



EXECUTIVE COUNCIL ZOOM MEETING AGENDA

Friday, May 29, 2020
11:30 am

**NOTE: The Agenda will be posted to the
Section website.**

Real Property, Probate and Trust Law Section Executive Council Zoom Meeting

Friday, May 29, 2020
11:30 am

Agenda

Note: Agenda Items May Be Considered on a Random Basis

- I. Presiding — *Robert S. Freedman, Chair*
- II. Attendance — *Steven H. Mezer, Secretary*
 1. Attendance roster for Bar year to date. **p. 9**
- III. Minutes of Previous Meeting — *Steven H. Mezer, Secretary*
 1. Motion to approve the minutes of the February 1, 2020, meeting of the Executive Council held at the Grand Hyatt Tampa Bay, Tampa, Florida. **p. 24.**
- IV. Chair's Report — *Robert S. Freedman, Chair*
 1. Thank you to our Sponsors! **p. 36**
 2. Milestones.
 3. Section's response to COVID-19.
 4. RPPTL Bylaws meeting attendance requirements.
 5. Virtual committee meeting schedule. **p. 39**
 6. Leadership Training Program on June 4th.
 7. Interim Actions Taken by the Executive Committee. **p. 40**
 - a. Decisions by the Executive Committee to cancel the Out-of-State (Amsterdam) Meeting and the Annual Convention, to proceed with a virtual Executive Council meeting, and to postpone the 2020 Legislative & Case Law Update to August 20-22, 2020.
 - b. April 21st approval of letter to Ms. Amy Fariior (Chair, Board of Governors Rules Committee) on the Advanced Florida Registered Paralegal Proposal. **p. 41**

- c. Reply to Bar staff on proposal for providing pro bono legal services involving testamentary documents to pandemic frontline responders. **p. 59**
- 8. Update on Proposed Rules Pertaining to Mediation of Elder Law Disputes. **p. 61**
- 9. General Comments of the Chair.
- V. **[Liaison with Board of Governors Report](#)** — *Michael G. Tanner*
- VI. **[Chair-Elect's Report](#)** — *William T. Hennessey, III, Chair-Elect*
 - 1. 2020-2021 Executive Council meetings. **p. 64**
 - 2. RPPTL Committee Leadership Appointments for 2020-2021. **p. 65**
- VII. **[Treasurer's Report](#)** — *Wm. Cary Wright, Treasurer*
 - 1. Statement of Current Financial Conditions. **p. 76**
- VIII. **[Director of At-Large Members Report](#)** — *Lawrence Jay Miller, Director*
- IX. **[CLE Seminar Coordination Report](#)** — *Wilhelmina F. Kightlinger (Real Property) and John C. Moran (Probate & Trust), Co-Chairs*
 - 1. Report on CLE Committee Activity since COVID-19 restrictions. **p. 77**
 - 2. Upcoming CLE programs and opportunities. **p. 79**
- X. **[Legislation Committee](#)** – *S. Katherine Frazier and Jon Scuderi, Co-Chairs*
- XI. **[General Standing Division Report](#)** — *William T. Hennessey, III, General Standing Division Director and Chair-Elect*

Information Items:

- 1. **Fellows** - *Benjamin Frank Diamond and Christopher A. Sajdera, Co-Chairs*
 - a. Report on applications for the Fellows program
- 2. **Liaison with Clerks of the Court** – *Laird A. Lile*
 - a. Update on matters of interest.
- 3. **Information and Technology** – *Neil Barry Shoter, Chair*
 - a. Update on committee activities.

4. **Membership and Inclusion** - *Annabella Barboza and Brenda Ezell, Co-Chairs*
 - a. Report on committee activities.
5. **Professionalism and Ethics** – *Gwynne A. Young, Chair*
 - a. Update on proposed Rule 4-1.14 (Client With Diminished Capacity).

XII. Real Property Law Division Report — *Robert S. Swaine, Division Director*

Information Item:

1. **Condominium and Planned Development** - *William P. Sklar and Joseph E. Adams, Co-Chairs*
 - a. Discussion of legislative initiative for amendments to Ch. 617, 718 and 720, Fla. Stat., to provide that quorum requirements in governing documents for a community association control over the requirements of Chapter 617 and to provide internal consistency within Chapters 718 and 720, Fla. Stat. **p. 80**

XIII. Probate and Trust Law Division Report — *Sarah Butters, Division Director*

Information Items:

1. **Ad Hoc Committee on E-Wills** - *Angela Adams, Chair*
 - a. Consideration of amendment to Florida Statutes 117.285, 709.2119, 732.401, 732.503, 732.521, 732.703, and 747.051 relating to electronic notarization of testamentary documents. **p. 150**
2. **Ad Hoc Guardianship Law Revision Committee** - *Nicklaus J. Curley and Sancha Brennan Whynot, Co-Chairs*
 - a. Update on current version of potential changes to the Guardianship Code. **p. 165**
3. **Probate Law Committee** – *M. Travis Hayes, Chair*
 - a. Consideration of proposed changes to the Florida Probate Code and Trust Code to clarify that any testamentary bequest made in favor of a former spouse is void upon divorce from that spouse, regardless of when the bequest was made (the *Gordon* fix). **p. 206**

- b. Consideration of amendments to the Probate Code to permit the posting of a fiduciary bond in lieu of a restricted depository accounts (the *Goodstein* fix). **p. 216**
- 4. **Estate and Trust Tax Planning Committee** - *Robert L. Lancaster, Chair*
 - a. Consideration of adopting a new Part XV of the Florida Trust Code to be titled "Florida Community Property Trust Act of 2021. **p. 224**

XIV. Probate and Trust Law Division Committee Reports — *Sarah Butters, Division Director*

1. **Ad Hoc Guardianship Law Revision Committee** — Nicklaus J. Curley, and Sancha Brennan Whynot, Co-Chairs; David C. Brennan and Stacey B. Rubel, Co-Vice Chairs
2. **Ad Hoc Committee on Electronic Wills** — Angela McClendon Adams, Chair; Frederick "Ricky" Hearn and Jenna G. Rubin, Co-Vice Chairs
3. **Ad Hoc Study Committee on Professional Fiduciary Licensing** — Angela McClendon Adams, Chair; Yoshimi Smith, Vice Chair
4. **Ad Hoc Study Committee on Estate Planning Conflict of Interest** — William T. Hennessey, III, Chair; Paul Edward Roman, Vice-Chair
5. **Ad Hoc Study Committee on Due Process, Jurisdiction & Service of Process** — Barry F. Spivey, Chair; Sean W. Kelley and Christopher Q. Wintter, Co-Vice Chairs
6. **Asset Protection** — Brian M. Malec, Chair; Richard R. Gans and Michael A. Sneeringer, Co-Vice-Chairs
7. **Attorney/Trust Officer Liaison Conference** — Tattiana Patricia Brenes-Stahl and Cady Huss, Co-Chairs; Tae Kelley Bronner, Stacey L. Cole (Corporate Fiduciary), Patrick C. Emans, Gail G. Fagan and Mitchell A. Hipsman, Co-Vice Chairs
8. **Charitable Planning and Exempt Organizations Committee** — Seth Kaplan, Chair and Jason Havens, Vice-Chair
9. **Elective Share Review Committee** — Lauren Young Detzel, Chair; Cristina Papanikos and Jenna G. Rubin, Co-Vice-Chairs
10. **Estate and Trust Tax Planning** — Robert L. Lancaster, Chair; Richard Sherrill and Yoshimi O. Smith, Co-Vice Chairs
11. **Guardianship, Power of Attorney and Advanced Directives** — Nicklaus Joseph Curley, Chair; Brandon D. Bellew, Stacey Beth Rubel, and Jamie Schwinghammer, Co-Vice Chairs
12. **IRA, Insurance and Employee Benefits** — L. Howard Payne and Alfred J. Stashis, Co-Chairs; Charles W. Callahan, III, Vice Chair
13. **Liaisons with ACTEC** — Elaine M. Bucher, Shane Kelley, Charles I. Nash, Tasha K. Pepper-Dickinson, and Diana S.C. Zeydel
14. **Liaisons with Elder Law Section** — Travis Finchum and Marjorie Ellen Wolasky
15. **Liaisons with Tax Section** — Lauren Young Detzel, William R. Lane, Jr., and Brian C. Sparks

16. **Principal and Income** — Edward F. Koren and Pamela O. Price, Co-Chairs, Joloyon D. Acosta and Keith Braun, Co-Vice Chairs
17. **Probate and Trust Litigation** — John Richard Caskey, Chair; Angela McClendon Adams, James R. George and R. Lee McElroy, IV, Co-Vice Chairs
18. **Probate Law and Procedure** — M. Travis Hayes, Chair; Amy B. Beller, Jeffrey S. Goethe, Christina Papanikos and Theodore S. Kypreos, Co-Vice Chairs
19. **Trust Law** — Matthew H. Triggs, Chair; Tami Foley Conetta, Jack A. Falk, Jenna G. Rubin, and Mary E. Karr, Co-Vice Chairs
20. **Wills, Trusts and Estates Certification Review Course** — Jeffrey S. Goethe, Chair; J. Allison Archbold, Rachel A. Lunsford, and Jerome L. Wolf, Co-Vice Chairs

XV. Real Property Law Division Committee Reports — *Robert S. Swaine, Division Director*

1. **Attorney-Loan Officer Conference** – Robert G. Stern, Chair; Kristopher E. Fernandez, Wilhelmina F. Kightlinger, and Ashley McRae, Co-Vice Chairs
2. **Commercial Real Estate** – Jennifer J. Bloodworth, Chair; E. Burt Bruton, E. Ashley McRae, R. James Robbins, Jr. and Martin A. Schwartz, Co-Vice Chairs
3. **Condominium and Planned Development** – William P. Sklar and Joseph E. Adams, Co-Chairs; Alexander B. Dobrev, Vice Chair
4. **Condominium and Planned Development Law Certification Review Course** – Sandra Krumbein, Chair; Jane L. Cornett and Christene M. Ertl, Co-Vice Chairs
5. **Construction Law** – Reese J. Henderson, Jr., Chair; Sanjay Kurian, Vice Chair
6. **Construction Law Certification Review Course** – Melinda S. Gentile and Elizabeth B. Ferguson Co-Chairs; Gregg E. Hutt and Scott P. Pence, Co-Vice Chairs
7. **Construction Law Institute** – Jason J. Quintero, Chair; Deborah B. Mastin and Brad R. Weiss, Co-Vice Chairs
8. **Development & Land Use Planning** – Julia L. Jennison, Chair; Jin Liu and Colleen C. Sachs, Co-Vice Chairs
9. **Insurance & Surety** – Michael G. Meyer, Chair; Katherine L. Heckert and Mariela M. Malfeld, Co-Vice Chairs
10. **Liaisons with FLTA** – Alan K. McCall and Melissa Jay Murphy, Co-Chairs; Alan B. Fields and James C. Russick, Co-Vice Chairs
11. **Real Estate Certification Review Course** – Manuel Farach, Chair; Lynwood F. Arnold, Jr., Martin S. Awerbach, Lloyd Granet and Brian W. Hoffman, Co-Vice Chairs
12. **Real Estate Leasing** – Brenda B. Ezell, Chair; Richard D. Eckhard and Christopher A. Sajdera, Co-Vice Chairs

13. **Real Property Finance & Lending** – Richard S. McIver, Chair; Deborah Boyd and Jason M. Ellison, Co-Vice Chair
14. **Real Property Litigation** – Michael V. Hargett, Chair; Amber E. Ashton, Manuel Farach and Christopher W. Smart, Co-Vice Chairs
15. **Real Property Problems Study** – Lee A. Weintraub, Chair; Stacy O. Kalmanson, Susan K. Spurgeon and Adele Ilene Stone, Co-Vice Chairs
16. **Residential Real Estate and Industry Liaison** – Nicole M. Villarroel and Salome J. Zikakis, Co-Chairs; Raul Ballaga, Louis E. “Trey” Goldman, and James A. Marx, Co-Vice Chairs
17. **Title Insurance and Title Insurance Liaison** – Brian W. Hoffman, Chair; Mark A. Brown, Alan B. Fields, Leonard Prescott and Cynthia A. Riddell, Co-Vice Chairs
18. **Title Issues and Standards** – Christopher W. Smart, Chair; Robert M. Graham, Brian W. Hoffman, Karla J. Staker, and Rebecca Wood, Co-Vice Chairs

XVI. General Standing Division Committee Reports — *William T. Hennessey, III, General Standing Division Director and Chair-Elect*

1. **Ad Hoc Florida Bar Leadership Academy** — Kristopher E. Fernandez and J. Allison Archbold, Co-Chairs; Bridget Friedman, Vice Chair
2. **Ad Hoc Remote Notarization** – E. Burt Bruton, Jr., Chair
3. **Amicus Coordination** — Kenneth B. Bell, Gerald B. Cope, Jr., Robert W. Goldman and John W. Little, III, Co-Chairs
4. **Budget** — Wm. Cary Wright, Chair; Tae Kelley Bronner. Linda S. Griffin, and Pamela O. Price, Co-Vice Chairs
5. **CLE Seminar Coordination** — Wilhelmina F. Kightlinger and John C. Moran, Co-Chairs; Alexander H. Hamrick, Hardy L. Roberts, III, Paul E. Roman (Ethics), Silvia B. Rojas, and Yoshimi O. Smith, Co-Vice Chairs
6. **Convention Coordination** — Sancha Brennan, Chair; Bridget Friedman, Nishad Khan and Alexander H. Hamrick, Co-Vice Chairs
7. **Disaster and Emergency Preparedness and Response** – Brian C. Sparks, Chair; Jerry E. Aron, Benjamin Frank Diamond and Colleen Coffield Sachs, Co-Vice Chairs
8. **Fellows** — Benjamin Frank Diamond and Christopher A. Sajdera, Co-Chairs; Joshua Rosenberg and Angel Santos, Co-Vice Chairs
9. **Florida Electronic Filing & Service** — Rohan Kelley, Chair
10. **Homestead Issues Study** — Jeffrey S. Goethe (Probate & Trust) and J. Michael Swaine (Real Property), Co-Chairs; Michael J. Gelfand, Melissa Murphy and Charles Nash, Co-Vice Chairs
11. **Information Technology & Communication** — Neil Barry Shoter, Chair; Erin H. Christy, Alexander B. Dobrev, Jesse B. Friedman, Keith S. Kromash, Patrick F. Mize, Hardy L. Roberts, III, and Michael A. Sneeringer, Co-Vice Chairs
12. **Law School Mentoring & Programing** — Lynwood F. Arnold, Jr., Chair; Phillip A. Baumann, Guy Storms Emerich, Elizabeth Hughes and Kymberlee Curry Smith, Co-Vice Chairs

13. **Legislation** — Jon Scuderi (Probate & Trust) and S. Katherine Frazier (Real Property), Co-Chairs; Theodore S. Kypreos and Robert Lee McElroy, IV (Probate & Trust), Manuel Farach and Arthur J. Menor (Real Property), Co-Vice Chairs
14. **Legislative Update (2019-2020)** — Stacy O. Kalmanson and Thomas M. Karr, Co-Chairs; Brenda Ezell, Theodore Stanley Kypreos, Jennifer S. Tobin and Salome J. Zikakis, Co-Vice Chairs
15. **Legislative Update (2020-2021)** — Thomas M. Karr, Chair; Brenda Ezell, Theodore Stanley Kypreos, Gutman Skrande, Jennifer S. Tobin, Kit van Pelt and Salome J. Zikakis, Co-Vice Chairs
16. **Liaison with:**
 - a. **American Bar Association (ABA)** — Robert S. Freedman, Edward F. Koren and Julius J. Zschau
 - b. **Clerks of Circuit Court** — Laird A. Lile
 - c. **FLEA / FLSSI** — David C. Brennan and Roland D. “Chip” Waller
 - d. **Florida Bankers Association** — Mark T. Middlebrook
 - e. **Judiciary** — Judge Catherine Catlan, Judge Jaimie Goodman, Judge Mary Hatcher, Judge Hugh D. Hayes, Judge Margaret Hudson, Judge Celeste Hardee Muir, Judge Bryan Rendzio, Judge Janet C. Thorpe and Judge Jessica Jacqueline Ticktin
 - f. **Out of State Members** — Nicole Kibert Basler, John E. Fitzgerald, Jr., and Michael P. Stafford
 - g. **TFB Board of Governors** — Michael G. Tanner
 - h. **TFB Business Law Section** — Gwynne A. Young and Manuel Farach
 - i. **TFB CLE Committee** — John C. Moran (alt: Wilhelmina F. Kightlinger)
 - j. **TFB Council of Sections** — Robert S. Freedman and William T. Hennessey, III
 - k. **TFB Diversity & Inclusion** – Erin H. Christy
 - l. **TFB Pro Bono Committee** — Melisa Van Sickle
17. **Long-Range Planning** — William T. Hennessey, III, Chair
18. **Meetings Planning** — George J. Meyer, Chair
19. **Membership and Inclusion** — Annabella Barboza and Brenda Ezell, Co-Chairs; S. Dresden Brunner, Vinette Dawn Godelia, and Roger A. Larson, Co-Vice Chairs
20. **Model and Uniform Acts** — Bruce M. Stone and Richard W. Taylor, Co-Chairs; Patrick J. Duffey and Adele Irene Stone, Co-Vice Chairs
21. **Professionalism and Ethics** — Gwynne A. Young, Chair; Alexander B. Dobrev, Andrew B. Sasso, Hon. Mark Alan Speiser and Laura Sundberg, Co-Vice Chairs
22. **Publications (ActionLine)** — Jeffrey Alan Baskies and Michael A. Bedke, Co-Chairs (Editors in Chief); Richard D. Eckhard, Jason M. Ellison, George D. Karibjanian, Sean M. Lebowitz, Daniel L. McDermott, Jeanette Moffa and Paul E. Roman, Co-Vice Chairs
23. **Publications (Florida Bar Journal)** — Jeffrey S. Goethe (Probate & Trust) and Douglas G. Christy (Real Property), Co-Chairs; J. Allison Archbold

- (Editorial Board – Probate & Trust), Homer Duvall, III (Editorial Board — Real Property), Marty J. Solomon (Editorial Board — Real Property), and Brian Sparks (Editorial Board — Probate & Trust), Co-Vice Chairs
24. **Sponsor Coordination** — J. Eric Virgil, Chair; Patrick C. Emans, Marsha G. Madorsky, Jason J. Quintero, J. Michael Swaine, and Arlene C. Udick, Co-Vice Chairs
 25. **Strategic Planning** — Robert S. Freedman and William T. Hennessey, III, Co-Chairs
 26. **Strategic Planning Implementation** - Michael J. Gelfand, Chair; Michael A. Dribin, Deborah Packer Goodall, Andrew M. O'Malley and Margaret A. “Peggy” Rolando, Co-Vice Chairs

XVII. Adjourn: Motion to Adjourn.

ATTENDANCE ROSTER
REAL PROPERTY PROBATE & TRUST LAW SECTION
EXECUTIVE COUNCIL MEETINGS
2019-2020

Executive Committee	Division		July 24 Breakers	Nov. 6 Miami	Jan. 29 Tampa	April 1 Amsterdam	May 28 Orlando
	RP	P&T					
Boje, Debra Lynn Immediate Past Chair		√	√	√	√		
Freedman, Robert S. Chair	√		√	√	√		
Hennessey, William Chair-Elect & General Standing Div. Director		√	√	√	√		
Kightlinger, Wilhelmina F. Co-Chair Real Property	√		√	√	√		
Swaine, Robert S. Real Property Law Div. Director	√		√	√	√		
Butters, Sarah S. Probate & Trust Law Div. Director		√	√	√	√		
Wright, Wm. Cary Treasurer	√		√	√			
Frazier, S. Katherine Legislation Co-Chair Real Property	√		√	√	√		
Scuderi, Jon Legislation Co-Chair Probate & Trust		√	√	√	√		
Moran, John C. CLE Co-Chair Probate		√	√	√	√		
Mezer, Steven H. Secretary	√		√	√	√		
Miller, Lawrence J. Director, At Large Members		√	√	√	√		

Executive Council Members	Division		July 24 Breakers	Nov. 6 Miami	Jan. 29 Tampa	April 1 Amsterdam	May 28 Orlando
	RP	P&T					
Acosta, Jolyon Delphin		√	√	√	√		
Adams, Angela M.		√	√	√	√		
Adams, Joseph	√		√		√		
Akins, David J.		√	√	√	√		
Altman, Stuart H.		√	√	√	√		

Executive Council Members	Division		July 24 Breakers	Nov. 6 Miami	Jan. 29 Tampa	April 1 Amsterdam	May 28 Orlando
	RP	P&T					
Archbold, J. Allison		√	√		√		
Arnold, Jr., Lynwood	√		√		√		
Aron, Jerry E. Past Chair	√		√	√			
Ashton, Amber E.	√		√	√	√		
Awerbach, Martin S.	√		√	√	√		
Bald, Kimberly A.		√	√	√	√		
Ballaga, Raul P.	√						
Barboza, Annabella	√		√	√	√		
Baskies, Jeffrey		√	√	√			
Battle, Carlos A.		√	√	√	√		
Baumann, Phillip A.		√	√	√	√		
Beales, III, Walter R. Past Chair	√						
Bedke, Michael A.	√						
Belcher, William F. Past Chair		√	√	√	√		
Bell, Kenneth B.	√						
Bell, Rebecca Coulter		√	√	√	√		
Beller, Amy		√	√		√		
Bellew, Brandon D.		√	√	√	√		
Bloodworth, Jennifer J.	√		√	√	√		
Bonevac, Judy B.		√	√	√	√		
Bowers, Elizabeth A.		√	√	√	√		
Boyd, Deborah	√		√	√	√		
Braun, Keith Brian		√	√	√	√		
Brenes-Stahl, Tattiana		√	√	√	√		

Executive Council Members	Division		July 24 Breakers	Nov. 6 Miami	Jan. 29 Tampa	April 1 Amsterdam	May 28 Orlando
	RP	P&T					
Brennan, David C. Past Chair		√	√				
Bronner, Tae K.		√	√		√		
Brown, Mark A.	√		√	√	√		
Brown, Shawn	√		√	√	√		
Brunner, S. Dresden		√	√	√	√		
Bruton, Jr., Ed Burt	√		√	√	√		
Bucher, Elaine M.		√	√		√		
Butler, Johnathan		√	√		√		
Catlin, Catherine M.	√						
Callahan, Chad W. III		√			√		
Carlisle, David R.		√	√				
Caskey, John R.		√	√	√	√		
Christiansen, Patrick Past Chair	√		√		√		
Christy, Douglas G. III	√		√	√	√		
Christy, Erin Hope	√		√	√	√		
Cohen, Howard Allen	√		√	√	√		
Cole, Stacey L.		√	√	√	√		
Conetta, Tami F.		√	√	√	√		
Cope, Jr., Gerald B.	√		√	√	√		
Cornett, Jane Louise	√		√	√	√		
Curley, Nick		√	√	√	√		
Detzel, Lauren Y.		√	√	√	√		
Diamond, Benjamin F.		√	√		√		
Diamond, Sandra F. Past Chair		√	√	√	√		

Executive Council Members	Division		July 24 Breakers	Nov. 6 Miami	Jan. 29 Tampa	April 1 Amsterdam	May 28 Orlando
	RP	P&T					
Dobrev, Alex	√		√		√		
Dollinger, Jeffrey	√				√		
Dribin, Michael Past Chair		√	√	√	√		
Duffey, Patrick J.		√	√	√	√		
Duvall, III, Homer	√		√	√	√		
Duz, Ashley Nichole		√	√	√	√		
Eckhard, Rick	√				√		
Ellison, Jason M.	√		√	√	√		
Emans, Patrick C		√	√	√			
Emerich, Guy S.		√	√		√		
Ertl, Christene M.	√			√			
Evert, Jamison C.		√	√	√	√		
Ezell, Brenda B.	√		√	√			
Fagan, Gail		√	√		√		
Falk, Jr., Jack A.		√	√	√	√		
Farach, Manuel	√		√	√			
Faulkner, Debra Ann		√					
Felcoski, Brian J. Past Chair		√	√	√	√		
Ferguson, Elizabeth B.	√		√		√		
Fernandez, Kristopher E.	√		√	√	√		
Fields, Alan B.	√			√	√		
Finchum, Travis		√	√	√	√		
Fitzgerald, Jr., John E.		√	√	√	√		
Foreman, Michael L.		√	√		√		

