court Monitors is NOT a practical solution in most Guardianship Cases** because such Monitors must and should be paid for their services often initially from the Ward's assets and income. While the Court can assess such fees against a Guardian violating the law or causing harm to his/her Ward, often it is difficult to collect. Appointing a free Court Monitor by appointing Regional Counsel as such while authorized by Statute is not an option. The Office of Regional Counsel in the 20<sup>th</sup> Circuit is most often appointed to represent indigent Alleged Incapacitated Persons in their incapacity proceedings and is therefore not an independent third party. This Court is generally able to address its own concerns regarding Guardian-conduct and/or the concerns of DCF, the Collier Clerk's Office, Law Enforcement reports, or complaints of Interested-Parties, by scheduling a hearing regarding such concerns and requiring testimony of all those persons who might have information pertaining to the situation or circumstances. If such concerns cannot be addressed by the Court, then they can usually be addressed by law enforcement.

## **DISMISSING GUARDIANSHIP AND INCAPACITY CASES PRIOR TO DETERMINATION OF INCAPACITY AND APPOINTMENT OF GUARDIAN**

1. **Voluntary dismissals prior to incapacity determinations are legally permissible** pursuant to *Gort v. Gort*, 185 So.3d 607 (Fla. 4<sup>th</sup> DCA 2016) and Florida Rule of Civil Procedure 1.420. This means that the person who has filed a Petition for Determination of Incapacity and a Petition for Appointment of a Guardian may voluntarily dismiss them prior to an adjudicatory hearing at which the Court determines that the subject-Alleged-Incapacitated-Person is incapacitated.
  - A. **The Gort-Court DOES indicate that the Petitioner MUST seek Court “acceptance” of such a voluntary dismissal.** *Gort* at 612, citing *Cutler v. Cutler*, 84 So.3d 1172 (Fla. 3d DCA 2012) **This means that an Order Dismissing the Petitions MUST be submitted to the Court for the Judge’s signature upon the filing of Voluntary Dismissals of such Petitions in the Court files.** If any interested party objects, the Court would then hold a hearing. This is consistent with the *Gort*-Court distinguishing its ruling in that case from a prior ruling on the same issue in different circumstances.
    - (1) It is **NOT** sufficient to just file Notices of Dismissal in the Case files and not submit Orders of Dismissal to the presiding Judge for signature.
    - (2) If Petitions for Appointment of Guardian is filed simultaneously with a Petition for Determination of Incapacity, then Notices of Dismissal must be filed in both Cases **AND Orders of Dismissal** must be submitted to the Judge for both Cases.
    - (3) In accepting the dismissal, Courts must consider whether the dismissal is for the purpose of fraud or the Ward’s protection. *Gort* at 611, distinguishing *Jasser v. Saadeh*, 97 So.3d 241 (Fla. 4th DCA 2012).
    - (4) **Any Order of Dismissal should specify who or what entity is responsible for paying the Examining Committee’s fees.** When incapacity and guardianship Cases are dismissed, if the Examining Committee has been appointed and performed their evaluations, they still must be paid. (See also “Examining Committee” this Summary)

(5) **Final Accountings upon dismissal may be required.** If an Emergency Temporary Guardian has been appointed regarding the AIP's property and had begun or completed a marshalling of the AIP's assets and income, then such ETG must file a Final Accounting unless the Ward, the Petitioner and all other interested parties stipulate to waiving said Final Accounting. The ETG and the attorney representing him/her would also be entitled to fees and costs for their services.

B. These dismissals most often occur when the Petitioner for the Guardianship and the Ward and/or the Ward's relatives enter into an agreement regarding the care of their relative and the management and disposition of the property of the Alleged Incapacitated Person (AIP). If a majority of the Examining Committee Members have determined that the AIP is totally incapacitated despite a Court determination not having occurred, attorneys should be mindful as to whether such jeopardizes the validity of an agreement in which the AIP's consent is necessary as it did in *Jasser*.

2. **If a majority of the Examining Committee Members determine an Alleged Incapacitated Person is COMPETENT, then the Court must dismiss the Petition for Incapacity and the Petition for Appointment of a Guardian immediately and without a hearing.**

A. As set forth above, **the Examining Committee Members must be paid** and any order submitted to the Court dismissing the Petitions should include this language.

B. As set forth above, the ETG must file a Final Accounting and he/she and his/her attorney must be paid unless waived by the Ward, the Petitioner and all interested Parties. Any Order Dismissing should reflect the status of such.

3. **Motions to Dismiss** alleging that less-restrictive-means already exist to address a Ward's issue, should be addressed at the time of the incapacity and guardianship Court proceedings. Attorneys should notice these for hearing at the same time as the incapacity and guardianship hearings and ALSO make sure that such are listed on any Order of Referral to the Magistrate for the incapacity and guardianship hearing if such is occurring before the Magistrate.

4. **Notices of Voluntary Dismissal** after appointment of a Guardian of a Minor-Ward's Property have recently begun to be filed in Minor-Guardianship-Cases AFTER the Guardian has been appointed. These Cases are most often filed to facilitate personal injury settlements or inheritances for minors. It appears that attorneys are under the impression that after a Guardian has been appointed for his/her Minor-Ward's property, if the personal injury award is payable in the form of an annuity to the Ward at the time that the Ward reaches the age of majority or afterwards, that they can just file a Notice of Voluntary Dismissal and be done. **This is NOT correct.** A voluntary-dismissal is not effective to dismiss a case once a FINAL-order has been signed which is the Order Appointing Guardian. There are only two options:

A. Keep the guardianship open until the Ward reaches the age of majority and file an Initial Inventory and Annual Accountings reflecting ownership of the annuity by the Guardianship in a Simple Annual Accounting; OR

B. File a Petition for Determination of Alternatives to Guardianship pursuant to Section 744.464 of the Florida Statutes based on less restrictive means being available in the form of the annuity AND obtain an Order determining such and closing the Case. **The annuity company MUST be notified of the Guardianship's termination.** **Be warned** that Courts are not required to grant these Petitions unless there is evidence that the Annuity cannot be cashed in, transferred, liened or otherwise encumbered during the Ward's minority and the Minor's parent would not have legal authority to do so without a current appointment as a Guardian of the Minor's property.

## **DO NOT RESUSCITATE ORDERS**

1. Governing or relevant Statutes and Rules include: Sections 744.441(2), 744.4431, 765.105. 765.305, 765.401, and 765.404 of Florida Statutes and Florida Probate Rule 5.631.
  - A. Sections 744.441(2) and 744.4431 of the Florida Statutes provide that a Guardian may sign an "Order"<sup>37</sup> Not to Resuscitate" AFTER OBTAINING COURT APPROVAL to do so.
  - B. A hearing is not necessarily required.<sup>38</sup> **A hearing is only required if:**
    - (1) The Ward or the Ward's attorney objects;
    - (2) The Ward's next of kin or interested-parties object for any of the reasons set forth in Section 765.105(1) of the Florida Statutes;
    - (3) The Guardian, Ward or one of their attorneys requests a hearing; or
    - (4) The Petition does not set forth sufficient information for the Court to make a determination without a hearing.
  - C. If a hearing is required and exigent circumstances exist, the Court is required to hold said hearing within 72 hours.<sup>39</sup> The Guardian is responsible for alerting the Judge's office to the filing of a Petition for a Do Not Resuscitate Order and the necessity of a hearing. When contacting the Judge's office for hearing time in this circumstance, **inform the Judicial Assistant that this hearing must be held within 72 hours.**<sup>40</sup>
2. Section 744.4431 and Rule 5.631 set forth the pleading requirements for a Petition for a Do-Not-Resuscitate-Order.

## **EMERGENCY TEMPORARY GUARDIANS AND GUARDIANSHIPS**

1. **Petitions for Appointment of Emergency Temporary Guardians** cannot be granted without a hearing.<sup>41</sup> Such Petitions may be scheduled before a Judge or Magistrate.

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<sup>37</sup> The "Order" that a Guardian signs for health care purposes is not an Order that the Judge signs.

<sup>38</sup> *Fla.Prob.R. 5.631(2025)*

<sup>39</sup> *Fla.Stat. §744.441(2)(2025); Fla.Prob.R. 5.631(c)(2)(2025)*

<sup>40</sup> This 72-hour hearing may only be held before a Judge unless all persons including any objecting parties waive filing of Exceptions to the Magistrate's ruling. This is unlikely because the reason for the hearing is Objections filed by persons entitled to do so.

<sup>41</sup> *Covery v. Shaffer*, 277 So3d 694, 696-697 (Fla. 2d DCA 2019)

- A. Do NOT schedule these Petitions before the Magistrate UNLESS all Parties, Interested-Parties and their counsel agree to the Magistrate presiding over said hearing AND to waive the filing of Exceptions.<sup>42</sup>
- B. If there is no agreement regarding the Magistrate and waiving of Exceptions, contact the Judge's office for a hearing date and time. **ALERT** - beginning in Fall of 2025, the Judge will schedule consistent days and times to hear these types of Petitions and will be scheduling such to accommodate statutory time-limits and its own schedule rather than the attorneys' convenience.

2. **Requirements for appointment of Emergency Temporary Guardian (ETG) prior to determination of incapacity are:**

- A. The Petitioner must file a Petition for Determination of Incapacity must have been filed. *Fla.Stat. §744.3031(1)(2025)*
- B. The Petition for Appointment of an Emergency Temporary Guardian must be verified and must allege that:
  - (1) There is imminent danger that the physical or mental health or safety of the Alleged Incapacitated Person will be seriously impaired OR that the AIP's property is in danger of being wasted, misappropriated or lost unless immediate action is taken; *Fla.Stat. §744.3031(1)(2025); Fla.Prob.R.5.648(2025)* and
  - (2) The powers and duties that should be assigned to the Emergency Temporary Guardian. *Fla.Stat. §744.3031(1)(2025)*
- C. Counsel must be appointed for the AIP if one has not been already appointed as part of the incapacity and guardianship proceeding. *Fla.Stat. §744.3031(1)(2025)*
- D. **The Petitioner MUST also prepare a Notice of Filing of the ETG-Petition and of the Hearing that must be served on the AIP and the AIP's attorney at least 24-hours prior to the scheduled hearing unless the Petitioner can demonstrate that the AIP would experience substantial harm if such notice is given.** *Fla.Stat. §744.3031(2)(2025); Fla.Prob.R.5.648(b)(2025)*
  - (1) The serving of the above-Notice on the Ward may be accomplished by the Ward's attorney reading the Notice to the Ward as the Court-appointed Elisor.<sup>43</sup>
- E. **The Court will review Petitions for Appointment of an Emergency Temporary Guardian for sufficiency prior to scheduling hearings.** If the Court finds the Petition

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<sup>42</sup> If the filing of Exceptions is not waived, then the appointment of an Emergency Temporary Guardian will not be effective until after the 15-day-Exception-period expires and/or until the Court addresses any Exceptions that are filed. These hearings on Exceptions require the Party filing them to obtain a Court-Smart-recording of the hearing and then have it transcribed by a court reporter which requires another 45 to 60 days.

<sup>43</sup> The Court appoints an attorney for a Ward immediately upon the filing of the Petitions for Incapacity, Appointment of a Guardian and for Appointment of Emergency Temporary Guardian and at the same time appoints said attorney as the "Elisor" to serve Notices on the Ward. Fla.Prob.R.5.550(b)(2) An "elisor" is simply a person appointed by a Court to perform certain functions to effectuate Court orders, such as serve notices or execute documents.

fails to properly plead the grounds, it may dismiss the Petition without a hearing, Said dismissals are without prejudice and a Petitioner may amend his/her Petition.

- F. Notice of the filing of the Petition for Appointment of an Emergency Temporary Guardian and of the hearing on said Petition must be served on the Alleged Incapacitated Person and his/her attorney at least 24 hours prior to the hearing on said Petition commencing. *Fla.Stat. §744.3031(2)(2025); Fla.Prob.R.5.648(b)(2025)*
3. **Appointment AFTER determination of incapacity.** Section 744.3031(3) of the Florida Statutes provides that a Court may appoint an Emergency Temporary Guardian on its own motion if no Petition for Appointment of a Guardian has been filed at the time of the entry of an Order Determining Incapacity. Section 744.331(3)(b) requires that after a Court has determined a person to be incapacitated and that there are no other alternatives to a guardianship that will sufficiently address the problems of the incapacitated person, then the Court SHALL appoint a Guardian. This Court has determined that these Sections allow for appointment of Emergency Temporary Guardians after a Ward has been determined to be incapacitated when a current Guardian for some reason is not appointed, including when the Petitioner, Ward, and/or interested Parties and/or counsel cannot agree if a Guardian should be appointed, who the Guardian should be, and when a Guardian has died or been removed.
4. **Authority of any ETG only lasts 90 days though it may be extended another 90 days ONLY** upon a showing that the emergency conditions still exist. *Fla.Stat. §744.3031(4)(2025)*
  - A. **The Court will NOT extend an ETG longer than the 180 total days on any one Petition.** There are very few “emergency” situations that should last longer than this period without appointment of an actual Guardian or dismissal of the guardianship proceedings.
  - B. If for some reason there is a circumstance that requires an ETG of longer than 180 days, file a new Petition and remember to explain why the guardianship-proceedings are requiring longer than 180 days and the circumstances that form the basis of the “emergency” as allowed by the Statute.
  - C. The Emergency Temporary Guardian must file a Final Report or Reports no later than 30 days after the expiration of the emergency temporary guardianship. *Fla.Stat. §744.3031(9)(a)(2025)*
  - D. The Court cannot authorize the payment of fees to the ETG or his/her attorney until the Final Reports are filed. *Fla.Stat. §744.3031(9)(b)(2025)*
  - E. If the ETG becomes the Guardian, the Final Reports must consist of an Initial Inventory and/or Initial Plan. *Fla.Stat. §744.3031(9)(c)&(d)(2025)*

## **EXAMINING COMMITTEE**

1. **An Examining Committee must be appointed to evaluate and determine if an Alleged Incapacitated Person IS or is NOT incapacitated.**<sup>44</sup> An Examining Committee is a 3-person Committee.<sup>45</sup> Florida Statutes REQUIRE that one member of the Committee be a psychiatrist or other physician licensed to practice in Florida. The other two members can be Florida-licensed psychologists, mental health professionals, registered nurses or higher nursing qualification, or person with advanced gerontology degree. One of the three members appointed, must have knowledge of the type of incapacity alleged to be at issue for the AIP who they are evaluating. *Fla.Stat. §744.331(3)(a) (2025)*

2. **Examining Committee Members** in the 20<sup>th</sup> Judicial Circuit are listed on the Circuit's webpage at the "Services" tab and "Expert Witness Registry". There is only one physician listed on this list that performs evaluations for Collier County incapacity cases. He conducts these evaluations via Zoom technology though will do so in person if the AIP can be transported to his office in Charlotte County, Florida. The link for the list is:

<https://www.ca.cjis20.org/isc/pdf/Expert-Registry.pdf>

3. **Examining Committee Members are appointed as required by Statute and on a randomized basis.** When there is only one physician on the Examining-Committee-List, then that doctor will always be appointed. The other two Committee-members are appointed on a randomized basis.

4. **Examining Committee Members are paid regardless as to the Committee's determination of capacity.** If the AIP has financial resources, the Committee Members are paid from the assets and/or income of the Alleged Incapacitated Person. If the AIP does not have the financial resources or is otherwise indigent, 20<sup>th</sup> Circuit Court Administration pays the Committee Members.

A. **If Examining Committee Members have conducted their evaluations and filed their Reports, they are paid even when Petitions for Incapacity Determination and for Appointment of Guardian are dismissed prior to a determination of capacity or denied by the Court.** Any Orders Dismissing or Denying submitted to the Court must INCLUDE language that requires payment either from the AIP's assets and income or by Court Administration. Payment of Examining-Committee-Member-Fees upon a dismissal or denial of Petitions for Incapacity Determination and for Appointment of Guardian shall occur and are ordered as follows:

(1) **Court Administration pays the Examining Committee Fees if the AIP is indigent and the AIP pays such if he/she is not indigent when the Committee Members unanimously determine that an AIP has capacity and consequently the Court dismisses the Petitions for Determination of Incapacity AND Guardianship. However, the Court may require the Petitioner to pay the fees if the Court determines that the Petitions were filed in bad faith.**

(2) **Court Administration pays the Examining Committee Fees if the AIP is indigent and the AIP pays such if he/she is not indigent when Petitioners withdraw or**

<sup>44</sup> *Fla.Stat. §744.331(2025)*

<sup>45</sup> *Fla.Stat. §744.331(3)(a) (2025)*

dismiss their Petitions for Incapacity Determination and for Appointment of a Guardian PRIOR TO a Court ruling on said Petitions. This usually occurs when the Petitioner, the AIP and other family members are able to agree as to how to address the AIP's circumstances that gave rise to the filing of the Petitions.

- (3) **Court Administration pays the Examining Committee Fees if the IP is indigent and if not, by the person with authority who is designated as the IP's Power of Attorney or Trustee pays such fees, when a Petition for Incapacity Determination is granted, but the corresponding Petition for Appointment of Guardian is denied** because the Court determines that there are less restrictive means than a guardianship to address the circumstances of the Incapacitated Person (IP) and his/her lack of capacity. Persons with such authority to pay bills on behalf of a Ward include those who are agents under a Power of Attorney or Trustees of a trust.
- (4) **Examining Committee Fees should be paid immediately upon receipt of an invoice.** Failure to pay Examining Committee Fees and pay them timely results in less experts willing to serve as Committee Members. Courts have discretion to enforce the law and their own Court orders by use of sanctions. If the attorneys receive invoices for such fees that should be paid by Court Administration or become aware that such fees have not been paid by their client(s), they should immediately forward the invoice to Court Administration at the below contact or ensure that such fees are immediately paid. The Court Administration contact for payment of Examining Committee Fees is:

**Mariem Ibrahim at [MIbrahim@ca.cjis20.org](mailto:MIbrahim@ca.cjis20.org)**

- B. The-Examining-Committee-Fee-rates when Court Administration pays are determined by the Florida Supreme Court as set forth on the same 20<sup>th</sup> Circuit webpage as the Examining-Committee-list. (see links below)

<https://www.ca.cjis20.org/isc/pdf/Expert-AOSC17-12.pdf>  
<https://www.ca.cjis20.org/isc/pdf/Expert-AOSC18-17.pdf>

5. **Florida Statutes determine the nature and type of evaluation that is to be conducted by the Examining Committee Members.**<sup>46</sup> The Committee Members' examination must include a "comprehensive examination". This Comprehensive Examination must include: (1) a physical examination; (2) a mental health examination; and (3) a functional assessment. Each Committee Member is required to prepare a written Reports of their examination of the AIP that must be filed in the Court file of the Cases to which they are appointed. If any of the three-required-examinations cannot be performed, the Committee Member MUST explain the reasons for the omission in their respective Reports.<sup>47</sup> (See "Examining Committee Report" Form on Collier's 20<sup>th</sup> Judicial Circuit webpage at the "Guardianship" tab.)

- A. Examining Committee Members SHALL:

- (1) Examine the AIP; *Fla.Stat. §744.331(3)(e)(2025)*

<sup>46</sup> *Fla.Stat. §744.331(e)-(g)(2025)*

<sup>47</sup> *Fla.Stat. §744.331(f)(2025)*

(2) Consult with the AIP's attending or family physician IF available; *Fla.Stat. §744.331(3)(a)(2025)*

(a) Be able to communicate with the AIP, either directly or through an interpreter, in a medium understandable to the AIP, if he/she is able to communicate; *Id.*

(b) Determine the AIPs ability to exercise the rights specified in Section 744.3215 of the Florida Statutes; *Fla.Stat. §744.331(3)(e)(2025)*

(c) Be given access to previous examinations of the person including, but not limited to habilitation plans, school records, and psychological and psychosocial reports voluntarily offered<sup>48</sup> for use by the AIP; *Fla.Stat. §744.331(3)(e)(2025)*

(d) Include a “Comprehensive Examination” that MUST include “IF indicated”

- i. A physical examination;
- ii. A mental health examination; and
- iii. A functional assessment. *Fla.Stat. §744.331(3)(f)(2025)*

(e) If any of the 3-aspects of the examination is not indicated or cannot be accomplished for any reason, the written report **MUST explain the reasons for its omission.** *Fla.Stat. §744.331(3)(f)(2025)*

(f) File a Report with the Clerk of Court within 15 days of his/her appointment with the AIP that must include:

- i. A determination of the AIPs ability to exercise 744.3215-rights; *Fla.Stat. §744.331(3)(e)&(g)(2025)*
- ii. The results of the “Comprehensive Examination;” *Fla.Stat. §744.331(3)(e)&(g)(2025)*
- iii. A diagnosis, prognosis and recommended course of treatment, to the extent possible; *Fla.Stat. §744.331(3)(g)1(2025)*
- iv. An assessment of information provided by the attending or family physician, if any; *Fla.Stat. §744.331(3)(g)3(2025)*
- v. A description of any matters with respect to which the AIP lacks the capacity to exercise rights, the extent of that incapacity, and the factual basis for the determination that the person lacks that capacity. *Fla.Stat. §744.331(3)(g)4(2025)*
- vi. The names of all persons present during the time of the examination including any answers given by said person; *Fla.Stat. §744.331(3)(g)5(2025)*
- vii. The date and time of the examination; *Fla.Stat. §744.331(3)(g)6(2025)*
- viii. The signature of the Examining Committee Member. *Fla.Stat. §744.331(3)(g)6(2025)*

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<sup>48</sup> The “voluntarily offered” requirement only applies to the psychological and psychosocial reports.

B. While Florida Statutes require that a Comprehensive Examination be completed for each Alleged Incapacitated Person and that said Examination should have three distinct components, Florida case law provides that not all Committee Members must perform all three parts of this evaluation. Each Committee Member may contribute some or all of the necessary components of the Comprehensive Examination so that together their Reports constitute ALL the necessary 3-parts.<sup>49</sup>

C. Neither Chapter 744 or Probate/Guardianship Rules require that the Examining Committee Members conduct any of the 3-examinations or assessments in-person-face-to-face. Further, the applicable standards of practice also do not require such in-person-face-to-face contact with medical or health care professionals. Chapter 456 of the Florida Statutes governing Health Professions and Occupations provides for telehealth evaluations and assessments.<sup>50</sup> Telehealth assessments and evaluations are authorized by the Florida Administrative Code for medical professionals for various types of conditions, including substance abuse.

6. **Florida statutes allow the Examining Committee Members to consider the AIP's prior health records IF they have access to such records.**<sup>51</sup> If the Committee Members do not have access to such records, then this lack does not render their evaluations and Reports insufficient. If Parties and attorneys want the Committee Members to review such records as a part of their evaluation, then they should ensure that the Members receive copies of them and/or access to them.

7. **The Examining Committee Members are required to perform their examinations and file their Reports within 15 days of the date of their appointment.**<sup>52</sup> However, this time frame is often expanded to accommodate Wards and the Committee Members. The remedy for untimely evaluations and Report-filing would NOT be dismissal of the pending Incapacity Petitions and would depend on the circumstances of the Case.

A. If an Examining Committee Member has completely failed to evaluate an AIP or file a Report, either a Motion for Order to Show Cause or Motion to Substitute another Committee Member would be the remedy. Occasionally, a Committee Member is unaware of his/her appointment or he/she believes that he/she has filed his/her Report.

B. When an examination occurs or a Report is filed after the 15-day deadline, this does not necessarily invalidate the examination or Report. The Court is required to consider if the lateness was “reasonable” based on the circumstances on a case-by-case basis.<sup>53</sup>

8. **An adjudicatory hearing as to the AIP's capacity must be conducted by a Court at least 10 days but no more than 30 days after the filing of the last Examining Committee Member's Report.**<sup>54</sup> Courts are required to schedule this date at the time that the Examining

<sup>49</sup> *Cook v. Cook*, 260 So.3d 281, 286 (Fla. 4<sup>th</sup> DCA 2018)

<sup>50</sup> *Fla.Stat. §456.47(2025)*

<sup>51</sup> *Fla.Stat. §744.331(3)(e)(2025)*

<sup>52</sup> *Fla.Stat. §744.331(3)(e)(2025)*

<sup>53</sup> *Sarfaty v. M.S.*, 232 So.3d 1074 (Fla.3d DCA 2017)

<sup>54</sup> *Fla.Stat. §744.331(5)(2025)*

Committee is appointed. This unfortunately does not happen so as to allow for scheduling challenges with the AIP and/or Examining Committee Members AND the attorneys schedules. **HOWEVER, this procedure will soon become stricter as it is being used to delay proceedings. At the time that the Order Appointing the Examining Committee is executed and filed, the adjudicatory hearing shall be scheduled approximately 45 days in advance. No exceptions will be made or continuances will be granted except upon Petition filed in the Court file and Order thereon from the presiding Judge.** This will allow the Examining Committee Members to conduct their examinations and file their Reports and give the attorneys time to review same prior to an adjudicatory hearing.

- A. Delays in the occurrence of adjudicatory hearings and aging of Examining Committee Reports does not necessarily affect the Court's ability to rely on the Reports.<sup>55</sup>
- B. Any Motions or Objections that might delay such adjudicatory hearing MUST be filed, scheduled AND heard prior to the adjudicatory hearing, including any Objections to the Examining Committee Reports. If attorneys or their offices contact the Judge's or Magistrate's office to schedule such Motions and/or Objections, they MUST inform the Judge's Judicial Assistant of when the adjudicatory hearing is scheduled and that a hearing must be scheduled prior to that time.
  - (1) Florida Probate Rule 5.550(e)(3) requires that Objections to Examining Committee Reports be filed no later than **5 days prior** to the adjudicatory hearing. These are evidentiary "objections" such as hearsay objections. These do NOT include bases of Motions to Strike Reports. Those should be filed immediately upon the filing of the Committee Reports.
- C. If any Party or Interested Person files a hearsay-objection to the admission of the Examining Committee Reports into evidence at the adjudicatory hearing and/or requires such Committee Members to testify at said hearing and a Member or Members are unable to appear on the date and time of the previously scheduled hearing, they may testify by pre-recorded-video deposition. The Parties or Interested Persons who are requiring such live testimony shall be responsible for scheduling such depositions on dates and times at which said witnesses are available. The attorneys SHALL make themselves available.
- D. All Parties, attorneys, interested persons and Examining Committee Members may appear via Zoom for adjudicatory hearings before the Judge and Magistrate.

9. **Objections and discovery issues other than hearsay-objections to the Examining Committee Reports must be set forth in a Motion/Petition to Strike the Reports and scheduled for a hearing PRIOR to the adjudicatory hearing.**<sup>56</sup> Such objections include those based on incomplete Examining Committee Reports. If such a Motion/Petition is granted, the court may then order:

- A. All or less than all the Committee Members to amend their Reports if they failed to include a required criteria;

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<sup>55</sup> *Sarfaty v. M.S.*, 232 So.3d at 1080-1081

<sup>56</sup> *Levine v. Levine*, 4 So.3d 730 (Fla. 5<sup>th</sup> DCA 2009)

- B. A re-examination by the existing Committee or a Committee Member and that he/she/they file a new Report; and/or
- C. Appointment of a new Examining Committee or Committee Member and order an examination by the new Member or Members and that he/she/they file a new Report.<sup>57</sup>

**10. Requests to allow experts to evaluate a Ward and give opinions in addition to the Examining Committee, may be allowed pursuant to Rule of Civil Procedure 1.360.** The requesting party must file a Motion/Petition for such relief and the granting of the relief is in the Court's discretion. Such experts will not be "appointed" by the Court as additional or substitute-Examining-Committee-Members. Such examinations may only be allowed pursuant to Florida Rule of Civil Procedure 1.360.<sup>58</sup> In order to obtain authorization to require that the AIP be examined by an expert, the condition to be examined must be in controversy.<sup>59</sup> Case law provides:

*The two essential prerequisites that must be clearly manifested are: (1) that petitioner's mental condition is "in controversy" i.e. directly involved in some material element of the cause of action or a defense; and (2) that "good cause" be shown i.e. that the mental state of petitioner, even though "in controversy," cannot adequately be evidenced without the assistance of expert medical testimony. Gasparino v. Murphy, 352 So.2d 933, 935 (Fla. 2d DCA 1977).*

*... In Schlagenhauf the court held that the 'in controversy' and 'good cause' requirements of Rule 35:<sup>60</sup> '....are not met by mere relevance to the case—but require an affirmative showing by the movant that each condition as to which the examination is sought is really and genuinely in controversy and that **good cause** exists for ordering each particular examination.'*  
 [Emphasis added]

Such controversy might exist if the Examining Committee Members disagree substantially regarding an AIP's capacity. This Court has held that one Committee Member determining that an AIP could retain his right to vote does NOT constitute such a controversy.

**11. The Examining Committee Members are required to file Reports in the Court file.** These Reports can be relied on by the Court in determining capacity or incapacity if no hearsay objections are raised or the attorneys stipulate to the admission of such Reports into evidence at the time of the incapacity-adjudicatory-hearing. Florida Statutes require that these Reports are an "essential element, but not necessarily the only element" in the Court's determination of an AIP's capacity or incapacity.<sup>61</sup> If a hearsay-objection is raised to a Report, then the Committee Member who prepared the Report must testify at the hearing. In almost ALL instances, such testimony can occur via Zoom.

## **“FOREIGN”/OUT OF STATE GUARDIANSHIPS**

<sup>57</sup> *Id.*

<sup>58</sup> Florida Probate Rules specifically allow the application of certain Civil Procedure Rules and Rule 1.360 is among those that may be utilized. *Fla.Prob.R.5.080(10)*

<sup>59</sup> *Fla.R.Civ.P.1.360(a)/1*

<sup>60</sup> Federal Rule of Civil Procedure is 35(a) which is nearly identical to Florida Rule of Civil Procedure 1.360(a). The landmark case which interpreted the 'in controversy' and 'good cause' requirements [under Federal Rule of Civil Procedure 35(a)] is *Schlagenhauf v. Holder*, 379 U.S. 104, 85 S.Ct. 234, 13 L.Ed.2d 152 (1964).