Executive Council Members	Division		July 24 Breakers	Nov. 6 Miami	Jan. 29 Tampa	April 1 Amsterdam	May 28 Orlando
	RP	P&T					
Friedman, Bridget	√		√		√		
Friedman, Jesse B.		√	√		√		
Galler, Jonathan		√	√	√	√		
Gans, Richard R.		√	√	√	√		
Gelfand, Michael J Past Chair	√		√	√	√		
Gentile, Melinda S.	√		√	√			
George, James		√	√	√	√		
George, Joseph P.		√	√	√	√		
Godelia, Vinette D.	√				√		
Goethe, Jeffrey S.		√	√	√	√		
Goldman, Louis “Trey”	√		√		√		
Goldman, Robert W. Past Chair		√		√			
Goodall, Deborah P. Past Chair		√	√	√			
Goodman, Hon Jaimie							
Graham, Robert M.	√		√		√		
Granet, Lloyd	√		√		√		
Griffin, Linda S.		√	√		√		
Grimsley, John G. Past Chair		√					
Grosso, Jennifer		√			√		
Gunther, Eamonn W.		√	√	√	√		
Gurgold, Eric		√	√		√		
Guttmann, III, Louis B Past Chair	√				√		
Hamrick, Alexander H		√	√	√	√		
Hargett, Michael Van	√		√	√	√		

Executive Council Members	Division		July 24 Breakers	Nov. 6 Miami	Jan. 29 Tampa	April 1 Amsterdam	May 28 Orlando
	RP	P&T					
Hatcher, Hon. Mary P.			√		√		
Havens, Jason		√	√	√			
Hayes, Hon. Hugh D.			√	√			
Hayes, Michael Travis		√	√	√	√		
Hearn, Frederick "Ricky"		√	√		√		
Hearn, Steven L. Past Chair		√	√		√		
Heckert, Katie	√		√	√			
Henderson, Jr., Reese J.	√		√	√			
Henderson, III, Thomas N.	√			√	√		
Heuston, Stephen P.		√	√	√			
Hipsman, Mitchell Alec		√	√	√	√		
Hoffman, Brian W.	√		√	√	√		
Hudson, Hon. Margaret "Midge"		√	√		√		
Hughes, Elizabeth		√		√			
Huss, Cady L.		√	√	√			
Hutt, Gregg Evan	√				√		
Ispording, Roger O. Past Chair		√	√				
Jennison, Julia Lee	√		√	√			
Johnson, Amber Jade		√	√	√	√		
Jones, Frederick W.	√		√	√	√		
Jones, Patricia P.H.	√		√	√			
Judd, Robert B.		√	√	√			
Kalmanson, Stacy O.	√		√	√	√		
Kaplan, Seth		√	√	√	√		

Executive Council Members	Division		July 24 Breakers	Nov. 6 Miami	Jan. 29 Tampa	April 1 Amsterdam	May 28 Orlando
	RP	P&T					
Kangas, Michael R.		√	√	√			
Karibjanian, George		√	√				
Karr, Mary E.		√	√	√	√		
Karr, Thomas M.		√	√	√	√		
Kayser, Joan B. Past Chair		√		√	√		
Kelley, Rohan Past Chair		√	√	√	√		
Kelley, Sean W.		√	√	√	√		
Kelley, Shane		√	√	√	√		
Keyser, Hon. Janis Brustares							
Khan, Nishad	√		√	√	√		
Kibert-Basler, Nicole	√		√	√			
Kinsolving, Ruth Barnes, Past Chair	√				√		
Koren, Edward F. Past Chair		√	√	√	√		
Kotler, Alan Stephen		√		√	√		
Kromash, Keith S.		√	√	√	√		
Krumbein, Sandra Elizabeth	√		√	√			
Kurian, Sanjay	√		√	√			
Kypreos, Theodore S.		√	√	√	√		
LaFemina, Rose M.		√	√	√	√		
Lancaster, Robert L.		√	√	√	√		
Lane, Jr., William R.		√	√		√		
Larson, Roger A.	√		√				
Leathe, Jeremy Paul		√	√	√	√		
Lebowitz, Sean				√	√		

Executive Council Members	Division		July 24 Breakers	Nov. 6 Miami	Jan. 29 Tampa	April 1 Amsterdam	May 28 Orlando
	RP	P&T					
Lile, Laird A. Past Chair		√	√	√	√		
Lindsey, Hon. Norma							
Little, III, John W.	√		√				
Liu, Jin	√		√	√	√		
Lunsford, Rachel Albritton		√	√	√	√		
Madorsky, Marsha G.		√		√			
Malec, Brian		√		√	√		
Malfeld, Mariela	√		√	√			
Marger, Bruce Past Chair		√			√		
Marshall, III, Stewart		√	√		√		
Marx, James A.		√	√	√	√		
Mastin, Deborah Bovarnick	√		√	√	√		
McCall, Alan K.	√		√		√		
McDermott, Daniel		√	√	√			
McElroy, IV, Robert Lee		√	√	√	√		
McIver, Richard	√		√	√	√		
McRae, Ashley E.	√		√		√		
Melanson, Noelle M.		√	√	√	√		
Menor, Arthur J.	√			√			
Meyer, George F. Past Chair	√		√	√	√		
Meyer, Michael	√			√			
Middlebrook, Mark	√		√	√	√		
Mize, Patrick		√	√	√	√		
Moffa, Jeanette	√						

Executive Council Members	Division		July 24 Breakers	Nov. 6 Miami	Jan. 29 Tampa	April 1 Amsterdam	May 28 Orlando
	RP	P&T					
Muir, Hon. Celeste H.		√	√	√	√		
Murphy, Melissa J. Past Chair	√		√		√		
Nash, Charles I.		√	√		√		
Neukamm, John B. Past Chair	√		√	√	√		
Nguyen, Hung V.		√	√	√	√		
Oliver, Rachel			√	√	√		
O'Malley, Andrew M.	√			√	√		
Papanikos, Cristina		√	√	√	√		
Payne, L. Howard		√	√	√			
Pence, Scott P.	√		√	√	√		
Pepper-Dickinson, Tasha K.		√	√	√			
Pilotte, Frank		√	√	√	√		
Pollack, Anne Q.	√		√	√	√		
Prescott, Leonard	√		√	√			
Pressly, Grier James				√	√		
Price, Pamela O.		√	√	√	√		
Quintero, Jason	√		√	√	√		
Redding, John N.	√		√	√	√		
Riddell, Cynthia	√		√	√	√		
Rieman, Alexandra V.		√	√	√	√		
Robbins, Jr., R.J.	√		√		√		
Roberts, III, Hardy L.	√			√	√		
Rojas, Silvia B.	√		√	√	√		
Rolando, Margaret A. Past Chair	√		√	√	√		

Executive Council Members	Division		July 24 Breakers	Nov. 6 Miami	Jan. 29 Tampa	April 1 Amsterdam	May 28 Orlando
	RP	P&T					
Roman, Paul E.		√	√	√	√		
Rosenberg, Joshua		√	√	√			
Rubel, Stacy		√	√	√	√		
Rubin, Jenna		√	√	√	√		
Russick, James C.	√		√	√	√		
Sachs, Colleen C.	√		√	√	√		
Sajdera, Christopher	√		√	√	√		
Santos, Angela		√					
Sasso, Andrew	√		√	√	√		
Schwartz, Martin	√			√	√		
Schwartz, Robert M.	√		√	√	√		
Schwinghamer, Jamie		√	√	√	√		
Seaford, Susan	√						
Seigel, Daniel A.	√		√	√	√		
Sheets, Sandra G.		√	√	√	√		
Sherrill, Richard		√	√	√			
Shoter, Neil B.	√		√	√	√		
Sklar, William P.	√		√	√	√		
Skrande, Gutman		√		√	√		
Smart, Christopher W.	√			√	√		
Smith, Kymberlee C.	√		√	√			
Smith, G. Thomas Past Chair/Honorary Member	√		√				
Smith, Yoshimi O.		√	√	√	√		
Sneeringer, Michael		√	√	√			

Executive Council Members	Division		July 24 Breakers	Nov. 6 Miami	Jan. 29 Tampa	April 1 Amsterdam	May 28 Orlando
	RP	P&T					
Solomon, Marty	√		√		√		
Sparks, Brian C.		√	√	√	√		
Speiser, Hon. Mark A.			√		√		
Spivey, Barry F.		√	√	√	√		
Spurgeon, Susan K.	√		√		√		
Stafford, Michael P.		√	√	√	√		
Staker, Karla J.	√		√	√	√		
Stashis, Alfred Joseph		√	√	√	√		
Stern, Robert G.	√				√		
Stone, Adele I.	√		√	√	√		
Stone, Bruce M. Past Chair		√					
Suarez, Hon. Richard							
Sundberg, Laura K.		√	√		√		
Swaine, Jack Michael Past Chair	√		√		√		
Taylor, Richard W.	√		√	√	√		
Thomas, Hon. Patricia			√		√		
Thornton, Kenneth E.	√		√	√	√		
Thorpe, Hon Janet C.			√				
Ticktin, Hon. Jessica J.							
Tobin, Jennifer S.	√		√		√		
Triggs, Matthew H.		√	√	√	√		
Tschida, Joseph John	√		√	√	√		
Tucker, Kristine L.		√	√	√			
Udick, Arlene C.	√			√	√		

Executive Council Members	Division		July 24 Breakers	Nov. 6 Miami	Jan. 29 Tampa	April 1 Amsterdam	May 28 Orlando
	RP	P&T					
Van Dien, Lisa Barnett	√		√	√			
Van Lenten, Jason Paul		√	√	√			
Van Pelt, Kit E.		√	√		√		
VanSickle, Melissa	√						
Villarroel, Nicole Marie	√		√		√		
Virgil, Eric		√	√	√			
Waller, Roland D. Past Chair	√		√	√	√		
Warner, Richard	√						
Weintraub, Lee A.	√		√	√	√		
Weiss, Brad R.	√		√	√	√		
Wells, Jerry B.		√	√		√		
White, Jr., Richard M.		√	√		√		
Whynot, Sancha B.		√	√	√	√		
Wilder, Charles		√					
Williams, Margaret A.	√		√		√		
Williamson, Julie Ann Past Chair	√			√			
Wintter, Christopher		√	√	√	√		
Wohlust, Gary Charles		√	√		√		
Wolasky, Marjorie E.		√	√	√	√		
Wolf, Jerome L.		√	√	√			
Wood, Rebecca	√		√	√	√		
Young, Gwynne A.		√	√	√	√		
Zeydel, Diana S.C.		√	√		√		
Zikakis, Salome J.		√		√	√		

Executive Council Members	Division		July 24 Breakers	Nov. 6 Miami	Jan. 29 Tampa	April 1 Amsterdam	May 28 Orlando
	RP	P&T					
Zschau, Julius J. Past Chair	√		√		√		

RPPTL Fellows	Division		July 28 Breakers	Nov. 6 Miami	Jan. 29 Tampa	April 1 Amsterdam	May 28 Orlando
	RP	P&T					
Abukodeir, Samah		√					
Barr, James C.	√		√	√			
Cazobon, Denise		√	√	√	√		
Coleman, Jami		√		√	√		
de la Riva, Lian		√	√				
Hinden, Michelle Gomez	√		√	√	√		
Jackson, Gabrielle	√		√	√			
Jaiven, Kristen King	√		√	√	√		
McDermott, Daniel L.		√	√				
Peregrin, Jacqueline J.	√						
Percopo, Joseph		√		√	√		

Legislative Consultants	Division		July 28 Breakers	Nov. 6 Miami	Jan. 28 Tampa	April 1 Amsterdam	May 28 Orlando
	RP	P&T					
Brown, French		√	√	√	√		
Dobson, Michael	√						
Dunbar, Peter M.	√		√	√	√		
Edenfield, Martha Jane	√	√	√	√	√		
Finkbeiner, Brittany		√	√				
Roth, Cari L.	√		√				

Guest sign in	Division	
	RP	P&T
Jacobeli J. Behar		√
David Shanks	√	
Lea Anne Groover		√
Antonio Romano		√
Sharifa Jarrett		√
Robert Persante		√
Darren Shotts		√
Zack Zuroweste		√
Julia Horstkamp	√	
Paige Baker	√	
Eric Sulzberger		√
Erin Finlen		√
Eve A. Bouchard		√
Jeremy T. Cranford	√	
Marve Ann Alaimo		√
Bonnie Lee Polk		√
Ciselle Leonardo – Nov. 7 th & 8 th		
Sandy Boisrond		√
Steven Hitchcock	√	
Mike Tanner – Nov. 7 th – 9 th		
Brandon Masher (Law Student)		
Edwin Ed Walken		
Sabine Seidel	√	
Sarah Volmy	√	√
Erica Conklin Baines		√
Adam Gaslowitz		√
Michael Faulkner		√
Alexis Robbins		√
Zack Zuroweste		√
Addiannette Williams		

Mia Banks		
Yveline Dalmacy		
Yine "Laura" Cio		√

**Real Property, Probate and Trust Law Section
Executive Council Meeting
Grand Hyatt Tampa Bay
Tampa, Florida
Saturday, February 1, 2020**

Minutes

- I. Presiding** — *Robert S. Freedman, Chair called the meeting to order at 9:48 A.M.*
- II. Attendance** — Mr. Freedman recognized Steven H. Mezer, Secretary. Mr. Mezer announced that the attendance roster was being passed.
- III. Minutes of Previous Meeting**

Mr. Mezer asked if there were comments or corrections as to the minutes. There were no comments or corrections. Mr. Mezer then asked for a motion to approve the minutes of the November 9, 2019, meeting of the Executive Council held at the JW Marriott Marquis, Miami, Florida. Motion was made. The motion was unanimously approved.

IV. Chair's Report

1. Recognition of Guests.

Mr. Freedman introduced his law partner, Representative Fentrice Driskell. Representative Driskell is a Section Member representing District 53 of the Florida House. Representative Driskell is sponsoring the Section's Estate bill. She offered to help Section members and invited them to contact her on any issues.

Mr. Freedman recognized the law students.

Cooley Law School
Jamie Sarah – Cooley Law School
Robbins Cooley Law School

Mr. Freedman recognized the Section sponsors:

Thursday Sponsors:

MPI - Lunch
JP Morgan Private Bank – Welcome Reception
Old Republic Title – Welcome Reception
Cumberland Trust – Hospitality Suite

Friday evening dinner reception sponsors:

Wells Fargo Private Bank – Johnathan Butler
Westcor Land Title Insurance Company – Sabine Seidel

Friday evening sponsors:

First American Title Insurance Company – Mr. Freedman recognized Alan McCall who provided information regarding First American.

Phillips – Mr. Freedman recognized Jennifer Jones who provided information regarding Phillips.

Saturday sponsors:

Attorney's Title Fund – Spouse/Guest Breakfast

Fidelity National Title Group – Real Property Law Division Roundtable Breakfast

Stout Risius Ross, Inc. Probate and Trust Law Division Roundtable Breakfast

Guardian Trust – Probate and Trust Law Division Roundtable Breakfast

Stewart Title – Executive Council Meeting and Lunch. Mr. Freedman recognized David Shanks. Mr. Shanks provided information regarding Stewart Title.

The Florida Bar Foundation - Executive Council Meeting and Lunch

General Sponsors:

WFG National Title Insurance Co. – App Sponsor

Management Planning, Inc.

JP Morgan

Old Republic Title

Wells Fargo Private Bank

Westcor Land Title Insurance Company

First American Title Insurance Company

Attorneys Title Fund Services, LLC

Fidelity National title Group

Stout Risius Ross, Inc.

Guardian Trust

The Florida Bar Foundation

Stewart Title

Phillips

Attorneys Title Fund Services, LLC

Friends of the Section:

Amtrust Title

Business Valuation Analysts, LLC

CATIC

Cumberland Trust

EasySoft

Fiduciary Trust International of the South
Heritage Investment
North American Title insurance Company
Practice 42
Valuation Services, Inc.
Wilmington Trust

Mr. Freedman recognized the following Milestones:

- Jonathan Butler had a birthday
- Mr. Freedman was interrupted by an invasion by the Rough Riders. The Rough Riders thanked the Section for its donation of 250 teddy bears. Order was restored 15 minutes later.
- Patrick Duffey married Molly Venters on January 19, 2020 in St. Petersburg, Florida.
- Hilary Stephens, our Section Administrative Assistant, and her husband Jason welcomed their daughter Kennedy Claire Stephens on November 13th. Kennedy weighed 6 lbs. 8 oz. and 19" long. Congratulations to Hilary and Jason!
- Travis Hayes and his wife Kevyn welcomed their second daughter Emmy Alexander on December 10th. Emmy weighed 7 lbs. 5 oz. and was 19½ inches long. Congratulations to Travis, Kevyn and big sister Lily.
- Nicole Kibert Basler and her husband Art welcomed Margot Josephine on Wednesday of this week (which explains Nicole's absence from this meeting). Margot was 9 lbs. 10 oz. and was 21" long. Congratulations to Nicole, Art and big sister Arwen.

Report of Interim Actions by the Executive Committee.

- a. December 31, 2019: Approval of candidates for Florida Bar Leadership Academy. This action was tabled until the committee's report.
- b. January 6, 2020: Approval of a letter to Daniel E. Norby, Chair of the Florida Supreme Court Judicial Nominating Commission, regarding Supreme Court nominations, emphasizing the importance of a Justice having knowledge of both real property law and probate, trust and estate law issues.

Laird Lile commented that Justice Canady has a background in transactional real estate.

- c. January 9, 2020: Approval of a legislative position regarding revisions to Section 736.08145, Florida Statutes, to grant a trustee discretionary authority to reimburse the deemed owner of a grantor trust for income taxes attributable to the deemed owner. This

legislation was filed by other stakeholders. Our Section was able to provide technical assistance and express support for the bill as modified.

Mr. Freedman reported on 2019-2020 Executive Council meetings. Details appear at page 54 of the agenda.

Meetings for rest of The Bar year:

April 1- April 5 – Hotel Okura, Amsterdam, The Netherlands

May 28 – May 31 Loews Sapphire Falls, Orlando, FL

Mr. Freedman provided an update on the out of state meeting in Amsterdam. The meeting will be held at the Hotel Okura in Amsterdam. E-mails regarding trip are being sent and there is a dedicated listserv for those who are attending.

Mr. Freedman recognized Sancha Brennan to present an update on the Convention. Ms. Brennan reported on the planning for the Convention being held in Orlando – Lowes Sapphire Falls, Orlando which is across from Universal. Thursday reception with surprises. Friday will include a 2-hour CLE Notary seminar. Special pricing for Law Students. Friday night there will be a special event – video was presented.

The Convention will be family friendly – bring family. Ms. Brennan inquired if there was interest in discount tickets to Universal. Many hands went up. There will be a silent auction to benefit The Florida Bar Foundation. Saturday will have ample time. Mr. Freedman thanked Ms. Brennan and the committee.

Mr. Freedman recognized Mary Ann Obos for her extra efforts in making this meeting a success.

V. Liaison with Board of Governors Report

Mr. Freedman reported that the Section's liaison to the Board of Governors, Michael Tanner could not attend our meeting in person, however, he had submitted a video report. Mr. Tanner's video report was presented. He reported that the Board of Governors meeting was to be held in Tallahassee (January 30 and 31st). He reported on items of interest to the Section.

One of the items of interest to the Section is the proposed amendment to Chapter 20 Florida Registered Paralegal Program creating the Advanced Florida Registered Paralegal Program. The Section provided a letter September 30 in opposition to portions of the amendments creating the Advanced Florida Registered Paralegal Program. It is the intent of Board of Governors to hear the presentation at their January meeting, however, no action will be taken at that meeting. The matter will be referred to Committee for further review. If you have additional comments, please contact Mr. Tanner at Gunster Website.

The Chair recognized Sandy Diamond regarding the proposed amendment to Chapter 20 of the Florida Registered Paralegal Program to create the Advanced Florida Registered Paralegal Program. She indicated that all but one other Section (Family Law) of The Florida Bar favored the proposed amendment. Other Sections agreed as this appears to be a “mom and apple pie” issue. Purpose of this amendment, paralegals would be able to assist clients with wills and guardianship, debt collection and Landlord/Tenant; not to provide legal advice; filling out forms, contracts after getting three (3) more credit hours.

VI. Chair-Elect's Report — *William T. Hennessey, III, Chair-Elect*

Mr. Freedman recognized Mr. Hennessey. Mr. Hennessey reported on 2020-2021 Executive Council meetings. Details are found at **p. 55** of the agenda.

September 30 – October 4. Jackson Hole, Wyoming: Mr. Hennessey presented a video about Jackson Hole, Wyoming. Antlers were presented to Mr. Hennessey by Michael Hargett. The meeting will be at Jackson Hole – Four Seasons Resort in Teton Village.

Wednesday night event will be dinner at Handlebar Lounge at the Four Seasons . Thursday morning - Wildlife Safari in Grand Teton National Park. Thursday afternoon lunch at Jackson Lake Lodge. Thursday evening dinner at Rendezvous Lodge. Gondolas to top for star gazing. Friday Night – Diamond Cross Ranch, a top wedding venue. Rancher demonstrates breaking an untrained horse. Apply the tactics and principles to group – managing people in difficult situations.

Friday and Saturday will be a variety of activities: Hiking, rafting tour, fly-fishing for beginners, tour to National Wildlife Art Museum.

On Saturday, members will have dinner on their own in town. Mr. Hennessey recommended meeting up at the Million Dollar Cowboy bar. Event will have a shuttle to and from downtown. On Sunday, we will tour Yellowstone National Park which is a 3-hour drive each way. The tour will include stops at Old Faithful Geyser and the Grand Canyon of Yellowstone. Materials at end of this month and registration for Jackson Hole. Mr. Hennessey recommended making reservations as soon as possible. Flights are cheaper now.

Mr. Hennessey reported on meetings for the next Bar year, Executive Council and legislative update.

July 23-July 26: Breakers, Palm Beach, FL

December 2 – December 6, 2020: Disney Yacht Club – Orlando, FL Executive Council and Committee meetings.

February 4 – February 7, 2021: Hammock Beach Resort, Palm Coast between Daytona and St. Augustine in a secluded area. He does not anticipate a lot of attendees.

June 2-June 5, 2021: Marco Island Executive Council and Convention.

VII. Treasurer's Report

Mr. Freedman reported that Section Treasurer Cary Wright was absent as he is getting ready for a trial.

Mr. Freedman reported that the Statement of Current Financial Conditions is at page 56 of the agenda. Mr. Freedman reported that there are significant number of expenses to be accounted for. However, he indicated that the Section is still in good financial shape.

VIII. Director of At-Large Members Report

Mr. Freedman recognized Lawrence Jay Miller.

Mr. Miller reported that ALMs seeking alternate funding for No Place Like Home project particularly looking to community foundations. They are making a statewide outreach for that funding. Please contact your lead ALMs. Mr. Miller also reported that information about jurat forms is being circulated by the ALMs.

IX. CLE Seminar Coordination Report

Mr. Freedman recognized Wilhelmina F. Kightlinger and John C. Moran.

Ms. Kightlinger reported upcoming Construction Law Institute and Construction Law Certification Review Course March 4-6, 2020 at JW Marriott, Orlando. Register now as it tends to fill up. Real Property Board Certification Review - CLE on February 4-February 6 in Orlando. Condominium and Planned Development Review Course is being presented February 21-22, 2020 at Nova Law School. Even if not sitting for exam, this is a highly recommended presentation. Ms. Kightlinger reported that the Attorney-Banker Conference February 28, 2020 at Stetson Law School, Tampa. There are 53 registrants so far. The registration fee is \$125. Ms. Kightlinger reminded Committee Chairs to request CLE credits for Committee Meetings no later than 2 months after.