<sup>61</sup> *Fla.Stat. §744.331(f)(2025)*

1. A “foreign” guardianship filed in Florida is one in which a Guardian was appointed in another State. *Fla.Stat. §744.102(8)(2025)* These occur when a Ward’s **place of residence** is moved to the State of Florida or when a Guardian appointed in another State must manage his/her Ward’s property or other interests located or occurring in Florida. This does NOT include a Ward vacationing in Florida or receiving services at a Florida-rehabilitation clinic that is not intended to be his/her permanent residence. The laws and rules governing this type of guardianship are: Sections 744.306, 744.307 and 744.308 of the Florida Statutes and Rule 5.645 of Florida Probate Rules.
2. Within 60 days of a Ward moving to Collier County, Florida, the Guardian must file an authenticated copy of the out-of-State-Order of Appointment with the Collier County Clerk’s Office attached to a Petition to Appoint Florida Guardian.
  - A. **Foreign-Guardians who are converted to Florida-Guardians, are subject to Florida laws and Florida laws treat Guardian Advocates and Guardians slightly differently as to representation and reporting requirements.** Therefore **this Court ALSO now requires** that the Petition for Appointment of a Florida Guardian based on such prior foreign-guardian-appointment, should specify whether: an incapacity determination preceded said foreign-appointment OR if the appointment was based on the Ward being disabled before he/she was 18 years of age. In other words, **this Court must be on notice as to whether the prior foreign-guardianship was the same or similar to a guardian advocacy or a guardianship that was based on a determination of incapacity by a court after examination of the Ward.**
3. **A Foreign Guardian seeking to manage his/her Ward’s assets and/or interests that are located in Collier County, Florida** must file a Petition pursuant to Florida Probate Rule 5.645 of the Florida Probate Rules that attaches authenticated copies of his/her appointment as well as any Bond posted in the foreign-State. The Petition as well as any Orders and Letters submitted to the Court for execution MUST be specific regarding what assets and/or interests the Foreign Guardian seeks to manage in Collier County, Florida. **The Foreign Guardian will only have authority to manage those specific assets or interests.**

## **GIFTING AND CREATION OF TRUSTS and SIMILAR VEHICLES DURING GUARDIANSHIPS**

1. **Gifting and the creation of trusts with guardianship assets once a guardianship has been established, are generally only allowed if they are consistent with the legal-purposes of guardianships as set forth in Florida’s guardianship laws.** The purpose of guardianships is to assist incapacitated persons in meeting the essential requirements for their physical health and safety by managing their financial resources, developing or regaining their abilities to the maximum extent possible, and preserving their rights to participate in the decisions that affect such to the maximum extent possible.<sup>62</sup> In order to accomplish these purposes, it is necessary for Guardians to manage their Wards assets well for maximum benefit to the Ward.

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<sup>62</sup> *Fla.Stat. §744.1012(3)(2025)*

2. **GIFTS: Gifting of a Ward's assets and/or income are specifically addressed by Sections 744.441(17) and (19) of the Florida Statutes.**

A. **Section 744.441(17) limits Guardians ability to make gifts of Wards' assets.**

Guardians may make gifts from their Wards' assets ONLY if all three of the below criteria are met:

- (1) **The Guardian receives written Court authorization to do so.** This requires the filing of a Petition for such authorization and submission of an Order to the Judge. Occasionally, the Court will require a hearing.
- (2) **The gifts are intended for the Ward's family.** Case law has expanded the definition of family to include those family members for whom a Ward had expressed donative intent prior to his/her incapacity, even if not close family relatives.<sup>63</sup>
- (3) **The gifts are being made for estate and tax planning purposes.** Transfers to ensure that a Minor-Ward is not able to spend his/her assets until years after he/she reaches the age of majority, are not considered to be for the purposes of estate and tax planning.<sup>64</sup>

B. Even if a proposed gift meets all of the above criteria, it must also be consistent with what the Ward would have wanted to do if he/she had capacity.<sup>65</sup>

C. A person who is legally dependent on a Ward may Petition the Court for an Order directing the Guardian of the Ward's property to pay support to said legal-dependent. Such legal dependents may include a spouse and minor children. *Fla.Stat. §744.421(2025)* Payments to persons who are not "legally dependent" on a Ward without full and adequate consideration, are gifts even if the Ward might be construed to have a moral or equitable obligation to support them.<sup>66</sup>

- (1) **This Court will scrupulously scrutinize Petitions seeking authorization to use a Ward's assets and/or income to buy an asset or pay an expense that benefits not only the Ward but also his Guardian-parent(s) and other family members. If the Court grants such authorization, it may require the Guardian(s) to pay rent personally for use of the asset by him/herself and the family members who are not the Minor-Ward.** Without a clear reciprocal financial benefit for the Ward, such transactions may constitute gifts for tax purposes because while the Minor-Ward may be legally dependent on his/her parents, parents and a Ward's siblings are not legal-dependents of the Minor-Ward.

3. **TRUSTS: Guardians' may create, fund, or modify trusts with or holding Wards' assets, including trust-vehicles that may extend beyond the disability or life of the Ward, but are limited by Section 744.441(19) of the Florida Statutes.** Guardians may do

<sup>63</sup> *In Re: the Guardianship of Bohac*, 380 So.2d 550, 553 (Fla. 2d DCA 1980)

<sup>64</sup> *Guardianship of Bernstein v. Miller*, 777 So.2d 1125, 1127 (Fla. 4<sup>th</sup> DCA 2011)

<sup>65</sup> *In Re: the Guardianship of Bohac*, 380 So.2d at 553

<sup>66</sup> *Rev.Rul 73-612*, 1973-2 C.B. 322; *Rev. Rul. 67-280*, 1967-2 C.B. 349

so ONLY if the purpose of creating, modifying and/or funding such trust is for estate, gift, and/or tax planning or estate planning.

- A. **The Guardianship Court retains oversite over the assets transferred to a trust during a Guardianship and has jurisdiction to require the Guardian to account for the assets, income and expenditures in and by such Trusts pursuant to Section 744.441(19) of the Florida Statutes.** This Section provides that IF a trust is created or established during the guardianship of a Ward with assets owned by the Ward/Guardianship outside of such vehicles or such assets are transferred into an already existing trust, then the Court retains oversite over the assets transferred to a trust, unless the Court orders otherwise.
  - (1) **The Court has determined that the above provision means that ‘retaining oversite over assets’ includes that the assets transferred to trusts during a guardianship shall be included in the Guardian’s financial reporting as well as any expenditures therefrom and that the Guardian must be given and maintain a copy of the Trust documents.**
    - (a) The Court must be able to determine from a Guardianship’s financial-Reporting if there are enough assets and income to care for the Ward for his/her life time and/or if the Ward’s assets and income are being properly and legally spent and/or managed.
    - (b) Naming an institutional trustee will NOT shield a trust created from a Ward’s assets during a guardianship from the required Guardianship-financial-reporting.
  - (2) **To make the above clear to Guardians and Trustees, any Orders submitted to the Court regarding establishment of ANY trusts during guardianships MUST include language that the Trustee(s) shall submit to the Court’s jurisdiction in the relevant guardianship case including for the purposes of the Guardian including such Trusts in the Initial Inventory AND Annual Accountings.** This means that the Trust assets and expenditures will be included in such Guardianship-Reporting and the Guardian MUST be given a copy of the Trust.
- B. A Guardian may not create a trust that would pass to a beneficiary different than the Ward would have directed under estate planning documents executed prior to the Ward’s incapacity.<sup>67</sup>
- C. Guardian may not create a trust or an account with a Minor-Ward’s guardianship-assets that would only pay the assets to the Ward well after he/she reached the age of majority.<sup>68</sup>
- D. **Medicaid Planning – Pooled and Special Needs Trusts.** Guardians may engage in Medicaid Planning with such vehicles as Special Needs and/or Pooled Trusts as long as Guardians comply with Section 744.441(19) and the Guardian files a Petition for Authorization that clearly sets forth the “substituted-judgement” criteria as the basis for

<sup>67</sup> *In Re: the Guardianship of Sherry*, 668 So.2d 659 (Fla. 4<sup>th</sup> DCA 1996)

<sup>68</sup> *Guardianship of Bernstein v. Miller*, 777 So.2d at 1127

the Guardian's proposed decisions. **The Trustees of these Trusts must also submit to the Court's jurisdiction in the relevant Guardianship-Case, including for the purposes of the Guardian's financial reporting to the Court.**

- E. Florida Courts are to use a 'substituted-judgement test' versus 'best interest of the Ward' test in considering whether to authorize Guardians' decisions.<sup>69</sup> The substituted-judgment-test-criteria are:
  - (1) The donative intent that a Ward manifested prior to his/her incapacity;
  - (2) The permanency of the Ward's condition;
  - (3) The size and nature of the Ward's estate;
  - (4) The needs of the Ward and the proposed recipients;
  - (5) The extent to which the recipients of transfers may vary from those who would inherit in the natural course of events from the Ward's estate;
  - (6) The affinity or intimacy between the Ward and the remainder-recipients; and
  - (7) Whether the remainder-recipients are dependent upon the Ward for support
- F. In many cases, Guardians are petitioning the Court for authorization to transfer assets into a trust-vehicle in order to prolong the financing of their Wards' care and any sensible person would make the same decisions if they had capacity to do so.
- G. Because these trust-vehicles do have remainder beneficiaries even when it's likely that funds held in the proposed Medicaid-planning-trust will be exhausted, the above criteria must be applied to the transfer of guardianship assets to such vehicles.<sup>70</sup>
  - (1) **Guardians must include trusts established for the benefit of a Ward during his/her guardianship and/or his/her assets and/or income are transferred to a trust during his/her guardianship in the Initial Inventory and Annual Accountings that the Guardians file.**<sup>71</sup>
- H. **A Guardian MUST include "...any trusts of which a Ward is a beneficiary..." in the Initial Inventory filed for his/her Ward.**<sup>72</sup> However, it is unlikely that a trust would be created or even assets transferred to an already existing trust prior to the time that an Initial Inventory must be filed. (See also "Reporting Required by Guardians" this Summary)
- I. **Guardians must include trusts created or funded with their Wards' assets during their guardianships in their Annual Accountings** because if such were not included then the Court's preauthorization responsibilities and discretion set forth in 744.441 and supportive case law<sup>73</sup> would be meaningless and based on the Statutory language that such Accountings must include:

<sup>69</sup> *In re Guardianship of Bohac*, 380 So.2d at 553; *Rainey v. Guardianship of Mackey*, 773 So.2d 118, 121-122 (Fla. 4<sup>th</sup> DCA 2000)

<sup>70</sup> *Rainey v. Guardianship of Mackey*, 773 So.2d at 121-122; *In re Guardianship of Bohac*, 380 So.2d at 553

<sup>71</sup> Fla.Stat. §744.365(2)(a)(2025); Fla.Stat. §744.3678(2)(a)(2025) (See also "Reporting Required by Guardians" this Summary)

<sup>72</sup> Fla.Stat. §744.365(2)(a)(2025); Fla.Prob.R.5.620(a); Fla.Prob.R.5.910, Section J

<sup>73</sup> *Guardianship of Bohac*, 380 So.2d 550, 553 (Fla.2d DCA 1980); *Goeke v. Goeke*, 613 So.2d 1345, 1348 (Fla.2d DCA 1993); *Guardianship of Sherry v. Klevansky*, 668 So.2d 659, 660 (Fla.4<sup>th</sup> DCA 1996); *Rainey v. Mackey*, 773 So.2d 118, 121 (Fla 4<sup>th</sup> DCA/2000)

*...a full and correct account of the receipts and disbursements of all of the Ward's property over which the guardian has control and a statement of the Ward's property on hand at the end of the accounting period. Fla.Stat.744.3678(2)(a)(2025)*

**This Court has determined that this to mean that such trusts and trust assets must be included in Annual Accountings when:**

- (1) A Guardian creates a trust for his/her Ward during the guardianship;
- (2) A Guardian transfers a Ward's assets and/or income into a trust during a guardianship that existed prior to the guardianship;
- (3) A Guardian's Plan for the Ward includes that the Guardian is using or relying on an asset or assets held in a trust established prior to the guardianship for the care of the Ward, including a residence and/or payment of expenses; and
- (4) A Guardian becomes the Trustee of either an already existing trust or a trust established during the guardianship.

- J. **Most often including trusts and trust assets in required Reports will affect the audit fee charged by the Clerk's Office as such is based on the total value of a Ward's Guardianship-estate. However, trusts or trust assets held by Special Interest or Pooled Trusts may not be so included in the calculation of the Audit-Fee unless such trusts or trust assets may legally pay all or a portion of such Audit-Fees, depending on the terms of the trust and the law governing them.** Special Interest and Pooled Trusts can only pay certain types of expenses on behalf of Wards.
- K. **The Court will no longer approve the creation of trusts or transfer of trust assets to an already existing trust UNLESS the Trustee of such trusts is or agrees to be subject to the Court's jurisdiction in the Guardianship Case.** While it is the legal responsibility of the GUARDIAN not a trustee to make complete disclosure of his/her Ward's assets, debts, income and the expenditures made on the Ward's behalf or for the Ward's benefit, Guardians occasionally have difficulty obtaining the necessary information from a Trustee that is a family member or institution. Consequently, in the future, **the Court will only authorize creation of a Trust during a guardianship IF the Trustees agree to be subject to this Court's jurisdiction in the Guardianship Case, including disclosure of assets, income, expenditures and fees of said Trusts.**

## **GUARDIAN RESPONSIBILITIES**

1. **GENERALLY a Guardian of an incapacitated person is a fiduciary and may exercise only those rights that have been removed from the Ward and assigned to the Guardian.** The term "fiduciary" is not defined in the Guardianship Statutes though it is in other areas of law and Courts have determined that where this term is not defined, that the general

definition is sufficient.<sup>74</sup> The standard plain meaning of “fiduciary” is: **a person who stands in a special relationship of trust, confidence, or responsibility in his/her obligation to others**. It is important for Guardians to keep this in mind at all times in their decisions and actions that affect their Wards. The following Statutes, Rules and Administrative Rules are important for Guardians to know and understand regarding what they **should** be doing as Guardians and what they can and **CANNOT** do with and without filing a Petition for Authorization in the Court file and receiving a written Court Order allowing such.

SECTION/ RULE	TITLE
744.108	Guardian and Attorney Fee Expenses
744.1097	Venue
744.1098	Change of Ward’s Residence
744.361	Powers and Duties of Guardian
744.362	Initial [ <b>required</b> ] Guardianship Reports
744.363	Initial [ <b>required if Guardian of Person appointed</b> ] Guardianship Plan
744.365	Initial [ <b>usually required if Guardian of Property or a Ward’s finances is appointed</b> ] Guardianship Inventory
774.367	Annual Report requirements [ <b>required if Guardian of Person appointed</b> ]
744.3675	Annual Plan
	Annual Accounting [ <b>usually required if Guardian of Property or a Ward’s finances is appointed unless COURT waives</b> ]
744.3725	Procedure for Extraordinary Authority [ <i>regarding Guardian actions listed in §744.3215(4)</i> ]
744.421	Petition for Support of Ward’s dependents
744.422	Petition for Support of Adult Dependent Child
744.441	Powers of Guardian Upon Court Approval [ <b>ONLY!</b> ]
744.444	Powers of Guardian Without Court Approval
744.446	Conflicts of Interest; prohibited activities; Court approval; breach of fiduciary duty
744.447	Petition for Authority to Act
744.474	Reasons for Removal of a Guardian
744.521	Termination of Guardianship
744.524	Termination of Guardianship on change of Domicile of Resident Ward
744.527	Final Reports [ <i>Required of Guardian of Property</i> ] and Application [ <i>Petition</i> ] for Discharge [ <b>Required of ALL Guardians</b> ]
744.531	Order of Discharge

<sup>74</sup> *Specialty Restaurants Corp. v. City of Miami*, 501 So.2d 101 (Fla. 3d DCA 1987)

2. The powers and duties of Guardians are set forth in Section 744.361 of the Florida Statutes and are as follows:

- (1) *The guardian of an incapacitated person is a fiduciary and may exercise only those rights that have been removed from the ward and delegated to the guardian. The guardian of a minor shall exercise the powers of a plenary guardian.*
- (2) *The guardian shall act within the scope of the authority granted by the court and as provided by law.*
- (3) *The guardian shall act in good faith.*
- (4) *A guardian may NOT act in a manner that is contrary to the ward's best interests under the circumstances.*
- (5) *A guardian who has special skills or expertise, or is appointed in reliance upon the guardian's representation that the guardian has special skills or expertise, shall use those special skills or expertise when acting on behalf of the ward.*
- (6) *The guardian shall file an initial guardianship report in accordance with s. 744.362.*
- (7) *The guardian shall file a guardianship report annually in accordance with s. 744.367.*
- (8) *The guardian of the person shall implement the guardianship plan.*
- (9) *When two or more guardians have been appointed, the guardians shall consult with each other.*
- (10) *A guardian who is given authority over any PROPERTY of the ward shall:*
  - (a) *Protect and preserve the property and invest it prudently as provided in chapter 518, apply it as provided in s. 744.397, and keep clear, distinct, and accurate records of the administration of the ward's property. [The term "property" includes all assets and income of any kind.]*
  - (b) *Perform all other duties required of him or her by law.*
  - (c) *At the termination of the guardianship, deliver the property of the ward to the person lawfully entitled to it.*
- (11) *The guardian shall observe the standards in dealing with the guardianship property that would be observed by a prudent person dealing with the property of another.*
- (12) *The guardian, if authorized by the court, shall take possession of all of the ward's property and of the rents, income, issues, and profits from it, whether accruing before or after the guardian's appointment, and of the proceeds arising from the sale, lease, or mortgage of the property or of any part. All of the property and the rents, income, issues, and profits from it are assets in the hands of the guardian for the payment of debts, taxes, claims, charges, and expenses of the guardianship and for the care, support, maintenance, and education of the ward or the ward's dependents, as provided for under the terms of the guardianship plan or by law. [This means that accounts must be opened in the name of the Guardianship NOT the name of the Guardian personally!]*
- (13) *Recognizing that every individual has unique needs and abilities, a guardian who is given authority over a ward's person shall, as appropriate under the circumstances:*
  - (a) *Consider the expressed desires of the ward as known by the guardian when making decisions that affect the ward.*
  - (b) *Allow the ward to maintain contact with family and friends unless the guardian believes that such contact may cause harm to the ward.*
  - (c) *Not restrict the physical liberty of the ward more than reasonably necessary to protect the ward or another person from serious physical injury, illness, or disease.*
  - (d) *Assist the ward in developing or regaining capacity, if medically possible.*
  - (e) *Notify the court if the guardian believes that the ward has regained capacity and that one or more of the rights that have been removed should be restored to the ward.*
  - (f) *To the extent applicable, make provision for the medical, mental, rehabilitative, or personal care services for the welfare of the ward.*
  - (g) *To the extent applicable, acquire a clear understanding of the risks and benefits of a recommended course of health care treatment before making a health care decision.*

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

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

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

(14) A professional guardian [of the Ward's person] must ensure that each of the guardian's wards is personally visited by the guardian or one of the guardian's professional staff at least once each calendar quarter. During the personal visit, the guardian or the guardian's professional staff person SHALL assess:

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

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

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

(d) *The nature and extent of visitation and communication with the ward's family and friends..... Fla.Stat. §744.361(2025). [Emphasis added]*

**3. All Guardians are required to be represented by an attorney even after they have been appointed** pursuant to Florida Probate Rule 5.030 UNLESS:

A. A Guardian has been appointed only as the Guardian of a Minor's property which is deposited into a "restricted" account<sup>75</sup> and the only transactions after said deposit(s) are interest, dividends and/or appreciation and bank fees; or

B. A Guardian has been appointed as a Guardian Advocate AND who is the designated payee for the Ward for his/her government-benefits AND the Ward does not own any assets that the Guardian Advocate must manage.

**4. Attorneys representing Guardians of any sort SHOULD be advising their Guardian-clients of the Guardian's legal responsibilities and prohibitions.** Attorneys can be held professionally responsible for the actions and inactions of their Guardian-clients if such actions or inactions cause damages to the Wards of such Guardian-clients.<sup>76</sup> This applies even to Attorneys whose representation is limited to establishing the Guardianship or Guardian Advocacy. **Once the Guardianship is established by the Court, attorneys should provide their clients with WRITTEN advice or a list as to the actions that they must take on behalf of their Wards including DEADLINES and actions that they are prohibited from taking at all or only with Court-authorization.**

**5. Beginning January of 2026, the Court will require that all Guardians file an executed Affidavit and/or Acknowledgment under oath that he/she has been informed of and understand his/her legal responsibilities as a Guardian and will comply with them.**

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<sup>75</sup> A "restricted" account is one established pursuant to Section 69.031 of the Florida Statutes.

<sup>76</sup> *Sadeh v. Conners*, 166 So.3d 939 (Fla. DCA 4<sup>th</sup> 2015); Fla. AGO 96-94 1996 WL680981; See also "Attorney Representation" Section, this Summary)

## 6. PRACTICAL Guidelines:

- A. **Open Guardianship accounts.** Do NOT conduct a Ward's financial business from the Ward's financial accounts unless the Ward retains authority over that area of his/her life and the Guardian does not have that authority. Guardians should also NOT conduct a Ward's business from the Guardian's own personal accounts.
- B. **The GOAL is to care for Wards at the highest and most appropriate manner for them based on their needs and in the same or similar manner that they themselves would choose if they had capacity and do so for the entirety of their lives, given their financial resources.** This means that care is a function of:
  - (1) Maximizing Ward's benefits, including Medicaid planning;
  - (2) Responsible and intelligent financial management;
  - (3) Reasonable financial choices that don't exceed a Ward's financial capabilities over the remainder of his/her life.
- C. **Keep accurate and current financial records** and automate everything that can be automated without jeopardizing the Wards' assets and income. Keep receipts for everything!
- D. **File Reports ON-TIME.**
- E. **Guardians should NOT steal from their clients, including taking benefits that they do not disclose or are not authorized by the Court to receive.** Don't use your own personal credit cards or accounts on a regular basis.
- F. **Guardians MUST VISIT THEIR WARDS *in person*** at least once per quarter (every 3 months)!

## **GUARDIAN ADVOCATES**

- 1. **Guardian Advocates are created by and appointed pursuant to Chapter 393** of the Florida Statutes rather than Chapter 744. However, Guardian Advocates must comply and are governed by Chapter 744 and the Florida Probate Rules as are other Guardians.<sup>77</sup>
  - A. **Guardian Advocates are persons appointed by a Court to represent a person with developmental disabilities.** *Fla.Stat. §393.063(20)(2025)*
  - B. A “developmental disability” is defined for the purposes of these guardianships as a disorder or syndrome that:
    - (1) Manifests before the Ward is 18 years of age;
    - (2) Is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down Syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; and

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<sup>77</sup> *Fla.Stat. §393.12(10)(2025); Fla.Stat. §393.12(8)(e)(2025); Fla.Stat. §393.12(8)(g)(2025); Fla.Stat. §744.3085*

(3) Constitutes a substantial handicap that can reasonably be expected to continue indefinitely. *Fla.Stat. §393.063(11)(2025)*

2. **PROCEDURE FOR OBTAINING A GUARDIAN ADVOCATE.** Unlike other Guardianships, the incapacity of the potential Ward is not required to be established by a Court determination based on Examining Committee evaluations. *Fla.Stat. §744.3045 (2025)* A Circuit Court may appoint a Guardian Advocate for a person with a developmental disability if that person is able to perform some, but not all of decision-making-tasks necessary to care for his or her person or property, or if the developmentally-disabled person voluntarily requests that a Court appoint a Guardian Advocate for him/her. The procedure for appointment is set forth in Florida Statute Section 393.12 and Probate Rule 5.649 and includes the following:

- A. An adult-person who is a Florida resident files verified Petition for Appointment of a Guardian Advocate for an alleged developmentally-disabled person with the Clerk of the County in which the disabled person resides. The Petition must set forth the allegations required by Section 393.12(3)(a) including specifying **the exact legal-disability** to which the potential-Ward is subject. *Fla.Stat. §393.12(3)(a)5(2025); Fla.Prob.R.5.649(5)*
- B. The Petition for Appointment of a Guardian Advocate may request authority for the Guardian Advocate to file a civil action to establish periodic support payment from either or both parents for the developmentally-disabled-person pursuant to Section 61.1255 of the Florida Statutes. *Fla.Stat. §393.12(3)(b)(2025)*
- C. A Notice of the filing of the Petition for Appointment of a Guardian Advocate MUST be prepared by the person filing the Petition (the Petitioner) or his/her attorney. It MUST attach a copy of the Petition and state the time and date of the hearing to be held before the Court. This Notice must be given to the alleged developmentally disabled person, that person's next of kin, health care surrogate, and person designated pursuant to an Advance Directive or in a Durable Power of Attorney. *Fla.Stat. §393.12(4)(2025)* This Notice may be "given" to the disabled person by reading it to him/her. *Fla.Prob.R.5.550(b)(2)* (See Rule 5.905(b) Form for Notice of Filing of a Petition for Appointment of Guardian Advocate – also available on Collier Guardianship Case Management webpage at <https://www.collierclerk.com/court-divisions/court-guardianship/guardianship-forms/> .
- D. **An attorney will be appointed for the alleged developmentally disabled person** within 3 days of the filing of the Petition. Most of these alleged disabled persons do not own any assets and receive very little income. Therefore, the Court appoints Regional Counsel for whom neither the Ward, the Petitioner or the Guardian Advocate are required to pay. *Fla.Stat. §393.12(5)(2025)*
- E. **The alleged disabled person's condition or syndrome and the basis for appointment of a Guardian Advocate must be proven by clear and convincing evidence at an evidentiary hearing before a Judge or Magistrate.** Such hearing will be scheduled by the Court or Magistrate's Office as soon as practicable. At the hearing, the Court will consider evidence of the potential-Ward's disability including professional reports from doctors if available and the person's current support and education plans. *Fla.Stat. §393.12(6)(2025)*

F. **A developmentally disabled person's Advance Directive for Health Care and Durable Power of Attorney must be addressed** at the hearing and in the Order Appointing a Guardian Advocate as to whether any exist that were validly executed.

G. **Court Order and Letters:** The Court will sign an Order that appoints a Guardian Advocate and Letters of Authority reflecting the Guardian's authority. If the Petitioner is represented by an Attorney, said attorney should submit these documents to either the Magistrate or the Judge for signature depending on who presided over the hearing. **The Order should specify what legal rights the Ward retains.** (REMEMBER, such Wards must retain at least one-right in order to qualify for appointment of a Guardian Advocate.<sup>78</sup>) Both the Order and Letters should designate that:

- (1) The Guardian is appointed as a **Guardian Advocate** (**DON'T USE the term "Plenary" in the title of any document or in the description of the appointment;**<sup>79</sup> and
- (2) Specifically the legal rights that the Guardian Advocate is appointed to exercise.

**REMEMBER**, the legal rights that the Guardian Advocate is assigned should NOT include the one(s) specifically retained by the Ward.<sup>80</sup>

3. **GUARDIAN ADVOCATES DUTIES AND PROHIBITIONS.** **Guardian Advocates are subject to the same laws and Rules** as are Guardians in addition to Chapter 393 - Florida Chapter 744 and the Probate Rules. (See this Summary)

4. **REPORTING REQUIREMENTS:** **Guardian Advocates are required to file the same Reports with the same deadlines as are Guardians.** Since most Wards of Guardian Advocates do not own any assets and receive only Social Security or minimal income, very often a Court will require the Guardian Advocate who has authority over the Ward's finances and property to file the Initial Plan and Inventory and then waive the Annual Accountings for the Guardian Advocate. If the Guardian Advocate did not make a request for this waiver at the time of the hearing, he/she must file a Petition with the Court and submit and Order for such a waiver. Otherwise, the Guardian Advocate must file Annual Accountings every year. The Guardian Advocate MUST file an Annual Plan every year on the same deadlines as Guardian and comply with the same Florida statutes and Rules.

<sup>78</sup> Many times the Order Appointing Guardian Advocate and/or the Letters set forth that the Ward is retaining a legal right that the court file and subsequent Physician's Reports reflect would be impossible for the Ward to exercise based on the Ward's intellectual or other disabilities. If the Court determines upon a file review that this discrepancy exists, it may schedule the Case for a status conference to address it.

<sup>79</sup> "Plenary" denotes that ALL of a Ward's delegable rights have been assigned to a Guardian. A Ward for whom a Guardian Advocate is being appointed must retain at least ONE of such rights which means the Guardian is NOT a plenary guardianship. The Ward may be denied the legal right that he/she retains by third parties because of this mistitling.

<sup>80</sup> It is important to specify what right or rights the Ward retains so that he/she may exercise such right or rights. Otherwise, if the Ward retains the right to obtain a Driver License but that right is not specified in the Order Appointing and the Letters of Authority just say "plenary guardian advocacy", the DMV may not honor this reservation of rights.

5. **LEGAL REPRESENTATION** of most Guardian Advocates is not required unless a Court requires such representation or the Guardian Advocate is delegated any authority over the Ward's property rights other than to be the representative payee for government benefits or to receive periodic payments for the support, care, maintenance, education or other needs of the Ward. *Fla.Stat. §393.12(2)(b)(2025); Fla.Prob.R 5.030(a)*

6. **RESTORATION OF CAPACITY** procedures for Wards subject to Guardian Advocacies are similar to, but not exactly the same as those filed in other Guardianships. (See "Restoration of Capacity" this Summary) Suggestions of Capacity in Guardian Advocacies are governed by **Section 393.12(12) of the Florida Statutes and Rule 5.681 of the Florida Probate Rules.**

- A. A Suggestion of Capacity may be filed by any interested person. *Fla.Stat. §393.12(12)(2025)*
- B. The Suggestion of Capacity must assert that the developmentally disabled person is capable of exercising some or all of his/her legal rights that had been delegated to the Guardian Advocate and attach to it evidentiary support for the assertion. This can include a signed statement from a medical, psychological or psychiatric professional who has evaluated the Ward and supports the restoration of rights. *Fla.Stat. §393.12(12)(2025)*
- C. However, if such professional's statement is not attached to the Suggestion, then upon holding a hearing to ascertain the reasons for the lack of evidence, the Court may appoint one of these professionals to conduct an evaluation. *Fla.Stat. §393.12(12)(2025)*
- D. Counsel is appointed for the Ward within 3 days of the filing of the Suggestion. *Fla.Stat. §393.12(12)(a)(2025)*.
- E. The Court is **required** to schedule the Suggestion for hearing if Objections are filed to it within 20 days of its filing or if the evidentiary support for the Suggestion, indicates that restoration is not appropriate. *Fla.Stat. §393.12(12)(d)(2025)*

7. **PRACTICAL PROBLEMS THAT OCCUR IN GUARDIAN ADVOCACIES.** Because Guardian Advocates are not required to be represented by an attorney throughout the Guardianships, many problems arise in these Cases usually from the Guardian Advocates not knowing and understanding the law and its requirements and procedures. Neither the Clerk's Office or the Court can give unrepresented parties legal advice, nor can the Court's Judicial Assistant or Case Managers. Consequently, these Cases are often scheduled for compliance hearings, including to address Guardian Advocates:

- A. **Not filing Reports** – usually not filing Annual Plans or filing inadequate Reports. When the Court reviews an Annual Plan that fails to list specifics of the Ward's activities and health care without explanation, not only is the Court required to compel a Guardian Advocate to comply to provide such specifics pursuant to the applicable Florida Statutes and Rules, but also the Court becomes concerned for the Ward's welfare. The Court is a mandatory-reporter of abuse, neglect and abandonment;
- B. **Not obtaining a Waiver of Annual Accountings**, but also NOT filing said Accountings. Section 393.12 of the Florida Statutes allows Guardian Advocates not to file Annual

Accountings IF the Court makes a “determination” that the developmentally disabled adult receives only Social Security benefits and the Guardian Advocate is the representative-payee for such benefits. This means that the Guardian Advocate MUST file a Petition for the Court to make this “determination” AND submit an Order for the Court to execute. The Court will usually do so without a hearing but not until AFTER the Guardian Advocate has filed an Initial Inventory reflecting such a financial condition for the Ward;

- C. **Not submitting to the Court an Order Approving the Reports** that the Guardian has filed. The Court is not aware when someone files something in one of its over 900 Guardianship-Cases. The Court only becomes aware that some action is required of it when an Order is submitted to the Court for signature or at a hearing.
- D. **Not establishing a Guardianship bank account** in which to deposit any assets or income of the Ward and from which to pay the Ward’s expenses;
- E. **Paying their own personal expenses from the Ward’s assets and income** rather than filing a Petition for Fees and Cost-Reimbursement;
- F. **Not keeping the Clerk’s Office updated with the current address of the Guardian Advocate**, both email and street address;
- G. **Changing the Residence of the Ward out of Collier County Florida or out of State without following the proper procedures to do so.** (See “Changing Ward’s Residence” this Summary) and
- H. **Failing to Designate Standby Guardian Advocate.** Most Wards for whom Guardian Advocates have been appointed will outlive the initial Guardian Advocates who are often their parent or parents. It is important to designate a Standby Guardian so that the Ward’s care will not be disrupted. This can be done in the initial Order Appointing the Guardian Advocate or upon a subsequent Petition. Standby Guardians are addressed by Section 744.304 of the Florida Statutes.

## **GUARDIAN ACTIONS AND DECISIONS REQUIRING COURT AUTHORIZATION**

- 1. There are certain actions that Guardians are PROHIBITED from taking **without specific Court authorization through the filing of a Petition<sup>81</sup> seeking such authorization and obtaining a written Court Order.** Guardians are expected to KNOW what actions or decisions they may take or make without express Court-authorization and which ones require express Court authorization. Attorneys representing Guardians are expected to advise their clients as to the parameters of Guardian-actions and decision-making. **If a Guardian acts without Court authorization, it is possible that the Court may disallow such and require repayment by the Guardian to the Guardianship or against the Guardian’s bond, if there was a monetary**

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<sup>81</sup> Fla. Prob. R. Rule 5.630

**effect on the Guardianship.** Similarly, attorneys representing Guardians owe a fiduciary duty to their clients' Wards and as such could be held liable for their Clients' actions that cause harm to their Wards when such actions are clearly contrary to Florida statutory prohibitions.<sup>82</sup> **Attorneys should be providing their Guardian-clients with a list of actions and decisions that require Court authorization.**

2. The actions for which Guardians MUST seek Court authorization are primarily set forth in Section 744.441 of the Florida Statutes and are as follows:
  - (1) *Perform, compromise, or refuse performance of a ward's contracts that continue as obligations of the estate... . [This should include residential care contracts.]*
  - (2) *Execute, exercise, or release any powers as trustee, personal representative, custodian for minors, conservator, or donee of any power of appointment or other power that the ward might have lawfully exercised, consummated, or executed if not incapacitated, if the best interest of the ward requires such execution, exercise, or release.*
  - (3) *Make ordinary or extraordinary repairs or alterations in buildings or other structures; demolish any improvements; or raze existing, or erect new, party walls or buildings. [Family-Member-Guardians frequently fail to do this.]*
  - (4) *Subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving consideration; or dedicate easements to public use without consideration.*
  - (5) *Enter into a lease as lessor or lessee for any purpose, with or without option to purchase or renew, for a term within, or extending beyond, the period of guardianship. [This includes contracts with residential care facilities.]*
  - (6) *Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement.*
  - (7) *Abandon property when, in the opinion of the guardian, it is valueless or is so encumbered or in such condition that it is of no benefit to the estate.*
  - (8) *Pay calls, assessments, and other sums chargeable or accruing against, or on account of, securities.*
  - (9) *Borrow money, with or without security, to be repaid from the property or otherwise and advance money for the protection of the estate.*
  - (10) *Effect a fair and reasonable compromise with any debtor or obligor or extend, renew, or in any manner modify the terms of any obligation owing to the estate.*
  - (11) *Prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the guardian in the performance of his or her duties. Before authorizing a guardian to bring an action described in s. 736.0207, the court shall first find that the action appears to be in the ward's best interests during the ward's probable lifetime. There shall be a rebuttable presumption that an action challenging the ward's revocation of all or part of a trust is not in the ward's best interests if the revocation relates solely to a devise. This subsection does not preclude a challenge after the ward's death. If the court denies a request that a guardian be authorized to bring an action described in s.*

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<sup>82</sup> *Saadeh v. Conors*, 166 So.3d 959, 963-964(Fla. 4<sup>th</sup> DCA 2015); *Rushing v. Bosse*, 652 So.2d 864, 873 (Fla. 4<sup>th</sup> DCA 1995) (Involving cause of action vs. attorneys by a child-subject-of-adoption); *Op.Att'y Gen.Fla.96-94*, (1996)

736.0207, the court must review the continued need for a guardian and the extent of the need for delegation of the ward's rights.

- (12) *Sell, mortgage, or lease any real or personal property of the estate, including homestead property, or any interest therein for cash or credit, or for part cash and part credit, and with or without security for unpaid balances.*
- (13) *Continue any unincorporated business or venture in which the ward was engaged.*
- (14) *Purchase the entire fee simple title to real estate in this state in which the guardian has no interest, but the purchase may be made only for a home for the ward, to protect the home of the ward or the ward's interest, or as a home for the ward's dependent family. If the ward is a married person and the home of the ward or of the dependent family of the ward is owned by the ward and spouse as an estate by the entirety and the home is sold pursuant to the authority of subsection (12), the court may authorize the investment of any part or all of the proceeds from the sale toward the purchase of a fee simple title to real estate in this state for a home for the ward or the dependent family of the ward as an estate by the entirety owned by the ward and spouse. If the guardian is authorized to acquire title to real estate for the ward or dependent family of the ward as an estate by the entirety in accordance with the preceding provisions, the conveyance must be in the name of the ward and spouse and be effective to create an estate by the entirety in the ward and spouse. [This provisions is FREQUENTLY abused in Minor-Guardianships. **REMEMBER** that if the Ward's estate owns the entirety of a home in which the Ward and his family are living, said family may be required to pay rent to the Guardianship-Estate and it's NOT always cheaper to buy a place for the Ward to live versus rent, when taxes, insurance and large and small repairs are totaled. And, a Court may appoint an Attorney or Guardian Ad Litem to review such a proposed transaction to determine if it's in the Ward's best interest if the Ward is a Minor.]*
- (15) *Exercise any option contained in any policy of insurance payable to, or inuring to the benefit of, the ward. [This includes cashing in life insurance policies.]*
- (16) *Pay reasonable funeral, interment, and grave marker expenses for the ward from the ward's estate.*
- (17) *Make gifts of the ward's property to members of the ward's family in estate and income tax planning procedures. [See also "Gifting and Creation of Trusts" this Summary]*
- (18) *When the ward's will evinces an objective to obtain a United States estate tax charitable deduction by use of a split interest trust (as that term is defined in s. 736.1201), but the maximum charitable deduction otherwise allowable will not be achieved in whole or in part, execute a codicil on the ward's behalf amending said will to obtain the maximum charitable deduction allowable without diminishing the aggregate value of the benefits of any beneficiary under such will.*
- (19) *Create or amend revocable trusts or create irrevocable trusts of property of the ward's estate which may extend beyond the disability or life of the ward in connection with estate, gift, income, or other tax planning or in connection with estate planning. **The court shall retain oversight of the assets transferred to a trust, unless otherwise ordered by the court.***
- (20) *Renounce or disclaim any interest by testate or intestate succession or by inter vivos transfer.*
- (21) *Enter into contracts that are appropriate for, and in the best interest of, the ward.*

(22) *As to a minor ward, pay expenses of the ward's support, health, maintenance, and education, IF the ward's parents, or either of them, are alive.* [This is most often abused by family-member-Guardians of Minor Wards. They often want to pay for expenses for which they themselves SHOULD be responsible. A Court may appoint an Attorney or Guardian Ad Litem to review such proposed transactions to determine if they are in such a Ward's best interest.<sup>83</sup>] [Emphasis added] *Fla. Stat. §744.441(2025)*

3. In addition to the list requiring Court approval set forth in Section 744.441, there are additional-Guardian-actions and decisions that require Court approval:

A. **ALL payments TO Guardians for ANYTHING must be approved by the Court in a written Order in connection with a Petition filed by the Guardian in the Court file BEFORE the payments are paid to the Guardians.**<sup>84</sup> (See "Guardian Fees and Costs" this Summary) This is because of the potential for conflicts of interest, self-dealing, fraud and theft. Such payments include:

- (1) **FEES** for a Guardian's efforts;
- (2) **COSTS** incurred in connection with those efforts (such as copying and postage, but NOT mileage if charging for travel); **AND**
- (3) **REIMBURSEMENTS for costs or expenses that a Guardian may have paid on behalf of the Ward.** Family-Guardians especially ignore or are unaware of this requirement. Section 744.444(16) ONLY authorizes Guardians to pay costs from the Guardianship accounts to persons employed by the Guardian without Court approval prior to such payments, subject to the Court's review and approval of such in the Annual Accountings. Guardians are not "employed" by themselves as Guardians. Family-Guardians frequently believe that they are allowed to reimburse themselves for expenses under Section 744.444(11) of the Florida Statutes which allows Guardians to pay "...incidental expenses in the administration of the estate." However, neither Section 744.444(11) or Section 744.444(16) allow for payment by the Guardian to him/herself even to reimburse the Guardian for expenditures made from his/her personal funds on the Ward's behalf, without pre-authorization by the Court in a written Court Order.<sup>85</sup> **It is important to remember that the Court may order the Guardian to reimburse the Guardianship-estate if such reimbursement-payments have already occurred.**

B. **Guardians must request authorization from the Court to pay support to legal dependents of their Wards.** *Fla. Stat. §744.421(2025)* The persons who are the proposed

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<sup>83</sup> For Minor-Wards, the best-interest-standard is utilized. For Adult-Wards, the 'substituted-judgement-standard' is used.

<sup>84</sup> *Fla. Stat. §744.108 (2025); Rule 5.630 (addresses Petitions for Approval of Acts)*

<sup>85</sup> *Fla. Stat. §744.444(11) & (16)(2025);* While there is no case law directly on point in connection with either Sections 744.441 or 744.444, the Court has discretion to approve or disapprove a Guardian's specific exercise of power. *Rainey v. Guardianship of Mackey*, 773 So.2d 118, 122 (Fla. 4<sup>th</sup> DCA 2000) And, in the context of the prohibitive-language throughout Chapter 744 regarding Guardian-conflicts of interest, this Court is confident that ANY payments made TO a Guardian for ANY reason, MUST be pre-approved by a court by written Order.

recipients MUST be LEGAL dependents. A parent is NOT a legal dependent of his/her Child-Ward.

C. **Guardians may request authorization from the Court to file a civil suit in circuit court to establish periodic payments from either or both parents of a dependent-adult-child subject to a Guardianship or Guardian Advocacy for the support, care, maintenance, educations or other needs of the adult-child, that are not otherwise provided for in the guardianship plan pursuant to Section 61.1255 of the Florida Statutes** - *Support for dependent adult children; legislative intent; powers of court.*

*Fla.Stat. §744.422(2025); Fla.Stat. §393.12(3)(b)(2025)* While the Court did not find any case law pertaining to Sections 744.422 or 61.1255, it suspects that such support would be calculated using the Child-Support-Guidelines set forth in Chapter 61.

D. **Do Not Resuscitate (DNR's)** Pursuant to Section 744.4431 of the Florida Statutes except as specifically provided by that Section, all decisions by PROFESSIONAL Guardians as they are defined by Section 744.102, to withhold or withdraw life-prolonging procedures from or to execute an Order Not to Resuscitate for a Ward **MUST be approved by the Court BEFORE such actions or decisions can be taken or made.**

*Fla.Stat. §744.4431(1)(2025)*

(1) The Professional Guardian must file a Petition in the Court file that clearly contains the allegations required by Section 744.4431(2):

- i. *A description of the proposed action or decision for which court approval is sought and documentation of or reference to the authority of the professional guardian to make health care decisions on behalf of the ward. [likely already existing in the Court file]*
- ii. *A statement regarding any known objections to the relief sought in the petition.*
- iii. *A description of the ward's known wishes, including all advance directives executed by the ward, or, if there is no indication of the ward's wishes, a description of why the relief sought is in the best interests of the ward.*
- iv. *Any exigent circumstances that exist which necessitate immediate relief. [If the Guardian is seeking exigent relief, in addition to filing the Petition, he/she by and through his/her attorney should contact the Judge's office to alert the Judge that such a Petition has been filed.]*
- v. *A description of the circumstances requiring the proposed action or decision and evidence, including affidavits, medical records, or other supporting documentation, showing that the proposed action or decision satisfies the criteria in s. 765.305 [Procedure in absence of a living will], s. 765.401(3) [Proxy] or s. 765.404, [Persons in persistent vegetative state with no Advance Directive and no evidence of person's wishes] as applicable. Fla.Stat. §744.4431(2)(2025) [Emphasis added]*

(2) Unless waived by the Court, notice of the above Petition and any hearing on it must be served on: the Ward, the Ward's attorney if any, the Ward's next of kin if known, and any other interested persons as the Court may direct.

(3) The Court MUST hold a hearing on the Petition IF the Court has insufficient information upon which to make the requested determination and IF:

- (a) The Ward or his/her attorney or the Guardian request a hearing;
- (b) The Ward or his/her attorney objects to the Petition. Or,
- (c) The Ward's next of kin or interested person objects on any basis set forth in Section 765.105(1) – *Review of surrogate or proxy's decision*. Section 765.105 allows a patient's family, interested persons and other affected persons to request expedited judicial intervention pursuant to Probate Rule 5.900 based on:
  - (a) *The surrogate or proxy's decision is not in accord with the patient's known desires or this chapter* [Chapter 765];
  - (b) *The advance directive is ambiguous, or the patient has changed his or her mind after execution of the advance directive;*
  - (c) *The surrogate or proxy was improperly designated or appointed, or the designation of the surrogate is no longer effective or has been revoked;*
  - (d) *The surrogate or proxy has failed to discharge duties, or incapacity or illness renders the surrogate or proxy incapable of discharging duties;*
  - (e) *The surrogate or proxy has abused his or her powers; or*
  - (f) *The patient has sufficient capacity to make his or her own health care decisions.*

[Emphasis added]

(4) **Court approval is NOT necessary IF:**

- (a) **A Professional Guardian has been granted authority by the Court pursuant to Section 744.3115 of the Florida Statutes upon the Guardian's initial appointment** to carry out the do not resuscitate-instructions in the Ward's Advance Directive or to take actions consistent with said Directive, as long as there are no known objections from: the Ward; the Ward's attorney; the Ward's next of kin, if known; and, any other interested persons as the court may direct based on Section 765.105(1) of the Florida Statutes.
- (b) **If the Ward is in a hospital and a Professional Guardian has been delegated health-care-decision-making authority to execute an order not to resuscitate, as described in Section 401.45(3)(a) AND all of the following conditions are met:**
  - i. **The ward's primary treating physician and at least one other consulting physician document in the Ward's medical record** that:
    - There is no reasonable medical probability for recovery from or a cure of the Ward's underlying medical condition;
    - The Ward is in an end-stage condition, a terminal condition, or a persistent vegetative state as those terms are defined in Section 765.101, and that the Ward's death is imminent; and
    - Resuscitation will cause the Ward physical harm or additional pain.
  - ii. **The professional guardian has notified the Ward's next of kin, if known, and any interested persons as the court may direct and the decision is not contrary to the Ward's expressed wishes and there are no known**

**objections from: the Ward; the Ward's attorney; the Ward's next of kin, if known; or any other interested-persons as the Court may direct on the basis of Section 765.105(1) of the Florida Statutes.**

(5) If a professional-Guardian signs a DNR without prior Court approval pursuant to the above exceptions, **within 2-business days** the Professional Guardian must notify the Court in writing by the filing of a Notice or Affidavit that sets forth the following:

- (a) The date the order not to resuscitate was executed.
- (b) The location of the Ward when the order not to resuscitate was executed.
- (c) The names of the physicians who documented the Ward's condition in the ward's medical record.

**E. ANY conflicts of interest or potential conflicts of interest between a Guardian and his/her Ward MUST be authorized by a Court by written Order and on a Petition specifically requesting authorization and describing the conflict BEFORE the conflict manifests, exists, or occurs.<sup>86</sup> Any activity prohibited by Section 744.446 of the Florida Statutes is VOIDABLE and the Court has discretion to take ANY actions necessary to protect Wards. <sup>87</sup> Section 744.446 of the Florida Statutes prohibits Guardians from:**

- (1) Using their fiduciary relationship with the Ward for private gain EXCEPT for fees and expenses as provided by law, in other words per Section 744.108 of the Florida Statutes.**
- (2) Incurring any obligations on behalf of a Ward that conflict with the proper discharge of the Guardian's duties.**
- (3) Directly or indirectly or overtly or covertly offer, pay, solicit or receive a commission, benefit, bonus, rebate, or kickback in cash or in kind or engage in a split-fee arrangement in exchange or in connection with referring, soliciting or engaging in transactions for past, current or future goods or services on behalf of any Wards.**
- (4) Unless specifically approved by prior court Order or the relationship existed before a Guardian's appointment AND it was disclosed in the Petition for Appointment, a Guardian may not:**
  - (a) Acquire an ownership, possessory, security, or other pecuniary interest adverse to the Ward;**
  - (b) Be designated as a beneficiary on any of a Ward's life insurance policies, pensions, or benefit plans, unless such designations were made prior to the determination of the Ward's incapacity.**

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<sup>86</sup> Rule 5.630 – Petitions for Approval of Acts; Fla.Stat. §744.309(3) & (6) (2025); Fla.Stat. §744.446(3)(2025)

<sup>87</sup> Fla.Stat. §744.446(4)&(5)(2025)

- (c) Have any financial or other interest, directly or indirectly, in any business transaction or activity with the Ward, the presiding Judge, any Examining Committee Member who evaluated the Guardian's Ward, any Court employee involved in the Guardianship process, or the attorney representing the Ward;
- (d) Directly or indirectly purchase, rent, lease or sell any property or services from or to any business entity of which the Guardian or the Guardian's spouse or any of the Guardian's lineal descendants, or collateral kindred, is an officer, partner, director, shareholder, proprietor or has any financial interest. This provision prohibits Guardians from paying themselves, their spouses or family-members through separate business-entities such as accounting firms, investment firms, security-service-firms, cleaning-businesses, etc. UNLESS they receive specific written Court authorization to do so. Said authorization does NOT include the Court approving an Annual Accounting that contains such payments.

## **GUARDIAN ACTIONS AND DECISIONS WITHOUT COURT AUTHORIZATION**

1. **Generally** any actions for which the Guardian is not REQUIRED to obtain Court approval as set forth in Section 744.441 or other Sections as set forth above or which are not PROHIBITED, may be made without Court authorization. If a Guardian is in doubt, err on the side of caution and Petition the Court for authorization.
2. **A specific list of actions and decisions that Guardians ARE permitted to make without Court authorization is set forth in Section 744.444 of the Florida Statutes.**
3. **Professional fees and costs:** Sections 744.444(13) and (16) allow Guardians without Court authorization to:

*When reasonably necessary, employ persons, including attorneys, auditors, investment advisers, care managers, or agents, even if they are associated with the guardian, to advise or assist the guardian in the performance of his or her duties.*

*Pay or reimburse costs incurred and reasonable fees or compensation to persons, including attorneys, employed by the guardian pursuant to subsection (13) from the assets of the guardianship estate, subject to obtaining court approval of the annual accounting.* [Emphasis added]

These provisions allow Guardians to employ attorneys to represent them as such as well as other professionals including accountants and investment advisers AND pay them from the Guardianship estate without seeking preauthorization from the Court to do so. **HOWEVER, these expenditures MUST be reviewed by the Court at the time of the Annual Accounting AND do NOT include reimbursements to a Guardian him/herself.**

- A. **ANY payments to Guardians from their Ward's assets and income including reimbursements, MUST be authorized by the Court PRIOR to being paid or they**

**may be disallowed and the Guardian required to repay the Guardianship.** Payments requiring pre-authorization by the Court include: payments to entities solely owned by the Guardian and/or in which the Guardian is the only employee or the only employee performing the services being compensated by the Guardianship.<sup>88</sup> **Attorneys representing Guardians are responsible for properly advising their clients of this legal requirement.**

B. **Any payments made to the above professionals must be reviewed by the Court at the time of the Annual Accountings in which they such payments are reflected.** In order for a Court to determine “reasonableness” as required by the above Section 744.444(16) as well as Section 744.108 that applies to attorney fees, the invoices and/or bills for such services must be attached to the Accountings so that the Court can make this determination. Courts would appreciate the following practices that will facilitate timely review of these Accountings by the Court:

- (1) Group the bills for each professional paid during the Accounting-year together;
- (2) If the grouped-bills are attached as an Exhibit number or letter, indicate such on the Accounting AND the page number of the package at which they appear OR give the Court SOME indication as to the page or section location in the filed-Accounting that these bills appear (**‘Attached hereto’ is NOT enough of an indication**);
- (3) If the professional is charging an hourly rate, then such rate, the number of hours and the actions taken or work done during those hours must be set forth on such invoices or bills.<sup>89</sup> ALL billings should identify the person taking action whose time is being billed and their level of qualification. Initials are not enough unless the billing identifies those initials somewhere in the billing and their level of qualification, such as “paralegal”, “associate attorney” or “partner in charge”. Attorneys should NOT be billing secretarial-work at paralegal-rates and paralegal-rates should not be more than \$150 per hour.<sup>90</sup> (See 2022 Florida Bar Survey on Paralegal Rates at: [Bar survey looks at the economics of paralegals – The Florida Bar](#) )
- (4) If hourly rates are greater than the median or what is reasonable for the Collier County geographic area, the Accounting should include an explanation as to why such professionals were paid such rates and how it benefited the Ward. Otherwise, the Court may schedule a hearing regarding those payments. If the Court does schedule a hearing regarding attorney fees expended for the benefit of the Ward, expert testimony is not required pursuant to Section 744.108(9), unless specifically required by the Scheduling-Order.
- (5) The standard for review of attorney fees and costs that have been incurred for the benefit of a Ward is whether such are “substantially unreasonable.”  
*Fla.Stat. §744.108(8)(2025)*

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<sup>88</sup> An example is when a Guardian pays him/herself for accounting services either directly or through an entity under which such services are provided.

<sup>89</sup> *Fla.Stat. §744.108(5)(2025)*

<sup>90</sup> The Florida Bar 2022 survey found that the “median” rate was \$135 per hour. The \$150 per hour rate takes into consideration the cost of living and practicing law in Collier County Florida.

## **GUARDIAN FEES and COST REIMBURSEMENTS**

1. **ALL fees paid to Guardians MUST BE approved PRIOR to payment pursuant to Section 744.108 of the Florida Statutes.** This means that the Guardian through his/her attorney must file a Petition in the Court file and forward an Order Authorizing Payment to the Court for signature. If the Guardians activity is clearly set forth and the rates for such, the Court most often does not need a hearing. Usually the Court will only schedule a hearing if it has questions that may stem from a lack of clarity in the billings rather than any substantive concerns. Most often, expert testimony at such a hearing regarding the reasonableness of a Guardian's fees is not necessary. *Fla.Stat. §744.108(9)(2025)* The standard for review of a Guardian's fees is whether they are substantially unreasonable. *Fla.Stat. §744.108(8)(2025)*
2. **ALL COST-reimbursement payments to Guardians MUST BE approved PRIOR to payment.** Payments for reimbursement to GUARDIANS are not listed in 744.444(16) and therefore all such reimbursements to Guardians MUST be approved PRIOR to payment to a Guardian and reviewed pursuant to Section 744.108. *Fla.Stat. §744.108(1)(2025)*
3. **Frequency of Petitions for Guardian Fees and Reimbursements:** The Collier Guardianship Judge would appreciate if the Guardians would NOT submit a Petition every month. There are at least 900 open guardianship cases in Collier County. Not all of the Guardians in those cases bill, but even if only half submitted a Petition for Fees and Costs on a monthly basis, the work-load would be astronomical. The Collier Court requests that Guardian's file Petitions for Fees and Costs and submit the associated Orders no more frequently than every 3 months. However, **DO bill at least every 6 months.** Otherwise, the bills appear unusually high. The Court makes an effort to address those Petitions and Orders on a timely basis.
4. **Petitions for Guardian Fees and Reimbursements must be verified<sup>91</sup> and must clearly set forth:**
  - A. **The time period** during which the activity occurred. *Fla.Stat. §744.108(7)(2025)*
  - B. **Past payments to the Guardian for fees** BY anyone or any entity including the Guardianship. **This includes if the Guardian has or is receiving payments from a hospital or care facility for the Ward's care or in any way connected to the Guardianship proceeding.**<sup>92</sup> *Fla.Stat. §744.108(7)(2025)*
    - (1) **IMPORTANT:** Guardians may not be appointed who are directly or indirectly employed by a provider of health care services to the Ward, UNLESS a Court specifically determines based on a Petition and in a written Order that such does not pose any conflict of interest that is NOT in the Ward's best interest. **REMEMBER**

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<sup>91</sup> Rule 5.630 requires that Petitions for Approval of Acts, which would include payment of Guardians' fees and costs, MUST be verified that the representations are true and correct. This means that the signor is doing so under oath that the assertions contained in the document are true under penalty of perjury. *Fla.Stat. §744.104(2025)*

<sup>92</sup> REMEMBER, it is permissible for an attorney to accept payments from a hospital or care facility who is only a Petitioner, but NOT if the Petitioner then becomes the Guardian or as the attorney representing the appointed-Guardian.

that payments by third-parties that benefit a Ward could be considered as gifts to the Ward that might incur taxes and/or affect that Ward's government benefits.

(2) **IMPORTANT: Benefits to a Guardian generated in connection with the Guardian's services to the Ward, including fee-splitting, commissions, price reductions that benefit a Guardian and "points" ARE compensation to such a Guardian and MUST be disclosed and preapproved by the Guardianship Judge by written Order.** In addition, **such benefits are and/or could possibly constitute conflicts of interest** that a Guardian is required to have specifically authorized by the Guardianship Judge in addition to the approval required for Guardian-compensation. Examples of these types of benefits include but are NOT limited to:

- (a) A Guardian referring all of his/her Wards to her own dentist and that dentist reducing the cost of the Guardian's own dental fees because of the referrals;
- (b) A Guardian sharing in a real estate commission in connection with the sale of his/her Ward's real property, either directly or through a family member;
- (c) A Guardian paying his/her spouse for services to the Guardianship;
- (d) A Guardian referring accounting work to his/her own accounting firm, of which he/she is the owner, sole proprietor and/or only employee performing the work; and
- (e) Receiving or benefiting from credit card points for purchases made on behalf of a Ward. When a Guardian uses his/her own credit card for expenses of his/her Wards and then uses the points or rewards for the Guardian's own benefit, that is compensation to the Guardian. While it's not completely unreasonable for a Guardian to maintain a credit card for the sole use of some of a Ward's expenses, remember that credit cards that award points charge higher fees which a Guardian would then be passing on to the Ward. And, many Wards are not able to benefit from credit card rewards such as travel, etc.

C. **Section 744.108(5) REQUIRES that the details of the Guardian's activity** on behalf of the Ward be specifically set forth in the Petition for Guardian Fees and Costs, usually by attaching the time and/or fee records.<sup>93</sup> A large number of notations such as "pay bills" may not be allowed without more specifics, especially for Wards whose expenses should be included in their residential care fee. Other fees and/or costs that may not be authorized by the Court include:

- (1) Fees for Reports that were not filed;
- (2) Milage if the Guardian is charging for travel-time to and from visits with the Ward or other required activities that benefit the Ward. Guardians may deduct this "mileage" on their taxes, but may not charge the Ward for it on top of travel-time;

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<sup>93</sup> Fla.Stat. §744.108(5)(2025); In Re: the Guardianship of Sapp v. Hamrick, 868 So.2d 687, 695 (Fla. 2d DCA 2004)

- (3) Efforts that a normal family-member would perform for another.<sup>94</sup>
- (4) Billing for accounting services that the Guardian is actually performing in the guise of an accounting-entity while at the same time billing for preparing the Annual Accounting, unless it is very clear that these are not duplicative services.