Mr. Moran reported on available Probate Division CLE credits. – Probate, Trust & Guardianship and Secure Act – download. Details on CLE offerings are at p 57 of the agenda. There are a variety of topics available 24/7 on demand. Professional conflict letters and homestead.

Mr. Moran reported that the Wills, Trusts and Estates Certification Review Course will be April 17-18, 2020 in Orlando. Wills, Trust, Estates Board Certification in Orlando and Guardianship CLE April 24th in Tampa.

X. Legislation Committee

Mr. Freedman recognized S. Katherine Frazier and Jon Scuderi.

Mr. Scuderi stated no legislative call this week and asked Mr. Dunbar to provide a brief update.

Mr. Dunbar stated that Section initiatives are moving reasonably well.

Mr. Dunbar offered shout outs to Representative Driskell for her help with the probate bill and Representatives Altman and Senator Powell for their work on the curative deeds bill. Both are on Special Order calendars.

Mr. Dunbar also recognized key Chairman who have been helpful to the Section this session: Judiciary Chairs Simmons in Senate and Paul Renner in the House.

Also Mr. Dunbar acknowledged the support of Representatives Heather Fitzenhagen and Chris Sprowls in the House.

Mr. Scuderi - Update on legislative issues, including new Florida Bar Legislative Position Request Form. **p. 58** Florida Bar's new form on legislative committee page – a sample of the completed forms are also on the Committee's web page. Ms. Frazier and Mr. Scuderi offered to help everyone needing help with the forms.

XI. General Standing Division Report — *William T. Hennessey, III, General Standing Division Director and Chair-Elect*

Professionalism and Ethics – Gwynne A. Young, Chair

Mr. Hennessey introduced the Ethics Vignette.

The Ethics Vignette - The Underlying Work Conflict was presented.

Fellows - Benjamin Frank Diamond and Christopher A. Sajdera, Co-Chairs

Mr. Freedman recognized Benjamin Frank Diamond. Mr. Diamond thanked the Fellows for their work. Mr. Freedman recognized Michael Gelfand. Mr. Gelfand thanked the diversity committee and others.

- a. Proposed mission statement and scholarship selection criteria for the Fellows Program. **p. 71**

Chris Sadjera and Mr. Hennessey presented the updated mission statement and scholarship selection criteria for the Fellows at Page 71 of the agenda. This is presented as an information item only.

Judge Speiser was recognized for a seminar that was presented at Nova University as an outreach to minority bar associations in South Florida. The seminar has standing room only attendance.

Mr. Hennessey explained that the intent of the updated missions statement is to expand diversity and to identify rising stars. The mission of the RPPTL Fellows program is to recruit diverse attorneys who have demonstrated interest in practicing in the area of wills, trusts, estates, and/or real estate, and who are interested in greater involvement in the RPPTL Section and its committees, but who would not otherwise be able to participate due to financial constraints or needs. Our goal is to provide opportunities for deserving attorneys to achieve their career while at the same time fostering diversity within the section. Geographical, racially and ethnically underrepresented attorneys in wills and trust practices, specifically attorneys who have not otherwise participated due to financial limitations. Otherwise criteria is open. This resolution will be an Action Item at the next Section meeting.

Ad Hoc Remote Notarization

Mr. Hennessey recognized Burt Bruton.

- a. Report of items of interest pertaining to changes in notarization statutes. **p. 72**

Mr. Bruton stated that even if you do not use remote notarization, the notary certificate for all documents has changed. Paragraph "C – form – is at page 77 of the agenda.

The Statute requires that the jurat indicate the notary show whether in person or remote. Title companies and banks care as to other interested parties. This is a suggested form. Some court clerks are requiring use of the statutory form only. That position is wrong. The statutory form is not required.

Ad Hoc Florida Bar Leadership Academy

Mr. Hennessey recognized Kristopher E. Fernandez and Allison Archbold.

Mr. Fernandez reported that the purpose of the Leadership Academy was to identify future leaders so can be service to community and to the Bar – 2 members selected from RPPTL. Recognized past participants. First meeting in June 2020. Mr. Fernandez thanked Larry Miller and ALMS, Jeff Baskies – Action Line Articles and continued Committee Chairs and several others.

- a. Report on scholarship selection.

Mr. Freedman indicated that the Section's recommendations were pending Florida Bar approval.

Liaison with Clerks of the Court – Laird A. Lile

Mr. Freedman recognized Laird A. Lile.

Mr. Lile presented an update on matters of interest to the Section. Mr. Lile requested the Members let him know if they encounter problems with clerks regarding the new notary form.

Law School Mentoring & Programing – Lynwood F. Arnold, Jr., Chair

It was reported that the Mentor Program is active with representation in all 12 Florida law schools. 25 students planned to attend this meeting. A few could not attend. Ave Maria – Stetson, Florida, A&M, Nova, FSU all have mock interview programs. Lunch and Learns, career days, coffees, bagels/donuts for exam times. New programs for students for the for the landlord and tenant at Chili cookoff with Diversity and Inclusion. Florida Supreme Court Justices and 1st DCA Judges attended.

Membership and Inclusion- *Annabella Barboza and Brenda Ezell, Co-Chairs*

The Committee discussed a a proposed Code of Conduct for Section Members.

Dresden Brunner discussed Sr. Partner program to mentor a new member of Section for one year. Looking for volunteers to participate with an “Associate” who has expressed an interest.

Information and Technology Committee – Neil Barry Shoter, Chair

The Chair recognized Neil Barry Shoter.

Mr. Shoter reported that the committee is working behind the scenes to help committees and communications with members and provide CLE’s and to keep information flowing. Mr. Shoter reported that social media is growing in popularity particularly for “younger” members. The Committee is looking at linking an Instagram account with Facebook and Twitter. The Section’s Twitter account currently has 600 followers has doubled in a year past. Mr. Shoter reported on the Committee’s accomplishments:

Working on downloading Actionline for tablets. Interest in a job board within Section will be assisting ALMS for a newsletter and getting information to Circuits. Searchability within documents in the cite being pursued.

Section website is looking at a design refresh. No issues have been reported recently. Objective is to improve communication regarding activities, CLE and caselaw and to make historic data and White Papers accessible.

Mr. Hennessey welcomed first time attendees. He urged Committee Chairs to make first time attendees welcome at your committee meetings. We will be matching Fellows with mentors.

Three events were held: St. Petersburg: outreach (January 11).Tallahassee – Chili cookoff January 9. Fort Lauderdale: February 1. The committee will report next meeting on a proposed Code of Conduct.

Liaison With Business Law Section- *Manuel Farach and Gwynne Young*

No report.

Travis Finchum – Elder Law. CLE presentation working with incapacitated persons.

Amicus – Judge Cope: re: Hayslip – arbitration provisions in a deed continues. Judge Cope reported that it is being briefed and working through Bar channels. Request was made to approve filing. Brian Hoffman is working on it. Florida Land Title Association filed notice of interest. Judge Cope reminded us that when Section files an Amicus Brief, it does not take sides, it just helps court with the law.

XII. Probate and Trust Law Division Report — *Sarah Butters, Division Director*

Ms. Butters thanked Sponsors of the Probate and Trust Law Division.

BNY Mellon Wealth Management
Business Valuation Analysts, LLC
Coral Gables Trust
Grove Bank and Trust
Kravit Estate Appraisal
Management Planning Inc.
Northern Trust

Probate and Trust Litigation Committee

Ms. Butters recognized John Richard Caskey.

Mr. Caskey reported that there is consideration of proposed changes to Florida Statutes § 736.1008 so that the same statute of limitations for breach of trust against a trustee applies to directors, officers, and employees acting for the trustee. This is an information item. The statute is unclear whether employees of a corporate trustee are also protected. The plain language is applicable only to the Trustee. Subcommittee report indicates that there is no justification to limit to Trustee. – see P. 80 of agenda.

Ad Hoc Guardianship Law Revision Committee - Nicklaus J. Curley and Sancha Brennan Whynot, Co-Chairs

Ms. Brennan reported on the new proposed Guardianship Code. **p. 89**. There has not been a major re-write of the Guardianship Code in 31 years. The 1989 draft

was the last rewrite of the 1945 original code. Since 2013, there have been legislative changes every year. The Committee is working on a White Paper which will be circulated in advance of the next meeting.

XIII. Real Property Law Division Report

Mr. Freedman recognized Robert S. Swaine, Division Director.

Mr. Swaine recognized the Real Property Division committee sponsors:

Sponsors:

AmTrust Financial Services
Attorneys Title Fund Services, LLC
Attorneys' Real Estate Councils of Florida, Inc.
First American Title
Hopping Greens & Sams

Real Property Finance and Lending Committee

Mr. Swaine recognized Kip Thornton.

Opinion Customary Practice in Florida. **pp. 132**

Mr. Thornton reported that the Section had worked with Business Law Section since 2012. In 2013 statutory amendments and issues regarding customs and practices were changing. The proposed amendments were adopted by Business Law Section. The Real Property Division approved these amendments in Miami.

Mr. Swaine reported no additional comments.

This is a Committee motion to approve First Supplement to the Report on Third Party Legal. Committee motion, no second needed.
Approved unanimously.

Residential Real Estate and Industry Liaison – Nicole M. Villarroel and Salome J. Zikakis, Co-Chairs

Ms. Zikakis is presented the Committee motion to approve rider to FR/Bar contract that includes the statutorily required notice that must be included in a contract for the sale of real property that has a PACE assessment. **pp. 186**

She further reported that the Board of Realtors already approved.

Mr. Swaine indicated no second was required.

Motion was passes unanimously.

Mr. Freedman announced that the Long-Range Planning Committee will meet at 12

Noon.

Mr. Freedman asked for a motion to adjourn. Several motions to adjourn and seconds were voiced. The meeting adjourned at 11:50 A.M.

Respectfully submitted.

Steven H. Mezer, Secretary



Thank you to Our General Sponsors

Event Name	Sponsor	Contact Name	Email
App Sponsor	WFG National Title Insurance Co.	Joseph J. Tschida	jtschida@wfgnationaltitle.com
Thursday Grab and Go Lunch	Management Planning, Inc.	Roy Meyers	rmeyers@mpival.com
Thursday Night Reception	JP Morgan	Carlos Batlle	carlos.a.batlle@jpmorgan.com
Thursday Night Reception	Old Republic Title	Jim Russick	jrussick@oldrepublictitle.com
Friday Reception	Wells Fargo Private Bank	Johnathan Butler	johnathan.l.butler@wellsfargo.com
Friday Reception	Westcor Land Title Insurance Company	Sabine Seidel	sseidel@wltic.com
Friday Night Dinner	First American Title Insurance Company	Alan McCall	Amccall@firstam.com
Spouse Breakfast	Attorneys Title Fund Services, LLC	Melissa Murphy	mmurphy@thefund.com
Real Property Roundtable	Fidelity National Title Group	Karla Staker	Karla.Staker@fnf.com
Probate Roundtable	Stout Risius Ross Inc.	Kym Kerin	kkerin@srr.com
Probate Roundtable	Guardian Trust	Ashley Gonnelli	ashley@guardiantrusts.org
Executive Council Meeting Sponsor	The Florida Bar Foundation	Michelle Fonseca	mfonseca@flabarfdn.org
Executive Council Meeting Sponsor	Stewart Title	David Shanks	laura.licastro@stewart.com
Friday Night Dinner	Phillips	Sebastian Clark; Jennifer Jones	jjones@phillips.com ; Sebastian@ragoarts.com
Overall Sponsor/Leg. Update	Attorneys Title Fund Services, LLC	Melissa Murphy	mmurphy@thefund.com
Overall Sponsor/Leg. Update	Attorneys Title Fund Services, LLC	Melissa Murphy	mmurphy@thefund.com



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Cumberland Trust	Eleanor Claiborne	eclaiborne@cumberlandtrust.com
EasySoft	Paula Portner	paula.portner@easysoft-usa.com
Fiduciary Trust International of the South	Vaughn Yeager	vaughn.yeager@ftci.com
Heritage Investment	Joe Gitto	jgitto@heritageinvestment.com
North American Title Insurance Company	Jessica Hew	jhew@natic.com
Practice 42	Aubrey J. Ehrhardt	aubrey@practice42.com
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Wilmington Trust	David Fritz	dfritz@wilmingtontrust.com



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First American Title	Wayne Sobian	wsobien@firstam.com	Real Estate Structures and Taxation
Hopping Green & Sams	Vinette D. Godelia	vinetteg@hgslaw.com	Development and Land Use
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BNY Mellon Wealth Management	Joan Crain	joan.crain@bnymellon.com	IRA, Insurance and Employee Benefits
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Management Planning Inc.	Roy Meyers	rmeyers@mpival.com	Estate and Trust Tax Planning
Northern Trust	Tami Conetta	tfc1@ntrs.com	Trust Law



RPPTL Virtual Annual Convention Meeting Schedule

Tuesday, May 26, 2020		
Condominium and Planned Development Review Course	RP	8:00 am - 9:30 am
Ad Hoc Committee on Electronic Wills	PT	8:00 am - 9:30 am
Ad Hoc Guardianship Law Revision Committee	PT	8:00 am - 9:30 am
Principal and Income	PT	8:00 am - 9:30 am
Fellows	GS	10:00 am - 11:30 am
Construction Law Institute	RP	12:00 pm - 1:30 pm
Ad Hoc ART Committee	PT	12:00 pm - 1:30 pm
Sponsorship	GS	12:00 pm - 1:30 pm
Development and Land Use	RP	12:00 pm - 1:30 pm
IRA, Insurance & Employee Benefits	PT	12:00 pm - 1:30 pm
Title Issues and Standards	RP	2:00 pm - 3:30 pm
Professionalism & Ethics	GS	2:00 pm - 3:30 pm
Attorney Banker Conference	RP	4:00 pm - 5:30 pm
Insurance and Surety	RP	4:00 pm - 5:30 pm
Probate Law & Procedure	PT	4:00 pm - 5:30 pm
Wednesday, May 27, 2020		
Commercial Real Estate	RP	8:00 am - 9:30 am
Ad Hoc Study Committee on Professional Fiduciary Licensing	PT	8:00 am - 9:30 am
Asset Protection	PT	8:00 am - 9:30 am
Attorney/Trust Officer Liaison Conference	PT	8:00 am - 9:30 am
Member Communication & Information Technology	GS	10 am - 11:30 am
Real Estate Leasing	RP	12:00 pm - 1:30 pm
Guardianship, Power of Attorney & Advance Directives	PT	12:00 pm - 1:30 pm
Membership and Inclusion	GS	2:00 pm - 3:30 pm
Real Property Problems Study	RP	4:00 pm - 5:30 pm
Probate and Trust Litigation	PT	4:00 pm - 5:30 pm
Thursday, May 28, 2020		
Real Property Finance and Lending	RP	8:00 am - 9:30 am
Elective Share Review Committee	PT	8:00 am - 9:30 am
Law School Programming and Mentoring	GS	10 am - 11:30 am
Residential Real Estate and Industry Liaison	RP	10 am - 11:30 am
Condominium and Planned Development	RP	12:00 pm - 1:30 pm
Trust Law	PT	12:00 pm - 1:30 pm
Real Property Litigation	RP	4:00 pm - 5:30 pm
Estate & Trust Tax Planning	PT	4:00 pm - 5:30 pm
Ad Hoc Study Committee on Jurisdiction and Due Process	PT	5:00 pm - 6:30 pm
ALMS Happy Hour		5:00 pm - 6:30 pm
Friday, May 29, 2020		
Disaster & Emergency Preparedness	GS	8:00 am - 9:30 am
Title Insurance and Title Industry Liaison	RP	8:00 am - 9:30 am
Homestead Issues	GS	10 am - 11:30 am

**Real Property, Probate and Trust Law Section
of The Florida Bar
Summary of Interim Action of Executive Committee**

On March 12, 2020, the Executive Committee convened telephonically to evaluate the out-of-state meeting in Amsterdam, given the travel ban imposed by the President, the likelihood of a declaration of a state of emergency, and related concerns regarding the coronavirus. After discussion, a motion was made to cancel the out-of-state trip indicating that the facts recited by Mr. Freedman had effectively canceled the trip as it had been rendered impossible by those unforeseen events and circumstances which are beyond the control of the parties. The motion also authorized Mr. Freedman to provide notice of cancelation to both the hotel, Okura, and to the tour operator, Ovation, citing force majeure and to make all reasonable efforts to pursue a refund of funds paid and any and all other avenues of recovery. The motion was unanimously approved. At that meeting, the Executive Committee considered the impact of the coronavirus on the Section's CLE courses. A motion was made to cancel the Trust & Estates Symposium scheduled for March 13, 2020 in Fort Lauderdale to be reset at a later date. The motion was approved by a vote of 10 to 2. Ms. Obos volunteered to handle all issues relating to the facility and the videographer.

On April 1, 2020, the Executive Committee convened telephonically to consider the Section's response to the COVID-19 crisis. After discussion, a motion was made and seconded to approve a statement to be posted and circulated in response to inquiries as to the Section's position and options during the COVID-19 crisis. It was reported that Ms. Butters and Mr. Hennessey had been in contact with professors from the University of Florida as well as other law school professors nationally regarding Florida's requirement of in-person witnesses for the execution of wills. The Executive Committee also considered the impact of witnesses required for certain real property transactions. After discussion, the motion to approve a statement to be posted and circulated in response to inquiries as to the Section's position and options during the COVID-19 crisis was passed unanimously. Mr. Swaine inquired as to whether there was any support for a letter to the Governor regarding this issue. He polled the persons on the call and none were in favor.

By: Steven H. Mezer, Secretary

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**REAL PROPERTY,
 PROBATE &
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 SECTION**



**THE
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April 21, 2020

Ms. Amy S. Farior
 Chair, Rules Committee
 of the Board of Governors
 Buell & Elligett, P.A.
 303 W. Azeele Street, Suite 100
 Tampa, Florida 33609

Via Email to:
etarbert@floridabar.org

Re: Revised Proposal - Advanced Florida Registered Paralegals

Dear Ms. Farior:

This correspondence is provided in response to the April 14, 2020, email received from Elizabeth Tarbert, Ethics Counsel to The Florida Bar. Ms. Tarbert's email was sent on behalf of the Rules Committee, and included an amended proposed rule for Advanced Florida Registered Paralegals ("AFRPs") as well as an explanatory letter dated April 13, 2020, which was addressed to you by Mr. Gordon Glover on behalf of the Florida Commission on Access to Civil Justice. On behalf of the Real Property, Probate and Trust Law Section ("RPPTL Section") of The Florida Bar and its approximately 11,000 members, we would like to address several points raised in the amended proposed rule and Mr. Glover's letter.

The RPPTL Section, like the other stakeholders, believes in fair, equal and increased access to justice, including measures that will increase the ability of the public to gain access to legal services. The RPPTL Section echoes the sentiment by many that the public should have better access to more affordable legal services. However, at the same time, the RPPTL Section believes that this policy should be balanced with the need to protect the public and the operations of our courts. The RPPTL Section believes that any proposed rule change should meet the needs of the public and protect them from harm.

The RPPTL Section's concerns with the amended proposed rule include the following:

1. The amended proposed rule continues to include guardianship law as an “authorized area of law.” As the RPPTL Section noted in our letter dated September 30, 2019, Fla. Prob. R. 5.030 requires guardians to have counsel, and for good reason, given the complexity of this practice area and the life and death consequences associated with it. Moreover, while Rule 5.030 does not require counsel for the initial pleadings and litigation prior to the appointment of a guardian, any litigation concerning someone’s mental health and civil rights sets in motion a series of events that are intrusive, implicate due process and other constitutional rights, and should require counsel. Accordingly, whether the issue concerns guardianship litigation (which should be conducted by counsel) or guardianship administration (counsel is required pursuant to Rule 5.030 based on good public policy reasons), this is not an area that is appropriate for AFRPs to provide legal advice. The RPPTL Section failed to see any substantive comments on this issue other than a blanket rejection of the RPPTL Section’s recommendation in this regard.

2. Similarly, the amended proposed rule continues to include the ambiguous word “wills” as an “authorized area of law.” As noted by the RPPTL Section in our September 30, 2019 correspondence (a copy of which is attached for your convenience), the failure to specify what is included in “wills” is problematic for several reasons, including confusion regarding whether “wills” includes probate administration. As with guardianship administration, Fla. Prob. R. 5.030 generally requires personal representatives to be represented by counsel for similar reasons. If the RPPTL Section’s firm recommendation to exclude “wills” from the proposed rule is rejected, it is suggested that “wills” be narrowly defined to exclude probate administration (perhaps “wills” should be “wills drafting”).

3. The position expressed in Mr. Glover’s letter glosses over the issues raised by the RPPTL Section in points 1 and 2 above, and instead asserts that the RPPTL Section’s concern is that “wealthy clients or clients with complex matters will use an AFRP instead of a lawyer.” This statement does not accurately reflect the RPPTL Section’s stated positions and concerns and ignores the RPPTL Section’s expertise and experience in these areas of law. Whether a client is wealthy or otherwise, any client should use an attorney with expertise in the given area if the matter is complex or of significance. Drafting a will is a significant matter. Again, the RPPTL Section’s recommendation concerning will drafting is that it be excluded from being considered an “authorized area of law.” The complexity with drafting a will, even what some may refer to as a “simple” will, does not lie in the actual drafting or the use of a one-page form. The complexity lies in the rendering of legal advice, including exercising judgment based upon knowledge and experience, regarding what language to use or what alternatives may exist and understanding the unique legal circumstances of the client and intended beneficiaries. The implications of those actions, including the efficacy of those provisions for the beneficiaries or the tax consequences and the application of homestead law, could have a devastating effect on the testator and his or her family members. Moreover, some of those consequences may not be known for years or even decades after a document is executed. Also, the drafting of trusts should be totally

excluded from the definition of “wills” (which, as noted previously, remains undefined) because of the complexity of those instruments. This again highlights why “wills” as an “authorized area of law” requires a better, more narrowly defined definition. The bottom line is that the RPPTL Section firmly believes that the proposed rule must be safe and effective for the public, and the RPPTL Section has significant concerns that the public will be at risk under the amended proposed rule.

4. The RPPTL Section continues to have concerns that AFRPs are providing legal advice to clients in the areas of debt collection and landlord-tenant disputes which involve litigation that implicate substantive rights, including the possibility of fee shifting against *pro se* individuals. These concerns are exacerbated by the limited education and training required to be an AFRP and the rejection of the requirement for a lawyer to both employ **and** supervise the AFRP.¹ This simple change would ensure that there is a lawyer directly overseeing the AFRP’s work (with legal liability) in order to protect the public.

5. The RPPTL Section respectfully disagrees with the position that the Florida Supreme Court should allow the proposed rule to be promulgated, allow the system to be abused or for harm to befall the public, and then react after the fact. Instead, the RPPTL Section suggests providing safeguards for the public now, and if the system can be optimized later based upon experience, amendments to the rule should be made at that time. To do otherwise would be accepting harm to the public, some of which will be irreparable, and then requiring resources from The Florida Bar and the courts to rectify any harm. Fixing a problem often requires more resources and labor than doing it properly in the first instance (which also lessens the likelihood of harm to the public). While it may have taken ten years to implement Washington’s system (as reflected in the September 30, 2019 correspondence), the fact that Florida would not have to “reinvent the wheel” would allow Florida’s program to begin sooner than Washington’s and this also safeguards Florida from trying to take a shortcut to the detriment of the public. In other words, the RPPTL Section suggests doing it the right way – not the fast way.