## **INTERESTED PERSONS**

1. The term “interested persons” is used frequently throughout the Statutes and Rules governing Guardianships and Guardian Advocacies. It is defined by Section 731.201(23) of the Probate Code which applies in the absence of any contrary Guardianship Statutes or Rules.<sup>95</sup>

*...any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved. In any proceeding affecting the estate or the rights of a beneficiary in the estate, the personal representative of the estate shall be deemed to be an interested person. In any proceeding affecting the expenses of the administration and obligations of a decedent's estate, or any claims described in s. 733.702(1), the trustee of a trust described in s. 733.707(3) is an interested person in the administration of the grantor's estate. The term does not include a beneficiary who has received complete distribution. The meaning, as it relates to particular persons, may vary from time to time and must be determined according to the particular purpose of, and matter involved in, any proceedings<sup>96</sup>.*

2. As indicated above, who qualifies as an “interested person” depends on context. The Florida Supreme Court held that if **a person is entitled to notice or is authorized to file an objection under the State Guardianship Law or the probate rules**, that person, including an heir of a ward, has standing to participate in the guardianship proceeding as an interested person.<sup>97</sup> However, Courts must still examine the nature and character of each proceeding separately even when a person may be entitled to notice.
  - A. The Florida Supreme Court and subsequent appellate courts have determined that a Ward's heirs were Interested Persons as to a Guardian's legally required Reports, but not as to Guardian or Attorney Fees.<sup>98</sup>
  - B. The Third District Court determined that even though a person might file a Notice and a Request for Copies under Probate Rule 5.060 and be an active participant in the guardianship-proceedings that he was not entitled to participate in court proceedings involving requests for attorney fees by the Ward's attorney because he was not entitled to object to such claim.<sup>99</sup>

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<sup>94</sup> *In Re: the Guardianship of Neher v. Neher*, 659 So.2d 1294, 1296 (Fla. 2d DCA 1995); *In Re: Guardianship of Read v. Kenefick*, 555 So.2d 869, 870-871 (Fla. 2d DCA 1989); *In Re: the Guardianship of Sapp v. Hamrick*, 868 So.2d at 695-696

<sup>95</sup> *Fla.Stat. §744.1025(2025)*

<sup>96</sup> *Fla.Stat. §731.201(23)(2025)*;

<sup>97</sup> *Hayes v. Guardianship of Thompson*, 952 So.2d 498, 452 (Fla. 2006)

<sup>98</sup> *Id.* at 506-507;

<sup>99</sup> *Hernandez v. Hernandez*, 230 So.3d 119, 123 (Fla.3d DCA 2017) (Also, the Appellant may have caused the necessity for some or all of the Ward's attorney fees.)

## **LIMITED GUARDIANSHIPS**

1. The defining feature of Limited-Guardianships is that they delegate only some of the legal rights that may be legally delegated. The legal rights that may be delegated to a Guardian are:
  - (a) *To contract.*
  - (b) *To sue and defend lawsuits.*
  - (c) *To apply for government benefits.*
  - (d) *To manage property or to make any gift or disposition of property.*
  - (e) *To determine his or her residence.*
  - (f) *To make health care decisions as defined in s. 765.101. ...*
  - (g) *To make decisions about his or her social environment or other social aspects of his or her life.*
2. **Limited Guardianships REQUIRE SPECIFICITY.**
  - A. It is important that the Order Appointing a Limited Guardian and Letters of Authority specify EXACTLY which rights are delegated to the Guardian AND which rights that Guardian's Ward retains.
  - B. If a Limited Guardian is delegated authority only over certain of his/her Ward's accounts, the Order Appointing a Limited Guardian and Letters of Authority MUST specify exactly the accounts and/or assets and/or income-streams over which the Guardian has authority.
3. **COMMON PRACTICAL PROBLEMS in limited guardianships stem from the conflict between the goals of protecting Wards and allowing them some freedom.** Remember, if a Ward retains the right to make decisions about his/her social environment, this may leave such Wards vulnerable to a wide range of predators that pray on the elderly and disabled. If a Ward retains certain financial-decision-authority, this may undermine the goal of protecting such Wards from incurring debt, giving away assets, being scammed, and/or other bad decisions that may be caused by their limited capacities.
4. **Limited Guardianships** are subject to the same laws and rules as Plenary Guardianships and must file Initial and Annual Reports as applicable.

## **MINOR GUARDIANSHIPS**

1. **Guardians of Property Procedures:** Guardians of Property of Minors are most often sought because a Minor because a lawsuit is being filed on behalf of a Minor or is receiving a settlement of a potential lawsuit or an inheritance. The Natural Parent or Parents are most often the Petitioner(s) and the proposed Guardian(s) in these circumstances.
  - A. **No hearing is required:**<sup>100</sup> A hearing is not required in order for a petitioner by Rule 5.555 or 5.636 or Section 744.3021 though if the Court has concerns or questions, it may schedule Petition for Appointment of a Guardian of a Minor for a hearing. Certain documents must be filed in the Court file in order for the Court to address these Petitions without a hearing.

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<sup>100</sup> No hearing is required for Minor-Guardianships UNLESS the Court is addressing such a proceeding pertaining to a minor who is 17 years and 6 months old who is subject to Chapter 39 proceedings. *Fla.Stat. §744.3021(4)(2025)*

B. See **Florida Probate Rule 5.555 and Section 744.3021 of Florida Statutes for PLEADING requirements.** (What must be alleged in a Petition for Appointment of Guardian of a Minor.)

(1) **The Petition for Appointment must comply with Florida Statutes and Rules.**

Don't ask the Court to grant relief that it's not statutorily authorized to grant. This most often occurs in connection with settlements of personal injury claims or lawsuits.

(2) **The Petition must set forth the Minor's date of Birth AND a copy of the Minor's Birth Certificate** must be either attached to the Petition or filed in the Court file prior to the Court signing any Orders. There must be evidence in the Court file as to the Minor's date of birth AND that the petitioning parent is actually related to the Minor.

**The proposed Guardian(s) must be statutorily eligible for appointment pursuant to Sections 744.309 and 744.312 of the Florida Statutes** and must file an Application for Appointment and submit to a level-2 background check and a credit check.

*Fla.Stat. §744.3125(2025) [Public Fingerprinting | Naples, FL](#)*

AND

[Guardianship Resources – Collier Clerk of the Circuit Court & Comptroller](#)

(3) **Both parents of the Minor MUST either request appointment or if only one does, the other parent MUST consent and a Consent must be filed in the Court file.** If the non-petitioning parent is deceased, such an allegation should be set forth or explained in the Petition for Appointment and a Death Certificate of the deceased parent should be attached to the Petition or filed at or around the time of the Petition.

(4) **The Petitioner should specify in his/her Petition for Appointment whether the Guardian will be posting a Bond, depositing the Minor's assets into a "restricted account" pursuant to Section 69.031 of the Florida Statutes, or if the Guardianship will be holding only an annuity/structured settlement for the Ward that cannot be cashed or borrowed against.** Guardians are REQUIRED to post a Bond in the amount of any cash or liquid assets OR a bond can be waived if such cash assets are deposited directly into an interest bearing, restricted-account established pursuant to Section 69.031 of the Florida Statutes.<sup>101</sup>

(a) If the Ward's asset are to be deposited in a restricted account pursuant to Section 69.031, the Guardian must file an additional Petition and obtain an Order Authorizing such. All financial institutions may accept or reject such designation so it is advisable to confirm that the bank or other financial institution will accept such a designation. *Fla.Stat. §69.031(4)(2025)* The financial institution must file its acceptance or rejection of the designation within 15 days of when it becomes aware of this designation. *Fla.Stat. §69.031(4)(2025)* The Court, Collier Guardianship

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<sup>101</sup> *Fla.Stat. §744.351(2025)*

Case Management and the Collier Clerk's Auditor regularly review Court files to confirm that this Acceptance of Designation has been filed in the Court file.

- C. When all required pleadings and documents are filed AND actually appear in the Court file, Petitioner and/or his/her attorney may submit Orders and Letters to the Court for signature.
- D. When Guardians of minors' property ARE required and NOT: The Court will NOT approve a settlement for a Minor or appoint a Guardian Ad Litem (GAL) without a Guardian being appointed for the Minor's property **when that property's net value exceeds \$15,000 net**, including for personal injury settlements or distributions from a deceased person's estate.
  - (1) A guardianship MUST be opened and a Guardian of the Property appointed for settlements that are greater than \$15,000 BEFORE a Court can consider whether to approve a settlement or appoint a Guardian Ad Litem (GAL).<sup>102</sup> When the Court receives a Petition to Approve Settlement WITHOUT a Petition for Appointment of a Guardian of the Property, it will STRIKE such and DENY the Petition, with leave to amend to a Petition for Minor Guardianship (See requirements above).
  - (2) Settlements of less than \$15,000 do NOT require the appointment of a Guardian or Court approval of a Settlement. Parents as natural guardians can approve settlements on behalf of their minor-children WITHOUT court approval or filing a Petition to Appoint a Guardian of the Property IF the settlement amount is less than \$15,000 net pursuant to 744.3872 of the Florida Statutes and the Petition to Approve the Minor's Settlement sets forth the required allegations and attaches proof. (See "Minor Settlements," next Section this Summary)
  - (3) Parents MAY request an appointment of a Guardian for settlements of less than \$15,000 net. However, appointing a Guardian for this settlement-amount is often more burdensome than he/she expects. It subjects that Guardian to initial and annual reporting requirements until the Ward reaches the age of 18 and the Guardian will be required to post a Bond or deposit any cash or liquid assets into a restricted account.
- E. A Petition for Appointment of a Guardian of a Minor MAY be voluntarily dismissed by the Petitioner, but **ONLY PRIOR to the Court appointing the Guardian requested in the Petition**. If a Petitioner files a Notice of Dismissal prior to a Guardian being appointed, then the Petitioner or his/her attorney should submit and Order of Dismissal for the Court's signature.
  - (1) Recently, Petitioners and/or their attorneys have been filing Notices of Voluntary Dismissal AFTER a Guardian of a Minor has been appointed. **This is a legal nullity** and the Court will STRIKE such Notices from the Court file. It appears to the Court that such attempts to dismiss a Minor-Guardianship after appointment of a Guardian are based on the mistaken belief that if a Minor's settlement is a structured-settlement

<sup>102</sup> Fla.Stat. §744.387 (2025); *JSJ v. Pena*, 109 So.3d 1281, 1283 (Fla. 5<sup>th</sup> DCA 2013); *Fields v. Kirton*, 961 So.2d 1127, 1129-1130 (Fla. 4<sup>th</sup> DCA 2007); *Hancock v. Share*, 67 So.3d 1075 (Fla. 5<sup>th</sup> DCA 2011)

funded by an annuity that is payable when the Minor reaches the age of majority, that the Guardianship can be dismissed. **This is not legally correct.** A Guardian of a Minor who has received such a settlement has only two choices:<sup>103</sup>

- (a) Continue as Guardian until the Minor-Ward reaches the age of majority listing the structured settlement as the only asset of the Guardianship until then in all of the financial Reports that are required by law to be filed; OR
- (b) File a Petition pursuant to Section 744.462 of the Florida Statutes alleging that less restrictive means than the Guardianship has been discovered and request termination of the Guardianship. The Guardian will be required to comply with the Statutory requirements for termination of the Guardianship and discharge of the Guardian as set forth in Sections 744.521, 744.527 and 744.531 of the Florida Statutes.

#### **F. Financial limitations on Guardians of Minor's Property:**

- (1) Guardians may NOT place Ward's property in trust or other such vehicles **whose purpose is to keep the funds/assets from the Minor-Wards well after their 18<sup>th</sup> birthdays, unless there is a valid tax or estate planning purpose for doing so.** *Guardianship of Bernstein v. Miller*, 777 So.2d 1125, 1127 (Fla. 4<sup>th</sup> DCA 2001)
- (2) A Guardian MAY agree to and Courts MAY approve a PI-settlement in the form of an annuity or structured-settlement-vehicle that are payable AFTER the Minor becomes 18 years of age, if that is in the best interests of the Minor-Ward. *Hancock v. Share*, 67 So.3d 1075, 1077 (Fla. 5<sup>th</sup> DCA 2011)
- (3) **Guardians may NOT use a Minor Ward's property for expenses for which the Guardian-parent would normally be responsible as a part of his/her parenting responsibilities and decisions.** Expenses such as utilities, rent and/or mortgage payments, travel, prom dresses, athletic expenses, and braces are expenses that would normally be paid by parents. If a Guardian wants to use his Minor-Wards assets for such expenses, the Guardian MUST file a Petition for Authorization and must receive a written Court Order authorizing such BEFORE the Guardian uses the Minor-Ward's assets for such expenses. **The Court very carefully scrutinizes these requests and may require a hearing.**
- (4) **Guardians may NOT use a Minor Ward's property for his/her own benefit and/or others for whom the Minor Ward is not legally responsible.** This Court very often finds GROSS misuse and dissipation of Minor Ward's property for purchases or payment of expenses for such items as homes, cars, and education of others. **As such, this Court will VERY closely scrutinize Petitions for these type of payments and such use of the Guardianship assets.** Examples of this misuse of the Ward's assets include, but are not limited to:

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<sup>103</sup> A third option is to petition to set aside the Guardian's appointment and then if the Court grants it, the Petition for Appointment may be dismissed. However, this may not be the best option if Minor's Guardian was required to sign the legal settlement documents waiving the Minor's rights, etc., this option might invalidate the settlement and/or cause similar legal problems.

- (a) Purchase of residences ‘...so that the Ward [and other members of the Ward’s family] will each have their own bedroom and a backyard’;
- (b) Purchase of a vehicle for the Guardian-Parent(s) because the Guardian drives the Minor-Ward to health appointments, even though no-specially-equipped-vehicle is requested or needed;
- (c) Support payments for parents or other family-member-Guardians;
- (d) Tuition payments for persons other than the Minor-Ward; and
- (e) Payment of legal expenses for persons other than the Minor-Ward.

(5) **Mismanagement of the Ward’s assets** may violate a Guardian’s legal responsibilities for the property of his/her Minor Ward. Such mismanagement may include: failing to deposit cash assets into an interest-bearing account; failure to properly invest such cash; and/or failure to apply for or maintain health insurance for the Minor-Ward such that the Ward’s health expenses are higher than necessary that require use of the Minor-Ward’s funds for such expenses.

**G. Guardianships of the Minor’s Person:** These guardianships occasionally occur when both parents die and a friend or relative steps in to parent a Minor or when parents are unavailable for other reasons and relatives (often grandparents) assume that role.

- (1) **Pleading requirements** set forth in Rule 5.555 and Section 744.3021 apply. Birth Certificate of minor and any relevant Death Certificates must be filed. In addition, a **Uniform Child Custody and Jurisdiction Act (UCCJEA) Affidavit must be filed.**
- (2) The Court DOES require a hearing for these Petitions, but the Minor is NOT required to attend.
- (3) Guardian must be represented by Counsel during proceedings and in filing Initial and Annual Plans.
- (4) A Standby Guardian should be named if the Minor is young and the proposed Guardian(s) are older.
- (5) **Financial limitations:** While the Court recognizes that that parents may provide financially for the care of their children in the event of their deaths via life insurance and other vehicles and that Children may receive Social Security benefits connected with the death of their parents, such financial arrangements and benefits do not mean that the friends and/or relatives that assume responsibility for Minors should receive a windfall for doing so. This Court carefully scrutinizes financial arrangements that use a Minor-Ward’s inheritance and/or death benefits for the benefit of the Minor’s Guardian(s).

(6) **When Minor-Guardianships are sought for other purposes than as allowed by Florida Guardianship Statutes:** The Court frequently receives Petitions to Appoint a Guardian of the Person of a Minor Ward for the purpose of obtaining some advantage in the Minor's immigration or deportation proceedings. This is NOT the purpose of the Guardianship Statutes. Nevertheless, the Court is required to consider such Petitions pursuant to Florida's statutory criteria for all guardianships and will grant or deny these Petitions based on the **LEGAL** criteria ONLY. These legal criteria do **NOT** include a Minor's need to bolster his/her immigration case. This Court will **NOT** make any findings outside of the statutory criteria including any that attorneys argue might be 'helpful' for immigration or deportation proceedings.

## **MINOR SETTLEMENTS**

(See also previous Section "Minor Guardianships" this Summary)

1. **Settlements of injury and probate-inheritance claims** are most often the types settlements that are brought before the Court for review and approval. Injury claims are brought either before or after a Court case is filed.
2. **Settlements of less than \$15,000 NET do NOT require the appointment of a Guardian and a Petition for Approval of a Minor Settlement Less than \$15,000 Net may be filed and approved by the Court pursuant to 744.387 of the Florida Statutes.** A Minor's Natural Parents are legally authorized as such to approve and settle a case for their minor-child without Court intervention or authorization.<sup>104</sup> Despite that Section 744.387(2) of the Florida Statutes occurs in the middle of the "Guardianship" Chapter of the Florida Statutes, this Section appears to authorize a **Natural Guardian/Parent to settle a claim on behalf of his/her Minor-Child if the settlement amount is less than \$15,000 net and that a Court has discretion to approve such a settlement as an independent-cause of action** **WITHOUT prior appointment of said Parent as a Guardian.** Section 744.387(2) provides as follows:

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

Subsection (1) of the above Section provides:

*When a settlement of any claim by or against the guardian, whether arising as a result of personal injury or otherwise, and whether arising before or after appointment of a guardian, is proposed, but before an action to enforce it is begun, on PETITION by the guardian of the property STATING the facts of the claim, question, or dispute and the proposed settlement, and on any evidence that is introduced, the court MAY enter an ORDER authorizing the settlement IF SATISFIED that the settlement will be for the best interest of the ward. [Emphasis Added]*

<sup>104</sup> Fla.Stat. §744.387(2025); Fla.Stat. §744.301(2)(2025); JSJ v. Pena, 109 So.3d 1281 (Fla. 3d DCA 2013)

The Court has determined that Subsection (2) only requires that approval of settlements less than \$15,000 be sought in the same “**MANNER**” as in subsection (1), despite that the term “guardian” is seemingly determinative. Such a cause of action to approve a minor’s settlement of less than \$15,000 net does require that a Verified-Petition for Approval<sup>105</sup> be filed that sets forth the criteria described in Section 744.387(1):

- The facts of the claim, question, or dispute,
- The proposed settlement, and
- The reasons the settlement is in the Minor’s best interest.

A. **Section 744.301 does not limit a Court’s discretion to consider and approve settlements of \$15,000 NET even though it authorizes Natural Parents to settle claims of their Minor children only up to \$15,000 “in aggregate.”** While the Court has determined that “aggregate” referred to in Section 744.301 means “gross” settlement prior to deducting any fees and costs and the “net settlement” referred to in Section 744.387(2) clearly indicates an amount calculated after deducting fees and costs, Section 744.387(2) encompasses the Section 744.301 amount and therefore does not limit the Court’s discretion to approve such a settlement as an independent-cause of action without prior appointment of said Parent as a Guardian, as long as the NET amount of the settlement does not EXCEED \$15,000.

B. In addition to the pleading requirements of Florida Probate Rule 5.636(b), Petitions to Approve Minor Settlement of Less than \$15,000 Net must allege:

- (1) **The facts of the claim, question, or dispute:** these allegations usually include a general statement as to how the Minor was injured.
- (2) **The proposed settlement:** these allegations should include the amount being paid to the Minor, less the amounts for fees and costs as well as HOW this settlement is being paid, e.g. as an annuity, cash payment, etc.
- (3) **The reasons the settlement is in the Minor’s best interest:** These allegations SHOULD include how the **form of payment** of the settlement as well as the **amount** is in the Minor’s best interest. The Court questions whether giving a Minor’s parents the Minor’s settlement in cash directly without any safeguards or reasons for doing so, is in the Minor’s best interest. In other words, how is it in the Minor’s best interest that the Minor’s Mother buys a new car or pays for a facelift for herself with the Minor’s settlement-cash.

3. **A Guardian of a Minor’s Property MUST be Appointed in order for a Court to consider and approve settlements that EXCEED \$15,000 net, to which said minor is entitled.**<sup>106</sup> The Court will NOT consider a Petition to Approve a Minor Settlement that exceeds \$15,000 after deducting fees and costs, regardless as to the form the settlement. The Court will strike such pleadings with leave to amend to a Petition for Appointment of a Guardian of a Minor. (See this Summary, “**Minor Guardianships**” for requirements and

<sup>105</sup> Verification is required because 744.387 requires that the court’s consideration of the settlement be based on “evidence”.

<sup>106</sup> *Fla.Stat. §744.387(2)(2025); JSJ v. Pena*, 109 So.3d 1281, 1283 (Fla. 5<sup>th</sup> DCA 2013); *Fields v. Kirton*, 961 So.2d 1127, 1129-1130 (Fla. 4<sup>th</sup> DCA 2007); *Hannock v. Share*, 67 So.3d 1075 (Fla. 5<sup>th</sup> DCA 2011)

**procedures.)** AFTER such a Guardian is appointed AND the Letters of Authority issued, then a Petition for Approval of a Minor's Settlement may be filed and if necessary a Petition for Appointment of a Guardian Ad Litem. The same pleading requirements apply to these Petitions as are required for Petitions to Approve Minor Settlements less than \$15,000 Net.<sup>107</sup>

4. **The Court is required to appoint a Guardian Ad Litem (GAL) in addition to the appointment of a Guardian of the Property of the minor-ward if the settlement to which a minor is entitled is worth more than \$50,000.**<sup>108</sup> A proposed settlement equals or exceeds \$50,000 if the **gross amount payable** equals or exceeds \$50,000 WITHOUT reduction to reflect present value or fees and costs.<sup>109</sup> The Guardian Ad Litem (GAL) reviews the settlement and makes a recommendation to the Court regarding it by filing a Report in the guardianship-court-file.<sup>110</sup> The Court can review these without a hearing.
  - A. **A Guardian Ad Litem cannot be appointed to review a minor's settlement UNLESS a Guardian of the Property has previously been appointed** pursuant to Section 744.3021 of the Florida Statutes and Rule 5.555 of the Florida Probate Rules.
  - B. **The Court MAY appoint a Guardian Ad Litem when the settlement to which a Minor-Ward is entitled is valued between \$15,000 and \$50,000.**  
*Fla.Stat. §744.3025(1)(a)(2025)* If appointment of a GAL is legally required or if a Petitioner would like one appointed, file a Petition for such relief setting forth the basis and forward an Order to the Court for review and signature once the Petition actually appears in the Court file.
  - C. **A Court is required to or may appoint a GAL for a Ward in connection with other than personal injury claims or lawsuits.** Such include settlements reached on behalf of a Minor Ward for distribution of inheritances.
5. Once a Guardian of the Property of the Minor-Ward has been appointed if the net settlement amount exceeds \$15,000 net or upon the filing of a Petition for Approval of Settlement if the settlement is less than \$15,000, the Court may review **without a hearing** the Petition to Approve Settlement, the Guardian Ad Litem Report if any was appointed, and any Settlement Agreement documents or Closing Statement that are either filed or forwarded to the Court. Counsel should forward to the Court via the e-filing-Portal an Order Approving Settlement. If the Court identifies concerns or issues based on the court file contents, it may require a hearing to address same. The pleading requirements for Petitions to Approve Minor's Settlement are set forth in Florida Probate Rule 5.636(e).
  - A. **The Court may approve a Minor-Ward's structured-settlement when the terms of the settlement include payments past the Minor-Ward's 18<sup>th</sup> birthday**, such as a structured-settlement and/or annuity.<sup>111</sup>

<sup>107</sup>*Fla.Stat. §744.387(1)-(2) (2025)*

<sup>108</sup> *Fla.Stat. §744.3025(1)(b)(2025)*

<sup>109</sup> *Fla.Prob.R.5.636(e)*

<sup>110</sup> *Fla.Prob.R.5.636(f)*

<sup>111</sup> *Hancock v. Share, 67 So.3d 1075 (Fla. 5<sup>th</sup> DCA 2011)*

- B. **The Court CANNOT authorize the Guardian of a Minor-Ward's property to transfer such assets including cash or similar assets to an investment vehicle, asset or entity that the Minor-Ward cannot access when he/she becomes 18 years of age.**<sup>112</sup> This includes a Guardian investing a Ward's cash in a Certificate of Deposit that imposes a penalty for liquidation that would occur after the Ward's 18<sup>th</sup> birthday.
- C. **The Court is required to order that the Guardian post a Bond in the amount of total cash or liquid assets OR deposit settlement funds or other assets into a "restricted account"** pursuant to Section 69.031 of the Florida Statutes.

## **REMOVAL OF GUARDIANS**

- 1. Courts may remove a Guardian from his/her position as such on the Court's own initiative or Petition of the Ward, the Guardian's Surety, or any other interested person.<sup>113</sup> Guardian removals are generally governed by Section 744.474 of the Florida Statutes and Florida Probate Rule 5.660.
- 2. The definition of "interested persons" is in guardianship cases is dependent on the context of the circumstances:
 

*...any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved. In any proceeding affecting the estate or the rights of a beneficiary in the estate, the personal representative of the estate shall be deemed to be an interested person. In any proceeding affecting the expenses of the administration and obligations of a decedent's estate, or any claims described in s. 733.702(1), the trustee of a trust described in s. 733.707(3) IS an interested person in the administration of the grantor's estate. The term does NOT include a beneficiary who has received complete distribution. The meaning, as it relates to particular persons, may vary from time to time and must be determined according to the particular purpose of, and matter involved in, any proceedings.*

*Fla.Stat. §731.201(23)(2025)<sup>114</sup>* [Emphasis added]

Determining who are "Interested Persons" for the purposes of Guardian-Removal-proceedings requires the trial court to evaluate the nature of both the proceeding and the interest asserted.<sup>115</sup> Persons who are entitled to object to certain actions and/or on certain issues as well as who are entitled to notice of removal proceedings would qualify as "interested persons."<sup>116</sup> The persons who are entitled to notice of Guardian-Removal-proceedings are: Guardians, next of kin, the Ward and "other interested persons." This would likely include trustees of any trusts of which the Ward is a beneficiary especially if the Guardian and/or next of kin are acting as such trustee. Whether it would include financial institutions, care facilities and health care providers providing services to the respective

<sup>112</sup> *Berstein v. Miller*, 777 So.2d 1125, 1127 (Fla. 4<sup>th</sup> DCA 2001)

<sup>113</sup> *Fla.Stat. §744.477(2025); Fla.Prob.R.5.660(a)*

<sup>114</sup> Guardianship law relies on Probate-estate-law for the definition of "interested persons" as set forth in Section 731.201 of the Florida Statutes. *Fla.Stat. §744.1025 (2025); Hayes v. Guardianship of Thompson*, 952 So.2d 498 (Fla. 2006); *See, Hernandez v. Hernandez*, 230 So.3d 119, 123 (Fla. 3d DCA 2017)

<sup>115</sup> *Hayes v. Guardianship of Thompson*, 952 So.2d 498, 507 (Fla. 2006); *See, Hernandez v. Hernandez*, 230 So.3d 119, 123 (Fla. 3d DCA 2017)

<sup>116</sup> *Id.*

Wards and/or paying expenses of such Wards does not appear to have been addressed by appellate courts.

**3. GROUNDS FOR REMOVAL:** Generally, the grounds for removal of a Guardian are set forth in Section 744.474 of the Florida Statutes. In addition, Guardians may be removed for or in connection with: having or developing conflicts of interest; abusing, neglecting and/or exploiting their Wards; and, pursuant to reports from the Department of Children and Families (DCF) , a law enforcement agency, the Collier Clerk's Office, the Office of Public and Professional Guardians (OPPG),<sup>117</sup> and/or a Report of a Court Monitor appointed by the Court.

A. The grounds for removal of a Guardian are based on the duties of Guardians set forth in Section 744.361 and the rights of persons determined to be incapacitated pursuant to Section 744.3215 of the Florida Statutes. Such removal-grounds also incorporate any required actions and prohibited-actions of Guardian as set forth throughout Chapter 744 and 393 and the applicable Probate Rules.

B. The grounds for removal of a Guardian are:

(1) ***Fraud in obtaining her or his appointment.***

(2) ***Failure to discharge her or his duties.*** [This encompasses a broad range of Guardian-actions and inactions.]

(3) ***Abuse of her or his powers.*** This encompasses a broad range of Guardian-actions and inactions.]

(4) ***An incapacity or illness, including substance abuse,*** which renders the guardian incapable of discharging her or his duties.

(5) ***Failure to comply with any order of the court.*** [This includes failure to respond to Orders to Show Cause for failure to file required-Reports.]

(6) ***Failure to return schedules of property sold or accounts of sales of property or to produce and exhibit the ward's assets when so required.*** [By the Court OR the Clerk-Guardianship-Auditor]

(7) ***The wasting, embezzlement, or other mismanagement of the ward's property.*** [This can include failing to properly invest and maximize the use of a Ward's assets and income.]

(8) ***Failure to give bond or security for any purpose when required by the court or failure to file with the annual guardianship plan the evidence required by s. 744.351 that the sureties on her or his bond are alive and solvent.***

(9) ***Conviction of a felony.***

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<sup>117</sup> OPPG is the Office of Public and Professional Guardians and is the certifying division for Professional Guardians.

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

(11) **Development of a conflict of interest between the ward and the guardian.** [This can include a broad range of Guardian-actions and inactions, especially in Minor-Ward-Guardianships and for Guardians who are relatives of the Ward and are living with the Ward and as such using the Ward's assets and income.]

(12) **Having been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under s. 435.04 or similar statute of another jurisdiction.** [This is the level-2-criminal background check.]

(13) **A material failure to comply with the guardianship report by the guardian.**

(14) **A failure to comply with the rules for timely filing the initial and annual guardianship reports.**

(15) **A failure to fulfill the guardianship education requirements.**

(16) **The improper management of the ward's assets.** [This can include improper investing, failure to apply for and/or maximize the Ward's government benefits, paying unnecessary expenses, failing to sell assets that a Ward is no longer capable of using, failing to sell assets at or above fair market value, incurring unnecessary debt, failing to properly ensure assets, failing to negotiate prices or expenses, and other actions or inactions that reduce the value of a Ward's assets.]