6. The RPPTL Section continues to believe that the lack of specificity in the proposed rule will lead to abuse, diminished benefits to the public, lack of confidence in the justice system, future problems that The Florida Bar and the courts will have to resolve, and various unintended consequences which may be harmful to the public as a whole. This current proposed rule may be inferior to increasing funding to legal aid organizations where low-income individuals are given assistance by members of The Florida Bar. Furthermore, the problem has other less-extreme solutions which could be

¹ Much was said in letter sent by Mr. Glover concerning an attorney who may not be the “employing” attorney having supervisory control over an AFRP, necessitating the use of the word “or” in the proposal. However, such response misses or ignores the reality that should the word “or” be utilized in the proposal, an ARFP which is “employed” by an attorney *need not be supervised by an attorney, a very serious public policy concern.*

implemented. Similar to law students (who have 1-2 years of education and training as opposed to the proposed educational requirements in the amended proposed rule), a proposal could include waivers for AFRPs to provide legal services, under the supervision of a licensed attorney directly to legal aid organizations, public defenders, or other non-profit groups, each of which serve the under-served public.

7. While the RPPTL Section respectfully disagrees with the position of the Florida Registered Paralegal Enrichment Committee, the RPPTL Section does agree that AFRPs should be “certified” in the areas in which they are allowed to provide legal advice.

While this letter addresses several points raised in the amended proposed rule and the letter sent by Mr. Glover, the RPPTL Section remains committed to its earlier position as reflected in our September 30, 2019 letter and opposes the proposal as currently drafted. Many of the issues and concerns from the RPPTL Section’s previous letter reflect real life situations and not just hypotheticals.

In closing, thank you for giving the RPPTL Section an opportunity to weigh in on this very important issue. The RPPTL Section stands ready to assist, if given the opportunity, in the process of creating rules for AFRPs that protect the public and the operations of our courts.

Sincerely,



Robert S. Freedman
Chair, Real Property, Probate and
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**REAL PROPERTY,
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September 30, 2019

Lori S. Holcomb
 Division Director, Ethics and Consumer Protection
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 651 East Jefferson Street
 Tallahassee, Florida 32399-2300

Re: *Proposal to Expand the Florida Registered Paralegal Program (Chapter 20, Rules Regulating The Florida Bar)*

Dear Ms. Holcomb:

The Florida Commission on Access to Civil Justice (“FCACJ”) has requested input from The Florida Bar’s Board of Governors regarding its proposal to expand the Florida Registered Paralegal Program (Chapter 20, Rules Regulating The Florida Bar), by amending the rules (the “Proposal”). The Board of Governors has in turn requested input from the Real Property, Probate and Trust Law Section of The Florida Bar (“RPPTL Section”), and this correspondence is sent in response to your email soliciting such input.

The RPPTL Section.

As an introduction, the RPPTL Section historically has been, and continues to be, the largest substantive law section of The Florida Bar. The RPPTL Section assists, represents, and involves well over 10,000+ members practicing in the areas of real estate, construction, probate, trust and estate law. RPPTL Section members’ dedication to serving the public in these fields of practice is reflected in just a few of their continuing efforts, including producing educational materials and seminars for attorneys and the public, assisting the public pro bono, drafting proposed legislation, rules of procedure and regulation, and, upon request, providing advice to the judicial, legislative and executive branches on issues related to our fields of practice.

Current Situation.

Currently, there are rules that create and regulate registered paralegals in Chapter 20, Rules Regulating The Florida Bar. The proposed amendments would allow a paralegal, registered as an Advanced Florida Registered Paralegal (“AFRP”), to provide limited legal services to limited representation clients in matters involving family law, landlord tenant law, guardianship law, wills, advance directives or

debt collection defense. In assisting these clients, the AFRP may help the limited representation client fill out forms, provide general information, and assist the clients in navigating the court system. The Proposal appears to allow AFRPs to provide legal services/advice without lawyer supervision of the work product, which is a major change from the current situation. See Rule 4-5.3(c) of the Rules Regulating The Florida Bar. While many lawyers currently employ paralegals, they have a duty to supervise the work of the paralegals. Under the current Proposal, the “work product” of a Florida Registered Paralegal (“FRP”) would continue to be supervised by a lawyer (see Rule 20-2.1(l)(1) of the Proposal), but not for AFRPs.

In addition, many lawyers currently use paralegals to perform client intake without the lawyer’s presence. This is permissible when (1) the paralegal identifies that he/she is not a lawyer, (2) it is limited to fact gathering, and (3) no legal advice is given. See Ethics Opinion 88-6. The attorney then makes the decision to either accept or reject a case, provides the opinion as to what documents are required, and provides the required legal services. The Proposal, as currently drafted, appears to allow the AFRP to listen to a potential client’s legal issue, recommend a form, and prepare the form, all without lawyer review of the work product. The Proposal would also allow the AFRP to prepare “other documents” in addition to the form in question. See Rule 20-6.3(a)(a) of the Proposal. This may result in the execution of forms which do not properly address an individual’s legal needs, resulting in additional time and legal costs to correct the errors.

Opposition to Proposal: Discussion and Analysis.

The RPPTL Section commends the laudable efforts of the FCACJ to provide the poor and underserved persons greater access to quality legal services. It is well known that the cost of legal services can be prohibitive, and the interests of justice and the citizens of Florida are better served by more people having access to quality legal services that they can afford.

However, the RPPTL Section’s Executive Committee, taking interim action in accordance with the RPPTL’S Section Bylaws because consideration of the Proposed Probate Rules by the overall RPPTL Section Executive Council was not possible under the time frame required for a response, unanimously approved a RPPTL Section Position on September 27, 2019, **in opposition** to the Proposal. We provide the following comments and discussion for the FCACJ’s consideration.

These concerns, and the basis for the RPPTL Section’s opposition to the current Proposal, are that the Proposal (a) conflicts with existing unlicensed practice of law (“UPL”) and ethics decisions (and the solid public policy reasoning for such decisions), (ii) fails to provide quality control for the legal services being provided, (iii) fails to detail the requisite specificity for a successful program, and (iv) is subject to abuse, fraud, and other potential unforeseen consequences. For the foregoing reasons, the Proposal, as drafted, does not accomplish the goal of access to justice nor does it fix the current problems facing the public. In fact, the Proposal, as currently drafted, potentially creates a host of new problems (which are addressed below).

a. Conflict with Existing Law - Unlicensed Practice of Law.

The Proposal appears to be contrary to Florida Supreme Court decisions, Florida Bar ethics opinions, the Rules Regulating The Florida Bar, and the well-reasoned arguments supporting those decisions and rules. In *The Florida Bar v. Sperry*, 140 So.2d 587, 595 (Fla. 1962), and *The Florida Bar v. Town*, 174 So.2d 385 (Fla. 1965), the Florida Supreme Court announced that if important legal rights of a person are affected by the giving of advice or by the performance of services, including the preparation of legal instruments by which legal rights are

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obtained, secured, or given away, then such act constitutes the practice of law. Clearly, providing assistance in the completion of forms, even the most basic of forms, affects the legal rights of persons and could constitute UPL.

Rule 10-2.1(a) of the Rules Regulating The Florida Bar provides that, “[i]n assisting in the completion of the form, oral communication by nonlawyers is restricted to those communications reasonably necessary to elicit factual information to complete the blanks on the form and inform the self-represented person how to file the form. The nonlawyer may not give legal advice or give advice on remedies or courses of action.” Aside from the ministerial act of taking written instructions (from the client or a Florida attorney) and filling in blanks, any further action taken by a person on behalf of another would constitute UPL.

In *The Florida Bar v. Keehley*, 190 So.2d 173 (Fla. 1966), which dealt with matters relating to the preparation of corporate charters and other related documents, the Florida Supreme Court approved and adopted the conclusions of the circuit court judge acting as a referee which held that neither the absence of compensation, the close personal relationship between the party preparing the documents and those for whom they were prepared, nor the interest of the respondent in the transaction, either present or prospective, served to legalize his actions in formation of the corporations. See also, Advisory Legal Opinion – AGO 75-129, May 5, 1975. The Florida Supreme Court stated in *Keehley*:

"It is equally inimical, dangerous and contrary to the welfare of the public to permit untrained and unqualified persons, who have not been admitted to The Florida Bar, to perform such services for individuals who desire to incorporate and to operate as corporations under the Florida law, whether a fee is charged, whether the parties are closely related, or whether the untrained persons is one of the interested parties." *Keehley*, 190 So.2d at 175.

The Proposal appears to separate AFRPs from FRPs by allowing AFRPs to provide legal services or prepare documents which are not reviewed by an attorney. Cf. Rule 20-2.1(l)(1) of the Proposal relating to FRPs. If this is the case, this would be in conflict with Rule 4-5.3(c), which states, “the lawyer **must review** and be responsible for the work product of the paralegals or legal assistants.” (Emphasis added.)

b. Harm to the Public.¹

The limited training required under the Proposal does not fully address the concerns regarding protection of the public. Perhaps a significant amount of training and licensing requirement may provide for better protection of the public than what is in the current Proposal (something akin to being licensed members of the Bar but less stringent). The Florida Supreme Court has stated:

". . . the unauthorized practice of law by those not qualified and admitted actually creates work for the legal profession because of the errors and mistakes of those who for others illegally perform legal work they are not competent to perform. In this, the members of the legal profession gain, but the unfortunate

¹ “[T]he single most important concern in the Court’s defining and regulating the practice of law is the protection of the public from incompetent, unethical, or irresponsible representation.” *The Florida Bar v. Moses*, 380 So.2d 412, 417 (Fla. 1980).

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members of the public who were ill-advised lose, in some instances, quite badly." *Sperry*, 140 So.2d at 595.

Any lawyer who has been hired as successor counsel after prior counsel has made mistakes understands the difficulty and expense of redressing any prior mistakes. Additionally, while some mistakes can be fixed at a minimum cost, others can be very costly to remedy. Even worse, some mistakes simply cannot be repaired and a client who may have a winning case is left losing their case and paying attorney's fees (and possibly the other side's attorney's fees).

The Proposal appears to allow an AFRP to provide services if they are supervised **or** employed by a lawyer. The RPPTL Section believes that any AFRP allowed to provide services must be employed **and** supervised by a lawyer. The failure to require employment with a lawyer and supervision by that lawyer would appear to allow loosely associated individuals to thwart the intent of the Proposal and to otherwise harm the public. Moreover, it provides the "stamp of approval" of The Florida Bar over individuals practicing under the auspices of the AFRP program, when in fact such individuals may be practicing with little or no oversight from The Florida Bar and a licensed attorney. What if an attorney is licensed in Florida but actually practices in another jurisdiction, does not have an office in Florida, but associates with local paralegals? Is this a scenario that is acceptable? The RPPTL Section believes there should be added safeguards, and perhaps requiring the lawyer to be located in Florida (or at least for a percentage of the time) if she/he uses AFRPs may address this concern.

In addition, the Proposal allows the AFRP to prepare "other documents" related to the forms as well without truly defining "other documents." (See Rule 20-6.3(a)(1) of the Proposal.) If a guardianship owes taxes, should the AFRP be allowed to provide tax advice since it relates to the guardianship? There should be limitations on what "other documents" includes.

It is not on account of protectionism for the practice of law, but protection for the general public, that the Proposal, as currently drafted, should be rejected. As stated by the Florida Supreme Court, "[i]t is the effort to reduce this loss by members of the public that primarily justifies the control of admissions to the practice of law, discipline of those who are admitted, and the prohibition of the practice to those who have not proved their qualifications and been admitted." *Sperry*, 140 So.2d at 595. Under the Proposal, AFRPs are not subject to the same ethical rules and standards of care as a member of The Florida Bar. These Rules and standards of care of our profession exist for the protection of the public, and any person providing legal services must adhere to the same. The inability to control the quality of the legal services provided by an AFRP harms the public and fails to provide the requisite protection incumbent to move forward with the Proposal.

c. Practice Areas.

The breadth of the practice areas encompassed by the Proposal, together with the lack of definitions or specificity of what services may be provided within such practice areas, is problematic. While the Proposal may work for some, limited practice areas in limited scope assignments, the Proposal does not contain the requisite specificity to guide the AFRP program. For example, what is meant by "wills"?² Does it include a 100 page "form" will that has been developed by a practitioner over years of experience? Does this include estate planning and probate administration? If it is contemplated that drafting of "simple wills" be allowed, one gets into the slippery slope of what is a "simple" will. Also, it is doubtful that an AFRP has the legal

² The Florida Supreme Court has held that a nonlawyer cannot draft a will for a third party. *The Florida Bar v. Larkin*, 298 So.2d 371 (Fla. 1974).

ability to advise a client regarding proper alternatives to a “simple will,” including using other estate planning tools and techniques, such as lady bird deeds, trust agreements, jointly held assets, and the legal implications of choosing those alternatives, including tax consequences and asset protection.

In probate and guardianship administrations, lawyers are generally required to be involved pursuant to Fla. Prob. R. 5.030(a). This is because probate and guardianships are extremely detailed-oriented practice areas fraught with deadlines and other nuances which present traps for the unwary. Guardianship cases are by their very nature adversarial because the petitioner is seeking to declare someone incapacitated and to remove their civil rights (which is why counsel is appointed for the alleged incapacitated person when a case is initiated pursuant to § 744.331(2), Fla. Stat.) Accordingly, an AFRP should not be allowed to provide legal advice in guardianships and probate cases.

Ethics opinions, such as Ethics Opinion 89-5, demonstrate the specificity necessary for a nonlawyer to engage in a quasi-legal practice. Ethics Opinion 89-5 details five requirements for a nonlawyer in a law firm to conduct a real estate closing, including the requirement that the client understands the closing documents in advance of the closing, the lawyer be available for consultation during closing, and the nonlawyer will not give legal advice at the closing or make impromptu decisions that should be made by the supervising lawyer. Whether a real estate closing, contract, or “simple” will, a nonlawyer will not be able to comply with similar requirements without attorney involvement.

Landlord-tenant law and debt collection often involve litigation. Moreover, without the requisite specificity, each suffer from the same deficiencies enumerated above. The FAR/BAR residential form lease may be one thing (although such lease still has numerous instances of negotiated issues that impact legal rights), but a twenty-five page lease developed by a lawyer, which contains numerous legal waivers and requirements, could be something completely different. Debt collection involves extensive knowledge of Federal and State debt collections law, Florida exemptions, and tenancy by the entirety laws, and traverses bankruptcy protections and the numerous exceptions across each area of the law. Debt collection is not “form” driven.

Notwithstanding the above, with the proper protections, an AFRP may be able to aid clients with filling out certain forms which have been approved by the Florida Supreme Court or by statute, such as forms commonly used in family law or advanced directives, provided that specificity and protections, such as was set forth in Ethics Opinion 89-5, are put in place. Other areas of practice which are not enumerated in the Proposal, but which may also lend themselves to an AFRP’s involvement, may include Baker Act and Marchman Act proceedings. Even so, when a limited representation client asks, “what’s the difference between Option A and Option B?”, a licensed attorney should be available to explain such important legal rights.

Whether a “simple” form or a more complex guardianship or debt collection proceeding, it is clear that lawyer oversight is necessary. Such oversight will necessarily bear a cost, negating or substantially reducing any cost savings intended by the Proposal and reveals the Proposal to not be materially different than what is presently available to lawyers, paralegals, and the public through the Florida Registered Paralegal Program.

d. _____ Concerns Regarding Fraud.

The Proposal opens the door, and may perhaps legitimize, certain unscrupulous activities. One potential unintended consequence of the Proposal would be to allow paralegal mills, conceivably employing scores of AFRPs, headed by one lawyer, with very little, if any, supervision. What if a financial planner obtains the necessary requirements to be an AFRP

under the Proposal and loosely teams up with a non-estate planning lawyer to then provide an estate planning mill closely tied to the financial planner's investment advice business? There are also concerns regarding UPL with disbarred lawyers or out-of-state lawyers practicing law in Florida through an AFRP loophole.

e. Other Issues Identified.

The unintended consequences of the Proposal should be studied. In addition to the aforementioned issues, the RPPTL Section also identified several other issues and potential unintended consequences of the Proposal as currently drafted. While the target audience of the Proposal is the "underserved" and indigent persons in Florida, AFRPs could be utilized to target other groups, such as the elderly, wealthy, or the public as a whole, through broad marketing campaigns aimed at getting large quantities of clients in the door to provide "one size fits all" legal products, or worse, a "bait and switch" tactic of drastically increasing the cost of services provided after the initial meeting or detracting from presently available sources for quality low or no cost competent legal representation. Without any restriction on services to be provided by the AFRP or fees to be charged, the Proposal could be subject to abuse of citizens outside its target, potentially resulting in an AFRP being tasked with providing legal advice or drafting estate plans for extremely wealthy individuals with major tax consequences. Legal aid organizations have income limits to ensure that the target audience receives their services. The Proposal lacks such limit or any other mechanism to ensure the target audience is served which could result in the target audience, again, being ignored and priced out of the services to be provided.

Cottage industries within practice areas could spring forth from the Proposal. For instance, in corporate legal practice, the Proposal could be utilized for the completion of corporate documents, charters, or articles of incorporation. Such would violate existing law. *The Florida Bar v. Fuentes*, 190 So.2d 748 (Fla. 1966); *Keehley*, 190 So. 2d at 173.

The public may not truly appreciate that the services are being provided by a person who is not authorized to practice law in the state of Florida. Detailed written disclosures and informed consent could alleviate some of these concerns but are absent from the Proposal.

f. State of Washington Limited License Legal Technician (LLLT).

There has been some discussion that the Proposal is based on Washington State's concept of a Limited License Legal Technician ("LLLT").³ However, the requirements for LLLTs appear to be much more in-depth than what is required of AFRPs and the Washington program only has a handful of participants. Some of the requirements of an LLLT include:

1. Education

- o Associate Degree or higher in any subject
- o LLLT Core Curriculum: 45 credits of legal studies courses that must be taken at a school with an ABA-approved or LLLT Board-approved paralegal program or at an ABA-approved law school and that must include the following subjects
 - o Civil Procedure, minimum 8 credits

³ The Washington Lawyer (publication of the District of Columbia Bar), suggests that the program may work in Washington State based on the specific needs of that jurisdiction, but are not appropriate everywhere, including in their own jurisdiction. John Murph, *The Justice Gap & the Rise of Nonlawyer Legal Providers*, Wash. Law., Sept. 2019, at 18-23. A copy of the Article is enclosed with this submission.

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- o Contracts, minimum 3 credits
- o Interviewing and Investigation Techniques, minimum 3 credits
- o Introduction to Law and Legal Process, minimum 3 credits
- o Law Office Procedures and Technology, minimum 3 credits
- o Legal Research, Writing, and Analysis, minimum 8 credits
- o Professional Responsibility, minimum 3 credits
- o 5 credit hours in basic domestic relations subjects
- o 10 credit hours in advanced and Washington-specific domestic

relations subjects.

2. Examinations Requirement: 3 examinations

- o Paralegal Core Competency Exam (PCCE)
- o LLLT Practice Area Examination: Tests knowledge of a specific practice area. Currently, the approved practice area is family law.
- o LLLT Professional Responsibility Examination: Tests knowledge of LLLT ethics.

3. Experience Requirement

- o 3,000 hours of substantive law-related work experience as a paralegal or legal assistant supervised by a lawyer prior to licensing.
- o Experience must be acquired no more than three years prior to, or 40 months after, passing the LLLT practice area exam.

The Proposal only requires 3 hours of course credit to sit for national examination. Under the Proposal, an AFRP could take a 3-hour course in contracts and then seek to provide services in family law. How does this benefit the public if the AFRP does not know family law and its nuances? The Proposal only requires a national examination. If an attorney is required to take the Bar Exam which includes Florida-specific law, why should an AFRP not also be subject to an examination on Florida specific law?

Conclusion.

The RPPTL Section supports the push to increase access of the public to justice, but opposes the Proposal in its current form. However, any efforts to increase access should have as its priority Florida's unwavering public policy of protecting its citizens from the unlicensed practice of law, incompetent legal services, and fraud. Regarding the Proposal, the RPPTL Section recommends:

- Eliminating wills, guardianships, landlord tenant and debt collection from the practice areas;
- Studying allowing AFRP to participate in Baker Act and Marchman Act proceedings and/or the completion of Florida Supreme Court-approved forms;
- Strictly defining exactly what services and forms (and limiting each) which can be utilized by the AFRP within any areas of practice allowed (such as family law);
- Providing a better definition (with proper limits) on what "other documents" mean in Rule 20-6.3(a)(1);

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- Increasing the educational/licensing requirement to be an AFRP;
- Requiring an AFRP to be both employed by **and** supervised by a lawyer and perhaps require the lawyer to work or have an office in Florida;
- Adding additional safeguards to prevent fraud, such as paralegal mills with lack of supervision;
- Expanding legal aid or re-routing resources into the existing Florida Bar's Lawyer Referral Source program, or other available no/low cost legal alternatives should be considered in the alternative to the Proposal. There are presently programs and service providers which provide access to justice for underserved and indigent persons, *under the supervision or directly by a licensed attorney*. Increasing funding to such organizations or providing a mechanism for underserved persons to pay a portion of the cost of legal services commensurate to their income level could serve *and* protect the target audience; and
- Providing better public access to legal references, such as legal educational materials, forms, and other tools – even posting such tools online in a centralized location. Computer access at each public library or Clerk of Court could be provided (with no other internet service) to allow persons to research public records, Florida Supreme Court-approved forms, and potential tutorials produced by The Florida Bar on how to complete of the forms.

If revisions to the Proposal are made in this regard, the RPPTL Section would be able to consider providing its support.

Thank you in advance for your courtesies.

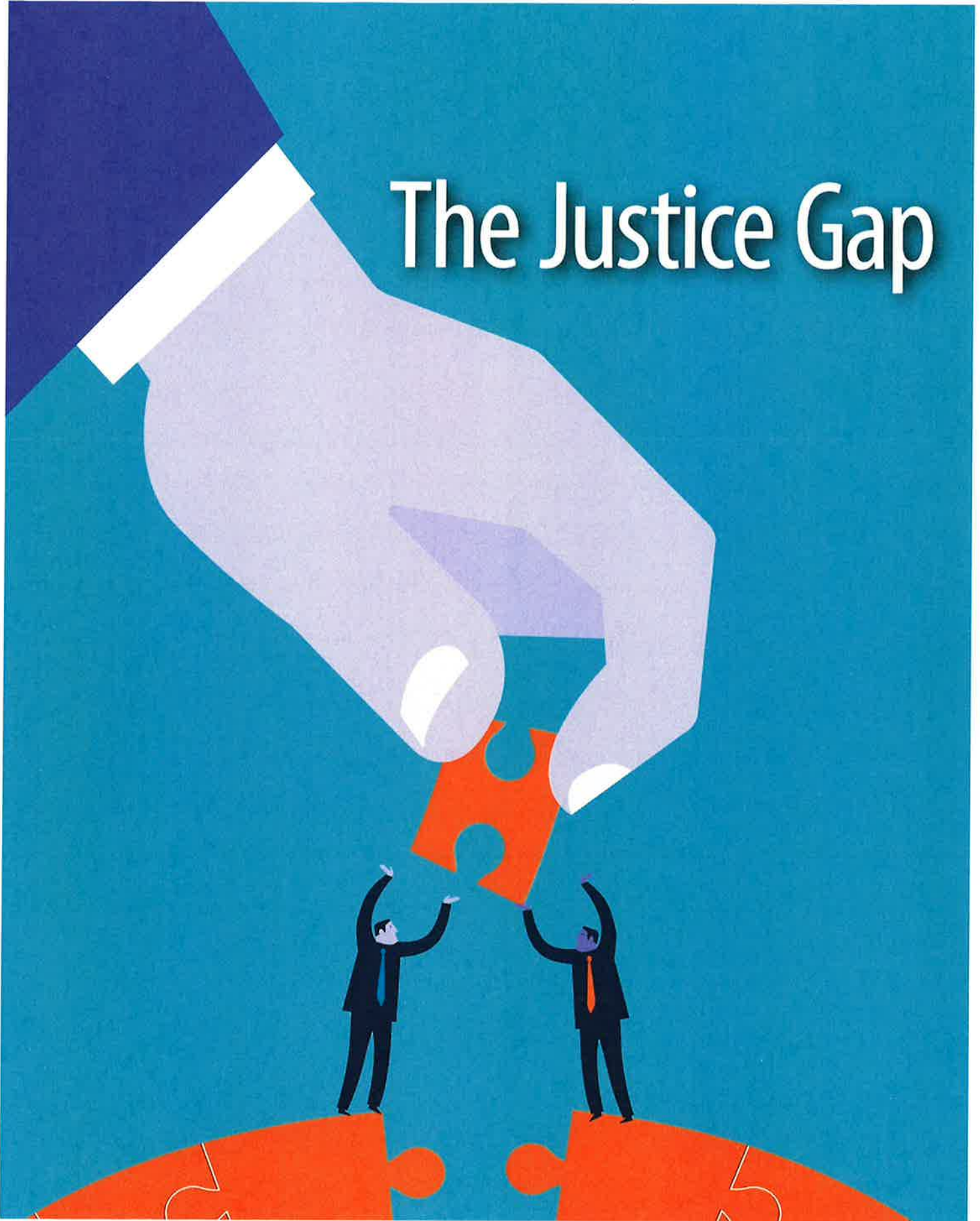
Respectfully submitted,



Robert S. Freedman
Chair, Real Property, Probate & Trust
Law Section

Enclosure

The Justice Gap



& the Rise of Nonlawyer Legal Providers

By John Murph

Kelly Peterson-Lalka, a mother of four living in Montesano, Washington, began a lengthy child custody battle with her ex-husband in 2008. Unable to afford a lawyer, she had no choice but to represent herself in court, while her ex-husband, according to Peterson-Lalka, spent close to \$60,000 in attorney's fees. "I would get killed every time I entered the court because of the forms and service requirements, plus the legal processes were so confusing," Peterson-Lalka says.