(17) **A material change in the ward's financial circumstances such that the guardian is no longer qualified to manage the finances of the ward, or the previous degree of management is no longer required.**

(18) **After appointment, the guardian becomes a disqualified person as set forth in s. 744.309(3).** [If the Guardian is convicted of a felony, becomes incapacitated, is incapable of discharging guardian duties, or otherwise becomes unsuitable to perform such duties.]

(19) **Upon a showing by a person who did not receive notice of the petition for adjudication of incapacity, when such notice is required, or who is related to the ward within the relationships specified for nonresident relatives in ss. 744.309(2) and 744.312(2) and who has NOT previously been rejected by the court as a guardian that the current guardian is not a family member AND [below] subsection (20) applies.**

(20) **Upon a showing that removal of the current guardian is in the best interest of the ward.** In determining whether a guardian who is related by blood or marriage to the ward is to be removed, there shall be a rebuttable presumption that the guardian is acting in the best interests of the ward.

(21) **A bad faith failure to submit guardianship records during the audit pursuant to s. 744.368. [Audit by the Clerk's Office]**

**C. Additional GROUNDS are:**

(1) **ABUSE, NEGLECT OR EXPLOITATION BY A GUARDIAN.** While it may seem obvious, **Guardians are prohibited from abusing, neglecting or exploiting their Wards pursuant to Sections 744.359 and 825.103 of the Florida Statutes.**

(a) Pursuant to Section 744.359, exploitation includes not only financial wasting, misuse and stealing of Wards' assets, but also a Guardian abusing his/her powers and committing fraud in obtaining appointment. *Fla.Stat. §744.359(2)(2025)*  
Guardians may be removed from their positions a such pursuant to this Statutory Section.

(b) Section 825.103 imposes criminal penalties on Guardians if they exploit their Wards. This Section defines addresses primarily financial exploitation. Courts do not file criminal charges. Only the Executive Branch of government may investigate and file criminal charges - law enforcement and the State Attorney's Office. The Clerk's Office which is also an Executive Branch entity, may share information with law enforcement and the State Attorney's Office with Court-authorization.<sup>118</sup> Such Court authorization does NOT require a Court to make a probable cause determination.<sup>119</sup>

(c) **ALL persons** who believe that a Ward has been abused, neglected or exploited are required to report such to the Department of Children and Families. This includes judges, attorneys, and Court and Clerk-Office personnel. The phone number and website link for such reporting is:

**1-800-962-2873**  
[Abuse Hotline | Florida DCF](#)

*[Web-reporting is advised as DCF-Hotline operators rarely answer the phone and if they do, the wait-time is usually more than 1 hour. Be as descriptive as possible with emphasis on how the vulnerable adult or elder is **NOT SAFE** or has been financially EXPLOITED]*

(2) **CONFLICTS OF INTEREST:** Guardians are prohibited from personally profiting from their role as Guardian except in the form of Guardian-Fees and expenses that must be specifically authorized by the filing of Petitions for such and the Court authorizing payment of such by written Order pursuant to Section 744.108 of the Florida Statutes.<sup>120</sup> All conflicts of interest or potential conflicts MUST be approved

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<sup>118</sup> *Fla.Stat. §744.3701(4)(2025)*

<sup>119</sup> *Id.* Subsection (4) states that the Clerk may disclose confidential information to DCF and law enforcement for "other purposes" as provided by Court Order. There is no mention of a probable cause determination in Section 744.3701 as there is regarding Emergency-Court-Monitor-reporting in Section 744.1075(3) of the Florida Statutes.

<sup>120</sup> *Fla.Stat. §744.446(1)(2025)*

by a Court PRIOR to engaging in the activity giving rise to the conflicts.<sup>121</sup> Certain conflicts cannot ever be waived or authorized by a Court. A Guardian may not:

...offer, pay, solicit, or receive a commission, benefit, bonus, rebate, or kickback, directly or indirectly, overtly or covertly, in cash or in kind,...; or  
...engage in a split-fee arrangement in return for referring, soliciting, or engaging in a transaction for goods or services on behalf of an alleged incapacitated person or minor, or a ward, for past or future goods or services.<sup>122</sup>

#### 4. PROCESS AND PROCEDURES FOR REMOVING GUARDIANS:

- A. Circumstance raising the possibility of a Guardian's removal comes to the Court's attention through the Court's review of court-file and/or various Reports and/or other filings in the Court file as follows:
  - (1) **Petitions for Removal of Guardian** filed by the Ward, Surety or other interested persons (see below-definition);
  - (2) **A Court's own review of the Court file** usually in conjunction of reviewing required-Guardian-Reports or Guardian-Petitions requesting authorization to take some action;
  - (3) **A DCF-investigation-Report** forwarded to the Court as required by law;
  - (4) **A Report from the Clerk's Office** filed in the Court file;
  - (5) **A Report from a Court Monitor or Emergency Court Monitor.** A Court-Monitor is appointed by the Court based on Clerk and/or DCF reporting or on the Court's own concerns apparent in the Court file; and/or
  - (6) **A report and/or notification from the Office of Public and Professional Guardians** that they have received a complaint against a Guardian and/or made a determination to suspend or revoke a professional Guardian's registration.<sup>123</sup>
- B. **DCF investigations into allegations of abuse, neglect and exploitation of disabled or incapacitated adults** are governed by Chapter 415 of the Florida Statutes. DCF is required to send a "Report" to the Judge presiding over the Guardianship Case in which they investigate reports of abuse, neglect or exploitation of an adult-Ward by the Ward's Guardian.<sup>124</sup> The Court is prohibited from disclosing this DCF-Report via filing it in the Court file or forwarding to any Party or Party's attorney unless it makes a specific determination of good cause to do so.<sup>125</sup> When a Guardianship has already been established for a Ward, **DCF rarely if ever files an adult-supervision-case as is authorized by Chapter 415 of Florida Statutes.** Consequently, it becomes the Guardianship-Court's responsibility to address the allegations in such a DCF-Report through a Guardianship-Court proceeding, including by removing the Guardian identified

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<sup>121</sup> Fla.Stat. §744.446(3)(2025); Fla.Stat. §744.309(3)&(6)(2025)

<sup>122</sup> Fla.Stat. §744.446(2)(2025)

<sup>123</sup> Fla.Stat. §744.2004(4)(2025)

<sup>124</sup> Fla.Stat. §415.1055(9)(2025)

<sup>125</sup> Section 415.107 provides: "...(3) Access to all records, excluding the name of the reporter which shall be released only as provided in subsection (6), shall be granted only to the following persons, officials, and agencies: .....(e) A court, pursuant to s. 825.1035(4)(h); or by subpoena, upon its finding that access to such records may be necessary for the determination of an issue before the court; however, such access must be limited to inspection in camera, unless the court determines that public disclosure of the information contained in such records is necessary for the resolution of an issue then pending before it." [Emphasis added] Fla.Stat. §415.107(3)(e)(2025)

in the DCF-Report. The Court has discretion to order that the DCF-investigator(s) appear at such Court-proceeding and may order these investigators to testify.<sup>126</sup>

C. **Clerk-Reports.** The Collier County Clerk's Office is required to "report" to and/or "advise" the Court upon review of the Guardian's required-Reports.<sup>127</sup> There isn't any guidance in the Florida Statutes, Probate Rules, Florida Administrative Code, or Case Law regarding how this "reporting" and/or "advising" is to occur. The Collier Guardianship Division in conjunction with Court Administration and the Collier County Clerk's Office determined that the Clerk's Office would file in Guardianship Court files detailed written Reports upon its review of Initial and Annual Plans and Initial Inventories and Annual Accountings. Such serves the purpose of both reporting to and advising the presiding Judge(s) and giving the Guardians and their attorneys notice as to said Reports and/or Advisements. Additionally, Judges are alerted that the Clerk's Office has concerns regarding a Guardian's required-Reports when the Clerk's Office:

- (1) Notifies the Judge that a Guardian is delinquent in filing his/her required-Reports.  
The Collier Clerk's Office forwards a list of delinquent Guardianship-Reports to the Collier Guardianship Case Management Office on a monthly basis;
- (2) Recommends disapproval of a financial-Report filed by a Guardian;
- (3) Petitions the Court for authorization to share information with DCF or a law enforcement agency; and/or
- (4) Petitions the Court for authorization to issue subpoenas to non-parties to compel production of financial documents.

D. **If a Guardian Ad Litem appointed to represent the interests of a Ward determines that there is a conflict of interest between said Ward and his/her Guardian, then the Guardian Ad Litem MUST petition the Court for removal of such a Guardian.**<sup>128</sup> A Guardian ad Litem must be appointed for a Ward in any litigation between the Ward and the Guardian and if the interest of a Guardian is or becomes adverse to that of his or her Ward.<sup>129</sup>

E. **Court Monitor and Emergency Court Monitor Reports.** (See also "Court Monitors" this Summary) When a Judge becomes aware that a Guardian may be acting or failing to act in a manner that is causing harm to a Ward, the Court may appoint a Court Monitor to investigate, seek information, examine documents or interview the Ward and shall then report his or her findings to the Court by forwarding and/or filing a written Report in the relevant Court file.<sup>130</sup> The Court may then "...enter any order necessary to protect the Ward or the Ward's estate including... suspending a Guardian or initiating proceedings to remove a Guardian."<sup>131</sup> Section 744.107 of the Florida Statutes and Florida Probate Rule 5.720 govern appointment of Court Monitors and their related hearings.

- (1) A Court may appoint an Emergency Court Monitor without notice, if it appears to the Court that the physical or mental health or safety of a Ward will be seriously impaired

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<sup>126</sup> Fla.Stat. §415.107(3)(e)(2025)

<sup>127</sup> Fla.Stat. §744.368(3)(4)&(5)(2025)

<sup>128</sup> Fla.Stat. §744.391(2025)

<sup>129</sup> *Id.*

<sup>130</sup> Fla.Stat. §744.107(2)(2025)

<sup>131</sup> Fla.Stat. §744.107(3)(2025)

or that the Ward's property is in danger of being wasted, misappropriated or lost unless immediate action is taken.<sup>132</sup> If upon reviewing the Emergency Court Monitor's Report the Court finds probable cause to take further action to protect the person or property of the Ward, then the Court issues an Order to Show Cause and schedules a hearing on said Order at which the Guardian must show cause as to why the Court should not take further action that can include suspending the Guardian and/or removing him or her as such.<sup>133</sup> The Emergency-Court-Monitor-Report is then filed in the Court file either as a separate document or attached to the Order to Show Cause.

F. The Court must hold a hearing on a Petition to Remove a Guardian.<sup>134</sup> If a Court is scheduling the Removal-hearing on its own "motion" or initiation, the Court should set forth the issues in its Scheduling-Order or the above-described Order to Show Cause. A Petition for Removal or Court Order for Removal Hearing must be served by formal notice.<sup>135</sup>

#### G. RELIEF IS GRANTED

- (1) The Court may "remove" a previously appointed Guardian(s) from his/her position as Guardian. Said removal relieves said Guardian of any authority over any matters for which he/she/they previously were appointed.
- (2) The Court MUST appoint a Successor Guardian upon removal of a Guardian.<sup>136</sup> The Court may appoint an Emergency Temporary Guardian pursuant to Section 744.3031 and Florida Probate Rule 5.648, if a more permanent alternative is not immediately available.
- (3) The Court must order that the Removed Guardian complete the tasks set forth in the Statutes and Rules and as set forth below.
- (4) The Court may issue an Injunction to protect the Ward's person and/or property as a part of its ruling on the Guardian's removal or in conjunction with said Removal-Order pursuant to Section 825.1035 of the Florida Statutes (Injunction for Protection Against Exploitation of Vulnerable Adult)
- (5) Voiding any transactions or activity of the Removed-Guardian that formed the basis of the Guardian's removal and imposing personal liability on the Removed-Guardian through a surcharge-proceeding.<sup>137</sup>

#### 5. Removed-Guardian's responsibilities upon removal: If the Court removes a guardian from his/her position as such, the Removed-Guardian must still complete certain tasks including:

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<sup>132</sup> Fla.Stat. §774.1075(1)(2025); Fla.Prob.R.5.725

<sup>133</sup> Fla.Stat. §774.1075(4)(a)-(c)(2025); Fla.Prob.R.5.725

<sup>134</sup> Fla.Prob.R.5.660(a)

<sup>135</sup> *Id.*; Courts generally do not "serve" anything, but can require delivery of Orders by Civil Service of Process.

<sup>136</sup> Fla.Stat. §744.471(2025)

<sup>137</sup> Fla.Stat. §774.446(4)(2025)

- A. Within 20 days of being removed, the Removed-Guardian must file an Accounting, with service on the Successor Guardian and the Ward unless the Ward is a minor or has been determined to be 100% incapacitated.<sup>138</sup>
- B. The Removed-Guardian must deliver or otherwise transfer to the Successor Guardian all of the Guardianship-assets AND records in the Removed-Guardian's possession or control.<sup>139</sup>
- C. The Court is REQUIRED to issue an Order to Show Cause if the Removed-Guardian fails to file the Final Accounting and turn over all assets.

6. **Implications and/or effects of removal for Guardians and their attorneys:**

- A. If the Court removes a professional-Guardian for actions or inaction in violation of relevant Florida Statutes, the Court must notify: the Office of Public and Professional Guardians; the Collier County Administrative Judge; the Chief Judge of the 20<sup>th</sup> Circuit; and the Collier County Clerk's Office.
- B. Depending on the reasons for the removal the Court may in addition to the above:
  - (1) Remove said professional-Guardian from ALL cases in which he/she has been appointed as a Guardian that are pending in Collier County;
  - (2) Void any transactions or activity of the Removed-Guardian and impose personal liability on the Removed-Guardian through a surcharge-action filed in the Guardianship proceeding;<sup>140</sup> and/or
  - (3) Prohibit the Guardian from serving as such in any future Court Case, as an Examining Committee Member, or providing services in any future guardianship cases, including in an accounting or bookkeeping position or personal services of any kind to any Ward.
- C. A Guardian who is also a Ward's family member may be removed as the Ward's Guardian and replaced with another family member, a professional guardian or the Public Guardian if the Ward qualifies for the appointment of the latter. The Court may impose the same penalties and/or grant the same relief as set forth above.
- D. A removed Guardian and/or said Guardian's attorney who represented the Guardian during the Guardian's malfeasance, may be sued for civil damages in a separate civil action(s).<sup>141</sup>
- E. Criminal charges may be filed against a Guardian based on the grounds for his/her removal by the Guardianship Court. The Guardianship Court is NOT a criminal-charging entity. That responsibility is that of the Executive Branch, usually a law enforcement

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<sup>138</sup> Fla. Prob. R.5.660(b)

<sup>139</sup> Fla. Prob. R.5.660(c)

<sup>140</sup> Fla. Stat. §774.446(4)(2025)

<sup>141</sup> Sadeh v. Conners, 166 So.3d 939 (Fla.DCA 4<sup>th</sup> 2015); Fla. AGO 96-94 1996 WL680981

agency and/or the State Attorney Office. The criminal penalties for a criminal charge of Exploitation range from five to thirty years in prison.

## REPORTING REQUIRED BY GUARDIANS

### 1. INITIAL REPORTS:

**Inventory, Plan and Budget.** Guardians must file an Initial Inventory and Plan within 60 days of the Court signing the Letters of Authority.<sup>142</sup> Because Judges electronically sign all or most documents, the date of signing is the date that the document is also filed in the Court file. As a part of the Plan, but related to the Ward's finances, the Court also requires a Budget as do Florida's Administrative Rules governing Guardians.<sup>143</sup> The Court requires such Budget in order that it can assess whether and for how long the Ward can be cared for with the available financial resources. This gives the Court an objective benchmark for the proper management and expenditures of the Ward's assets and income.

- A. The requirements for the Initial Verified Inventory are set forth in Section 744.365 of the Florida Statutes and Florida Probate Rule 5.690. An Audit Fee is charged by the Clerk's Office if the total value of the assets is more than \$25,000.<sup>144</sup> Said Inventory must list:
  - (1) **ALL PROPERTY** including real and any personal property in the Ward's name or possession or to which the Ward is entitled and a statement as to any encumbrances, liens, loans or claims against or connected with said property.<sup>145</sup>
    - (a) Real property must be described so that it may be clearly identified and/or located.<sup>146</sup>
    - (b) The Initial Inventory must include "...any trusts of which the Ward is a beneficiary."<sup>147</sup> Such listing should include:
      - i. The name/title of the Trust(s);
      - ii. Whether the Ward was the Settlor of the Trust(s);
      - iii. If the Ward is the primary beneficiary of the Trust(s);
      - iv. The circumstances under which the Ward is entitled to benefit from the Trust;
      - v. The Trustee(s) of the Trust(s); and
      - vi. The total amount of assets upon which the Ward might be entitled to benefit.
  - (2) **ALL INCOME** sources including Social Security benefits and pensions.<sup>148</sup> The Court also requires that if an income source is paid only for a defined period of time or only up to a certain total payment or benefit amount, that this limitation be set forth and/or described. For example, if a Ward is receiving monthly long term care

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<sup>142</sup> Fla.Stat. §744.362(2025)

<sup>143</sup> Fla.Admin.Code.R. 58M-2.009(18)(a)4(2025)

<sup>144</sup> Fla.Stat. §744.365(6)(2025)

<sup>145</sup> Fla.Stat. §744.365(2)(a)-(b)(2025)

<sup>146</sup> Fla.Stat. §744.365(2)(b)(2025)

<sup>147</sup> Fla.Stat. §744.365(2)(a)(2025)

<sup>148</sup> Fla.Stat. §744.365(2)(c)(2025)

benefits, but the total payment is \$500,000 and \$250,000 has already been paid, such circumstances should be set forth and/or described in the Inventory.

- (3) For **ANY CASH ASSETS**, the Guardian must attach or file simultaneously the most current financial-institution-statement reflecting such assets. These include actual cash as well as investments accounts.<sup>149</sup>
- (4) **SAFE DEPOSIT BOXES** must also be listed on the Initial Verified Inventory and an inventory of the contents of said boxes<sup>150</sup> and **PICTURES** must be filed with the Initial Verified Inventory.
  - (a) **NOTHING** may be removed from a Ward's safe deposit box except by written Court Order.<sup>151</sup>
  - (b) The inventory of such safe deposit boxes must be filed with the Court within 10 days after such deposit boxes are opened as well as with the Initial Inventory if their deadlines do not coincide. The Ward must be given a copy of the Safe-Deposit-Box-inventory unless the Ward is a minor or has been adjudicated totally incapacitated.<sup>152</sup>
  - (c) **The Court requires pictures** so that there is evidence as to the contents of these Safe Deposit Boxes. If such safe deposit boxes contain documents, the Court does not require pictures of every page of each document in such a box, just a picture of the contents as a whole. However, if the box contains jewelry, precious metals including gold, silver and platinum for example in coins or bars, or such items, the Court DOES require pictures and eventually an appraisal or insurance valuation. Too often, Guardians have represented to the Court that the jewelry was only 'costume' or that there was nothing of value in a safe deposit box and then subsequently, it was discovered that some Guardians had taken and or misrepresented the value of such items. Including pictures, protects Guardians, Wards and gives documentary evidence to the Court if future action is necessary. The Guardian must also list anyone present during the opening of the Safe Deposit Box, by name, address, and occupation.<sup>153</sup>
- (5) Guardians are required to retain records that verify the representations set forth on the Inventory for three years after his/her discharge as the Guardian of that Ward and must allow the Clerk-Auditor's Office to review them.<sup>154</sup> If you file such records, make sure to designate them as a part of the Inventory or as amendments to the Inventory so that such will be maintained as confidential in the Court file.

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<sup>149</sup> Fla.Stat. §744.365(3)(2025)

<sup>150</sup> Fla.Stat. §744.365(4)(2025)

<sup>151</sup> Fla.Stat. §744.365(4)(c)(2025)

<sup>152</sup> Fla.Stat. §744.365(4)(b)(2025)

<sup>153</sup> *Id.*

<sup>154</sup> Fla.Stat. §744.365(5)(2025)

- (a) **The Guardian should receive and maintain a copy of any Trust-agreements or documents pertaining to any Trusts to which the Ward may be entitled to benefit in addition to the most recent Trust-accounting.**

## 2. ANNUAL REPORTS

Within 90 days of the yearly anniversary of the last day of the month in which the Guardian's Letters of Authority were signed by the Court, the Guardian must file an Annual Plan and Accounting every year.<sup>155</sup> The Clerk's Office will send out reminders to Guardians prior to these Reports being due. **The Guardian and Guardian's attorney MUST maintain current email addresses with the Clerk's Office.** See Office Designation of Current Mailing and E-mail Address form on the Collier County Clerk's webpage at:

[Instructions for Florida Supreme Court Approved Family Law Form 12.915, Designation of Current Mailing and E-mail Address \(06/18\) Instructions for Florida Supreme Court Approved Family Law Form 12.915, Designation of Current Mailing and E-mail Address \(06/18\)](#)

- A. **Annual Plans** – The information required by such Plans is set forth in Section 744.3675 of the Florida Statutes. Forms are available on the Collier Clerk's website and Collier Guardianship Case Management Office webpage:

[Annual-Guardianship-Plan-3.28.25.pdf](#)

[SC19-1370 IN RE: AMENDMENTS TO THE FLORIDA PROBATE RULES - GUARDIANSHIP](#)

ISSUES that frequently come to the Court's attention are set forth below

- (1) **A Doctor Report MUST be attached to the Annual Plan or simultaneously filed separately.**<sup>156</sup> The Florida Supreme Court Form is available for download on the above webpages and below at:  
[SC19-1370 IN RE: AMENDMENTS TO THE FLORIDA PROBATE RULES - GUARDIANSHIP](#)
- (a) Such Reports MUST be from an exam of the Ward by a **Physician, Physician Assistant** working at the designation of a Physician, or **Advanced Practice Registered Nurse.**<sup>157</sup>
- (b) The examination of the Ward by one of the above medical professionals must have occurred **within 90 days** of the filing of the Plan.<sup>158</sup> **Guardians cannot use the same certificate over and over again.** And, the Auditor and the Court DO SPOT forgeries.
- (c) **The above health-professional MUST set forth an evaluation of the Ward's condition and current level of capacity of the Ward.**<sup>159</sup> This "level of capacity" is whether the Ward still requires the same level of guardianship OR has regained some functionality.

<sup>155</sup> Fla.Stat. §744.365(1) & (6)(2025)

<sup>156</sup> Fla.Stat. §744.3675(1)(b)(2025)

<sup>157</sup> Fla.Stat. §744.3675(1)(b)(2025)

<sup>158</sup> Fla.Stat. §744.3675(1)(b)(2025)

<sup>159</sup> Fla.Stat. §744.3675(1)(b)(2025)

- (d) **Please ask the medical professional to provide in the Doctor-Report a sentence or a few word-description of the Ward's essential disability, e.g. Alzheimer's, Autism, etc.**
- (e) **It would be helpful if the medical professional would state the Ward's age or DOB at the time of the exam.** The Forms available on the websites of the Judge and Guardianship Case Management do provide a space for this information to be set forth.

(2) **Location of Ward's Residence and TYPE of placement MUST be listed in the Plan.** The location should include the COUNTY of residence. Types of residences include: living with parents, group home, assisted living facility, memory care facility, continues to reside in own home with assistance, etc.

- (a) **WARNING:** Just listing the County of residence OR a new residence location in the Plan is NOT the same as providing the 15-day-Notice required when a Ward moves from one County to another by Section 744.1098(2) of the Florida Statutes.
- (b) If the Auditor and/or the Court see in a Guardian's Annual Plan that he/she has changed the Ward's County of residence without filing the required Notice, a Petition to Change the Ward's Residence and/or a Petition to Change Venue, the Court often will note the Guardian's failure to comply with Florida Statutes, but approve the Plan. Then the Court will simultaneously issue a separate Order Changing Venue. Occasionally, the Court will schedule this issue for a hearing. (See "Changing Ward's Residence" this Summary)

(3) **Plans must be signed by the Guardian of the Person AND the Guardian's attorney.** Guardian Advocates are not required to be represented by an attorney. Guardians must sign pursuant to Rule 5.610 of the Florida Probate Rules. Attorneys must sign pursuant to Rule of Judicial Administration 2.515(a)

(4) **Guardian contact information: Guardians are REQUIRED to list the Guardian's current mailing address, phone number and email address or the office address and contact information for a corporate Guardian or Public Guardian in every Annual Plan that he/she files.**<sup>160</sup>

(5) **If the Guardian of the Person fails to file a timely Annual Plan Report, the Judge may impose sanctions** which may include contempt, removal of the guardian or other sanctions as provided by Section 744.3685 of the Florida Statutes.<sup>161</sup> Section 744.3685 provides that if a Guardian fails to file a required Report, the court SHALL order the Guardian to file it within 15 days. If the Guardian fails to do so, then the Court can find the Guardian in contempt and impose a fine on the Guardian that the Guardian is prohibited from paying from the Ward's assets and income. A Guardian's

<sup>160</sup> Fla.Prob.R. 5.695(1) & (2)(2025)

<sup>161</sup> Fla.Stat. §744.367(5)(2025)

repeated non-compliance could become a basis for the Court to remove and replace the Guardian.<sup>162</sup>

B. **Annual Accountings** – Florida Statutes impose certain legal responsibilities on Guardians of Property.<sup>163</sup> However, **the ultimate purpose of Annual Accountings is to assure and confirm that Wards can be cared for in the manner that they themselves would choose, for the entirety of their lives and/or the guardianship.** In Minor-Guardianships there is the added goal to preserve as much of the amounts to which the Ward is entitled for the Ward for when he/she reaches the age of majority so that he/she can then make decisions regarding such. In most adult guardianships, preserving assets for Wards' estate after death is NOT the goal. Guardians and their attorneys should keep these goals in mind in preparing their Annual Accountings.<sup>164</sup> **The specific requirements for Annual Accountings are set forth in Section 744.3678 of the Florida Statutes.** Issues that frequently come to the Court's attention are set forth below.

- (1) **Guardians are required to sign Annual Accountings under Oath, with penalties of perjury.**
- (2) **ATTORNEYS representing Guardians are ALSO required to sign Annual Accountings as they would any pleading, not just attesting to the service of the document.**<sup>165</sup> This signature constitutes a certificate by the attorney that:
  - (a) The attorney has read the document;
  - (b) to the best of the attorney's knowledge, information and belief there is good ground to support the document;
  - (c) The document is not interposed for delay; and
  - (d) The document does not contain any confidential or sensitive information that has not been properly protected.<sup>166</sup>
- (3) **Income" does NOT include transfers between Guardianship-accounts.** These are capital adjustments or transfers. Income includes anything that is included as "income" on a person's Federal tax return, including: earned income (unlikely for most Wards), interest, dividends, rental income, social security and pensions. Income might also include annuity and long-term-care-insurance payments depending on their tax treatment.
  - (a) When listing annuities and long-term care payments, please footnote the period over which these payments will continue and/or the total that will be paid and the current balance remaining. The purpose is for the Court to be able to assess the length of time these payments can support the Ward.
- (4) It is helpful if expenditures are listed either by category or by account.

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<sup>162</sup> Fla.Stat. §744.474(14)(2025)

<sup>163</sup> Fla.Stat. §744.361(10)-(12)(2025)

<sup>164</sup> Guardians and their attorneys frequently find Annual Accounting-requirements intrusive and burdensome and in some cases there is a resistance to complete disclosure. Florida law requires the Clerk's Auditor and the Court to assume certain responsibilities regarding Wards' finances and Wards have suffered significant harm when these responsibilities are not scrupulously effectuated.

<sup>165</sup> Fla.R.Gen.Prac.&Jud.Admin. 2.515(a)

<sup>166</sup> *Id.*

(5) **Annual Accountings** are REQUIRED for Guardian ADVOCATES who make decisions regarding their Ward's income or assets including social security income, unless the Court waives the Accountings on the Guardian Advocates Petition and an Order is signed by the Court and filed in the Court file. *Fla.Stat. §393.12(10)(2025); Fla.Stat. §744.3678(5)(2025)*

(a) **IF the Court determines that the Ward receives only Social Security income and the Guardian is the Ward's representative-payee, the Court may relieve a Guardian Advocate of the requirement to file Annual Accountings.**

*Fla.Stat. §744.3678(5)(2025)* This means that the Guardian Advocate MUST file a Petition to Waive Annual Accountings AND submit and obtain a signed Order from the Court that is filed in the Court file. The Clerk's Office is not authorized to waive Annual Accountings without such a written Court Order. The Court generally grants these Petitions without a hearing, after the Guardian Advocate has filed his/her Initial Inventory.

(6) **Trusts that are not under the control or administration of a Guardian are not required to be a part of the 'full and correct account of receipts and disbursements' required for all guardianship assets and accounts.**<sup>167</sup>

Nevertheless, if some or all of the Ward's support/care is paid by a trust and/or the residence in which a Ward is residing is held by a trust, **this Court requires** the following information as a part of the Annual Accounting of which the Guardian should be aware in his/her capacity as Guardian:

- (a) Identification of the Trust, by legal title of the Trust, when established and by who it was established;
- (b) Identification of the Trustee(s) by name, address, contact information and registered agent;
- (c) A statement or footnote as to the category and amount of the Ward's expenses that are being paid by the Trust and the approximate length of time that the Trust can pay the current level of spending for the Ward;
- (d) A statement that the Ward's residence is being held by a trust, how the residence expenses are being paid and the length of time that the trust can pay such expenses at the current level of spending; AND
- (e) Whether there are other beneficiaries of the Trust that are entitled to distributions at the same time as the Ward who would because this might affect the Trust's ability to provide financial support for the Ward's care. The Court is NOT asking for the names of such beneficiaries, only whether there are other simultaneous primary beneficial interests in the Trust that is paying a Ward's expenses that might affect whether such can continue throughout the Ward's lifetime.