In 2019, months before one of her daughters graduated from high school, Peterson-Lalka prepared for another court battle with her ex-husband, this time for post-secondary child support so he could help pay for the teenager's college education. "My daughter received a [partial] scholarship, but my ex-husband was unwilling to pay any amount toward her education," Peterson-Lalka says.

Under Washington State law, a court can order a divorced parent to pay some or all of a child's education expenses at a college, trade school, or vocational school, and sometimes graduate school. To receive post-secondary child support, the guardian parent must file a petition before the child turns 18 or graduates from high school.

Peterson-Lalka, who earns a moderate income, still could not afford a lawyer. But through some of her attorney friends from her home state of Montana, she learned about Washington's limited license legal technicians (LLLTs) — professionals who help clients fill out legal paperwork, provide information, and help clients navigate court proceedings without the supervision of a lawyer. LLLTs cost substantially less than lawyers.

Through a Google search, Peterson-Lalka found Kellie W. Dightman, an LLLT based in Olympia, Washington, who guided her through the petition filing process. After reviewing the ex-husband's income, Dightman discovered that he should have been paying more than double the amount he'd been ordered to pay in child support based on his monthly income. The ex-husband, however, refused to release his income information to the court, so Dightman helped Peterson-Lalka file for an extension on the post-secondary child support petition.

Peterson-Lalka appeared in court six times. Although Dightman was not authorized to appear in court with Peterson-Lalka, her legal assistance led to a favorable outcome. "My daughter is now going to get post-secondary child support from him in the amount of \$18,000 a year, which will allow her to graduate from college with zero debt," Peterson-Lalka says.

The charge for Dightman's services, which continued over a period of five months, was just \$395.

ELEVATING THE ROLE OF NONLAWYERS

Peterson-Lalka's case illustrates the crisis many people face nationwide regarding access to justice. According to a 2017 Legal Services Corporation study, low-income Americans received inadequate or no legal help for 86 percent of civil legal problems reported the previous year.

In 2013 Washington sought to mitigate the crisis by becoming the first state to offer an affordable option for individuals priced out of the services of lawyers: a new category of nonlawyer professionals called LLLTs. Licensed by the Washington Supreme Court, LLLTs advise and assist clients in certain family matters, including divorce and child custody, without lawyer supervision — but cannot represent them in court.

To become an LLLT, an applicant must have a minimum of an associate degree in any subject; earn at least 45 credits in legal studies courses from an American Bar Association (ABA)-approved or a Washington State Bar Association LLLT Board-approved paralegal program, or from an ABA-accredited law school; and pass three examinations focused on core competencies, practice area, and professional responsibility. The state has approximately 30 practicing LLLTs to date.

Other states have explored similar approaches to increasing access to justice. In 2013 the Colorado Judicial Branch authorized the use of self-represented litigant coordinators called Sherlocks, who staff self-help centers in courthouses throughout the state and provide free one-on-one procedural assistance, offer referrals, and give out court forms and written information to civil litigants. Sherlocks assisted 175,162 self-represented litigants in 2017.

In November 2018, Utah's Supreme Court amended Rule 14-802 of the Rules Governing the Utah State Bar to permit licensed paralegal practitioners (LPPs) to assist clients in specific matters. The minimum educational requirement for an LPP is an associate degree in paralegal studies from an accredited school. An applicant must also pass a professional ethics exam and an LPP exam for each practice area in which he or she seeks to be licensed, and obtain certification by the National Association of Legal Assistants, the National Association of Legal



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The challenge for LLLTs to work in the District might be finding opportunities where they can earn a high enough income to pay whatever student debt [they have] and afford the expense of living in D.C.

PATRICK MCGLONE
Ullico Inc.



If we are going to add 'limited' nonlawyer services in D.C. to address the reality of the needs here, we have to develop a program that provides opportunities and incentives for qualified nonlawyers to provide services at a much lower cost.

SHELDON KRANTZ
DC Affordable Law Firm

Professionals, or the National Federation of Paralegal Associations. Modeled after Washington State's LLLT program, LPPs help self-represented litigants in family law, landlord-tenant, and consumer debt matters, but cannot provide in-court representation.

Oregon also is considering allowing nonlawyer paraprofessionals to provide limited legal services. In June 2017, the Oregon State Bar Futures Task Force recommended the creation of a licensure program for paraprofessionals "who would be authorized to provide limited legal services, without attorney supervision, to self-represented litigants in (1) family law and (2) landlord-tenant proceedings."

"The most compelling argument for licensing paraprofessionals is that the Bar's other efforts to close the access-to-justice gap have continued to fall short. We must broaden the options available for persons seeking to obtain legal services, while continuing to strive for full funding of legal aid and championing pro bono representation by lawyers," the task force said in its report.

In June 2019, the State Bar of California's Task Force on Access Through Innovation of Legal Services proposed allowing nonlawyers to (1) provide specified legal advice and services with appropriate regulation and (2) hold a financial interest in law firms. The proposals have been submitted for public comment.

Other states have launched or are developing nonlawyer navigator programs to assist self-represented litigants with civil legal matters. A June 2019 report by the Justice Lab at Georgetown University Law Center in Washington, D.C., identified 23 such programs currently in existence.

The report, "Nonlawyer Navigators in State Courts: An Emerging Consensus," noted that those who championed the programs, including the judiciary, state access-to-justice commissions, and bar foundations, "brought a range of diverse resources and strategies to help meet the [self-represented litigant] demand and have created programs without major regulatory reform or rule changes."

New York City, for instance, allows volunteer court navigators to help self-represented litigants navigate its landlord-tenant court; some volunteers can even accompany clients in the Bronx Civil Court and in the Kings County and Queens County housing courts.

In the United Kingdom and Australia, "there is a greater variety of individuals and organizations that can provide legal services," says Kathleen Clark, vice chair of the D.C. Bar Global Legal Practice Committee. For example, organizations not owned by lawyers, including for-profit companies, are able to offer legal services to clients, a practice not allowed in the United States.

For people who are not eligible for pro bono legal assistance because their incomes exceed the federal poverty guidelines, LLLTs, LPPs, and other non-lawyer legal services providers are a lifeline. When Peterson-Lalka sought counsel from lawyers for her child custody matter, she recalls being told that the retainer alone could cost approximately \$1,500.

"That's not something I could come up with at the drop of a hat," she says. "Most Americans live from paycheck to paycheck. So, to come up with something between \$1,500 and \$2,000 just to start a case is almost unattainable, even for someone with a moderate income."

VIABILITY IN THE DISTRICT

But how viable would the LLLT model be for the rest of the country? The District of Columbia has more than 30 legal services provider organizations serving its low-income population, yet more than 80 percent of D.C. residents still represent themselves in Superior Court despite the city's high concentration of lawyers.

"It's untenable that so many represent themselves in situations where they are in danger of losing custody of their children or being evicted," says Sheldon Krantz, executive director of the DC Affordable Law Firm (DCALF), a nonprofit charitable organization that provides legal services to clients at reduced rates. "We need to be looking at alternative ways of providing needed services to people who confront a complicated legal system on their own."

At its first meeting in December 2018, the newly formed D.C. Bar Global Legal Practice Committee began studying the different models for providing legal services, including the LLLT program. "We are at an early stage of our inquiry. So, I'm not in any position to go into a lot of detail," says Clark. "But one question that arises is whether the model in Washington State is a step in the right direction. Is it sufficient? And how does it compare to what is occurring outside the United States?"



The [D.C. Access to Justice] Commission recommends that the District explore the use of nonlawyers and other allied professionals in addressing legal and other needs, including navigator-type programs.

NANCY DRANE
D.C. Access to Justice Commission

Krantz applauds Washington for devising an alternative method for providing legal services, but he questions whether the LLLT model would meet the needs of the District. "The model imposes very rigid and expensive qualifying requirements. While some of the requirements are needed to protect the public, others, in my view, go well beyond what is necessary," Krantz argues.

In addition to the educational and examination requirements, LLLT applicants must accumulate 3,000 hours of substantial law-related experience as a paralegal or legal assistant under lawyer supervision. Those hours must be acquired no more than three years prior to or 40 months after passing the practice area exam. In Utah, LPPs must log 1,500 hours of substantial law-related experience within three years prior to the application.

While these exacting requirements cost less than a law degree, many LLLTs and LPPs find that they need to charge rates sufficient to offset the debt they took on to obtain their license.

"While less than the normal fees lawyers charge, LLLT fees still average about \$100 an hour and often exceed that amount," Krantz says.

Priscilla Selden of Wenatchee, Washington, the second person to become an LLLT in the state, started her practice in 2015. Previously, she was a paralegal for 25 years. A member of Washington's Practice of Law Board between 2009 and 2012, Selden was on the committee that wrote the rules for LLLTs. Although her fees are not fixed in writing, she says her services cost about a third of what lawyers charge.

"I do flat fees as opposed to hourly because I think it's more understandable for clients and a bit kinder to them," Selden says. "The clients know what it's going to cost, which takes away some of the anxiety of wondering if they are going to run up a huge bill. We have a very consumer-focused ethos."

Selden gets clients through her contacts with a local nonprofit volunteer lawyer program, her work as a courthouse facilitator, and through referrals from other attorneys. "It's been a progression," she says. "But now, I'm pretty busy. I have maybe four or five clients in my solo practice at any given time."

It's important to mention that the cost of living in Wenatchee is significantly lower than that in Washington, D.C. "The challenge for LLLTs to work in the District might be finding opportunities where they can earn a high enough income to pay whatever student debt [they have] and afford the expense of living in D.C.," says Patrick McGlone, former D.C. Bar president and senior vice president, general counsel, and chief compliance officer at Ullico Inc.

In a September 2018 article in the online *ABA Journal*, McGlone cited a March 2017 study by the National Center for State Courts and the American Bar Foundation that found general client satisfaction with LLLTs. But the study also found that "the experience of . . . LLLTs to date has not been especially encouraging in terms of viable business models when operating as a pure full-time LLLT practice."

"Washington State, Utah, and other jurisdictions are to be commended for experimenting with new models of delivering at least limited legal services by nonlawyers, subject to certain educational requirements and disciplinary oversight. After a period of refinement and growth, the licensed legal technician model may mature into a potent solution to the access-to-justice gap," McGlone wrote. "In some jurisdictions, the model may grow to the point of sustainability. . . . In other states, the model may not be an effective solution, but given the persistence of the access-to-justice challenge, we must remain open-minded about this innovative approach."

McGlone says one reason LLLTs and LPPs work in Washington State and Utah is that they serve more rural areas where the ratio of lawyers is significantly less than the general population.

Steve Crossland, a lawyer based in Cashmere, Washington, concurs. One of the main architects of the LLLT program, he argues that Washington State's access-to-justice crisis stems largely from fewer people entering and graduating from law schools there. "About half of the Washington State Bar Association consists of baby boomers like me," Crossland says. "And many of us are retiring. That shrinking number of practicing lawyers has caused a crisis."

Krantz notes that because of the District's high cost of living, many DCALF clients struggle to pay its already reduced fees. "There are over 100,000 people in the District who fall within the 200 percent to 400 percent federal poverty level. As an example, the annual income level for an individual at 200 percent of the federal poverty level is \$24,280, and \$48,500 at 400 percent. DCALF charges \$75 an hour for its legal services," Krantz explains. "We learned very quickly that most of our clients cannot afford to pay even that rate. If we are going to add 'limited' nonlawyer services in D.C. to address the reality of the needs here, we have to develop a program that provides opportunities and incentives for qualified nonlawyers to provide services at a much lower cost."

James Sandman, president of the Legal Services Corporation, says District residents may be leery of LLLTs because of the very nature of their practice. "Let's start with the title they gave the position — limited licensed legal technician.

I can't think of a title less likely to inspire confidence on the part of the consumer," Sandman says.

Other hurdles that Sandman sees in getting the LLLT model off the ground in the District include getting buy-ins from local law schools to invest in an LLLT program and amending Rule 49 of the D.C. Court of Appeals Rules governing unauthorized practice of law.

ALTERNATIVES TO THE LLLT MODEL

Despite Washington, D.C.'s large network of legal services provider organizations and the availability of lawyers who offer lower rates by unbundling some of their services, the access-to-justice crisis persists.

"In a forthcoming report on the District's civil justice system, the D.C. Access to Justice Commission offers a variety of recommendations in bridging the justice gap, including the expansion of support for traditional models of legal representation and non-traditional approaches," says Nancy Drane, executive director of the commission. "Among other strategies, the commission recommends that the District explore the use of nonlawyers and other allied professionals in addressing legal and other needs, including navigator-type programs."

Drane notes that the D.C. Courts recently launched two navigator programs. The Veterans Navigator Office connects court-involved veterans to agencies and programs that provide a wide variety of services, including mental health and substance abuse treatment, civil legal assistance, social adjustment counseling, job training, and processing of VA benefits and claims. Court-involved veterans are defined as those having a criminal, civil, probate, domestic violence, small claims, landlord-tenant, or family matter in D.C. Superior Court.

The Court Navigator Program, on the other hand, helps self-represented litigants physically navigate the court, complete their business with the court, and access pertinent information on other legal services. This program currently serves clients in small claims and landlord-tenant disputes. These navigator programs supplement the services offered by legal services providers onsite at D.C. Superior Court, including attorneys of the day and the Landlord Tenant Resource Center.

Among the seven recommendations outlined in Georgetown Law's Justice Lab report are to "[secure] good data to measure and determine the results of navigator programs" and to conduct independent research to make the best use of navigator efforts. The latter includes "evaluations of individual programs to demonstrate program outcomes, impact, and cost savings; studies to help determine when best to use nonlawyers to provide assistance; and surveys of best practices in community-based programs using nonlawyers to help unrepresented people."

Krantz agrees that finding innovative solutions to bridge the justice gap is key. "We need to start thinking creatively of ways that involve our many universities," Krantz says. "The District has a number of law schools and schools of social work; we can engage their students. There are also massive numbers of baby boomers who are retiring from professional careers and are looking for ways to give back to their communities. We should involve them."

"But we should go way beyond Washington State's LLLT program and create our own way of using qualified nonlawyers to meet the crisis confronting us," Krantz adds. "I'm convinced that we are up to that challenge."

Illustration: Stock; Patrick McClone, courtesy of Patrick McClone; Sheldon Krantz, courtesy of Sheldon Krantz; Nancy Drane, courtesy of D.C. Access to Justice Commission



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Member of the New Hampshire House of Representatives
Founder and Executive Director
of Murder Victims' Families for Human Rights

Freedman, Robert S.

From: Freedman, Robert S.
Sent: Friday, May 15, 2020 4:41 PM
To: 'Hill, Terry L'; Muschott, Lee E; Shaw, Timothy S; Wilson, J; Guerrero, JoAnn M; DiGangi, Santo; White, Adam; WHennessey@gunster.com
Cc: Early, Charles; Libbert, Ricky; Young, Emily K; Miller, Thomas V; Obos, Mary Ann; WHennessey@gunster.com; Robert S. Swaine (bob@heartlandlaw.com); Sarah Butters; skfrazier@hwhlaw.com; Freedman, Robert S.
Subject: RE: potential section-driven pro bono initiative helping frontline responders (please respond indicating your section's interest, or lack thereof)

Hi Terry. My apologies for the delay in responding to your email.

The RPPTL Section appreciates you sending this info and request along. The RPPTL Section has set up a project with our At Large Members wherein they are providing pro bono services relating to wills and advance directives through local legal aid societies. Because of the potential liability to the Section and the Bar, the RPPTL Section has decided that it is best not provide those services directly through the Section. This is in recognition of the fact that estate planning is definitely not a one size fits all proposition. It requires careful consideration of family circumstances, including any existing obligations under contracts or judgments such as divorce decrees, tax situations, existing antenuptial agreements, potential spousal rights, homestead and exempt property issues and the like. Due to recent tax law changes, considerations also need to be given to payout options on deferred tax accounts. The RPPTL Section is concerned that providing form documents without the proper consultation and information gathering will provide a false sense of security and possibly put the individual in a worse position. The RPPTL Section would be happy to send an e-blast to Section members advising them of the project and providing them with information as to whom they can contact if they wish to participate on their own in providing the requested services. The RPPTL Section also would be happy to assist with providing form advance directives and living wills, as these documents are relatively simple documents that do not require extensive consultation or significant time commitment to properly draft. There are some resources on our Section page in this regard, but please let us know if there is an organized effort to reach out directly to offer these services.

Regards, Rob

Robert S. Freedman

Attorney at Law | Carlton Fields
4221 W. Boy Scout Blvd., Ste. 1000 | Tampa, Florida 33607-5780
Direct: 813.229.4149 | Fax: 813.229.4133
rfreedman@carltonfields.com

From: Hill, Terry L <THill@floridabar.org>
Sent: Thursday, April 23, 2020 3:37 PM
To: Muschott, Lee E <pete@muschottlaw.com>; Shaw, Timothy S <tshaw@blalockwalters.com>; Wilson, J <everett.wilson@polsinelli.com>; Guerrero, JoAnn M <jguerrero@chlawyers.com>; DiGangi, Santo <sdigangi@lawclc.com>; White, Adam <ajw@esclaw.com>; Freedman, Robert S. <rfreedman@carltonfields.com>; WHennessey@gunster.com
Cc: Early, Charles <CEarly@floridabar.org>; Libbert, Ricky <rilibbert@floridabar.org>; Young, Emily K <EYoung@floridabar.org>; Miller, Thomas V <TMiller@floridabar.org>; Obos, Mary Ann <mobos@floridabar.org>
Subject: potential section-driven pro bono initiative helping frontline responders (please respond indicating your section's interest, or lack thereof)

Pete, Tim, Everett, JoAnn, Santo, Adam, Rob, and Bill,

Good afternoon. You are receiving this email because you are the Chair or Chair-elect of the RPPTL Section, Solo & Small Firm Section, Health Law Section, or the President or President-elect of the Young Lawyers Division. I am reaching out to you to see if there is interest from one or multiple of your sections or division to collaborate on a pro bono project targeted to pandemic frontline responders.

The State Bar of Michigan recently launched an [initiative](#) along these lines where they are coordinating with Michigan attorneys to help pandemic frontline responders with important legal documents (wills, medical powers of attorney, financial powers of attorney, etc). I was asked to reach out to a few section leaders to see if there is interest in doing something along these lines in Florida in a coordinated effort through the Bar sections. Information on the State Bar of Michigan initiative is accessible via [THIS LINK](#).

I look forward to hearing back from you. Thank you.

Stay safe and healthy.

Terry L. Hill
Division Director, Programs
The Florida Bar
651 East Jefferson Street
Tallahassee, Florida 32399-2300
Direct Phone 850-561-5700
E-Mail thill@floridabar.org

Please note: Florida has very broad public records laws. Many written communications to or from The Florida Bar regarding Bar business may be considered public records, which must be made available to anyone upon request. Your e-mail communications may therefore be subject to public disclosure.



**STATE OF FLORIDA
SEVENTH JUDICIAL CIRCUIT
Circuit Court, Volusia County
Volusia County Courthouse Annex
125 East Orange Avenue, Suite 304
Daytona Beach, Florida 32114**

**Michael S. Orfinger
Circuit Judge**

Phone: (386) 257-6091

May 1, 2020

Mr. Robert S. Freedman, Chair
Real Property Probate and Trust Law Section
Carlton Fields
4221 W. Boy Scout Blvd.
Suite 1000
Tampa, Florida 33607-5780

Dear Mr. Freedman:

I am writing to you as Chair of the Florida Supreme Court's Committee on Alternative Dispute Resolution Rules & Policy (Committee) regarding proposed revisions to rule 1.720, Florida Rules of Civil Procedure, and rule 12.741, Florida Family Law Rules of Procedure. The proposed revisions would have added the following language to the rules: "When elder law issues are involved in the dispute or upon the request of all parties, the court may select a certified family or circuit mediator who has completed a Supreme Court of Florida certified elder mediation training."

Last summer, the Committee sought comments on these amendments generally and later in the fall requested assistance from The Florida Bar sections and committees in creating a definition for "elder matters." After receiving valuable feedback from our stakeholders in the field, the Committee has decided not to pursue the amendments at this time.

Mr. Robert S. Freedman

May 1, 2020

Page 2

I want to apprise you of the Committee's decision and thank you for your time and input. Your collaboration is greatly appreciated.

Cordially,



Michael S. Orfinger,
Chair of the Committee on Alternative
Dispute Resolution Rules and Policy

MICHAEL S. ORFINGER
Circuit Judge
Seventh Judicial Circuit
Volusia County Courthouse Annex
125 East Orange Avenue
Daytona Beach, Florida 32114



Mr. Robert S. Freedman, Chair
Real Property Probate and Trust Law
Section
Carlton Fields
4221 W. Boy Scout Blvd., Suite 1000
Tampa, Florida 33607-5780

3360735780 CD40



RPPTL 2020-2021
Executive Council Meeting Schedule
Bill Hennessey's Year

Limit 1 reservation per registrant, additional rooms will be approved upon special request.