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<sup>167</sup> *Fla.Stat. §744.3678(2)(a)(2025)*

- (7) **Trusts for which the Guardian is a Trustee, those that are created during the Guardianship, or already existing Trusts created by the Ward prior to the incapacity determination into which Guardianship assets are transferred during the Guardianship or at the inception of the Guardianship** **ARE** subject to Annual Accounting reporting requirements.<sup>168</sup> (See also “Gifting and Creation of Trusts” this Summary)
- (8) **Attorney fees:** If the Guardian has paid attorney-fees without a prior court Order, these billings must be attached to the Annual Accounting and referenced by page number or indexed so that the Court can find these documents.
- (9) **Simplified Annual Accountings/Accountings for designated depository assets:** When ALL guardianship property is held in a designated depository or depositories pursuant to Section 69.031 of the Florida Statutes **AND** the **ONLY** transactions that occur in that account(s) are **interest accrual, appreciation, initial deposits** from a claim-settlement or inheritance, and/or **financial institution charges**, **THEN** the Guardian may file a Simplified Annual Accounting consists of and **MUST** include:
  - (a) **A sworn statement** under penalty of perjury (not just a notarized signature), that the Guardian has custody and control of the Ward’s property as reflected in the attached year-end-statement(s) of the designated depository or depositories holding the Ward’s assets; **AND**
  - (b) **The year-end statement(s) from the financial institution(s)** holding the Ward’s assets **MUST** be attached to the Simplified Annual Accounting.
  - (c) An attorney is NOT required to sign such Simplified Annual Accountings because such Guardians are not required to be represented by attorneys in order to file such a Accountings.<sup>169</sup>
  - (d) **WARNING: Simplified Annual Accountings are ONLY authorized in the above circumstances.** Such Accountings may NOT be filed just because ‘...there are only a few expenditures from the Ward’s accounts each month.’

### 3. FINAL REPORTS:

- A. **Circumstances that require Guardians to file a Final Report:** ONLY Guardians of Property<sup>170</sup> must file Final Reports when:
  - (1) Such a Guardian resigns and is replaced by a Successor Guardian;
  - (2) A Ward dies;
  - (3) A Ward reaches the age of majority;

<sup>168</sup> *Fla.Stat. §744.3678(2)(a)(2025)*; If the Court did not have the responsibility and discretion to review assets and expenditures held in Trusts that were created during a guardianship and/or with guardianship assets, then the Court’s other responsibilities of authorization and review set forth in Sections 744.441 and 744.367 – 744.3725 of the Florida Statutes would be meaningless.

<sup>169</sup> *Fla.Stat. §744.3679(3)(2025)*

<sup>170</sup> Guardians of Property include Guardians of the Property of Minors, Plenary Guardians and Guardian Advocates and Limited Guardians and Guardian Advocates as long as the Guardian or Guardian Advocate had authority on behalf of the Ward to: apply for Government benefits; contract; take possession of and manage the Ward’s property and income; make gifts and disbursements on the Ward’s behalf including paying the Ward’s expenses.

- (4) A Ward's residence is relocated outside of the State of Florida;
- (5) Such a Guardian can't locate the Ward; and
- (6) The conclusion of an emergency temporary guardianship of a Ward's property.<sup>171</sup>

**B. Content of Final Reports** must set forth a guardianship's:

- (1) Receipts;
- (2) Disbursements;
- (3) Amounts reserved for unpaid and anticipated disbursements, costs, and fees, including the amounts and amounts of unpaid and anticipated costs and fees to be paid to the guardian and to the attorneys, accountants, or other agents employed by the guardian;
- (4) Other relevant financial information from the date of the previous annual accounting; and
- (5) A list of the assets to be turned over to the person entitled to them.<sup>172</sup>

**C. Time limits for filing Final Reports:** There are few time limits for filing of Final Reports:

- (1) The Guardian of a Ward's Property who has died must file a Final Report no later than 45 days from being served with a copy of Letters of Administration, Letters of Curatorship, or an Order of Summary Administration for the Ward's estate.<sup>173</sup>
- (2) When a Ward has been relocated outside of the State of Florida and a new Guardianship established in that new location, the Final Report may then becomes due, but there isn't a specific time limit specified in Rules or Statutes.<sup>174</sup>
- (3) If a Guardian has not been served with a copy of Letters of Administration, Letters of Curatorship, or an Order of Summary Administration for the Ward's estate, Final Reports need only be filed "promptly."<sup>175</sup> **HOWEVER, the Court may impose some time limits. Expect the Court to schedule a Case Management hearing if no Final Report has been filed within 90 days of an event that would trigger such a Report.**

**D. Notice of Final Report and Objection procedure:** In conjunction with the filing of a Final Report, a Notice must be filed that sets forth the procedure by which Objections to the Report and/or Petition for Discharge may be filed and addressed as specified in Florida Probate Rule 5.680(d).

**E. Service of Final Report:** A Guardian applying for discharge shall serve a copy of the Petition for Discharge and Final Report on his/her Ward, on the personal representative of a deceased Ward, or if there are no assets justifying qualification of a personal

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<sup>171</sup> *Fla.Stat. §744.521(2025); Fla.Stat. §744.527(1)(2025); Fla.Stat. §744.528(2)(2025); Fla.Stat. §744.524(2025); Fla.Prob.R.5.680(c)*

<sup>172</sup> *Fla.Prob.R.5.680(c)*

<sup>173</sup> *Fla.Stat. §744.527(2025)*

<sup>174</sup> *Fla.Stat. §744.524(2025)*

<sup>175</sup> *Fla.Stat. §744.527(1)(2025); Fla.Prob.R.5.680(c)*

representative for the estate of a deceased ward, on the known next of kin of the deceased Ward, or such other persons as the court may direct. A Guardian of Property who is subsequently appointed personal representative of his/her Ward's estate, must serve a copy of the Guardian's Final Report and Petition for Discharge upon the beneficiaries of the Ward's estate who will be affected by the Report.<sup>176</sup>

F. **Final Reports when prior Annual Reports have been waived by the Court.**

Guardians and Guardian Advocates must still file Final Reports even if Annual Reports have previously been waived by the Court, unless the Guardian AND all interested-persons waive such Final Report. HOWEVER, it is sufficient for such Final Report for a Guardian to state under oath that:

- (1) The Ward owned no assets;
- (2) The Ward/Guardian received only Social Security benefits;
- (3) The Ward's expenses exceeded his Social Security benefits and/or was assigned directly to a facility for his/her care; and
- (4) Annual Accountings were previously waived by the Court.

G. **Waiver of Final Reports:** There's no specific authority for waivers of Final Reports in the Guardianship Statutes or those Rules that apply specifically to Guardianships. Rule 5.180 in the Section of the Florida Probate Rules that applies to both probate and guardianship Cases does specify Waivers and Consents-requirements, imposes certain limitations, and requires that they be filed in the relevant court file. Section 731.302 of the Florida Statutes provides for Waivers and Consents by interested parties in probate proceedings. However, there is no corresponding such Section in the Guardianship Statutes that the Court has been able to identify. Beneficiaries of a deceased Ward's estate and interested parties may file Objections to Final Reports which seemingly implies an ability to waive such Objections. However, such "Objections" assume that a Final Reports has been filed. Despite the lack of specific authority, Guardian-attorneys regularly request that the Court waive the Final Report-requirement in various circumstances including when Wards have died or reached the age of majority. Since there isn't any specific authority for waiving the filing of Final Reports. The Court cannot set forth a policy as to its approach to the requests to waive Final Reports, but it can summarize how it has ruled in the following types of guardianships:

- (1) **Minor Guardianships with no expenditures when Ward reaches age of majority:** In Minor Guardianships in which all of the assets and/or cash has remained in a restricted account throughout the Guardianship as evidenced by the [Simplified] Annual Accountings, the Court has accepted a Waiver and not required a Final Accounting. A Petition for Discharge and Proof of Distribution and Receipt by Ward are still required to be filed in the Court file and an Order of Discharge submitted to the Court for signature.
- (2) **Minor Guardianships with expenditures when Ward reaches age of majority:** In Minor Guardianships in which the assets and/or income have been used for expenditures and/or dissipated during the Guardianship, the Court has NOT accepted a Waiver of the filing of Final Reports.

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<sup>176</sup> Fla.Prob.R.5.680(e)

(3) **Guardian Advocates and Public Guardian Cases of adult-Wards with PRIOR Annual Accounting-Waivers upon the Wards' deaths:** The Court has accepted Waivers of Final Reports in these Cases and NOT required Final Accountings. HOWEVER, a certified copy of the Ward's Death Certificate and a Petition for Discharge was still required to be filed and an Order of Discharge submitted to the Court for signature. **Guardians may NOT just file a Death Certificate in these Cases and think that they are done.** If this occurs, expect that the Court will schedule the Case for a Case Management hearing.

(4) **Guardians and others waiving filing of Final Reports when the Guardians are one of the deceased-Ward's beneficiaries or sometimes the only beneficiary:** This Court does not have a consistent track record in these types of cases.

(a) Section 744.531 provides as follows:

*If the court is SATISFIED that the guardian has faithfully discharged her or his duties, has rendered a complete and accurate final report, and, in the case of a guardian of the property, has delivered the property of the ward to the person entitled, and that the interest of the ward is protected, the court shall enter an order of discharge. The discharge shall operate as a release from the duties of the guardianship and as a bar to any action against the guardian or the guardian's surety unless the action is commenced within 3 years after the date of the order. [Emphasis added]*

Without a Final Report, a Court cannot know if a Guardian:

- has faithfully discharged his/her duties;
- rendered a complete and accurate Final Report; and
- Has delivered a Ward's property to the person(s) entitled to it.

And, if a Court does not know the above, then a Court cannot determine that a Ward's interest is protected.

(b) **When such a Guardian waives his/her Final Report for the guardianship of his/her deceased-Ward-parent and the Guardian is the sole beneficiary of his/her parent/deceased-Ward's estate**, but has operated as the Ward's Guardian in contravention of the Guardianship Statutes either intentionally or negligently, the Court **cannot be satisfied** that the Guardian has faithfully discharged his/her duties or rendered a complete and accurate Final Report. However, often in these situations it is a wasted effort to require the Guardian to reimburse their parent-Ward's Guardianship-estate because they are inheriting it and if the Court does not waive or approve such a Final Report, then the Case will never close. The Clerk's Office might refer such a case if the Guardian's behavior is extreme and clearly constitutes a crime, but the Court cannot do so.

(c) **When a Guardian and ALL the other beneficiaries of a deceased-Ward-parent's estate waive the filing of a Final Report and any Objections that they would be entitled to file, when likewise the Guardian has acted in contravention of the Guardianship Statutes**, if the Waivers set forth that ALL beneficiaries clearly understand the specific actions of the Guardian that may have caused harm or a diminution in the value of the Ward's estate AND that they are waiving their opportunity to hold the Guardian accountable for such including by an action for Surcharge and possibly obtain a greater share of their deceased-

parent's estate, then in such circumstances the Court can at least determine that the Ward's beneficiaries have voluntarily and knowingly waived their rights and consent to the Guardian's discharge and the Court closing the Court Case.

#### **4. CLERK'S REVIEW AND AUDITING OF REPORTS.**

Florida Guardianship Statutes assign responsibility to the Clerk's Office for reviewing all Initial Inventories, Initial Plans, Annual Reports and Final Reports filed by Guardians.<sup>177</sup>

- A. The Guardianship-Auditor of the Collier County Clerk Inspector General's Office supervises reviews and audits Guardianship Plans and financial Reports.
- B. **Plan Reviews:** The Clerk's Office is only responsible for reviewing Initial and Annual Plans and reporting to the Court as to whether the required information is set forth in said Reports. The Clerk's Office files its own Report to the Court regarding whether the information required information is set forth in said Reports. The Clerk's Office does NOT approve or disapprove these Plan-Reports.
- C. **Financial Inventories and Reports:** The Clerk's Office reviews AND can chose to audit Guardians' financial reporting. The Guardianship Auditor files its own Report to the Court in the Court file at the conclusion of its review and/or audit that DOES recommend approval or disapproval of such financial Reports. If the Guardianship-Auditor recommends disapproval, it's because a Guardian has not complied with the Guardianship Statutes or Rules in some manner. The Auditor's Office usually files an initial Auditor-Report that sets forth the information and/or documents that are missing and gives the Guardian an opportunity to supplement his/her financial-Report. If the Auditor recommends disapproval of a financial-Report, the Court will most often schedule such for a hearing.
  - (1) The Guardianship-Auditor may choose to conduct not just a review of an Annual Accounting, but an audit of said Accounting as well as past Accountings to the extent that entries on a current report may only be substantiated by documentation from prior years.<sup>178</sup>
  - (2) The Clerk's Guardianship-Auditor has the ability to request a Court-Order to obtain records from the Guardian or third-party-sources of documents.<sup>179</sup>

#### **5. COURT'S REVIEW OF GUARDIAN-REPORTS AND CLERK-AUDITOR-REPORTS.**

Court Administration's Guardianship Case Management Office is automatically notified by the Clerk's Office as to various events, including when Guardians have completely failed to file their Reports (delinquencies) and when the Clerk-Auditor files a Report recommending disapproval of a Report (deficiencies). These are then scheduled for a hearing on those issues. Otherwise, the Court's receipt of a proposed Order Adopting and/or Approving of a Report triggers the Court's review of the Guardian's Report and the Clerk-Auditor's Report.

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<sup>177</sup> Fla.Stat. §744.368(2025)

<sup>178</sup> Fla.Stat. §744.368(5)(2025); Florida Op. Atty. Gen., 2004-33, July 2, 2004.

<sup>179</sup> Fla.Stat. §744.368(6)-(8)(2025); Fla.Stat. §744.3685(2025)

Courts review of Reports is specified throughout the Guardianship Statutes, but specifically in Sections 744.369, 744.527 and 744.531 of the Florida Statutes.

- A. For Guardianships pending in Collier County, Attorneys may forward an Order Approving and/or Adopting a Report to the Collier Guardianship Case Management Office when they file the Report to which such Order pertains. The Guardianship Case Manager will forward the Order to the Court when the Clerk's Report is filed that does not recommend disapproval of the relevant Report. The Court will then review the Court file and the relevant Report and determine whether to approve or disapprove the Report, or make some other determination.
- B. The Florida Supreme Court made it clear in *Hayes v. Guardianship of Thompson*<sup>180</sup> that Court's must not just rubber stamp whatever Guardians and/or the Clerk-Auditor submits for their signature or to which they don't or fail to object.

*Courts must scrupulously oversee the handling of the affairs of incompetent persons under their jurisdiction and err on the side of over-supervising rather than indifference.*<sup>181</sup>

Courts very often must and should review the entire Court file in order to make a determination as to whether to approve or disapprove a Guardian-Report. Guardianships often remain open for years after a Guardian is appointed and consequently, such judicial reviews can and should require more time than simply affixing a signature to an electronic Order.
- C. In making determinations on Guardian-Reports, Courts ultimately only have two options: to approve or disapprove such.<sup>182</sup> Many Courts are loath to "approve" Reports that clearly reflect deficiencies or that the Guardian has acted in contravention of the Guardianship Statutes, Rules and sometimes Florida's criminal Statutes. And, yet as described above, when the only heir is the Guardian of the deceased-Ward-parent, it is a wasted effort to require repayment from the Guardian essentially to his/herself or Notice a Surcharge hearing. Consequently, this Court will "Accept" such Reports, discharge the Guardian but not as to the enumerated acts in the Order, and terminate the Case. The Court will set forth as much as possible the ways in which the Guardian has acted in contravention of the Guardianship Statutes and the Court's best estimate as to the damages and/or diminution in value to the Ward's estate.

## **REPORTS AND REPORTING TO AND FROM OTHER AGENCIES and GOVERNMENTAL BRANCHES**

1. **Generally guardianship and incapacity court cases are confidential and only the Parties and their attorneys and occasionally Interested Parties may access the court files and the documents and information in them.**<sup>183</sup> Certain governmental entities are required by law or rules of professional conduct to report certain circumstances to the Court presiding over guardianship cases to which said circumstances apply or in which they occur, and/or to other governmental entities or professional organizations. Judges are required to report

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<sup>180</sup> 952 So.2d 498 (Fla.2006 *rehearing denied* 2007)

<sup>181</sup> *Id. at 508*

<sup>182</sup> *Fla.Stat. §744.369(5)(2025)*

<sup>183</sup> *Fla.Stat. §744.3701 (2025); Fla.Stat. §744.2111(2025)*

certain circumstances pertaining to guardianship cases over which they preside to certain governmental entities and/or professional organizations.<sup>184</sup> Attorneys and all providers of services to elderly and vulnerable adults are likewise mandatory reporters of abuse, neglect and exploitation of elderly and vulnerable adults as well as children, including health care workers and bank employees.<sup>185</sup> The identity of reporter to the Department of Children and Families is confidential and may almost never be divulged except by the reporter's consent or Court Order under very limited and infrequent circumstances.<sup>186</sup>

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## 2. Judges are mandatory reporters:

- A. **Judges are mandatory reporters of abuse, neglect and exploitation of elderly or vulnerable adults and/or children.** Such reports are made to the Department of Children and Families via the same Hotline that everyone else must use. A judge who makes a Hotline-report regarding such circumstances that it perceives are occurring in a guardianship or incapacity case is not required to recuse from presiding over those cases, unless the judge obtained the information outside of the Court-case before such case or cases were filed.<sup>187</sup>
- B. **Judges are required by the Florida Code of Judicial Conduct to report attorneys' misconduct to the Florida Bar.**<sup>188</sup> Such reporting does not necessarily require a judge to recuse him/herself from the Case or the attorney's cases and is not a basis for disqualification of such a judge.<sup>189</sup>
- C. **Risk Protection Orders.** Occasionally, allegations are set forth in court filings in a guardianship or incapacity Court-files indicating that an alleged incapacitated adult or Ward may have possession, custody or control of firearms or ammunition or may purchase such and may pose significant danger of causing personal injury to him or herself or others by having such or intending to acquire such. The appropriate legal-action by the Court and ALL who become aware of such is to report such to the law enforcement agency of the County in which the AIP or Ward is residing. Law enforcement agencies may then file a Petition for a Risk Protection Order.
  - (1) Risk Protection Orders are governed by Section 790.401 of the Florida Statutes. Law enforcement is the ONLY entity that can file these Petitions and obtain these Orders. If a Risk Protection Order or Temporary Ex Parte Risk Protection Order is issued, law enforcement serves this on the AIP or Ward and obtains the firearms and/or ammunition.
  - (2) Petitions for Risk Protection Orders and the Orders themselves are NOT filed in guardianship or incapacity-Cases. Petitioning the Guardianship Court for authorization for the Guardian, Emergency Temporary Guardian or other persons to seize such weapons and/or personal property from the AIP or Ward, is dangerous to

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<sup>184</sup> *Fla.Stat. §415.1034(1)(2025)*

<sup>185</sup> *Id.*

<sup>186</sup> *Fla.Stat. §415.107(6)(2025); Fla.Prob.R.5.680(c)*

<sup>187</sup> *JEAC Op. 2019-13*

<sup>188</sup> *Fla. Code Jud. Conduct, Canon 3D; Fla. JEAC Ops. 2019-14*

<sup>189</sup> *JEAC Op. 2005-16; JEAC Op. 2001-6; 5-H Corp. v. Padovano*, 708 So. 2d 244 (Fla. 1997); *Birotte v. State*, 795 So. 2d 112 (Fla. 4th DCA 2001)

all persons involved and may violate the AIP's Constitutional Rights. The ONLY method to address this situation is through Law Enforcement and a Risk Protection Order. If pleadings are filed requesting this type of Court intervention in the incapacity and/or guardianship Court Cases, the Court will issue an Order directing the filer and/or Parties to report the situation to law enforcement AND may forward a copy of the Order and the Court-filing alleging the situation to Law Enforcement.

3. **Reports to the Court:** Courts presiding over guardianship cases receive reports relative to those cases from the entities described below in the form and under the circumstances described below. Unfortunately, there is very little if any guidance in the Florida Statutes, Rules or Administrative Code as to the form of these reports. Most Clerks' Offices and Court have therefore created reporting methods designed to put all parties on notice as to these communications.

**A. The Clerk-Auditor's Office is required to report to the Court regarding its review of Initial and Annual Reports pursuant to Section 744.368 of the Florida Statutes.**

- (1) The Clerk is required to review the Initial and Annual Plans and determine **IF they contain the required information**. The Clerk is NOT required to "approve" or "disapprove" these Plan-Reports. The Clerk reviews these Plans and files a Report in the Court file within 30 days after the Plan is filed. Attorneys or Guardians who are legally authorized to not be represented by an attorney, may then submit an Order Approving Plan to the Judge for signature.
- (2) The Clerk is required to review Initial Inventories and Annual Accountings within 90 days of Guardians filing these Reports and "...advise the court of the results of the audit."<sup>190</sup> The Clerk-Auditor files in the Court file a report recommending approval or disapproval of such Guardian-Reports and if recommending disapproval, the reasons for such. The Court then schedules the deficient Guardian-Reports for a Case Management hearing.
  - (a) The Clerk may conduct audits of a Guardian-Reports including more than just a current Report. The Clerk then is required to report to the Court the results of such audit. This "report" is filed in the Court file and either recommends approval of the current pending Guardian-Report or disapproval and sets for the reasons for such.
  - (b) The Clerk may also request that the Court enter an Order pursuant to Section 744.3685(2) of the Florida Statutes that requires Guardians to produce records and documents to the Clerk-Auditor upon the filing of an Affidavit in the Court file that identifies the records and shows good cause as to why said documents are needed to complete an audit of a Guardian-Reports.<sup>191</sup>
- (3) The Clerk is required to report to the Court when a Guardian's required Report is not filed timely.<sup>192</sup> The Collier Clerk-Auditor's Office generates a monthly report as to

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<sup>190</sup> Fla.Stat. §744.368(3)(2025)

<sup>191</sup> Fla.Stat. §744.368(6)(2025)

<sup>192</sup> Fla.Stat. §744.368(4)(2025)

all delinquent guardianship Reports and forwards such to Collier Guardianship Case Management Office. The Court is then REQUIRED to order such Guardians to file said Reports within 15 days after service of the Order or show cause as to why he/she/they may not be compelled to do so.<sup>193</sup> These Cases are schedule for a hearing on said Order to Show Cause which can be cancelled if the Guardian files the delinquent Report as required.

- (4) The Clerk will occasionally request an Order from the Court pursuant to Section 744.3701 of the Florida Statutes to release information to other entities including law enforcement, the Department of Children and Families and the Office of Public and Professional Guardians. Such a “request” is in the form of a Petition filed by the Clerk’s Office in the Court file. The Court reviews these as to whether such disclosure is allowed by Section 744.3701 NOT whether there is good cause or probable cause for any possible related allegations.

B. **The Department of Children and Families is required to notify the Judge in writing presiding over the guardianship-Case when it receives a report involving a Guardian.**<sup>194</sup> DCF will not file an adult supervision case as it might with regard to children, if a guardianship is already in place. The purpose of adult supervision cases is to move those situations involving elderly or vulnerable adults towards a legal structure that will protect them which is often a guardianship. Consequently, if there is already a guardianship in place for the subject-elderly or vulnerable adult, DCF relies on the Guardianship-Judge to address the situation. There does not appear to be any specific-Statutory guidance or Rules for addressing these situations other than the Court’s continuing jurisdiction, its authority to remove Guardians on its own motion, the statutory prohibitions of Guardians abusing, neglecting and/or exploiting their Wards, and Wards’ rights not to suffer such abuse, neglect and/or exploitation.<sup>195</sup> The Court has recently developed a protocol regarding these notifications:

- (1) Upon receiving a DCF-Report and determining that the identity of the reporter is not revealed in said Report, the Court issues an Order Disclosing the Report and files said Order and the written DCF-Report in the Court file limiting its disclosure to the Guardian and Guardian’s attorney, Clerk’s Office, the Ward and Ward’s attorney. If the identity of the Reporter would be disclosed in the DCF-Report, the Court would redact same prior to filing the Report. The Court implements this procedure even regarding an initial versus a final report from DCF because it has determined that the Court should not be holding information that it has not disclosed to the Parties AND because in the past DCF has failed to forward a final-investigation-Report to the Court.
- (2) The Court appoints an attorney to represent the Ward.
- (3) The Court schedules a hearing on the DCF-Report and orders the DCF-investigator(s) to appear and testify.

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<sup>193</sup> *Fla.Stat. §744.3685(2025)*

<sup>194</sup> *Fla.Stat. §415.1055(9)(2025)*

<sup>195</sup> *Fla.Stat. §744.372(2025); Fla.Stat. §744.477(2025); Fla.Stat. §744.474(2025)*

- C. **The Office of Public and Professional Guardians (OPPG) is required to notify the guardianship-Court when it makes a final determination to suspend or revoke a Guardian's registration as a professional guardian.**<sup>196</sup> Recently but inconsistently, OPPG has been notifying the Court when it receives complaints against Guardians involved in guardianship-Court-Cases. If the Court is notified of a final suspension or revocation of a professional-Guardian, it will follow the same procedures as it does for DCF-reports as well as notifies the 20<sup>th</sup> Circuit's Chief Judge. The Court also notifies the Chief Judge when it receives written notification from OPPG of complaints against a professional-Guardian. The Court will likely follow the same procedures it uses with DCF-Reports and OPPG-Reports of Guardian-suspensions and revocations.<sup>197</sup>

4. **Clerk's Office reporting:** The Auditor's office Collier County Clerk has certain reporting responsibilities:

- A. The Auditor must report to the Court regarding the results of its reviews of Initial and Annual Reports filed by Guardians.<sup>198</sup>
- B. The Auditor must report to the Office of Public and Professional Guardians when a professional-Guardian has been sanctioned by a Court.<sup>199</sup>
- C. The Auditor and its personnel are mandatory reporters of abuse, neglect and exploitation committed against the elderly and/or vulnerable adults to the Department of Children and Families.<sup>200</sup>
- D. The Auditor's Office can also report circumstances that may constitute crimes to law enforcement. The Clerk-Auditor's Office is part of the Executive Branch, not the Judicial Branch. The charging of crimes is an Executive Branch function, not a Judicial Branch function.
- E. The Auditor's Office may petition the Court for authorization to release information and/or documents to law enforcement, DCF and/or OPPG.<sup>201</sup> The Auditor files a Petition for such release in the Court file and submits an Order for the Court's consideration.
- F. The Auditor's Office may also file complaints against attorneys with the Florida Bar. In addition, the Clerk's legal counsel is required as an attorney to file such when the actions of an attorney in a guardianship or incapacity Case rise to the level that the Clerk's legal counsel has an ethical duty to report such.

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<sup>196</sup> 744.2004(4)(2025)

<sup>197</sup> As of December 2025, the Court has only received two such OPPG-Complaint-Notifications in cases in which the subject-Guardians had already been removed as such from their Court-Cases. Consequently, the Court did not file the Notifications.

<sup>198</sup> Fla.Stat. §744.368(2025)

<sup>199</sup> Fla.Stat. §744.368(8)(2025)

<sup>200</sup> Fla.Stat. §415.1034(1)(a)5(2025)

<sup>201</sup> Fla.Stat. §744.3701(2025)

## RESIGNATION OF GUARDIANS

1. Guardian-resignation is governed by Section 744.467 of the Florida Statutes and Florida Probate Rule 5.650. Guardians are REQUIRED to resign if they were improperly appointed or become disqualified as such.<sup>202</sup> Guardians also MAY resign as Guardians. In either circumstance however, a Guardian should NOT just file a Notice of Resignation and think that that he/she is done.
2. A Guardian who is required to or wishes to resign must:
  - A. File a Resignation AND a Petition for Discharge.<sup>203</sup> The Resignation and Petition for Discharge MUST identify the Successor Guardian.<sup>204</sup> A Guardian can NOT leave his/her Ward without a Guardian. *Fla.Stat. §744.471(2025)*
  - B. Serve both the Resignation, Petition for Discharge and a Notice of time periods for the filing of Objections on: the Ward, the Guardian's Surety, any Successor Guardian, and other persons at the Court's direction.<sup>205</sup>
  - C. File a Final Financial Report unless the Guardian was a Guardian Advocate and did not have any authority over management of his/her Ward's property.<sup>206</sup> Said Report must also be served on the same persons as the Resignation and Petition for Discharge.<sup>207</sup>
  - D. Deliver any and all assets and personal and financial records to the Successor Guardian.<sup>208</sup>
3. A Court may issue an Order Accepting the Guardian's Resignation and Discharging the Guardian when:
  - A. All Objections have been withdrawn, abandoned or determined by the Court;
  - B. The Court is satisfied that the resigning-Guardian has faithfully discharged his/her duties and the interests of the Ward are protected; and
  - C. The resigning-Guardian has delivered the Ward's assets and monies and all Guardianship-records to the Successor Guardian.<sup>209</sup>
4. A Court's acceptance of a Guardian's resignation and discharge does not exonerate the Guardian or his/her surety from any liability incurred by the Guardian for his/her actions or inactions occurring while serving as Guardian.<sup>210</sup>

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<sup>202</sup> *Fla.Prob.R. 5.650(i)*

<sup>203</sup> *Fla.Prob.R. 5.650(a) & (b)*

<sup>204</sup> *Fla.Prob.R. 5.650(b)(3)*

<sup>205</sup> *Fla.Prob.R. 5.650(d)&(e)*

<sup>206</sup> *Fla.Prob.R. 5.650(c) & (k); Fla.Stat. §744.467(2025)*

<sup>207</sup> *Fla.Prob.R. 5.650(e)*

<sup>208</sup> *Fla.Stat. §744.467(2025)*

<sup>209</sup> *Fla.Prob.R. 5.650(h); Fla.Stat. §744.467(2025)*

<sup>210</sup> *Fla.Stat. §744.467(2025)*

## **RESTORATION OF CAPACITY**

1. Restoration of Capacity of the Ward is governed by Section 744.464 of the Florida Statutes for Guardianships and Section 393.12 and Rule 5.681 of the Florida Probate Rules for Guardian Advocacies. Since a determination of incapacity and/or appointment of a Guardian or Guardian Advocate is based on the Court determining that the Ward lacked the capacity to manage at least some of his/her property or to meet at least some his essential health and safety requirements as defined by Section 744.102(12) of the Florida Statutes, “restoration of capacity” means that the Ward has regained at least some of those capacities.

2. **Restoration of capacity is initiated by the filing of a Suggestion of Capacity.** Such can be filed by the Guardian, the Ward, or any interested person, as the latter term is legally defined.<sup>211</sup> The requirements for this filing are that it must state that the Ward is currently capable of exercising some or all of the rights that were removed.<sup>212</sup>

A. An “interested person” is defined as:

*...any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved. ...The meaning, as it relates to particular persons, may vary from time to time and must be determined according to the particular purpose of, and matter involved in, any proceedings.<sup>213</sup>*

There does not appear to be any Florida case law defining “interested persons” in the context of capacity-restoration-proceedings. Florida case law does direct Courts to examine who is entitled to notice of and to object in the proceedings in which Interested Person may be involved.

B. **This Court has opined that at least a Ward’s next of kin qualify as “interested persons” in the context of capacity restoration proceedings.** The persons entitled to notice of the filing of a Suggestion of Capacity in addition to “interested persons” are: the Ward; the Ward’s attorney; and, the Guardian/Guardian’s attorney.<sup>214</sup> These persons are Parties. The Ward’s next of kin are entitled to copies of the Notice of Hearing, the medical examination ordered by the Court, and any Objections that were filed to the Suggestion of Capacity. However, it may not involve an unrelated friend of the Ward, unless there is some other factor than friendship that might cause such person to be ‘affected by the outcome of the proceeding.’

3. **The requirements and timing of the restoration proceeding are as follows:**

A. Upon the filing of a Suggestion of Capacity, the Court must IMMEDIATELY appoint a PHYSICIAN to examine the Ward.

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<sup>211</sup> Fla.Stat. §744.1025(2025)

<sup>212</sup> Fla.Stat. §744.464(2)(a)(2025)

<sup>213</sup> Fla.Stat. §731.201(23)(2025)

<sup>214</sup> Fla.Stat. §744.464(2)(c)(2025)

(1) **This Statutory Section only requires the appointment of a “physician” NOT an Examining Committee.** However, it is clear that this evaluator MUST BE a “physician”. A “physician” is defined in Section 458.305 of the Florida Statutes as person who is licensed to practice medicine in the State of Florida. The “practice of medicine” means the diagnosis, treatment, operation, or prescription for any human disease, pain, injury, deformity, or other physical or mental condition.<sup>215</sup>

(2) **The Court is limited as to which “physicians” it can appoint to evaluate restoration of a Ward’s capacity by the Florida Supreme Court guidelines for such.** The Court can only appoint from the list of physicians who have agreed to accept the fee approved by said guidelines. The list of such physicians is extremely short even if the Court looks to appointment lists for other divisions and case-types. There may not be any other “physicians” approved for appointment other than the one listed for Examining-Committee-Appointments. Because the Court is not required to appoint an “Examining Committee”, physicians that are not on the Court-Appointed-list may be appointed if they either accept the Court Administration contract rate or that a private Party pay such professional.

(3) Cases in which a Guardian Advocate has been appointed for a Ward with developmental disabilities, the person filing the Suggestion of Capacity is required to provide evidentiary proof that the Ward has regained or improved his/her capacities. This proof may include a signed statement from a **medical, psychological or psychiatric professional**. Consequently, experts other than physicians may be appointed to evaluate the developmentally-disabled-Ward.

B. The physician or other expert must examine the ward AND file his/her Report within **20 days** after his/her appointment.

C. The COURT must IMMEDIATELY send Notice of the filing of the Suggestion of Capacity to the Guardian by formal Notice and by informal Notice to the Ward, the Attorney for the Ward and other interested persons designated by the Court. Notice is NOT required to be served on the filer of the Suggestion of Capacity. (See *Fla.Prob.R. 5.040* regarding formal and informal service.)

D. Any Objections to the Suggestion of Capacity must be filed within 20 days of service of the Notice.

E. The Court must schedule the Suggestion for a hearing IF:

- (1) Objections are timely filed; or
- (2) If the physician’s examination indicates that full restoration of rights is NOT appropriate.

F. If the Court schedules the Suggestion for a hearing, it is required to give the hearing priority and advance it on its docket.

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<sup>215</sup> *Fla.Stat.458.305(3)(2025)*

- G. If the Court is required to schedule a hearing on the Suggestion, it must appoint an attorney for the Ward. However, generally this Court appoints an attorney at the time that it orders the physician's evaluation.
- H. The Notice of Hearing, copies of any Objections, and the Medical Examination Report must be served on the Ward, the Ward's attorney, the Guardian and the Ward's next of kin.
- I. The standard of proof for the Court's determination is by a preponderance of evidence rather than in establishing incapacity by clear and convincing evidence.  
*Fla.Stat. §744.464(3)(a)(2025)*

4. **Often the Court is unaware that a Suggestion of Capacity has been filed in a Guardianship court file.** The Guardianship-Case Management and the Collier Clerk's Office are actively developing and implementing procedures to ensure that the Statutory-procedures are followed. However, if an attorney is aware that a Suggestion of Capacity has been filed and it has not been addressed by the Court within 3 to 5 days, **please immediately contact the presiding Judge's office, Magistrate's office, Collier Guardianship Case Management and/or the Collier Clerk-Guardianship-Auditor's Office.** The Court will take action to ensure that it is legally addressed.

## **STANDBY AND SURROGATE GUARDIANS**

- 1. **A Standby Guardian may be appointed in two circumstances: as back up to an already appointed Guardian or Guardian Advocate; or, the natural parents of a minor may request for the appointment of a standby guardian without a prior guardianship of any sort having been established.**<sup>216</sup> It is advisable for Guardians and Guardian Advocates to obtain the appointment of a Standby Guardian when the Guardian or Guardian Advocate is considerably older than his/her Ward and may predecease the Ward.<sup>217</sup>
  - A. A Standby Guardian is someone who qualifies to be appointed as a Guardian or Guardian Advocate pursuant to Chapters 744 or 393 of the Florida Statutes and who will step into the role of the Guardian, Guardian Advocate or natural parent upon the death, removal or resignation of the existing Guardian or Guardian Advocate.<sup>218</sup>
  - B. A Standby Guardian must petition for confirmation of appointment no later than 20 days after he/she assumes the duties as Guardian.<sup>219</sup>
- 2. **Surrogate Guardians are persons appointed by a Court on the Petition of an already appointed Guardian to exercise the Guardian's powers if the Guardian is unavailable**

<sup>216</sup> *Fla.Stat. §744.304 (2025); Fla.Prob.R.5.646(2025).*

<sup>217</sup> *Fla.Stat. §744.304 (2025); Fla.Prob.R.5.646(2025)*

<sup>218</sup> *Fla.Stat. §744.304 (2025); Fla.Prob.R.5.646(2025)*

<sup>219</sup> *Fla.Stat. §744.304(4)(2025); Fla.Prob.R.5.646(c)(2025)*

**to act.**<sup>220</sup> A Surrogate Guardian is required to be a professional Guardian as defined by Section 744.102(17) of the Florida Statutes and is therefore required to be registered with OPPG and maintain a professional bond.

- A. The appointment of a Surrogate Guardian does not limit the legal responsibilities or liability of the appointed Guardian or Guardian Advocate.<sup>221</sup> The appointed Guardian or Guardian Advocate is responsible for the actions of the Surrogate Guardian.<sup>222</sup>
- B. A Surrogate Guardian may be appointed for a specified period of time and/or to perform a specific task.<sup>223</sup>

## **TERMINATION OF GUARDIANSHIPS AND DISCHARGE OF GUARDIANS**

1. **Circumstances of termination:** Guardianships may be terminated by: death of a Ward, a Ward reaching the age of majority, a Ward regaining capacity, or when a Guardian is unable to locate his/her Ward.<sup>224</sup> Most often, termination occurs because of a Ward's death or reaching the age of majority. "Termination" however, is NOT the same as a Guardian being "discharged." Until a guardian is "discharged" he/she has legal liability for any damages that he/she may have caused his/her Ward and for the Ward's assets.<sup>225</sup> Once a Guardian is discharged, the 3-year-Statute of Limitations begins to run for a Guardian's actions or inactions.

*... discharge shall operate as a release from the duties of the guardianship and as a bar to any action against the guardian or the guardian's surety unless the action is commenced within 3 years after the date of the order.*<sup>226</sup>

2. **Procedures to close a guardianship and discharge the appointed Guardian.**

Guardianships must be terminated AND the Guardians discharged before a Guardianship Court Case may be closed.

- A. **Guardianships of the deceased Ward's Person** are terminated by filing a Ward's death proof of which occurs when a certified copy of the Ward's Death Certificate is filed in the Court file.<sup>227</sup> A Suggestion of Death is NOT sufficient. Such a Guardian is NOT required to file a Final Report or a "Final Plan" and the Court is not required to hold a hearing to discharge the Guardian from his/her responsibilities for the Ward's person. **HOWEVER**, even if a Guardian was only appointed for the Ward's Person, filing a Death Certificate does not discharge the Guardian. Such a Guardian **MUST** file a Petition for Discharge and submit an Order to the Court that discharges the Guardian of

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<sup>220</sup> *Fla.Stat. §744.442 (2025); Fla.Prob.R.5.647(2025)*

<sup>221</sup> *Fla.Stat. §744.442(3)(2025)*

<sup>222</sup> *Fla.Stat. §744.442(3)(2025)*

<sup>223</sup> *Fla.Prob.R.5.647(d)(2025)*

<sup>224</sup> *Fla.Stat. §744.521(2025)*

<sup>225</sup> *Fla.Stat. §744.531(2025)*

<sup>226</sup> *Id.*

<sup>227</sup> *Fla.Stat. §744.521(2025)*

the Person and closes the Court file.<sup>228</sup> The form and required allegations for a Petition for Discharge is set forth in Florida Probate Rule 5.680.

- (1) Very often Guardians who have only been appointed to make non-financial decisions for their Wards just file a Death Certificate and nothing else. THIS DOES NOT DISCHARGE THE GUARDIAN and CLOSE THE CASE. Section 744.521 of the Florida Statutes and Florida Probate Rule 5.680 state that Guardians must file a Petition for Discharge when any of the terminating events listed in said Section and Rule occur.<sup>229</sup> Such law then states that a Guardian of the Person is discharged upon the filing of a certified copy of their Ward's Death Certificate. This does NOT mean that Guardians of a Ward's person are not required to file Petitions for Discharge, even if they are only appointed as a Guardian of their Ward's Person. It means that the proof that is required is only such a Ward's Death Certificate and that no hearing is required for the Court to grant the Petition for Discharge.
- (2) VERY FEW Guardianships qualify for the above procedure because very few Guardians are appointed ONLY of the Ward's Person. Guardian Advocates or Guardians of a Ward's Person who were ALSO responsible for ANY of their Ward's property, financial benefits and/or income rights or issues, must ALSO follow the discharge procedures for Guardians of Property **even if such a Ward only received Social Security benefits and/or Annual Accountings had been waived.**<sup>230</sup> Not being required to file Annual Accountings is NOT the same as only being appointed as a Guardian of a Ward's Person. Property rights and/or capacities include the right and capacity to:
  - Apply for government benefits, including Social Security;
  - Contract (which includes contracting for a Ward's placement in a residential facility);
  - Sue and defend lawsuits;
  - Manage property; and
  - Make gifts, dispose of or expend property or income.<sup>231</sup> This includes assigning Social Security benefits and/or Medicaid and Medicare benefits to residential facilities.

**B. Guardians of Property:** Regardless of the reason that a guardianship terminates, if the Guardian was assigned responsibility for financial rights, capacities and/or decisions, then the Guardian MUST:

- (1) File a Final Report even if past Annual Accountings have been waived (See "Final Reports" this Summary);
- (2) File a Petition to Distribute the Ward's assets to the appropriate persons, e.g. the personal representative of the deceased Ward's estate;
- (3) File a Petition for Discharge of the Guardian;

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<sup>228</sup> *Id.*; *Fla.Prob.R.5.680*

<sup>229</sup> *Id.*

<sup>230</sup> There's no enumerated exception to the filing of Final Reports or discharge procedures for guardianships in which Annual Accountings have been waived or for Guardian Advocates. *Fla.Stat.§393.12(2025); Fla.Stat.§744.521(2025); Fla.Stat.§744.527(2025); Fla.Stat.§744.528(2025); Fla.Stat.§744.531(2025); Fla.Prob.R.5.680*

<sup>231</sup> *Fla.Stat.§744.3215(2)-(3)(2025)*

- (4) File a Notice of Filing the Final Report, Petition to Distribute and Petition for Discharge and serve the persons as required by Rule 5.680(d)-(e);<sup>232</sup>
- (5) Obtain approval of the Final Report by the Clerk-Auditor's Office and/or respond to the Clerk Auditor regarding any deficiencies noted by said Office;
- (6) Respond to any Objections filed by Interested-Parties and/or attend hearings regarding same;
- (7) Submit an Order Discharging Guardian.<sup>233</sup>

C. **Timing:** Unless a Guardian is also appointed as the Personal Representative of his/her deceased Ward's estate or has been served with Letters of Administration issued in said estate, there are few clear time limits on the filing of the Final Report and Petition for Discharge.<sup>234</sup>

- (1) If a Guardianship terminates because of the Ward's death, the Guardian must file the Final Report within 45 days of being served Letters of Administration.
- (2) Other than the above 45-day-time-limit when a Ward has died, Guardian are only required to "promptly" file their Final Reports. Guardianship Case Management may schedule these Guardianships for a Case Management hearing if the Ward has been deceased, reached the age of majority or some other terminating event has occurred more than 90 days to determine the status of the Final Report and other requirements for Guardian-discharge and Case-closure.

## TRUSTS

(see Gifts and Trusts)

## VERIFICATION

1. "Verification" is referred to throughout various Florida guardianship Statutes and Rules in regard to pleadings filed in the Court file, e.g. "A Verified Petition" or a "Verified Inventory".
2. Verification is defined by Section 744.104 of the Florida Statutes and Florida Probate Rule 5.020(e). Section 744.104 and the Rule provide:

*When verification of a document is required in this chapter or by rule, the document filed shall include an oath or affirmation or the following statement: "**Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true to the best of my knowledge and belief.**" Any person who shall willfully include a false statement in the document shall be guilty of perjury and upon conviction shall be punished accordingly.* [Emphasis added]

<sup>232</sup> Fla.Prob.R.5.680

<sup>233</sup> Fla.Stat. §744.521(2025); Fla.Stat. §744.527(2025); Fla.Stat. §744.531(2025); Fla.Prob.R.5.680

<sup>234</sup> Fla.Stat. §744.521(2025); Fla.Stat. §744.527(2025); Fla.Stat. §744.528(2025);  
Fla.Stat. §744.531(2025); Fla.Prob.R.5.680

3. When an Oath or Acknowledgment is required, it must be taken by a judge, clerk or deputy clerk. Or a notary public within Florida.<sup>235</sup>

## **VOLUNTARY GUARDIANSHIPS**

1. **Voluntary guardianships** are authorized and governed by Section 744.341 of the Florida Statutes and Florida Probate Rule 5.552. Pursuant to this Section and Rule a person may voluntarily request that a guardianship be established for him/her even though he/she is mentally competent even though he/she is mentally competent.<sup>236</sup>
2. **Procedures.**
  - A. The person requesting the guardianship for him or herself must file a verified Petition for Voluntary Guardianship.<sup>237</sup>
  - B. The Petition must be accompanied by a Certificate of a licensed physician specifying that said physician has examined the Petitioner and that the Petitioner is competent to understand the nature of the guardianship and his or her delegation of authority.<sup>238</sup>
  - C. Notice of hearing on any Petition for Appointment and for authority to act shall be given to the Petitioner and to any person to whom the Petitioner requests that notice be given.<sup>239</sup> Such request may be made in the Petition for Appointment of Guardian or in a subsequent written Request for Notice signed by the Petitioner.<sup>240</sup> Notice is NOT required to be given to every possible relative or Interested-Person. Only the persons who the Petitioner/Voluntary Ward specifies receive notice that such proceedings have been filed or that a hearing will occur.
  - D. A voluntary guardianship may be established that is plenary or limited only to certain areas of decision-making.<sup>241</sup> Such a guardianship may also be limited to certain assets and/or financial-accounts.<sup>242</sup> If the voluntary guardianship is not plenary, the decisions assigned to the Guardian must be clearly specified. If the Guardian only has authority over certain assets or types of assets, this also MUST be CLEARLY specified in the Order Appointing Guardian and Letters of Authority.<sup>243</sup>
3. **Annual Reporting.** Guardians in voluntary guardianships are subject to the same Statutes and Rules as are Guardians in all other types of guardianships, including the reporting requirements.<sup>244</sup> However, rather than such a Guardian filing a Physician Certificate stating that the Ward is still incapacitated and still requires a guardianship, Guardians in voluntary guardianships must file a Physician's Certificate that states that said physician has examined

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<sup>235</sup> *Fla.Stat. §92.50(1)(2025)*

<sup>236</sup> *Fla.Stat. §744.341(2025)*

<sup>237</sup> *Fla.Prob.R.5.552(a)*

<sup>238</sup> *Fla.Prob.R.5.552(b)*

<sup>239</sup> *Fla.Stat. §744.341(1)(2025); Fla.Prob.R.5.552(c)*

<sup>240</sup> *Id.*

<sup>241</sup> *Fla.Stat. §744.341(2025); Fla.Prob.R.5.552*

<sup>242</sup> *Fla.Stat. §744.341(2)-(3)(2025); Fla.Prob.R.5.552(a)(4)*

<sup>243</sup> *Fla.Stat. §744.341(2)(2025)*

<sup>244</sup> *Fla.Stat. §744.341(3)(2025); Fla.Prob.R.5.552(d)*

the Ward not more than 90 days prior and the Ward is competent to understand the nature of the guardianship and the Ward's authority to delegate powers to the Voluntary-Guardian.<sup>245</sup>

- A. Unlike in most guardianships in which such a Physician's Certificate is only filed with the Guardian's Annual Plan Report if the Guardian is appointed for the Ward's person, the Statute and Rule regarding voluntary guardianships does not specify that such should only be filed if the Guardian is appointed to make decisions relating to the Ward's person. This is likely because the law wants to confirm that the Ward has the ability to understand his/her decision to delegate his/her decision making about ALL issue of his/her life. Consequently, the Physician's Certificate must be filed with the Annual Accounting Report even if the Guardian is only appointed as to the Ward's financial decisions and not decisions relating to the Ward's person.
4. **Termination.** A voluntary guardianship may be terminated by a Ward subject to a voluntary guardianship by filing a Notice with the Court that the voluntary guardianship is terminated. A copy of the Notice must be served on all interested persons.<sup>246</sup>
  - A. The guardian must file a Final Report and a Petition for Discharge in accordance with the Probate Rules.<sup>247</sup>

## APPENDIX

**FORMS AVAILABLE AS DOWNLOADS on Collier County Guardianship Case Management Webpage, on the 20<sup>th</sup> Circuit's website at:**

<https://www.ca.cjis20.org/Programs/Civil-Case-Management/guardianship.aspx> and at the Collier Circuit Clerk's website at: <https://www.collierclerk.com/court-divisions/court-guardianship/guardianship-forms/>

### Emergency Temporary Guardianship

- Magistrate's ETG Hearing Checklist
- Order Appointing Emergency Temporary Guardian
- Emergency Temporary Guardian Letters

### Incapacity

- Magistrate's Incapacity/Guardianship Hearing Checklist
- Report and Recommendations of the Magistrate on the Petition to Determine Incapacity
- Order Determining Incapacity

### Guardianship

- Magistrate's Report and Recommended Order Appointing Guardian
- Magistrate's Report and Recommended Order Denying the Appointment of Guardian Based on Less Restrictive Means
- Order Appointing Guardian

<sup>245</sup> Fla.Stat. §744.341(4)(2025); Fla.Prob.R.5.552(d)

<sup>246</sup> Fla.Stat. §744.341(5)(2025); Fla.Prob.R.5.552(e)

<sup>247</sup> Fla.Prob.R.5.552(e)

- Order Denying Appointment of a Guardian Based on Less Restrictive Means
- Guardian Letters

Guardian Advocacies

- Magistrate's Report and Recommended Order Appointing Guardian Advocate
- Order Appointing Guardian Advocate
- Guardian Advocate Letters

Minor Guardianships

- Order
- Letters
- Order regarding Depository

Reporting:

- Initial Inventory
- Annual Accounting
- Budget in Excel - created by Guardian Ginny Yates

Elder Abuse and Exploitation

- Jury Instruction 14.9: Exploitation of An Elderly Person or Disabled Adult (*sets forth grounds for such charges*)

**FORMS AVAILABLE AS DOWNLOADS** on Guardianship Magistrate's Webpage at  
[Magistrate Downloads](#)

**FORMS AVAILABLE AS DOWNLOADS** on Collier County Clerk's Webpage at

[Guardianship Forms – Collier Clerk of the Circuit Court & Comptroller](#)

**APPENDIX #2 - Florida Administrative Code Rules Governing Professional Guardians**  
*[Emphasis added throughout]*

**Rule 58M-2.009, F.A.C.**

Fla. Admin. Code r. 58M-2.009  
58M-2.009. Standards of Practice.

**(1) DEFINITIONS.**

(a) In addition to the terms defined in Chapter 744, F.S., the following definitions are applicable in this rule:

1. “Interested Person” means a person identified as an interested person in a guardianship proceeding. The meaning as it relates to particular wards may vary from time to time and must be determined by the Court according to the particular matter involved.

2. “Family” or “Family Member” means a person or persons who are:

a. A relative of an individual within the third degree by blood or marriage, or

b. The stepparent of a minor if the stepparent is currently married to the parent of the minor and is not a party in a pending dissolution, separate maintenance, domestic violence, or other civil or criminal proceeding in any court of competent jurisdiction involving one or both of the minor’s parents as an adverse party.

3. “Friend” means a person who an individual knows and with whom the individual has a bond of mutual affection.

4. “Abuse” means any willful act or threatened act by anyone who causes or is likely to cause significant impairment to a Ward’s physical, mental, or emotional health. Abuse includes acts and omissions.

5. “Neglect” means the failure or omission on the part of a caregiver, service provider or guardian to provide the care, supervision, and services necessary to maintain the physical and mental health of a Ward, including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services, which a reasonably prudent person would consider essential for the well-being of the Ward, under the same or similar circumstances. The term “neglect” also means the failure of a caregiver, service provider or guardian to make a reasonable effort to protect a Ward from abuse, neglect, or exploitation by others.

6. “Exploitation” means:

a. Knowingly obtaining or using, or endeavoring to obtain or use, a Ward’s funds, assets, or property with the intent to temporarily or permanently deprive the Ward of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the Ward, or

b. Breach of a fiduciary duty to a Ward by the Ward’s guardian which results in an

unauthorized appropriation, sale, or transfer of property, or

c. Intentionally or negligently failing to effectively use a Ward's income and assets for the necessities required for that Ward's support and maintenance, by the Ward's guardian.

**(2) THE PROFESSIONAL GUARDIAN'S RELATIONSHIP TO THE COURT.**

**(a) Professional Guardians shall know the extent of the powers and the limitations of authority granted to them by the court and all their decisions and actions shall be consistent with applicable court orders and Florida law.** Any action taken by a Professional Guardian pursuant to a court order shall not be deemed a violation of this rule.

**(b) Professional Guardians shall obtain court authorization for actions that are subject to court approval in advance except for emergency situations.**

(c) Professional Guardians shall clarify with the court any questions that the professional guardian has about the meaning of orders or directions from the court before taking action based on the orders or directions.

(d) Professional Guardians shall seek assistance as needed to fulfill responsibilities to the Wards under their guardianship. Professional Guardians shall disclose to the Court any and all employees or agents hired or assigned to perform tasks or duties related to an active guardianship.

(e) All payments to Professional Guardians from the assets of a Ward shall be submitted to the court for prior approval and shall follow the requirements of [Section 744.108, F.S.](#)

(f) Professional Guardians shall submit reports regarding the status of their Wards to the court as ordered by the court and as required by Chapter 744, F.S.

**(3) THE PROFESSIONAL GUARDIAN'S PERSONAL RELATIONSHIP WITH THE WARD.**

Professional Guardians may not engage in sexual activity with a Ward that violates the provisions of [Section 744.20041\(1\)\(n\), F.S.](#)

**(4) THE PROFESSIONAL GUARDIAN'S RELATIONSHIP WITH FAMILY MEMBERS AND FRIENDS OF THE WARD.**

(a) Professional Guardians of the person shall allow social interactions between their Wards and their Wards' family and friends in accordance with [Section 744.361\(13\)\(b\), F.S.](#)

(b) Professional Guardians shall keep interested persons advised of any pertinent medical issues or decisions when ordered to do so by the Court.

**(5) THE PROFESSIONAL GUARDIAN'S RELATIONSHIP WITH OTHER PROFESSIONALS AND PROVIDERS OF SERVICES TO THE WARD.** Professional Guardians shall strive to enhance cooperation between all parties on behalf of their Wards,

including all professionals and other service providers.

(a) Professional Guardians who are not family members of their Wards may not provide any services other than guardianship services to those Wards except in an emergency. Professional Guardians shall coordinate and monitor services needed by Wards to ensure that Wards are receiving the appropriate care and treatment.

(b) Professional Guardians shall make a good faith effort to cooperate with other surrogate decision-makers for Wards. These include, where applicable, any other guardians, agents under a power of attorney, health care proxies, trustees, U.S. Department of Veterans' Affairs fiduciaries, and representative payees.

**(6) INFORMED CONSENT.**

(a) Decisions that Professional Guardians make on behalf of their Wards under guardianship shall be based on the principle of Informed Consent.

(b) Informed Consent is a decision maker's agreement to a particular course of action based on a full disclosure of the facts needed to make the decision intelligently.

(c) To have Informed Consent, a decision maker must have adequate information on the issue, must be able to take voluntary action, and must not be coerced.

(d) In evaluating each requested decision, Professional Guardians shall do the following:

1. Have a clear understanding of the issue for which informed consent is being sought,
2. Have a clear understanding of the options, expected outcomes, risks and benefits of each alternative,
3. Determine the conditions that necessitate treatment or action,
4. Maximize the participation of Wards in understanding the facts and directing a decision, to the extent possible,
5. Determine whether a Ward has previously stated preferences in regard to a decision of this nature,
6. Determine why this decision needs to be made now rather than later,
7. Determine what will happen if a decision is made to take no action,
8. Determine what the least restrictive alternative is for the situation; and,
9. Obtain written documentation of all reports relevant to each decision, if possible.

**(7) STANDARDS FOR DECISION-MAKING.**

(a) Professional Guardians shall assist and encourage Wards to participate in decisions, when

possible.

(b) Professional Guardians shall, consistent with court orders and state statutes, exercise authority only as necessitated by the limitations of the Ward.

(c) Each decision made by a Professional Guardian shall be an informed decision based on the principle of Informed Consent as set forth in subsection (6).

(d) **Professional Guardians shall identify and advocate for the goals, needs, and preferences of their Wards.**

1. Professional Guardians shall ask their Wards what they want.

2. If a Ward has difficulty expressing what he or she wants, his or her Professional Guardian shall, to the extent possible, help the Ward express his or her goals, needs, and preferences.

3. When a Ward, even with assistance, cannot express his or her goals and preferences, Professional Guardians shall seek input from others familiar with the Ward to determine what the Ward may have wanted.

4. To the extent that a Ward's goals and preferences have been made known to a Professional Guardian, the Professional Guardian shall honor those goals or preferences, except when following the Ward's goals and preferences would cause significant impairment to a Ward's physical, mental, or emotional health.

(e) **Substituted Judgment.**

1. Substituted Judgment is a principle of decision-making which requires the guardian to consider the decision their Ward would have made when the Ward had capacity AND **use that as the guiding force in any surrogate decision a guardian makes.**

2. **Substituted Judgment shall be used when making decisions on behalf of a ward except when following the Ward's wishes would cause significant impairment to a Ward's physical, mental, or emotional health, or when a Professional Guardian cannot establish a Ward's goals and preferences even with support.**

(f) **Best Interest.**

1. **Best Interest is the principle of decision-making that should be used only when a Ward has never had capacity, when a Ward's goals and preferences cannot be ascertained even with support, or when following a Ward's wishes would cause significant impairment to a Ward's physical, mental, or emotional health or his or her property.**

2. The Best Interest principle requires a guardian to consider the least restrictive course of action to provide for the needs of a Ward.

3. The Best Interest principle requires guardians to consider a Ward's past practice and evaluate evidence of his or her choices.

4. The Best Interest principle requires the course of action that maximizes what is best for a Ward and that includes consideration of the least intrusive, most normalizing, and least restrictive course of action possible given the needs of the Ward.

**(8) LEAST RESTRICTIVE ALTERNATIVE.**

(a) When making a decision, Professional Guardians shall carefully evaluate the ward's resources and the alternatives that are available and choose the one that best meets the personal and financial goals, needs, and preferences of Wards under their guardianship, while placing the least restrictions on their Wards' freedoms, rights, and ability to control their environments.

(b) Professional Guardians shall weigh the risks and benefits of each decision and develop a balance between maximizing the independence and self-determination of Wards and maintaining Wards' dignity, protection, and safety.

(c) Professional Guardians shall make individualized decisions. The least restrictive alternative for one Ward might not be the least restrictive alternative for another Ward.

(d) The following guidelines apply in the determination of the least restrictive alternative:

1. Professional Guardians shall become familiar with the resources available for rights delegated to them including: options for residence, care, medical treatment, vocational training, and education for their wards.

2. Professional Guardians shall strive to know their Wards' goals and preferences.

3. Professional Guardians shall consider assessments of their Wards' needs as determined by specialists. This may include an independent assessment of a Ward's functional ability, health status, and care needs.

**(9) SELF-DETERMINATION OF THE WARD.**

(a) Professional Guardians shall provide Wards under their guardianship with every opportunity to exercise individual rights as they relate to the personal and financial needs of the Ward, as long as that exercise is consistent with court orders regarding the Ward's capacity.

(b) The Professional Guardian shall, whenever possible, seek to ensure that the Ward leads the planning process. If the Ward is unable to lead the process, the Professional Guardian shall, whenever possible, seek their participation.