Date	Location
July 23 – July 26, 2020 Now – August 20 – 23, 2020	Executive Council Meeting & Legislative Update The Breakers Palm Beach, Florida Room Rate (Deluxe Room – King): \$239 Premium Room Rate: \$290
September 30 – October 4, 2020	Out of State Executive Council Meeting Four Seasons Resort Jackson Hole, WY Standard Guest Room Rate: \$395 (single/double)
December 3 – December 6, 2020	Executive Council & Committee Meetings Disney's Yacht Club Orlando, FL Standard Guest Room Rate: \$289 (\$25 pp for each person over 18 years old)
February 4 – February 7, 2021	Executive Council & Committee Meetings Hammock Beach Resort Palm Coast, FL Standard Guest Room Rate: \$289 (single/double)
June 3 – June 6, 2021	Executive Council Meeting & Convention JW Marriott Marco Island, FL Standard Guest Room Rate: \$245 (single/double)

2020-2021 RPPTL Leadership Chart

General Standing

Committee	Name	Title
Leadership Academy	Kristopher Emil Fernandez	Co-Chair
	J. Allison Archbold	Co-Chair
	Bridget Friedman	Vice Chair
Ad Hoc Remote Notarization	E. Burt Bruton	Chair
Amicus Coordination	Kenneth Bradley Bell	Co-Chair
	Gerald Barnette Cope, Jr.	Co-Chair
	Robert W. Goldman	Co-Chair
	John Wesley Little, III	Co-Chair
Budget	Steven Mezer	Chair
	Tae Kelley Bronner	Co-Vice Chair
	Linda S. Griffin	Co-Vice Chair
	Pamela O. Price	Co-Vice Chair
CLE Seminar Coordination	Sancha Brennan Whynot	Co-Chair (P+T)
	Willie Kightlinger	Co-Chair (RP)
	Alexander Hamilton Hamrick	Co-Vice Chair (P+T)
	Paul Edward Roman	Co-Vice Chair (Ethics)
	Hardy L. Roberts, III	Co-Vice-Chair (General E-CLE)
	Yoshimi O. Smith	Co-Vice Chair (P+T)
	Stacy Kalmanson	Co-Vice Chair (RP)
	Silvia B. Rojas	Co-Vice Chair (RP)
Convention Coordination	Laura Sundberg	Chair
	Dresden Brunner	Co-Vice Chair
	Marsha Madorsky	Co-Vice Chair
	Alexander Hamilton Hamrick	Co-Vice Chair

Disaster and Emergency Preparedness and Response Committee	Brian Sparks	Chair
	Colleen Sachs	Co-Vice Chair
	Jerry Aron	Co-Vice Chair
	Benjamin Frank Diamond	Co-Vice Chair
Fellows	Chris Sajdera	Chair
	Joshua Rosenberg	Co-Vice Chair
	Chris Barr	Co-Vice Chair
	Angela Santos	Co-Vice Chair
Florida Electronic Filing & Service Homestead Issues Study	Rohan Kelley	Chair
	Jeffrey Scott Goethe	Chair
	Melissa J. Murphy	Co-Vice Chair
	Charles Ian Nash	Co-Vice Chair
	Michael J. Gelfand	Co-Vice Chair
	Amy Beller	Co-Vice Chair
Information Technology and Communication	Neil Barry Shoter	Chair
	Erin Hope Christy	Co-Vice Chair
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	Jesse B. Friedman	Co-Vice Chair
	Hardy L. Roberts, III	Co-Vice Chair
	Michael Sneeringer	Co-Vice Chair
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	Johnathan Butler	Co-Chair
	Phillip A. Baumann	Co-Vice Chair
	Guy Storms Emerich	Co-Vice Chair
	Kristine Tucker	Co-Vice Chair
	Kymberlee Curry Smith	Co-Vice Chair

Legislation

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Cary Wright	Co-Chair
Manuel Farach	Co-Vice Chair
Theodore Stanley Kypreos	Co-Vice Chair
Arthur James Menor	Co-Vice Chair
Robert Lee McElroy, IV	Co-Vice Chair

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Brenda B. Ezell	Co-Vice Chair
Theodore Stanley Kypreos	Co-Vice Chair
Jennifer Slone Tobin	Co-Vice Chair
Salome J. Zikakis	Co-Vice Chair
Kit van Pelt	Co-Vice Chair
Gutman Skrande	Co-Vice Chair

2021-2022

Brenda B. Ezell
Theodore Kypreos
Jennifer Slone Tobin
Salome J. Zikakis
Kit van Pelt
Gutman Skrande

Liaison with:

ABA
Edward F. Koren
Robert Scott Freedman
George Joseph Meyer
Julius James Zschau

Business Law Section
Manuel Farach
Gwynne Alice Young

Clerks of Circuit Court
Laird Andrew Lile

FLEA/FLSSI
David Clark Brennan
Roland D. Waller

Florida Bankers Association
Mark Thomas Middlebrook
Robert Stern

Model and Uniform Acts	Bruce Michael Stone	Co-Chair (P&T)
	Richard Walter Taylor	Co- Chair (RP)
	Patrick Duffey	Co-Vice Chair (PT)
	Adele Stone	Co-Vice-Chair (RP)
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	Alexander Dobrev	Co- Vice Chair
	Elizabeth Bowers	Co- Vice Chair
	Laura Sundberg	Co- Vice Chair
Publications ActionLine	Jeffrey Alan Baskies	Co-Chair (P+ T)
	Michael Alan Bedke	Co-Chair (RP)
	George Daniel Karibjanian	Co-Vice Chair (PT)
	Elizabeth Hughes	Co-Vice Chair (PT)
	Paul Edward Roman	Co-Vice Chair (Ethics)
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	Rick Eckhard	Co-Vice Chair (RP)
	Jason Ellison	Co-Vice Chair (RP)
	Keith Kromash	Co-Vice Chair (PT)
	Daniel Seigel	Co-Vice Chair (PT)
	Jeanette Moffa	Co-Vice Chair (RP)
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	Jeffrey Scott Goethe	Co-Chair (P+ T)
	J. Allison Archbold	Co-Vice Chair (PT)
	Marty Solomon	Co-Vice Chair (RP)
	Homer Duvall, III	Co-Vice Chair (RP)
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	Marsha Gerre Madorsky	Co-Vice Chair
	J. Michael Swaine	Co-Vice Chair
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	Robert Swaine	Chair
Strategic Planning Implementation	Michael J. Gelfand	Chair

Deborah Goodall	Co-Vice Chair
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Probate and Trust Law Division

Ad Hoc Guardianship Law Revision Committee

Nicklaus Joseph Curley	Co-Chair
Stacy Rubel	Co-Chair
David Brennan	Co-Chair

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Angela McClendon Adams	Chair
Jenna Rubin	Vice Chair
Ricky Hearn	Vice Chair

Ad Hoc Florida Business Corporation Act Task Force

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Travis Hayes	Co-Chair

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Attorney/Trust Officer Liaison Coinference	Tattiana Brenes-Stahl Cady Huss Stacey L. Cole Tae Kelley Bronner Gail Fagan Mitchell Hipsman Eammon Gunther	Co-Chair Co-Chair Co-Vice Chair Co-Vice Chair Co-Vice Chair Co-Vice Chair Co-Vice Chair
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Elective Share Review Committee	Lauren Young Detzel Jenna Rubin Cristina Papanikos	Chair Co-Vice Chair Co-Vice Chair
Estate & Trust Tax Planning	Robert Logan Lancaster Richard Sherrill Yoshimi Smith	Chair Co-Vice Chair Co-Vice Chair
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Liaisons with ACTEC	Elaine M. Bucher	Liaison
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	Shane Kelley	Liaison
	Charlie Nash	Liaison
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Liaisons with Elder Law Section	Travis Finchum	Liaison
	Marjorie Wolasky	Liaison
Liaisons with Tax Law Section	Lauren Detzel	Liaison
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	Cristina Papanikos	Co-Vice Chair
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	David Akins	Co-Vice Chair
Wills, Trusts & Estates Certification Review Course	Jeffrey Scott Goethe	Chair
	Jerome Lee Wolf	Co-Vice Chair
	Rachel Lunsford	Co-Vice Chair
	Allison Archbold	Co-Vice Chair

Real Property Division

Attorney Banker Conference	Ashley McRae Kris Fernandez Jim Robbins Salome Zikakis	Chair Co-Vice Chair New Co-Vice Chair New Co-Vice Chair
Commercial Real Estate	Jennifer Bloodworth Ashley McRae Ellie Taft Martin Schwartz	Chair Co-Vice Chair New Co-Vice Chair Co-Vice Chair
Condominium and Planned Development Law Certification Review Course	Jane Cornett Christine Ertl	 Chair Vice Chair
Condominium and Planned Development	Bill Sklar Joe Adams Shawn Brown Sandra Krumbein	Co-Chair Co-Chair New Co-Vice Chair New Co-Vice Chair
Construction Law	Reese Henderson Sanjay Kurian Bruce Partington	Chair Co-Vice Chair New Co-Vice Chair
Construction Law Certification Review Course	Mindy Gentile Elizabeth Ferguson Scott Pence Gregg Hutt	Co-Chair Co-Chair Co-Vice Chair Co-Vice Chair
Construction Law Institute	Jason Quintero Deb Mastin Brad Weiss	Chair Co-Vice Chair Co-Vice Chair
Development and Land Use	Julia Jennison Colleen Sachs Lisa Van Dien Jin Liu	Co-Chair Co-Chair New Co-Vice Chair Co-Vice Chair

Liaison with FLTA	Melissa Murphy Alan McCall Alan Fields Jim Russick	Co-Chair Co-Chair Co-Vice Chair Co-Vice Chair
Insurance & Surety	Michael Meyer Katie Heckert Mariela Malfeld	Chair Co-Vice Chair Co-Vice Chair
Real Estate Certification Review Course	Manny Farach Lloyd Granet Marty Awerbach Brian Hoffman Lynwood Arnold Laura Licastro	Chair Co-Vice Chair Co-Vice Chair Co-Vice Chair Co-Vice Chair New Co-Vice Chair
Real Estate Leasing	Brenda Ezell Chris Sajdera Kristen Jaiven	Chair Co-Vice Chair New Co-Vice Chair
Real Property Finance and Lending	Rich McIver Jason Ellison Deb Boyd	Chair Co-Vice Chair Co-Vice Chair
Real Property Litigation	Mike Hargett Chris Smart Manny Farach Amber Ashton	Chair Co-Vice Chair Co-Vice Chair Co-Vice Chair
Real Property Problems Study	Lee Weintraub Adele Stone Susan Spurgeon Anne Pollack	Chair Co-Vice Chair Co-Vice Chair New Co-Vice Chair
Residential Real Estate and Industry Liaison	Nicole Villarroel Trey Goldman Jamie Marx	Chair Co-Vice Chair Co-Vice Chair

**Title Insurance and Title Industry
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Co-Vice Chair
New Co-Vice Chair

Title Issues and Title Standards

Rebecca Wood
Karla Staker
Bob Graham
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Chair
Co-Vice Chair
Co-Vice Chair
Co-Vice Chair



RPPTL Financial Summary from Separate Budgets
2019-2020 [July 1 - April 30] YEAR
TO DATE REPORT

General Budget

YTD

Revenue	\$ 1,229,140
Expenses	\$ 1,231,679
Net:	\$ (2,539)

Attorney Loan Officer

YTD

Revenue	\$ 23,625
Expenses	\$ 21,469
Net:	\$ 2,156

CLI

YTD

Revenue	\$ 353,801
Expenses	\$ 215,032
Net:	\$ 138,769

Trust Officer Conference*

Revenue	\$ 289,590
Expenses	\$ 194,782
Net:	\$ 94,808

Legislative Update*

Revenue	\$ 61,523
Expenses	\$ 87,269
Net:	\$ (25,746)

Convention

Revenue	\$ 9,447
Expenses	\$ 1,326
Net:	\$ 8,121

Roll-up Summary (Total)

Revenue:	\$ 1,967,126
Expenses	\$ 1,751,557
Net Operations	\$ 215,569

Beginning Fund Balance:	\$ 2,136,908
Current Fund Balance (YTD):	\$ 2,352,477
Projected June 2020 Fund Balance	\$ 2,052,489

1 This report is based on the tentative unaudited detail statement of operations dated 4/30/20 (prepared 05/17/20)

**expenses and revenue have not been finalized*

To: The Florida Bar RPPTL Executive Committee

From: John Moran and Wilhelmina Kightlinger, Co-Chairs, CLE Coordination

Subject: RPPTL CLE Activity since COVID-19 Restrictions

Date: May 13th , 2020

The Shelter at Home orders and restrictions enacted to address the spread of COVID-19 has affected some of the Section's CLE programming. However, the Section continues to remain active with programming and meeting the CLE needs of its members and the public in various ways during this crisis.

1. **COVID-19 WEBPAGE** – At the direction of Section Chair, Rob Freedman, the Section immediately established a page on its website dedicated to distributing information to members of the Section and the public identifying issues raised by the restrictions imposed to stop the spread of the virus and possible solutions. This page has been extremely successful as evidenced by the recent analytics report attached hereto as Exhibit "A". The office of the Florida Supreme Court has recommended the webpage to those contacting it for information on how the crisis has affected matters involving real property, trusts, and estates.
2. **PARTICIPATION IN SPECIAL COVID-19 WEBINARS** – The Section co-sponsored, and Section members participated in, a free Zoom Webinar on the best practices for local government land use virtual hearings. The program provided 2 hours of valuable technology CLE credit and had 1,000 attendees.
3. **WEBINARS** – The Section continues to provide CLE credit through its on-demand CLE library and live webinars.


4. **AFFECTED LIVE CLE PROGRAMMING** – The Section adjusted some of its scheduled live programs to protect the health of the speakers, attendees, and administrators. The affected programs are:
- a. Real Property Certification Review Course – Previously scheduled for a live presentation April 17th and 18th, it is anticipated that this course will now be presented virtually in July or early August, 2020, and will be available in the on-demand CLE catalogue afterwards. The certification review examination has been rescheduled for September 10th, 2020.
 - b. Wills, Trusts, and Estates Certification Review Course – Previously scheduled for a live presentation April 17th and 18th, it is anticipated that this course will now be presented virtually in July or early August, 2020, and will be available in the on-demand CLE catalogue afterwards. The certification review examination has been rescheduled for September 11th, 2020.
 - c. Trusts and Estates Symposium- This live course was original scheduled for March 13th, 2020, in Ft. Lauderdale. It is anticipated that this course will be presented virtually in Fall 2020. The CLE Coordination Committee is currently evaluating potential dates for the virtual seminar.
 - d. Guardianship CLE Course – This course was originally scheduled for a live presentation in Tampa April 24th, 2020. It is anticipated that this course will be presented virtually in Fall 2020. The CLE Coordination Committee is currently evaluating potential dates for the virtual seminar.
 - e. Convention Seminar – Notarizations, the Definitive Guide- Will now be held virtually as a webinar. We will have the same format, speakers, and materials. Charge will be \$75 per attendee for 2 hours of CLE credit, which includes the valuable technology credit. The date and time for the Virtual Convention Seminar will be finalized soon.
 - f. Legislative Update – While not under the purview of the CLE Committee, we are monitoring the status of the Legislative Update and are available to assist if needed.

The CLE Co-chairs are receiving inquiries from chairs of live programming for the fall such as the ATO as to the status of the event and whether we should consider cancelling or moving to a virtual format. The Executive Committee decided to cancel the ATO for 2020. Bar staff is investigating moving the Legislative Update to the time for the ATO (end of August).

Pages

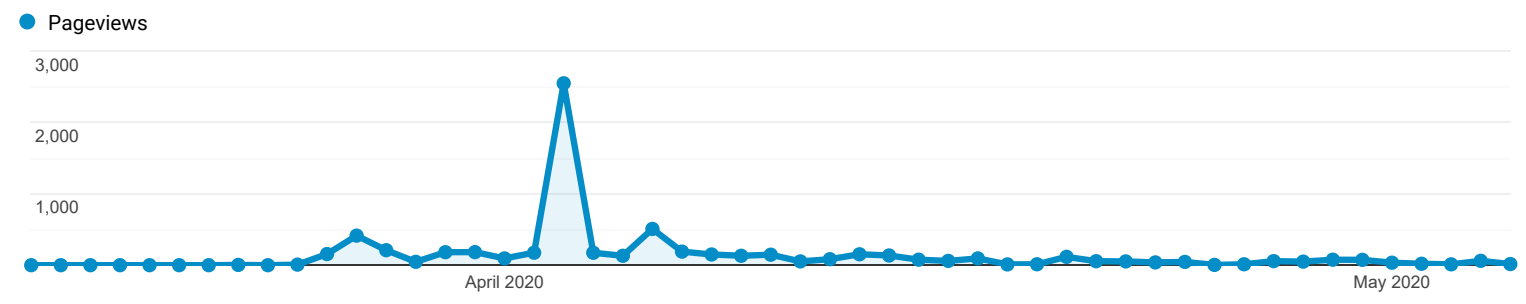
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Mar 16, 2020 - May 5, 2020



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	6,867 % of Total: 24.52% (28,005)	5,153 % of Total: 25.07% (20,556)	00:03:45 Avg for View: 00:01:13 (207.35%)	4,279 % of Total: 40.07% (10,679)	81.35% Avg for View: 60.99% (33.39%)	71.59% Avg for View: 38.13% (87.74%)	\$0.00 % of Total: 0.00% (\$0.00)
1. /DrawOnePage.aspx?PageID=124	6,867 (100.00%)	5,153 (100.00%)	00:03:45	4,279 (100.00%)	81.35%	71.59%	\$0.00 (0.00%)

Rows 1 - 1 of 1

<i>Original Course Date</i>	<i>Course #</i>	<i>Course Title</i>	<i>Post COVID-19 Plan</i>	<i>Original Location/Venue</i>
3/13/2020	3586	<i>Trust & Estate Symposium</i>	<i>Virtual Format - Date TBD</i>	Bahia Mar, Fort Lauderdale
4/17/2020	3588	<i>Wills Trusts and Estates Certification Review</i>	<i>Pre Recorded Webcast - No Live Presentation Available August 1</i>	Orlando Airport Hyatt
4/17/2020	3590	<i>Real Property Cert Review</i>	<i>Pre Recorded Webcast - No Live Presentation Available August 1</i>	Orlando Airport Hyatt
4/24/2020	3585	<i>Guardianship CLE</i>	<i>Virtual Format - Date TBD</i>	Tampa, CAMLS
5/20/2020	3722	<i>RPPTL Audio Webcast: Professionalism & Ethics Series - Ethics Potpourri</i>	POSTPONED TO AUGUST 12TH- Register Here	Audio Webcast
5/26/2020	3968	<i>RPPTL Audio Webcast: Bankruptcy Issues Plaguing Community Associations</i>	Proceeding as planned, Register Here	Audio Webcast
5/30/2020	3587	<i>RPPTL Convention Seminar: Notarizations – The Definitive Guide</i>	<i>Virtual Format - Date likely 6/18</i>	Loews Orlando
6/3/2020	3403	<i>RPPTL Audio Webcast: Professionalism and Ethics Series - Conflicts Letters and Waivers</i>	Proceeding as planned, Register Here	Audio Webcast
6/10/2020	TBD	<i>RPPTL Audio Webcast: Condo Law Ins and Outs, Part 3</i>	<i>Proceeding as planned</i>	Audio Webcast
6/17/2020	3723	<i>RPPTL Audio Webcast: Homestead Series - 3: More Homestead Essentials</i>	Proceeding as planned, Register Here	Audio Webcast
6/24/2020	3818	<i>RPPTL Audio Webcast: Homestead Series - 4</i>	Proceeding as planned, Register Here	Audio Webcast
08/19-21/20	TBD	<i>Attorney Trust Officer Conference</i>	CANCELLED	The Breakers
10/16/2020	3970	<i>RPPTL Inaugural Charitable Symposium</i>	<i>Proceeding as planned</i>	Miami
11/13/2020	TBD	<i>Probate Law</i>	<i>Proceeding as planned</i>	Fort Lauderdale



The Florida Bar

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Joshua E. Doyle
Executive Director

850/561-5600
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LEGISLATIVE OR POLITICAL POSITION REQUEST FORM

GENERAL INFORMATION

Submitted by: *(list name of section, division, committee, TFB group, or individual name)*

Joe Adams, Chair/Bill Sklar, Co-Chair, Condo and Planned Development Committee, RPPTL

Address: *(address and phone #)*

12140 Carissa Commerce Ct, Suite 200, Ft. Myers FL 33966

239-433-7707

Position Level: *(TFB section/division/committee)*

TFB RPPTL/Real Property/Condo and Planned Development

PROPOSED ADVOCACY

- All requests for legislative and political positions must be presented to the Board of Governors by completing this form and attaching a copy of any existing or proposed legislation or a detailed presentation of the issue.
- Select Section I below if the issue is legislative, II if the issue is political. Regardless, Section III must be completed.

If Applicable, List the Following:

(Bill or PCB #)

(Sponsor)

Indicate Position: Support Oppose Technical or Other Non-Partisan Assistance

I. Proposed Wording of Legislative Position for Official Publication

Support technical revisions to Chapters 718 and 720 to fix glitches and remove superfluous and conflicting language, including changes to Fla. Stat. 617.0725, 718.103, 718.110, 718.111, 718.112, 718.202, 718.303, 718.405, 718.503, 720.301, 720.303, 720.305 and 720.306.

II. Political Proposals:

N/A

III. Reasons For Proposed Advocacy:

A. Is the proposal consistent with *Keller vs. State Bar of California*, 110 S. Ct. 2228 (1990), and *The Florida Bar v. Schwarz*, 552 So. 2d 1094 (Fla. 1981)?

Since their adoptions, Chapters Section 718 and Section 720 have been continually amended in virtually every session of the Legislature. These amendments have varied from being comprehensive in nature to amendments that are solely to address specific issues. Often these amendments are finalized and adopted with language that conflicts with other provisions of the respective Chapters or

B. Which goal or objective of the Bar’s strategic plan is advanced by the proposal?

N/A

C. Does the proposal relate to: (*check all that apply*)

- Regulating the profession
- Improving the quality of legal services
- Improving the functioning of the system of justice
- Increasing the availability of legal services to the public
- Regulation of trust accounts
- Education, ethics, competency, and integrity of the legal profession

D. Additional Information:

PRIOR POSITIONS TAKEN ON THIS ISSUE

Please indicate any prior Bar or section/divisions/committee positions on this issue, to include opposing positions. Contact the Governmental Affairs office if assistance is needed in completing this portion of the request form.

Most Recent Position

N/A		
TFB Section/Division/Committee	Support/Oppose	Date

Others (*attach list if more than one*)

TFB Section/Division/Committee	Support/Oppose	Date

REFERRALS TO OTHER SECTIONS, COMMITTEES OR LEGAL ORGANIZATIONS

A request for action on a position must be circulated to sections and committees that might be interested in the issue. The Legislation Committee and Board of Governors may delay final action on a request if the below section is not completed. Please attach referrals and responses to this form. If you do not believe other sections and committees are affected and you did not circulate this form to them, please provide details below.

Referrals

Name of Group or Organization	Support, Oppose or No-Position
Business Law Section of the Florida Bar	
Public Interest Law Section of the Florida Bar	
Community Associations Institute	

Reasons for Non-Referrals:

CONTACTS

Board & Legislation Committee Appearance *(list name, address and phone #)*

Jon Scuderi, Legislative Co-Chair of the RPPTL Section, 850 Park Shore Drive, Suite 203, Naples, FL 34102, 239-436-1988

Appearances before Legislators *(list name and phone # of those having direct contact before House/Senate committees)*

Peter M. Dunbar and Martha Edenfield, Dean, Mead & Dunbar, P.A., 215 South Monroe Street, Suite 815, Tallahassee, Florida 32301, Telephone: (850) 999-4100

Meetings with Legislators/staff *(list name and phone # of those having direct contact with legislators)*

Same

Submit this form and attachments to the Office of General Counsel of The Florida Bar – <mailto:jhooks@floridabar.org>, (850) 561-5662. Upon receipt, staff will schedule your request for final Bar action; this may involve a separate appearance before the Legislation Committee unless otherwise advised.

**REAL PROPERTY, PROBATE & TRUST LAW SECTION
OF THE FLORIDA BAR**

WHITE PAPER

**PROPOSAL TO CORRECT TECHNICAL ERRORS AND
GLITCHES – REVISING CHAPTERS 718 AND 720**

I. SUMMARY

The proposal would fix multiple technical glitches in Chapters Section 718 and Section 720 that have come into existence due to the sheer number of times the Chapters have been amended since their inception. It would also remove provisions of both Chapters that are superfluous. The changes are necessary to resolve internal inconsistencies in Chapters Section 718 and Section 720 and provide additional clarification where the statutes are open to multiple ambiguous interpretations. Additional changes are adopted to clarify that community associations can undertake certain actions. The proposed legislation does not make substantive law or policy changes to Chapters 718 and 720. The legislation does not have a fiscal impact on state funds.

II. CURRENT SITUATION

Since their adoption, Chapters Section 718 and Section 720 have been continually amended in virtually every session of the Legislature. These amendments have varied from being comprehensive in nature to amendments that are solely to address specific issues. Often times, these amendments are finalized and adopted with language that conflicts with other provisions of the respective Chapters or are adopted without ensuring that the proposed amendment is consistent with how community associations operate.