**(10) THE PROFESSIONAL GUARDIAN'S DUTIES REGARDING DIVERSITY AND PERSONAL PREFERENCES OF THE WARD.**

Professional Guardians shall determine the extent to which Wards under guardianship identify with particular ethnic, religious, and cultural values. To determine these values, Professional Guardians shall consider the following:

- (a) The Ward's attitudes regarding illness, pain, and suffering;
- (b) The Ward's attitudes regarding death and dying;
- (c) The Ward's views regarding quality of life issues;
- (d) The Ward's views regarding societal roles and relationships; and,
- (e) The Ward's attitudes regarding funeral and burial customs.

**(11) CONFIDENTIALITY.**

- (a) Professional Guardians shall keep the affairs of Wards under guardianship confidential, unless otherwise provided by law or ordered by the Court.
- (b) Professional Guardians shall respect Wards' privacy and dignity, especially when the disclosure of information is necessary.
- (c) Disclosure of information shall be limited to what is necessary and relevant to the issue being addressed.
- (d) Professional Guardians shall assist Wards in communicating with third parties unless the disclosure will substantially harm the Ward.

**(12) DUTIES OF THE PROFESSIONAL GUARDIAN OF THE PERSON.**

- (a) Professional Guardians appointed guardians of the person shall have the following duties and obligations to Wards under guardianship, unless decision making authority has not been delegated to the Professional Guardian or the letters of guardianship provides otherwise:
  1. To see that Wards are living in the most appropriate environment that addresses each Ward's goals, needs, and preferences subject to limitations of his or her financial resources and availability of government benefits,
    - a. Professional Guardians must prioritize home or other community-based settings, when not inconsistent with a Ward's goals and preferences.
    - b. Professional Guardians shall authorize moving Wards to a more restrictive environment only after evaluating other medical and health care options and making an independent determination that the move is the least restrictive alternative at the time, fulfills the current needs of a Ward, and serves the overall best interest of a Ward.
    - c. Professional Guardians shall consider the proximity of the setting to those people and activities that are important to Wards when choosing a residential setting.
    - d. When Professional Guardians consider placement of a Ward in a residential setting, the bases of the decision shall be to minimize the risk of significant impairment to a Ward's physical, mental, or emotional health, to obtain the most appropriate placement possible, and to secure the best treatment for the Ward consistent with Section 744.3215, F.S.

2. To ensure that provision is made for the support, care, comfort, health, and maintenance of Wards, subject to limitations of his or her financial resources and availability of government benefits,
3. To make reasonable efforts to secure for Wards medical, psychological, therapeutic, and social services, training, education, and social and vocational opportunities that are appropriate and that will maximize Wards' potential for self-reliance and independence, subject to limitations of his or her financial resources and availability of government benefits; and,
4. To report to the Office of Public and Professional Guardians, the Department of Children and Families' Adult Protective Services Unit and local law enforcement incidents of abuse, neglect and/or exploitation as defined by state statutes within a reasonable period of time. For purposes of this provision the phrase "reasonable period of time" shall mean the time period in which a reasonably prudent person, under the same or similar circumstances, would report incidents of abuse, neglect and/or exploitation to the Office of Public and Professional Guardians and other appropriate authorities.

**(13) INITIAL AND ONGOING RESPONSIBILITIES OF THE PROFESSIONAL GUARDIAN OF THE PERSON.**

(a) With the proper authority, Professional Guardians appointed guardian of the person shall take the following initial steps after appointment:

- 1. Professional Guardians shall address all issues of Wards under guardianship that require immediate action.**
2. Professional Guardians shall meet with Wards as soon after the appointment as is feasible. At the first meeting, Professional Guardians shall:
  - a. Communicate to the Ward the role of the Professional Guardian,
  - b. Explain the rights retained by the Ward,
  - c. Assess the Ward's physical and social situation,
  - d. Assess the Ward's educational, vocational, and recreational needs,
  - e. Obtain the Ward's preferences,
  - f. Assess the support systems available to the Ward; and,
  - g. Attempt to gather any missing necessary information regarding the Ward.

3. After the first meeting with the Ward, the Professional Guardian shall notify relevant agencies and individuals of the appointment of a Professional Guardian, and shall complete the intake process by gathering information and ensuring that applicable evaluations are completed, if appropriate. The Professional Guardian shall:

- a. Obtain a psychological evaluation, if appropriate.
- b. Obtain an inventory of advance directives. Such statements of intent would include, but are not limited to, powers of attorney, living wills, organ donation statements, and statements by the person recorded in medical charts.
- c. Establish contact and communicate with the Professional Guardian of the property and/or any other relevant fiduciary for the Ward.

(b) Professional Guardians appointed guardian of the person **shall maintain a separate file for each Ward**. The file MUST include, at a minimum, the following information and documents, if available:

- 1. **The Ward's name, date of birth, address, telephone number, Social Security number, medical coverage, physician, diagnoses, medications, the purpose of each medication, and allergies to medications,**
- 2. **Any legal documents**, including the order appointing the guardian and letters of guardianship, involving the Ward, *[This should include any documents pertaining to Trusts of which the Ward is a beneficiary.]*
- 3. **Advance directives,**
- 4. **A list of key contacts and the contact information for next of kin,**
- 5. **A list of service providers, contact information, a description of services** provided to the person, and progress/status reports,
- 6. **A list of all medications the Ward is taking**, the dosage, and the name of the doctor prescribing the medication,
- 7. Progress notes and any documentation that reflect contacts made and work performed regarding the Ward, including the date, time and activity,
- 8. **The initial guardianship plan and annual plans;** and,
- 9. Assessments regarding the Ward's past and present medical, psychological, and social functioning,
- 10. Documentation of the Ward's known values, lifestyle preferences, and known wishes regarding medical and other care and service.

(c) Professional Guardians appointed guardian of the person or one of their professional staff **shall visit Wards at least quarterly each year.**

- 1. Professional Guardians appointed guardians of the person, if delegated, shall assess the Ward's physical appearance and condition, and if delegated by the Court, the

appropriateness of the Ward's current living situation, and the continuation of existing services while taking into consideration the Ward's resources, all aspects of social, psychological, educational, direct services, and health and personal needs as well as the need for any additional services.

2. Professional Guardians appointed guardian of the person shall maintain substantive communication with service providers, caregivers, and others attending to Wards.

3. Professional Guardians appointed guardian of the person shall examine all services and all charts, notes, logs, evaluations, and other documents regarding Wards at the place of residence and at any program site to ascertain that the care plan is being properly followed.

4. Professional Guardians appointed guardian of the person shall advocate on behalf of the Ward. Professional Guardians appointed guardians of the person shall assess the overall quality of services provided to Wards and seeking remedies when care is found to be deficient.

**5. Professional Guardians appointed guardians of the person shall monitor the residential setting on an ongoing basis** and take any necessary action when the setting does not meet the Ward's current goals, needs, and preferences, including but not limited to:

a. Evaluating the initial annual plan,

b. Enforcing residents' rights, legal, and civil rights; and,

c. Ensuring quality of care and appropriateness of the setting in light of the feelings and attitudes of the Ward.

**(d) Professional Guardians appointed guardian of the person shall fully identify, examine, and continue to seek information regarding options available to the Ward that will fulfill the Ward's goals, needs, and preferences.**

1. Professional Guardians appointed guardian of the person shall take advantage of available professional assistance in identifying all available options for long term services and support.

2. Sources of professional assistance include, but are not limited to Area Agencies on Aging, Centers for Independent Living, protection and advocacy agencies, Long Term Care Ombudsmen, Developmental Disabilities Councils, Aging and Disability Resource Centers, and community mental health agencies.

**(14) DECISION-MAKING BY GUARDIAN OF THE PERSON CONCERNING MEDICAL TREATMENT.**

(a) Professional Guardians appointed guardian of the person shall promote, monitor, and maintain the health and well-being of Wards under guardianship pursuant to their powers and duties as guardian, and in accordance with the Ward's available resources.

(b) Professional Guardians appointed guardian of the person shall ensure that all medical care

available to the Ward is appropriately provided.

(c) Professional Guardians, in making health care decisions or seeking court approval for such decisions, shall:

1. Maximize the participation of Wards,
2. Acquire a clear understanding of the medical facts,
3. Acquire a clear understanding of the health care options and the risks and benefits of each option; and,
4. Encourage and support Wards in understanding the facts and directing a decision.

(d) Professional Guardians shall use the substituted judgment standard, as defined in subsection (7), with respect to a health care decision, unless a Professional Guardian cannot determine a Ward's prior wishes, or when following the Ward's wishes would cause significant impairment to a Ward's physical, mental, or emotional health. Professional Guardians shall use the best interest standard with respect to health care decisions when it is not possible or inappropriate to use the substituted judgment standard.

(e) If possible, Professional Guardians shall determine whether a ward, before the appointment of a Professional Guardian, executed any advance directives, such as powers of attorney, living wills, organ donation statements and statements by a Ward recorded in medical charts. On finding such documents, Professional Guardians shall inform the court and other interested parties of the existing health care documents.

(f) To the extent a Ward cannot participate in the decision making process, a Professional Guardian appointed guardian of the person shall act in accordance with the Ward's prior general statements, actions, values, and preferences to the extent the Professional Guardian actually knows or should know of them, provided that such preferences are in the Ward's best interest.

(g) If a Ward's preferences are unknown and unascertainable, a Professional Guardian appointed guardian of the person shall act in accordance with information received from professionals and persons who demonstrate interest in the Ward's welfare to determine the Ward's best interests.

(h) Absent an emergency or a Ward's execution of a living will, durable power of attorney for health care, or other advance directive declaration of intent that clearly indicates a Ward's wishes with respect to a medical intervention, a Professional Guardian appointed guardian of the person and has authority may not grant or deny authorization for a medical intervention until he or she has given careful consideration to the criteria contained in subsections (6) and (7).

(i) In the event of an emergency, a Professional Guardian who has authority to make health care decisions shall grant or deny authorization of emergency medical treatment based on an assessment of the criteria contained in subsections (6) and (7), within the time allotted by the emergency.

(j) Professional Guardians appointed guardian of the person shall seek a second medical opinion for any medical treatment or intervention that would cause a reasonable person to do so or in circumstances where any medical intervention poses a significant risk to a Ward. Professional Guardians shall obtain a second opinion from a licensed physician.

(k) Professional Guardians appointed guardian of the person shall communicate with the treating medical provider before authorizing or denying any treatment or procedure that has been previously approved.

(l) Professional Guardians appointed guardian of the person shall, in accordance with [Section 765.1103\(1\), F.S.](#), seek to ensure that palliative care is incorporated into all health care, unless not in accordance with a Ward's preferences and values.

**(15) DECISION-MAKING CONCERNING WITHHOLDING AND WITHDRAWAL OF MEDICAL TREATMENT.**

(a) If a Ward expressed or currently expresses a preference regarding the withholding or withdrawal of medical treatment, a Professional Guardian shall follow the wishes of the Ward. If the Ward's past or current wishes are in conflict with each other or are in conflict with what the Professional Guardian feels is in the best interest of the Ward, the Professional Guardian shall have this ethical dilemma submitted to the court for direction.

(b) When making this decision on behalf of a Ward, Professional Guardians shall gather and document information as outlined in subsection (6), and shall follow subsection (7).

**(16) CONFLICT OF INTEREST: ANCILLARY AND SUPPORT SERVICES.**

(a) **Professional Guardians shall avoid all conflicts of interest and self-dealing**, when addressing the needs of Ward's under guardianship. A **conflict of interest** arises where a Professional Guardian has some personal or agency interest that can be perceived as self-serving, or adverse to the position or best interest of a Ward. **Self-dealing** arises when a Professional Guardian seeks to take advantage of his or her position as a Professional Guardian and acts for his or her own interests rather than for the interests of the Ward.

(b) Guidelines relating to specific ancillary and support service situations:

1. Professional Guardians may not directly provide housing, medical, or other direct services to a Ward unless the Ward is a Family Member of the Professional Guardian or approved by the court.

a. Professional Guardians shall coordinate and assure the provision of all necessary services to Ward's, other than guardianship services, rather than providing those services directly.

b. Professional Guardians shall be independent from all service providers and must challenge inappropriate or poorly delivered services and advocate on behalf of their Ward's.

- c. An exception to subsection (16), shall apply when a Professional Guardian can demonstrate unique circumstances indicating that no other entity is available to act as guardian, or to provide needed direct services provided that the exception is in the best interest of the Ward. Approval for the exception must be documented and approved by the court.
2. A Professional Guardian who is not a family member of the Alleged Incapacitated Person or acting in an official capacity has a public guardian appointed pursuant to [Section 744.2006, F.S.](#), may act as a petitioner for the initial appointment of a guardian only when no other entity is available to act, provided all alternatives have been exhausted.
3. Professional Guardians may not employ their friends or family to provide services for a profit or fee unless no alternative is available and the Professional Guardian discloses this arrangement to the court and the services are provided at the going market rate.
4. Professional Guardians shall neither solicit nor accept incentives from service providers.
5. Professional Guardians shall consider various ancillaries or support service providers and select the providers that best meet the needs of the Ward.
6. Professional Guardians who are attorneys, or employ attorneys, may provide legal services to Ward's only when doing so best meets the needs of the Ward's and is approved by the court following full disclosure of the potential for conflict of interest. Professional Guardians who are attorneys shall ensure that the services and fees are differentiated and are reasonable.
7. Professional Guardians may enter into a transaction that may be a conflict of interest only when necessary, or when there is a significant benefit to a Ward under the guardianship, and shall disclose such transactions to the Court and obtain prior court approval.

**(17) DUTIES OF THE PROFESSIONAL GUARDIAN OF THE PROPERTY.**

- (a) Professional Guardians appointed guardian of the property shall have the following duties and obligations to Ward's under guardianship; unless decision making authority has not been delegated to the Professional Guardian or the letters of guardianship provides otherwise:
- (b) When making decisions **Professional Guardians appointed guardian of the property shall:**
  1. **Give priority to the goals, needs, and preferences of the Wards;** and,
  2. **Weigh the costs and benefits to the estate.**
- (c) Professional Guardians appointed guardian of the property **shall consider the current wishes, past practices, and evidence of likely choices of their wards.** If substantial harm to a Ward's physical, mental, or emotional health would result or there is no evidence of likely choices, Professional Guardians appointed guardian of the property shall consider the best interests of the Ward.

(d) Professional Guardians shall assist and encourage Wards to participate in decisions to the extent they are capable and not inconsistent with court order.

(e) Professional Guardians appointed guardian of the property **shall provide management of Wards' property and shall supervise all income and disbursements of the Ward.**

(g) Professional Guardians appointed guardian of the property **shall manage the estate only for the benefit of the Ward** or as directed by the Court. *[NOT for the benefit of any subsequent beneficiaries of the Ward's estate.]*

(h) Professional Guardians appointed guardian of the property shall keep estate assets safe by **keeping accurate records of all transactions and be able to fully account for all the assets in the estate** during the time of the Professional Guardian's appointment by the Court.

(i) Professional Guardians appointed guardian of the property **shall keep estate money separate from their [own] personal money.**

(j) Professional Guardians appointed guardian of the property **shall apply state law regarding prudent investment practices, including seeking responsible consultation with and delegation to people with appropriate expertise to manage the estate.**

(k) If possible, Professional Guardians appointed guardian of the property shall determine **if a will exists and obtain a copy** to determine how to manage estate assets and property as their Wards would have done when they had capacity.

(l) Professional Guardians appointed guardian of the property **shall report to the Office of Public and Professional Guardians, the Department of Children and Families' Adult Protective Services and local law enforcement incidents of abuse, neglect, and/or exploitation within a reasonable period of time under the circumstances.** For purposes of this provision the phrase "reasonable period of time" shall mean the time period in which a reasonably prudent person, under the same or similar circumstances, would report incidents of abuse, neglect and/or exploitation to the Office of Public and Professional Guardians and other appropriate authorities.

#### **(18) PROFESSIONAL GUARDIAN OF THE PROPERTY: INITIAL AND ONGOING RESPONSIBILITIES.**

(a) With the proper authority, the initial steps after appointment as Professional Guardian of the property are as follows:

1. Professional Guardians shall **address all issues of the estate that require immediate action, which include, but are not limited to, securing all real and personal property, insuring it at current market value, and taking the steps necessary to protect it from damage, destruction, or loss.**

a. Professional Guardians **shall ascertain the income, assets, and liabilities of the Ward.**

- b. Professional Guardians shall ascertain the goals, needs, and preferences of the Ward.
- 2. Professional Guardians shall meet with Wards under guardianship as soon after the appointment as feasible. At the first meeting, Professional Guardians shall:
  - a. Communicate to the Ward the role of the Professional Guardian,
  - b. Outline the rights retained by the Ward and the grievance procedures available,
  - c. Assess the previously and currently expressed wishes of the Ward and evaluate them based on current acuity; and,
  - d. Attempt to gather from the Ward any necessary information regarding the estate. *[This includes information regarding any Trusts of which the Ward is a beneficiary.]*
- 3. Professional Guardians shall **file all tax returns, 1099s, and other forms on behalf of their wards** as required by the Internal Revenue Service.
- 4. Professional Guardians shall **develop and implement a BUDGET for the management of income and assets that corresponds with the care plan for the Ward, if any, and aim to address the goals, needs, and preferences of the Ward.** Professional Guardians of the property and the Professional Guardian of the Person (if one exists), or other health care decision-maker, shall communicate regularly and coordinate efforts with regard to the care and budget, as well as other events that might affect the Ward.
  - a. The BUDGET shall include a listing of all of the Ward's known assets, monthly income and whether the Ward's finances are sufficient<sup>1</sup> for the services the Ward needs, and are flexible enough to deal with the changing status of the Ward. The budget shall also include a listing of all of the Ward's recurring monthly expenses, including but not limited to housing, clothing, medical, health insurance, entertainment, and transportation costs.
  - b. Professional Guardians shall **prioritize the well-being of Wards over the preservation of the estate.**
  - c. Professional Guardians shall maintain the goal of **managing, but not necessarily eliminating, risks.**
- 5. Professional Guardians shall **assess the feasibility of pursuing all public and insurance benefits for which Wards may be eligible.**
- 6. Professional Guardians shall **document the management of the estate** and the carrying out of any and all duties required by statute or regulation.
- 7. Professional Guardians shall **prepare an inventory of all property for which he or she is responsible. The inventory must list all the assets owned by Wards known to the Professional Guardian and must be in accordance with Section 744.365, F.S., and Florida Probate Rule 5.620.**

8. All accountings must contain sufficient information to clearly describe all significant transactions affecting administration during the accounting period. All accountings must be complete, accurate, and understandable and consistent with Florida Probate Rule 5.696.

9. Professional Guardians shall oversee the disposition of Wards' assets subject to the Professional Guardian's control to qualify Wards for any public benefits program after obtaining Court approval.

10. On the termination of the guardianship or the death of a Ward, Professional Guardians shall facilitate the appropriate closing of the estate and submit a final accounting to the court.

11. The Professional Guardian appointed guardian of the property shall maintain a separate file for each Ward. The file must include, at minimum, the following information and documents, if available:

- a. The Ward's name, date of birth, address, telephone number, Social Security number,
- b. Any legal documents, including among others the order appointing the guardian and the letters of guardianship, involving the Ward, *[Including any documents for Trusts of which the Ward is a beneficiary.]*
- c. A list of key contacts and the contact information for next of kin,
- d. A list of service providers, contact information, a description of services provided to the person, and progress/status reports,
- e. Progress notes and any documentation that reflect contacts made and work performed regarding the Ward, including the date, time and activity,
- f. The initial inventory and annual accountings; and,
- g. Documentation of any goals or preferences expressed by the Ward that have been made known to the Professional Guardian and would require the expenditure of the Ward's assets in excess of \$1,000.00, and the date, time, location and individuals present when the goal or preference was expressed by the Ward.

12. Professional Guardians shall, when appropriate, open a burial trust account and/or make funeral arrangements for Wards.

(b) Professional Guardians appointed guardian of the property shall maintain substantive communication with service providers, caregivers, and others attending to Wards.

**(19) PROPERTY MANAGEMENT.**

(a) When disposing of a Ward's assets, pursuant to Section 744.441, F.S., a Professional Guardian appointed guardian of the property **must seek court approval and notify interested**

persons as required by Chapter 744, F.S.

(b) In the absence of evidence of a Ward's wishes before the appointment of a Professional Guardian, Professional Guardians appointed guardian of the property, having the proper authority, may not sell, encumber, convey, or otherwise transfer property of a ward, or an interest in that property, unless doing so is in the best interest of the Ward.

(c) In considering whether to dispose of a Ward's property, Professional Guardians appointed guardian of the property shall consider the following:

1. Whether disposing of the property will benefit or improve the life of the Ward,
2. The likelihood that the Ward will need or benefit from the property in the future,
3. The previously expressed or current desires of the Ward with regard to the property to the extent that they are known to the Professional Guardian,
4. The provisions of the Ward's estate plan as it relates to the property, if any,
5. The tax consequences of the transaction,
6. The impact of the transaction on the Ward's entitlement to public benefits,
7. The condition of the entire estate,
8. The ability of the Ward to maintain the property,
9. The availability and appropriateness of alternatives to the disposition of the property,
10. The likelihood that property may deteriorate or be subject to waste,
11. The benefits versus the liability and costs of maintaining the property; and,
12. Any other factor that may be relevant to the disposition of the Ward's property.

(d) Professional Guardians appointed guardian of the property shall consider the necessity for an independent appraisal of real and personal property.

(e) Professional Guardians appointed guardian of the property shall obtain insurance coverage, as appropriate, for property in the estate.

**(20) CONFLICT OF INTEREST: ESTATE, FINANCIAL, AND BUSINESS SERVICES.**

(a) Professional Guardians shall avoid all conflicts of interest and self-dealing when addressing the needs of Wards under guardianship. Impropriety or conflict of interest arises where a Professional Guardian has some personal or agency interest that can be perceived as self-serving or adverse to the position or best interest of a Ward. Self-dealing arises when the Professional Guardian seeks to take advantage of his or her position as a Professional Guardian and acts for his or her own interests rather than for the interests of a Ward.

- (b) Professional Guardians appointed guardians of the property shall not commingle personal or program funds with the funds of Wards.
- (c) With the exception of funds associated with Wards served by offices of public guardian established pursuant to [Section 744.2006, F.S.](#), Professional Guardians appointed guardians of the property shall not consolidate or maintain Wards' funds in joint accounts or with the funds of other Wards.
- (d) Professional Guardians appointed guardian of the property may not sell, encumber, convey, or otherwise transfer a Ward's real or personal property or any interest in that property to himself or herself, a spouse, a family member, a friend, a coworker, an employee, a member of the board of the agency or corporate Professional Guardian, an agent, or an attorney, or any corporation or trust in which the Professional Guardian, a friend of the Professional Guardian or a family member of the professional guardian has a substantial beneficial interest.
- (e) Professional Guardians appointed guardian of the property may not loan money or objects of worth from a Ward's estate unless specific prior approval is obtained from the court.
- (f) Professional Guardians appointed guardian of the property may not use a Ward's income and assets to directly support or directly benefit other individuals unless specific prior approval is obtained from the court.
- (g) Professional Guardians may not borrow funds from a Ward.
- (h) Professional Guardians may not lend funds to a Ward unless there is prior notice of the proposed transaction to interested persons and others as directed by the court or agency administering the Ward's benefits, and the transaction is approved by the court.
- (i) Professional Guardians may not profit from any transactions made on behalf of a Ward's estate at the expense of the estate, nor may the Professional Guardian compete with the estate, unless prior approval is obtained from the court. This provision shall not preclude the payment of fees to a Professional Guardian from the assets of a Ward that are associated with the performance of the duties of a guardianship.
- (j) Professional Guardians shall not give anything of monetary value associated with a guardianship referral.

**(21) TERMINATION AND LIMITATION OF PROFESSIONAL GUARDIANSHIP.**

- (a) Professional Guardians shall assist Wards under guardianship to develop or regain the capacity to manage their personal and financial affairs, if possible.
- (b) Professional Guardians shall seek termination or limitation of the guardianship in the following circumstances:
  1. When the Professional Guardian believes a Ward has developed or regained capacity in areas in which he or she was found incapacitated by the court,

2. When less restrictive alternatives exist that have not been previously addressed by the Court exist,
3. When a Ward expresses the desire to challenge the necessity of all or part of the guardianship,
4. When a Ward has died, or
5. When a guardianship no longer benefits the Ward; and,
6. When the Ward cannot be located after a diligent search.

**(22) PROFESSIONAL GUARDIANSHIP SERVICE FEES.**

(a) **All fees related to the duties of the guardianship MUST be reviewed and approved by the court.** Professional Guardians shall apprise the court of all fees paid to Professional Guardians relating to guardianship services, **including fees paid from sources outside of the guardianship.** Fees must be reasonable and be related only to guardianship duties. Petitions for Professional Guardian fees must include the source of payment (e.g. guardianship, trust, etc.), if known.

(b) Fees or expenses charged by a Professional Guardian shall be documented through billings maintained by the Professional Guardian as required by [Section 744.108, F.S.](#), which shall clearly and accurately state:

1. The date and time spent on a task,
2. The duty performed,
3. The expenses incurred,
4. The third parties involved; and,
5. The identification of the individual who performed the duty (e.g., guardian, staff, volunteer).

(c) All parties should respect the privacy and dignity of the person when disclosing information regarding fees.

**(23) MANAGEMENT OF MULTIPLE PROFESSIONAL GUARDIANSHIP CASES.**

**Professional Guardians shall limit his or her caseload to allow the Professional Guardian to properly carry out his or her duties for each Ward within statutory guidelines.**

B. This Court has determined that these requirements apply to assets and debts held in a trust also of which a Ward is a beneficiary, **regardless as to when said trust was established**. Guardians are ALSO required to not only list assets and debts, but also set forth their values and balances.<sup>248</sup> This applies to a Ward's beneficial interest in trusts.<sup>249</sup> Clearly Section J of Florida Probate Rule 5.910 requires that **the value of the Ward's beneficial interest be stated on an Initial Inventory**. This Court has determined in several instances that **the actual trust-assets should also be disclosed and listed as well as their values on an Initial Inventory**.

- (1) **Without accurate disclosure of a Ward's assets, debts and income, neither the Guardian nor the Court can perform their legal-responsibilities.** It is clear that the purposes of Initial Inventories in requiring listing and values of all assets, debts and income are to:
  - (a) Inform Guardians as to the financial resources with which they may care for their Wards and over which they have management responsibilities;
  - (b) Give the Clerk's Auditor and the Court a base-line from which to review the legality of Guardians' future expenditures and financial decisions; and
  - (c) Give the Clerk's Auditor and the Court a snap shot as to the financial resources that may be used to care for their Wards for the remainder of their lives, in a manner the same or similar to that which their Wards would have chosen for themselves.
- (2) When a Ward is one of several primary-trust-beneficiaries (versus remainder-beneficiaries), these requirements may present difficulties for a Guardian. Such a circumstance might occur if the Ward was a beneficiary of a family-trust that had been established prior to the Ward's incapacity by a family member that made simultaneous payments to not only the Ward but also the Ward's siblings. While not having ruled on this circumstance and not finding any case law directly addressing it, this Court theorizes that the Guardian's reporting of the trust-assets on his/her Initial Inventory would depend on: the total number of beneficiaries; whether any of the beneficiaries was assigned any priority of payments; and the total amount and nature and character of the assets held by such a trust.

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<sup>248</sup> *Fla.Stat. §744.365(2)(2025); Fla.Prob.R.5.910*

<sup>249</sup> While Section 744.365(2) of the Florida Statutes lists the general categories of assets, debts and income that must be listed on an Initial Inventory, Subsection (6) of this Statute implies and Florida Probate Rule 5.910 clearly requires that the value of the Ward's assets, debts and income be listed, including the value of the Ward's interest in any trusts. *Fla.Prob.R.5.910, Section J.*

## APPENDIX # 3 - Florida Probate Rules

Available on the Florida Bar Webpage at [Florida Probate Rules](#)

### PART III. GUARDIANSHIP

**Rule 5.540.** Hearings

**Rule 5.541.** Recording of Hearings

**Rule 5.550.** Petition to Determine Incapacity

**Rule 5.552.** Voluntary Guardianship of Property

**Rule 5.555.** Guardianships of Minors

**Rule 5.560.** Petition for Appointment of Guardian of an Incapacitated Person

**Rule 5.590.** Application For Appointment as Guardian; Disclosure Statement; Filing

**Rule 5.600.** Oath [of Guardian]

**Rule 5.610.** Execution by Guardian

**Rule 5.620.** Inventory

**Rule 5.625.** Notice of Completion of Guardian Education Requirements

**Rule 5.630.** Petition for Approval of Acts

**Rule 5.631.** Petition for Approval by Professional Guardian for Order Not to Resuscitate or to Withhold Life-Prolonging Procedures

**Rule 5.635.** Petition for Extraordinary Authority

**Rule 5.636.** Settlement of Minors' Claims

**Rule 5.640.** Continuance of Unincorporated Business or Venture of Ward

**Rule 5.645.** Management of Property of Nonresident Ward by Foreign Guardian

**Rule 5.646.** Standby Guardians

**Rule 5.647.** Surrogate Guardian

**Rule 5.648.** Emergency Temporary Guardian

**Rule 5.649.** Guardian Advocate

**Rule 5.650.** Resignation or Disqualification of Guardian; Appointment of Successor

**Rule 5.660.** Proceedings for Removal of Guardian

**Rule 5.670.** Termination of Guardianship on Change of Domicile of Resident Ward

**Rule 5.680.** Termination of Guardianship

**Rule 5.681.** Restoration of Rights of Person With Developmental Disability

**Rule 5.685.** Determination Regarding Alternatives to Guardianship

**Rule 5.690.** Initial Guardianship Report

**Rule 5.695.** Annual Guardianship Reports

**Rule 5.696.** Guardian Accounting

**Appendix A.** Accounting of Guardians

**Appendix B.** Guardian Accounting Principles

**Rule 5.697.** Magistrates' Review of Guardianship Inventories, Accountings, and Plans

**Rule 5.700.** Objection to Guardianship Reports

**Rule 5.705.** Petition for Interim Judicial Review

**Rule 5.710.** Reports of Public Guardian

**Rule 5.720.** Court Monitor

**Rule 5.725.** Emergency Court Monitor

**Rule 5.800.** Application of Revised Chapter 744 to Existing Guardianships