The result of the continuous amending of the Chapters Section 718 and Section 720 has left provisions in the Chapters that are no longer good law, directly conflict with other provisions of the Chapter or current law or have ultimately created additional burdens on community associations due to the inconsistent wording within the statutes.

III. EFFECT OF PROPOSED CHANGE

The proposed changes serve to resolve many of the technical inconsistencies and errors within Chapters Section 718 and Section 720. The changes also provide additional clarification to certain statutes where the current situation has created an ambiguity as to how the respective law is to be applied. Many of the proposed changes simply involve changing words within the statute to provide better guidance and clarification to community associations, community association managers and community association attorneys on how particular provisions in each respective Chapter are to be implemented and utilized.

In Chapter Section 718, the draft proposal clarifies various definitions in Section 718.103, further clarifies when mortgagee consent is required to amend a declaration of condominium in Section 718.110, clarifies the monetary value of food and services a director or manager may accept and allows associations to vacate easements in Section 718.111, provides further clarification on the items an association is required to insure in Section 718.111(11), specifies the amount of time a member can inspect the official records and allows the association to pass on copying and personnel costs associations incur during a records inspection to the owner.

Section 718.111(12) is amended to specify the threshold of when discussion of a management company employee is an exempt personnel record and addresses the long-standing issue of when emails on board member computers are official records of the association. Section 718.111(13) is amended to remove the penalty on an association from timely providing financial records to an owner. Section 718.112(2)(a)2 removes the requirement of the Division of Condominiums to provide opinions to associations and Section 718.112(2)(b)4 is amended to delete the ability of directors to submit written objections to action taken at a meeting the director did not attend. Section 718.112(2)(p) is amended to delete the express conflict with Section 718.3027(7).

Section 718.202(1) and (3) are amended to allow for developers to use alternative assurances, such as a irrevocable letter of credit, for deposits in non-residential condominiums and allows developers to use deposits in residential condominiums for hard costs such as permit, impact and utility fees and specifically restricts deposits from being used for attorneys' fees, sales commissions and loan fees.

Section 718.303(3) is amended to provide additional clarification as to how a fining hearing is held and what type of notice must be provided. Section 718.405(5) allows for a multicondominium to adopt a consolidated declaration and that adopting a consolidated declaration does not merge the condominiums.

Section 720.301(8) is amended to remove the rules and regulations of an association as a governing document. Section 720.303(2)(b) is amended to clarify the rights of owners to speak on items on which the board will vote upon and Section 720.303(2)(c)1 provides for posting of meeting notices on association websites. Section 720.303(5)(c) is amended to clarify the threshold a management company employee must spend with the association to qualify as a personal whose personnel records are exempt from being official records. Section 720.305(2) is amended to specify how a fine imposed by an association can become a lien against a parcel and how notice of a fining hearing is to be provided.

Section 720.306(1)(d) is amended to allow associations to utilize the public records when notifying mortgagees of certain proposed amendments and Section 720.306(1)(g) is amended to allow the association to rely on the addresses provided by owners for notification of meetings.

Finally, the draft proposal amends Section 720.306(7) to clarify how notice of an adjourned meeting is provided to owners acquiring title to a parcel following adjournment of the prior meeting and Section 720.306(9) provides the secret ballots shall be used in elections unless prohibited by the governing documents of an association and resolves the conflict of how

nominations from the floor at the annual meeting are to be handled when advance notice of the election is provided to the members.

IV. ANALYSIS

The following describes the changes being proposed:

A. Section 617.0725 is amended to provide the quorum requirements in the governing documents for a community association control over the requirements in Chapter 617.

B. Section 718.103(7) is amended to clarify who may comprise a committee.

C. Section 718.103(20) is amended to clarify that a multicondominium operates real property.

D. Section 718.103(21) clarifies that operation includes operating the association.

E. Section 718.110(11) is amended to clarify that mortgagee consent is only required for amendments that are lawful and that the mortgagee consent is only required when the provision requiring consent existed on the date of the recording of the mortgage. The amendment also removes the requirement of associations to obtain information from the unit owners regarding the mortgagee regarding different address for notice of the proposed amendment and allows associations to rely on the public records.

F. Section 718.110(12)(b) is amended to provide that amendments in a multicondominium may be approved by a different percentage of the voting interests than a majority when addressing amendments dealing with the share of common expenses.

G. Section 718.111(1)(a) is amended to clarify that board members and managers can accept food at a business meeting provided the value is \$25 or less. The amendment also removes the duplication with 718.405 that an association may operate more than one condominium.

H. Section 718.111(10) is amended to provide associations with the authority to vacate easements.

I. Section 718.111(11) is amended in (c)3 to remove the specific requirement of how insurance deductibles are determined and allow associations freedom to set insurance deductibles; (f)2 is amended to clarify the association only insures alterations and improvements made by the association; (g)2 is amended to clarify owners are responsible for the cost of reconstruction of property for which there is an exclusion under the master insurance policy and that owners are responsible for repair and reconstruction of property they are required to insure; (j)4 is amended to delete the superfluous term "with finality"; (n) is amended to clarify associations are not obligated to repair, replace or reconstruct improvements made by an owner solely for the benefit of that unit.

J. Section 718.111(12) is amended in (c)1 to limit the ability of an association to adopt rules that limit the ability of an owner or their representative to inspect records to less than one 8 hour day per month; amends (c)3 to allow an association to impose fees to cover the costs of copying official records for owners and fees for personnel costs for records inspections and copying exceeding 30 minutes; (c)3a is amended to provide the attorney-client privilege for official records to extend beyond the end of the litigation; (c)3c is amended to clarify when a management company employee's personnel records are exempt official records; (c)h is amended to resolve the conflict over when emails on individual board member's computers are official records of the association; (g)4 is amended to fix a scrivener's error.

K. Section 718.111(13) is amended to delete the prohibition on association's waiving financial reporting requirements when failing to timely respond to a notice of a failure to provide financial reports from the Division of Condominiums.

L. Section 718.112(2)(a)2 is amended to delete the ability of associations to seek written legal advice from the Division of Condominiums when responding to an owner's written inquiry.

M. Section 718.112(2)(b)2 is amended in (b)2 to clarify how general proxies are used; (b)4 is amended to remove the ability of a board or committee member to file a written objection to action taken at a meeting the member did not attend.

N. Section 718.112(2)(c) is amended in (c)1 to clarify to whom notice of a special assessment meeting is given in a multicondominium association; (c)2 is amended to clarify that all committee meetings except those of committees taking action on behalf of the board of making recommendations on the budget are exempt from the requirements of notice; (c)3 is amended to allow for meetings discussing management company employees from being open to members.

O. Section 718.112(2)(d)3 is amended to clarify where notices of meetings are to be posted by associations.

P. Section 718.112(2)(p) deletes the express conflict with Section 718.3027 regarding conflicts of interest for directors of an association.

Q. Section 718.112(3) is amended to clarify optional provisions in bylaws such as notice for meetings on adopting rules, restrictions on transfer of units and use of condominium property and allows for provisions that are not inconsistent with the articles of incorporation.

R. Section 718.202 is amended in (1) to clarify the Division of Condominiums can only accept alternative assurances on residential condominiums. (1) is also amended to allow for developers in nonresidential condominiums to provide a surety bond or irrevocable letter of credit in an amount equal to the aggregate of all payments up to 10% of the sale price; (3) is amended to allow for deposits to be used by the developer for actual costs, which include permit fees, impact fees, costs for architects, engineers and surveyors but does not include attorneys' fees, marketing fees, loan fees, costs or interest

S. Section 718.303(3) is amended to clarify fines may be imposed for each continuous violation, that an association may suspend the rights of occupants and guests and provides that a fine imposition hearing must be held regardless of whether the person to be fined attends the hearing, that notice of the hearing must be given 14 days in advance and posted 48 hours in advance. The amendment further provides the person fined must be given at least 10 days to pay the fine and that the association may recover its attorneys' fees and costs in an action to collect the fine.

T. Section 718.405(5) is amended to clarify that a multicondominium may adopt a consolidated or combined declaration and that such an act does not merge the condominiums.

- U. Section 718.503(2) is amended to clarify the financial information contained in the disclosure summary.
- V. Section 720.301(8) is amended to remove the rules and regulations as a governing document of the association.
- W. Section 720.303(1) is amended to delete the 15 lot exception for enforcement of deed restrictions established prior to the purchase of the parcel.
- X. Section 720.303(2) is amended in (b) to clarify members may only speak on board meeting agenda items on which the board will vote upon; (c)1 is amended to clarify the posting of board meetings applies to open meetings and that an association may adopt rules for posting meeting notices on an association website.
- Y. Section 720.303(4)(a) is amended to clarify the association only has to produce records for inspection that it has in its possession.
- Z. Section 720.303(5)(c) is amended to clarify when a management company employee's personnel records are exempt official records.
- AA. Section 720.305(2) is amended to clarify whom an association may fine, that a fine may be levied for each continuous violation, that fines may only become liens if provided by the declaration, that an association may suspect the rights of occupants and guests and provides that a fine imposition hearing must be held regardless of whether the person to be fined attends the hearing, that notice of the hearing must be given 14 days in advance and posted 48 hours in advance. The amendment further provides that the person fined must be given at least 10 days to pay the fine and that the association may recover its attorneys' fees and costs in an action to collect the fine.
- BB. Section 720.306(1) is amended in (1)(d) to remove the requirement of associations to obtain information from the parcel owners regarding the mortgagee regarding different addresses for notice of the proposed amendment and allows associations to rely on the public records; (1)(e) is amended to clarify that amendments to the articles of incorporation must also be filed with the Division of Corporations; (1)(g) is amended to delete the glitch that associations use addresses on the property appraiser's website for notice rather than the addresses contained in the association's official records.

CC. Section 720.306(5) is amended to clarify how notice of all member's meetings shall be given by an association.

DD. Section 720.306(7) is amended to provide for how notice is given of an adjourned meeting to owners who acquire title after notice was provided for the meeting that was previously adjourned.

EE. Section 720.306(8) is amended to provide that secret ballots are used in all elections unless prohibited by the governing documents of the association.

FF. Section 720.306(9) to clarify that if the election process allows candidates to receive notice of the election in advance and nominate themselves in advance of the annual meeting, then the association is not required to allow nominations from the floor at the meeting.

GG. Section 720.306(10) clarifies that members can record a meeting by audio or video means.

V. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The proposal does not have a direct fiscal impact on local governments.

VI. DIRECT IMPACT ON PRIVATE SECTOR

This proposal will likely reduce the costs of compliance for community associations due to the clarifications provided to Chapters Section 718 and Section 720 and the removal of superfluous provisions of those respective chapters. There are no other fiscal impacts on the private sector.

VII. CONSTITUTIONAL ISSUES

There are no constitutional issues.

VIII. OTHER INTERESTED PARTIES

The Business Law Section of the Florida Bar, the Public Interest Law Section of the Florida Bar, Cyber Citizens for Justice, and the Community Associations Institute.

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1 A bill to be entitled
2 An act relating to _____; providing an effective date.

3
4 Be It Enacted by the Legislature of the State of Florida:

5
6 **Section 1.** Section 617.0725 is amended to read as follows:

7 **617.0725 Quorum.**—An amendment to the articles of incorporation or
8 the bylaws which adds, changes, or deletes a greater or lesser
9 quorum or voting requirement must meet the same quorum or voting
10 requirement and be adopted by the same vote and voting groups
11 required to take action under the quorum and voting requirements
12 then in effect or proposed to be adopted, whichever is greater.
13 This section does not apply to any corporation that is an
14 association, as defined in s. 720.301, or a corporation regulated
15 under chapter 718 or chapter 719.

16 **Section 2.** Sections (7), (20) and (21) of Section 718.103 are
17 amended to read as follows:

18 **718.103 Definitions.**—As used in this chapter, the term:

19 (7) "Committee" means a group of board members, unit owners, or
20 board members and/or unit owners and/or other persons appointed by
21 the board or a member of the board to make reports or
22 recommendations to the board regarding the proposed annual budget
23 or, to take action on behalf of the board, or to take such actions

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24 as the resolution creating the committee, or the directors of the
25 board, may dictate.

26 (20) "Multicondominium" means ~~a real estate development~~ real
27 property containing two or more condominiums, all of which are
28 operated by the same association.

29 (21) "Operation" or "operation of the condominium" includes the
30 administration and management of the condominium property and the
31 association.

32 **Section 3.** Subsections (11) and (12) of Section 718.110 are
33 amended to read as follows:

34 **718.110 Amendment of declaration; correction of error or omission**
35 **in declaration by circuit court.-**

36 (11) The Legislature finds that the procurement of mortgagee
37 consent to amendments that do not affect the rights or interests of
38 mortgagees is an unreasonable and substantial logistical and
39 financial burden on the unit owners and that there is a compelling
40 state interest in enabling the members of a condominium association
41 to approve amendments to the condominium documents through legal
42 means. Accordingly, and notwithstanding any provision to the
43 contrary contained in this section:

44 (a) As to any mortgage recorded on or after October 1, 2007, any

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45 provision in the declaration, articles of incorporation, or bylaws
46 that requires the consent or joinder of some or all mortgagees of
47 units or any other portion of the condominium property to or in
48 amendments to the declaration, articles of incorporation, or bylaws
49 or for any other matter shall be enforceable only as to the
50 following matters:

51 1. Those matters described in subsections (4) and (8).

52 2. Amendments to the declaration, articles of incorporation, or
53 bylaws that adversely affect the priority of the mortgagee's lien
54 or the mortgagee's rights to foreclose its lien or that otherwise
55 materially affect the rights and interests of the mortgagees.

56 (b) As to mortgages recorded before October 1, 2007, any lawful
57 existing provisions in the declaration, articles of incorporation,
58 or bylaws requiring mortgagee consent on the date of recording such
59 mortgage shall be enforceable.

60 (c) In securing consent or joinder, the association shall be
61 entitled to rely upon the public records to identify the holders of
62 outstanding mortgages. The association may use the address provided
63 in the original recorded mortgage document, unless there is a
64 different address for the holder of the mortgage in a recorded
65 assignment or modification of the mortgage, which recorded
66 assignment or modification must reference the official records book

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67 and page on which the original mortgage was recorded. ~~Once the~~
68 ~~association has identified the recorded mortgages of record, the~~
69 ~~association shall, in writing, request of each unit owner whose~~
70 ~~unit is encumbered by a mortgage of record any information the~~
71 ~~owner has in his or her possession regarding the name and address~~
72 ~~of the person to whom mortgage payments are currently being made.~~
73 ~~Notice shall be sent to such person if the address provided in the~~
74 ~~original recorded mortgage document is different from the name and~~
75 ~~address of the mortgagee or assignee of the mortgage as shown by~~
76 ~~the public record. The association shall be deemed to have complied~~
77 ~~with this requirement by making the written request of the unit~~
78 ~~owners required under this paragraph. Any notices required to be~~
79 ~~sent to the mortgagees under this paragraph shall be sent to all~~
80 ~~available addresses provided to the association.~~

81 (d) Any notice to the mortgagees required under paragraph (c) may
82 be sent by a method that establishes proof of delivery, and any
83 mortgagee who fails to respond within 60 days after the date of
84 mailing shall be deemed to have consented to the amendment.

85 (e) For those amendments requiring mortgagee consent on or after
86 October 1, 2007, in the event mortgagee consent is provided other
87 than by properly recorded joinder, such consent shall be evidenced
88 by affidavit of the association recorded in the public records of

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89 | the county where the declaration is recorded. Any amendment adopted
90 | without the required consent of a mortgagee shall be voidable only
91 | by a mortgagee who was entitled to notice and an opportunity to
92 | consent. An action to void an amendment shall be subject to the
93 | statute of limitations beginning 5 years after the date of
94 | discovery as to the amendments described in subparagraphs (a)1. and
95 | 2. and 5 years after the date of recordation of the certificate of
96 | amendment for all other amendments. This provision shall apply to
97 | all mortgages, regardless of the date of recordation of the
98 | mortgage.

99 | (f) Notwithstanding the provisions of this section, any amendment
100 | or amendments to conform a declaration of condominium to the
101 | insurance coverage provisions in s. 718.111(11) may be made as
102 | provided in that section.

103 | (12)(a) With respect to an existing multicondominium association,
104 | any amendment to change the fractional or percentage share of
105 | liability for the common expenses of the association and ownership
106 | of the common surplus of the association must be approved by at
107 | least a majority of the total voting interests of each condominium
108 | operated by the association unless the declarations of all
109 | condominiums operated by the association uniformly require approval
110 | by a greater percentage of the voting interests of each

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111 condominium.

112 (b) Unless approval by a ~~greater~~ different percentage of the voting
113 interests of an existing multicondominium association is expressly
114 required in the declaration of an existing condominium, the
115 declaration may be amended upon approval of at least a majority of
116 the total voting interests of each condominium operated by the
117 multicondominium association for the purpose of:

118 1. Setting forth in the declaration the formula currently utilized,
119 but not previously stated in the declaration, for determining the
120 percentage or fractional shares of liability for the common
121 expenses of the multicondominium association and ownership of the
122 common surplus of the multicondominium association.

123 2. Providing for the creation or enlargement of a multicondominium
124 association by the merger or consolidation of two or more
125 associations and changing the name of the association, as
126 appropriate.

127 **Section 4.** Paragraph (a) of subsection (1), subsection (10),
128 paragraphs (c), (f), (g), (j) and (n) of subsection (11) of Section
129 718.111 are amended to read as follows:

130 **718.111 The association.—**

131 (1) CORPORATE ENTITY.—

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132 (a) The operation of the condominium shall be by the association,
133 which must be a Florida corporation for profit or a Florida
134 corporation not for profit. However, any association which was in
135 existence on January 1, 1977, need not be incorporated. The owners
136 of units shall be ~~shareholders or~~ members of the association. The
137 officers and directors of the association have a fiduciary
138 relationship to the unit owners. It is the intent of the
139 Legislature that nothing in this paragraph shall be construed as
140 providing for or removing a requirement of a fiduciary relationship
141 between any manager employed by the association and the unit
142 owners. An officer, director, or manager may not solicit, offer to
143 accept, or accept any thing or service of value or kickback for
144 which consideration has not been provided for his or her own
145 benefit or that of his or her immediate family, from any person
146 providing or proposing to provide goods or services to the
147 association. Any such officer, director, or manager who knowingly
148 so solicits, offers to accept, or accepts any thing or service of
149 value or kickback is subject to a civil penalty pursuant to s.
150 718.501(1)(d) and, if applicable, a criminal penalty as provided in
151 paragraph (d). However, ~~this paragraph does not prohibit~~ an
152 officer, director, or manager from accepting may accept food to be
153 consumed at a business meeting with a value of less than \$25 per

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154 | individual or a services or items good received in connection with
155 | trade fairs or education programs. ~~An association may operate more~~
156 | ~~than one condominium.~~

157 | (10) EASEMENTS.—Unless prohibited by the declaration, the board of
158 | administration has the authority, without the joinder of any unit
159 | owner, to grant, modify, vacate, or move any easement if the
160 | easement constitutes part of or crosses the common elements or
161 | association property. This subsection does not authorize the board
162 | of administration to modify, move, or vacate any easement created
163 | in whole or in part for the use or benefit of anyone other than the
164 | unit owners, or crossing the property of anyone other than the unit
165 | owners, without the consent or approval of those other persons
166 | having the use or benefit of the easement, as required by law or by
167 | the instrument creating the easement. Nothing in this subsection
168 | affects the minimum requirements of s. 718.104(4)(n) or the powers
169 | enumerated in subsection (3).

170 | (11) INSURANCE.—In order to protect the safety, health, and welfare
171 | of the people of the State of Florida and to ensure consistency in
172 | the provision of insurance coverage to condominiums and their unit
173 | owners, this subsection applies to every residential condominium in
174 | the state, regardless of the date of its declaration of
175 | condominium. It is the intent of the Legislature to encourage lower

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176 or stable insurance premiums for associations described in this
177 subsection.

178 (c) Policies may include deductibles as determined by the board.

179 1. The deductibles must be consistent with industry standards and
180 prevailing practice for communities of similar size and age, and
181 having similar construction and facilities in the locale where the
182 condominium property is situated.

183 2. The deductibles may be based upon available funds, including
184 reserve accounts, or predetermined assessment authority at the time
185 the insurance is obtained.

186 ~~3. The board shall establish the amount of deductibles based upon~~
187 ~~the level of available funds and predetermined assessment authority~~
188 ~~at a meeting of the board in the manner set forth in~~
189 ~~s. 718.112(2)(c).~~

190 (f) Every property insurance policy issued or renewed on or after
191 January 1, 2009, for the purpose of protecting the condominium must
192 provide primary coverage for:

193 1. All portions of the condominium property as originally installed
194 or replacement of like kind and quality, in accordance with the
195 original plans and specifications.

196 2. All alterations or additions made by the association to the
197 condominium property or association property ~~pursuant to~~

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198 | ~~s. 718.113(2).~~

199 | 3. The coverage must exclude all personal property within the unit
200 | or limited common elements, and floor, wall, and ceiling coverings,
201 | electrical fixtures, appliances, water heaters, water filters,
202 | built-in cabinets and countertops, and window treatments, including
203 | curtains, drapes, blinds, hardware, and similar window treatment
204 | components, or replacements of any of the foregoing which are
205 | located within the boundaries of the unit and serve only such unit.
206 | Such property and any insurance thereupon is the responsibility of
207 | the unit owner.

208 | (g) A condominium unit owner policy must conform to the
209 | requirements of s. 627.714.

210 | 1. All reconstruction work after a property loss must be undertaken
211 | by the association except as otherwise authorized in this section.
212 | A unit owner may undertake reconstruction work on portions of the
213 | unit with the prior written consent of the board of administration.
214 | However, such work may be conditioned upon the approval of the
215 | repair methods, the qualifications of the proposed contractor, or
216 | the contract that is used for that purpose. A unit owner must
217 | obtain all required governmental permits and approvals before
218 | commencing reconstruction.

219 | 2. Unit owners are responsible for the cost of reconstruction of

220 any portions of the condominium property for which an exclusion
221 under the association's master policy coverage exists pursuant to
222 subsection (f)3 hereof ~~the unit owner is required to carry property~~
223 ~~insurance~~, or for which the unit owner is responsible under
224 paragraph (j), and the cost of any such reconstruction work
225 undertaken by the association is chargeable to the unit owner and
226 enforceable as an assessment and may be collected in the manner
227 provided for the collection of assessments pursuant to s. 718.116.
228 Unit owners are responsible for reconstruction of any portions of
229 the condominium property for which the unit owner is required to
230 carry property insurance. The preceding sentence is intended to
231 clarify existing law and applies to associations existing on or
232 after July 1, 2021.

233 3. A multicondominium association may elect, by a majority vote of
234 the collective members of the condominiums operated by the
235 association, to operate the condominiums as a single condominium
236 for purposes of insurance matters, including, but not limited to,
237 the purchase of the property insurance required by this section and
238 the apportionment of deductibles and damages in excess of coverage.
239 The election to aggregate the treatment of insurance premiums,
240 deductibles, and excess damages constitutes an amendment to the
241 declaration of all condominiums operated by the association, and

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242 the costs of insurance must be stated in the association budget.
243 The amendments must be recorded as required by s. 718.110.
244 (j) Any portion of the condominium property that must be insured by
245 the association against property loss pursuant to paragraph (f)
246 which is damaged by an insurable event shall be reconstructed,
247 repaired, or replaced as necessary by the association as a common
248 expense. In the absence of an insurable event, the association or
249 the unit owners shall be responsible for the reconstruction,
250 repair, or replacement as determined by the maintenance provisions
251 of the declaration or bylaws. All property insurance deductibles
252 and other damages in excess of property insurance coverage under
253 the property insurance policies maintained by the association are a
254 common expense of the condominium, except that:
255 1. A unit owner is responsible for the costs of repair or
256 replacement of any portion of the condominium property not paid by
257 insurance proceeds if such damage is caused by intentional conduct,
258 negligence, or failure to comply with the terms of the declaration
259 or the rules of the association by a unit owner, the members of his
260 or her family, unit occupants, tenants, guests, or invitees,
261 without compromise of the subrogation rights of the insurer.
262 2. The provisions of subparagraph 1. regarding the financial
263 responsibility of a unit owner for the costs of repairing or

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264 replacing other portions of the condominium property also apply to
265 the costs of repair or replacement of personal property of other
266 unit owners or the association, as well as other property, whether
267 real or personal, which the unit owners are required to insure.

268 3. To the extent the cost of repair or reconstruction for which the
269 unit owner is responsible under this paragraph is reimbursed to the
270 association by insurance proceeds, and the association has
271 collected the cost of such repair or reconstruction from the unit
272 owner, the association shall reimburse the unit owner without the
273 waiver of any rights of subrogation.

274 4. The association is not obligated to pay for reconstruction or
275 repairs of property losses as a common expense if the property
276 losses were known or should have been known to a unit owner and
277 were not reported to the association until after the insurance
278 claim of the association for that property was settled or resolved
279 ~~with finality~~, or denied because it was untimely filed.

280 (n) The association is not obligated to reconstruct, repair or pay
281 for any reconstruction or repair expenses due to property loss to
282 any improvements installed by a current or former owner of the unit
283 or by the developer if the improvement benefits only the unit for
284 which it was installed and is not part of the standard improvements
285 installed by the developer on all units as part of original

286 construction, whether or not such improvement is located within the
287 unit. The preceding sentence is intended to clarify existing law
288 and applies to associations existing on or after July 1, 2021.

289 This paragraph does not relieve any party of its obligations
290 regarding recovery due under any insurance implemented specifically
291 for such improvements.

292 (o) The provisions of this subsection shall not apply to timeshare
293 condominium associations. Insurance for timeshare condominium
294 associations shall be maintained pursuant to s. 721.165.

295 **Section 5.** Paragraphs (b), (c), (g) of subsection (12) of Section
296 718.111 are amended to read as follows:

297 **718.111 The association.—**

298 (12) OFFICIAL RECORDS.—

299 (b) The official records specified in subparagraphs (a)1.-~~6~~5. must
300 be permanently maintained from the inception of the association.
301 All other official records must be maintained within the state for
302 at least 7 years, unless otherwise provided by general law. The
303 records of the association shall be made available to a unit owner
304 within 45 miles of the condominium property or within the county in
305 which the condominium property is located within 10 working days
306 after receipt of a written request by the board or its designee.

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307 However, such distance requirement does not apply to an association
308 governing a timeshare condominium. This paragraph may be complied
309 with by having a copy of the official records of the association
310 available for inspection or copying on the condominium property or
311 association property, or the association may offer the option of
312 making the records available to a unit owner electronically via the
313 Internet or by allowing the records to be viewed in electronic
314 format on a computer screen and printed upon request. The
315 association is not responsible for the use or misuse of the
316 information provided to an association member or his or her
317 authorized representative pursuant to the compliance requirements
318 of this chapter unless the association has an affirmative duty not
319 to disclose such information pursuant to this chapter.

320 (c)1. The official records of the association are open to
321 inspection by any association member or the authorized
322 representative of such member at all reasonable times. The right to
323 inspect the records includes the right to make or obtain copies, at
324 the reasonable expense, if any, of the member or authorized
325 representative of such member, or renter of a unit, as set forth in
326 subparagraph (c)(3). A renter of a unit has a right to inspect and
327 copy the association's bylaws and rules. The association may adopt
328 reasonable rules regarding the frequency, time, location, notice,

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329 and manner of record inspections and copying, but may not limit the
330 right of any association member or his or her authorized
331 representative, or renter of a unit, to inspect records to less
332 than one 8-hour business day per month. The failure of an
333 association to provide the records within 10 working days after
334 receipt of a written request creates a rebuttable presumption that
335 the association willfully failed to comply with this paragraph. A
336 unit owner who is denied access to official records is entitled to
337 the actual damages or minimum damages for the association's willful
338 failure to comply. Minimum damages are \$50 per calendar day for up
339 to 10 days, beginning on the 11th working day after receipt of the
340 written request. The failure to permit inspection entitles any
341 person prevailing in an enforcement action to recover reasonable
342 attorney fees from the person in control of the records who,
343 directly or indirectly, knowingly denied access to the records.

344 2. Any person who knowingly or intentionally defaces or destroys
345 accounting records that are required by this chapter to be
346 maintained during the period for which such records are required to
347 be maintained, or who knowingly or intentionally fails to create or
348 maintain accounting records that are required to be created or
349 maintained, with the intent of causing harm to the association or
350 one or more of its members, is personally subject to a civil

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351 penalty pursuant to s. 718.501(1)(d).
352 3. The association shall maintain an adequate number of copies of
353 the declaration, articles of incorporation, bylaws, and rules, and
354 all amendments to each of the foregoing, as well as the question
355 and answer sheet as described in s. 718.504 and year-end financial
356 information required under this section, on the condominium
357 property to ensure their availability to unit owners and
358 prospective purchasers, ~~and may charge its actual costs for~~
359 ~~preparing and furnishing these documents to those requesting the~~
360 ~~documents.~~ The association may impose fees to cover the costs of
361 providing copies of official records, including the costs of
362 copying and the costs required for personnel to copy the records if
363 the time spent copying the records exceeds one-half hour and if the
364 personnel costs do not exceed \$20 per hour. Personnel costs may not
365 be charged for records requests that result in the copying by
366 personnel of 25 or fewer pages. The association may charge up to 25
367 cents per page for copies made on the association's photocopier. If
368 the association does not have a photocopy machine available where
369 the records are kept, or if the records requested to be copied
370 exceed 25 pages in length, the association may have copies made by
371 an outside duplicating service and may charge the actual cost of
372 copying, as supported by the vendor invoice. An association shall

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373 allow a member or his or her authorized representative to use a
374 portable device, including a smartphone, tablet, portable scanner,
375 or any other technology capable of scanning or taking photographs,
376 to make an electronic copy of the official records in lieu of the
377 association's providing the member or his or her authorized
378 representative with a copy of such records. The association may not
379 charge a member or his or her authorized representative for the use
380 of a portable device. Notwithstanding this paragraph, the following
381 records are not accessible to unit owners:

382 a. Any record protected by the lawyer-client privilege as described
383 in s. 90.502 and any record protected by the work-product
384 privilege, including a record prepared by an association attorney
385 or prepared at the attorney's express direction, which reflects a
386 mental impression, conclusion, litigation strategy, or legal theory
387 of the attorney or the association, and which was prepared
388 exclusively for civil or criminal litigation or for adversarial
389 administrative proceedings, or which was prepared in anticipation
390 of such litigation or proceedings ~~until the conclusion of the~~
391 ~~litigation or proceedings.~~

392 c. Personnel records of association or management company
393 employees, including, but not limited to, disciplinary, payroll,
394 health, and insurance records. For purposes of this sub-

395 | subparagraph, the term "personnel records" does not include written
396 | employment agreements with an association employee or management
397 | company, or management company employee who spends at least twenty
398 | (20) hours per week of his or her paid time on the condominium
399 | property or association property, or budgetary or financial records
400 | that indicate the compensation paid to an association employee or
401 | management company employee who spends at least twenty (20) hours
402 | per week of his or her paid time on the condominium property or
403 | association property.

404 | (h) Emails contained on the private email servers of association
405 | board members, committee members or officers, unless the board
406 | member's, committee member's or officer's email account was
407 | established for or is used for the primary purpose of conducting
408 | association business.

409 | 4. The failure of the association to post information required
410 | under subparagraph 2. is not in and of itself sufficient to
411 | invalidate any action or decision of the ~~association's~~ board or its
412 | committees.

413 | **Section 6.** Paragraph (e) of subsection (13) of Section 718.111 are
414 | amended to read as follows:

415 | **718.111 The association.—**

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416 (13) FINANCIAL REPORTING.—

417 (e) A unit owner may provide written notice to the division of the
418 association's failure to mail or hand deliver him or her a copy of
419 the most recent financial report within 5 business days after he or
420 she submitted a written request to the association for a copy of
421 such report. If the division determines that the association failed
422 to mail or hand deliver a copy of the most recent financial report
423 to the unit owner, the division shall provide written notice to the
424 association that the association must mail or hand deliver a copy
425 of the most recent financial report to the unit owner and the
426 division within 5 business days after it receives such notice from
427 the division. ~~An association that fails to comply with the~~
428 ~~division's request may not waive the financial reporting~~
429 ~~requirement provided in paragraph (d) for the fiscal year in which~~
430 ~~the unit owner's request was made and the following fiscal year.~~ A
431 financial report received by the division pursuant to this
432 paragraph shall be maintained, and the division shall provide a
433 copy of such report to an association member upon his or her
434 request.

435 **Section 7.** Paragraphs (a), (b), (c) and (p) of subsection (2) of
436 Section 718.112 are amended to read as follows:

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437 **718.112 Bylaws.-**

438 (2) REQUIRED PROVISIONS.-The bylaws shall provide for the following
439 and, if they do not do so, shall be deemed to include the
440 following:

441 (a) *Administration.-*

442 2. When a unit owner of a residential condominium files a written
443 inquiry by certified mail with the board of administration, the
444 board shall respond in writing to the unit owner within 30 days
445 after receipt of the inquiry. The board's response shall either
446 give a substantive response to the inquirer, notify the inquirer
447 that a legal opinion has been requested, ~~or notify the inquirer~~
448 ~~that advice has been requested from the division. If the board~~
449 ~~requests advice from the division, the board shall, within 10 days~~
450 ~~after its receipt of the advice, provide in writing a substantive~~
451 ~~response to the inquirer.~~ If a legal opinion is requested, the
452 board shall, within 60 days after the receipt of the inquiry,
453 provide in writing a substantive response to the inquiry. The
454 failure to provide a substantive response to the inquiry as
455 provided herein precludes the board from recovering attorney fees
456 and costs in any subsequent litigation, administrative proceeding,
457 or arbitration arising out of the inquiry. The association may

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458 | through its board of administration adopt reasonable rules and
459 | regulations regarding the frequency and manner of responding to
460 | unit owner inquiries, one of which may be that the association is
461 | only obligated to respond to one written inquiry per unit in any
462 | given 30-day period. In such a case, any additional inquiry or
463 | inquiries must be responded to in the subsequent 30-day period, or
464 | periods, as applicable.

465 | (b) *Quorum; voting requirements; proxies.*—

466 | 2. Except as specifically otherwise provided herein, unit owners in
467 | a residential condominium may not vote by general proxy, but may
468 | vote by limited proxies substantially conforming to a limited proxy
469 | form adopted by the division. A voting interest or consent right
470 | allocated to a unit owned by the association may not be exercised
471 | or considered for any purpose, whether for a quorum, an election,
472 | or otherwise. Limited proxies and general proxies may be used to
473 | establish a quorum. Limited proxies shall be used for votes taken
474 | to waive or reduce reserves in accordance with subparagraph (f)2.;
475 | for votes taken to waive the financial reporting requirements of
476 | s. 718.111(13); for votes taken to amend the declaration pursuant
477 | to s. 718.110; for votes taken to amend the articles of
478 | incorporation or bylaws pursuant to this section; and for any other
479 | matter for which this chapter requires or permits a vote of the

480 unit owners. Except as provided in paragraph (d), a proxy, limited
481 or general, may not be used in the election of board members in a
482 residential condominium. General proxies may be used for ~~other~~
483 parliamentary or procedural matters ~~for which limited proxies are~~
484 ~~not required~~, and may be used in voting for nonsubstantive changes
485 to items for which a limited proxy is required and given.
486 Notwithstanding this subparagraph, unit owners may vote in person
487 at unit owner meetings. This subparagraph does not limit the use of
488 general proxies or require the use of limited proxies for any
489 agenda item or election at any meeting of a timeshare condominium
490 association or a nonresidential condominium association.

~~4. A member of the board of administration or a committee may
492 submit in writing his or her agreement or disagreement with any
493 action taken at a meeting that the member did not attend. This
494 agreement or disagreement may not be used as a vote for or against
495 the action taken or to create a quorum.~~

45. A board or committee member's participation in a meeting via
497 telephone, real-time videoconferencing, or similar real-time
498 electronic or video communication counts toward a quorum, and such
499 member may vote as if physically present. A speaker must be used so
500 that the conversation of such members may be heard by the board or
501 committee members attending in person as well as by any unit owners

502 present at a meeting.

503 (c) *Board of administration meetings.*—Meetings of the board of
504 administration at which a quorum of the members is present are open
505 to all unit owners. Members of the board of administration may use
506 e-mail as a means of communication but may not cast a vote on an
507 association matter via e-mail. A unit owner may tape record or
508 videotape the meetings. The right to attend such meetings includes
509 the right to speak at such meetings with reference to all
510 designated agenda items. The division shall adopt reasonable rules
511 governing the tape recording and videotaping of the meeting. The
512 association may adopt written reasonable rules governing the
513 frequency, duration, and manner of unit owner statements.

514 1. ~~Adequate~~ Except as provided in s. 718.112(2)(c)3.a. and b.,
515 notice of the date, time and place of all board meetings, which
516 must specifically identify all agenda items, must be posted
517 conspicuously on the condominium property at least 48 continuous
518 hours before the meeting except in an emergency. If 20 percent of
519 the voting interests petition the board to address an item of
520 business, the board, within 60 days after receipt of the petition,
521 shall place the item on the agenda at its next regular board
522 meeting or at a special meeting called for that purpose. An item
523 not included on the notice may be taken up on an emergency basis by

524 a vote of at least a majority plus one of the board members. Such
525 emergency action must be noticed and ratified at the next regular
526 board meeting. Written notice of a meeting at which a nonemergency
527 special assessment or an amendment to rules regarding unit use will
528 be considered must be mailed, delivered, or electronically
529 transmitted to the unit owners and posted conspicuously on the
530 condominium property at least 14 days before the meeting. In a
531 multicondominium association, or where assessments are being levied
532 pursuant to s. 718.113(1), notice of special assessments need only
533 be given to unit owners who will be subject to the special
534 assessment. Evidence of compliance with this 14-day notice
535 requirement must be made by an affidavit executed by the person
536 providing the notice and filed with the official records of the
537 association. Notice of any meeting in which regular or special
538 assessments against unit owners are to be considered must
539 specifically state that assessments will be considered and provide
540 the estimated cost and description of the purposes for such
541 assessments. ~~Upon notice to the unit owners, the board shall, by~~
542 ~~duly adopted rule, designate a specific location on the condominium~~
543 ~~property where all notices of board meetings must be posted.~~ If
544 there is no condominium property or association property where
545 notices can be posted, notices shall be mailed, delivered, or

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546 | electronically transmitted to each unit owner at least 14 days
547 | before the meeting. In lieu of or in addition to the physical
548 | posting of the notice on the condominium property, the association
549 | may, by reasonable rule, adopt a procedure for conspicuously
550 | posting and repeatedly broadcasting the notice and the agenda on a
551 | closed-circuit cable television system serving the condominium
552 | association. However, if broadcast notice is used in lieu of a
553 | notice physically posted on condominium property, the notice and
554 | agenda must be broadcast at least four times every broadcast hour
555 | of each day that a posted notice is otherwise required under this
556 | section. If broadcast notice is provided, the notice and agenda
557 | must be broadcast in a manner and for a sufficient continuous
558 | length of time so as to allow an average reader to observe the
559 | notice and read and comprehend the entire content of the notice and
560 | the agenda. In addition to or in lieu of any of the authorized
561 | means of providing notice of a meeting of the board, the
562 | association may, by rule, adopt a procedure for conspicuously
563 | posting the meeting notice and the agenda on a website serving the
564 | condominium association for at least the minimum period of time for
565 | which a notice of a meeting is also required to be physically
566 | posted on the condominium property or association property. Any
567 | rule adopted shall, in addition to other matters, include a

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568 requirement that the association send an ~~electronic~~ notice in the
569 same manner as a notice for a meeting of the members, which must
570 include a ~~hyperlink to~~ recitation of the address of the website
571 where the notice is posted, ~~to unit owners whose e-mail addresses~~
572 ~~are included in the association's official records.~~

573 2. ~~Meetings of a committee to take final action on behalf of the~~
574 ~~board or make recommendations to the board regarding the~~
575 ~~association budget are subject to this paragraph. Meetings of a~~
576 ~~committee that does not take final action on behalf of the board or~~
577 ~~make recommendations to the board regarding the association budget~~
578 ~~are subject to this section, unless those meetings are exempted~~
579 ~~from this section by the bylaws of the association.~~ Meetings of a
580 committee are not subject to this paragraph, except a committee
581 which takes final action on behalf of the board or which makes
582 recommendations to the board regarding the association budget.

583 3. Notwithstanding any other law, the requirement that board
584 meetings and committee meetings be open to the unit owners does not
585 apply to:

586 a. Meetings between the board or a committee and the association's
587 attorney, with respect to proposed or pending litigation, if the
588 meeting is held for the purpose of seeking or rendering legal
589 advice; or

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590 b. Board meetings held for the purpose of discussing personnel
591 matters, including matters relating to any management company
592 employees.

593 (d) *Unit owner meetings.*—

594 3. The bylaws must provide the method of calling meetings of unit
595 owners, including annual meetings. Written notice must include an
596 agenda, must be mailed, hand delivered, or electronically
597 transmitted to each unit owner at least 14 days before the annual
598 meeting, and must be posted in a conspicuous place on the
599 condominium property or association property at least 14 continuous
600 days before the annual meeting. Upon notice to the unit owners, the
601 board shall, by duly adopted rule, designate a specific location on
602 the condominium property where all notices of unit owner meetings
603 must be posted. This requirement does not apply if there is no
604 condominium property or association property for posting notices.
605 In lieu of, or in addition to, the physical posting of meeting
606 notices, the association may, by reasonable rule, adopt a procedure
607 for conspicuously posting and repeatedly broadcasting the notice
608 and the agenda on a closed-circuit cable television system serving
609 the condominium association. However, if broadcast notice is used
610 in lieu of a notice posted physically on the condominium property,
611 the notice and agenda must be broadcast at least four times every

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612 broadcast hour of each day that a posted notice is otherwise
613 required under this section. If broadcast notice is provided, the
614 notice and agenda must be broadcast in a manner and for a
615 sufficient continuous length of time so as to allow an average
616 reader to observe the notice and read and comprehend the entire
617 content of the notice and the agenda. In addition to or in lieu of
618 any of the authorized means of providing notice of a meeting of the
619 board, the association may, by rule, adopt a procedure for
620 conspicuously posting the meeting notice and the agenda on a
621 website serving the condominium association for at least the
622 minimum period of time for which a notice of a meeting is also
623 required to be physically posted on the condominium property or
624 association property. Any rule adopted shall, in addition to other
625 matters, include a requirement that the association send ~~an~~
626 ~~electronic~~ notice in the same manner as a notice for a meeting of
627 the members, which must include a ~~hyperlink to~~ recitation of the
628 address of the website where the notice is posted, ~~to unit owners~~
629 ~~whose e-mail addresses are included in the association's official~~
630 ~~records~~. Unless a unit owner waives in writing the right to receive
631 notice of the ~~annual~~ unit owner meetings, such notice must be hand
632 delivered to a person in the unit or the unit owner, mailed, or
633 electronically transmitted to each unit owner. ~~Notice for meetings~~

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634 ~~and notice for all other purposes must be mailed to each unit owner~~
635 ~~at the address last furnished to the association by the unit owner,~~
636 ~~or hand delivered to each unit owner. However, iif a unit is owned~~
637 by more than one person, the association must provide notice to the
638 address that ~~the developer identifies for that purpose and~~
639 ~~thereafter as one or more of~~ the owners of the unit advise the
640 association in writing, or if no address is given or the owners of
641 the unit do not agree, to the address ~~provided on the deed of~~
642 ~~record~~ of the unit. An officer of the association, or the manager
643 or other person providing notice of the association meeting, must
644 provide an affidavit or United States Postal Service certificate of
645 mailing, to be included in the official records of the association
646 affirming that the notice was mailed or hand delivered in
647 accordance with this provision.

648 ~~(p) Service providers; conflicts of interest. An association, which~~
649 ~~is not a timeshare condominium association, may not employ or~~
650 ~~contract with any service provider that is owned or operated by a~~
651 ~~board member or with any person who has a financial relationship~~
652 ~~with a board member or officer, or a relative within the third~~
653 ~~degree of consanguinity by blood or marriage of a board member or~~
654 ~~officer. This paragraph does not apply to a service provider in~~
655 ~~which a board member or officer, or a relative within the third~~

656 ~~degree of consanguinity by blood or marriage of a board member or~~
657 ~~officer, owns less than 1 percent of the equity shares.~~

658 **Section 7.** Subsection (3) of Section 718.112 is amended to read as
659 follows:

660 **718.112 Bylaws.—**

661 (3) OPTIONAL PROVISIONS.—The bylaws as originally recorded or as
662 amended under the procedures provided therein may provide for the
663 following:

664 (a) A method of adopting and amending administrative rules and
665 regulations governing the details of the operation and use of the
666 ~~common elements~~ condominium property.

667 (b) Restrictions on and requirements for the use, transfer,
668 maintenance, and appearance of the units and the use of the common
669 elements condominium property.

670 (c) Provisions for giving notice by electronic transmission in a
671 manner authorized by law of meetings of the board of directors and
672 committees and of annual and special meetings of the members.

673 (d) Other provisions which are not inconsistent with this chapter
674 or with the declaration or the articles of incorporation, as may be
675 desired.

676 **Section 8.** Subsections (1) and (3) of Section 718.202 are amended

677 to read as follows:

678 **718.202 Sales or reservation deposits prior to closing.-**

679 (1) If a developer contracts to sell a condominium parcel and the
680 construction, furnishing, and landscaping of the property submitted
681 or proposed to be submitted to condominium ownership has not been
682 substantially completed in accordance with the plans and
683 specifications and representations made by the developer in the
684 disclosures required by this chapter, the developer shall pay into
685 an escrow account all payments up to 10 percent of the sale price
686 received by the developer from the buyer towards the sale price.
687 The escrow agent shall give to the purchaser a receipt for the
688 deposit, upon request. In lieu of the foregoing concerning
689 residential condominiums, the division director has the discretion
690 to accept other assurances, including, but not limited to, a surety
691 bond or an irrevocable letter of credit in an amount equal to the
692 escrow requirements of this section. With respect to nonresidential
693 condominiums, the developer shall have the option of delivering to
694 escrow agent a surety bond or irrevocable letter of credit in an
695 amount equivalent to the aggregate of all payments up to 10 percent
696 of the sale price received by the developer from all buyers towards
697 the sale price, in all cases the aggregate of initial 10 percent
698 deposits monies being released secured by a surety bond or

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699 | irrevocable letter of credit in an equivalent amount. Default
700 | determinations and refund of deposits shall be governed by the
701 | escrow release provision of this subsection. Funds shall be
702 | released from escrow as follows:
703 | (3) If the contract for sale of the condominium unit so provides,
704 | the developer may withdraw escrow funds in excess of 10 percent of
705 | the purchase price from the special account required by subsection
706 | (2) when the construction of improvements has begun. He or she may
707 | use the funds for the actual costs incurred by the developer in the
708 | actual construction and development of the condominium property in
709 | which the unit to be sold is located. Actual costs shall also
710 | include expenditures for demolition, site clearing, permit fees,
711 | impact fees, utility reservation fees, as well as architectural,
712 | engineering, and surveying fees which directly relate to
713 | construction and development. However, no part of these funds may
714 | be used for salaries, commissions, or expenses of salespersons or
715 | for advertising, marketing or promotional purposes, loan fees,
716 | costs or interest, attorneys' fees, accounting fees or insurance. A
717 | contract which permits use of the advance payments for these
718 | purposes shall include the following legend conspicuously printed
719 | or stamped in boldfaced type on the first page of the contract and
720 | immediately above the place for the signature of the buyer: ANY

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721 PAYMENT IN EXCESS OF 10 PERCENT OF THE PURCHASE PRICE MADE TO
722 DEVELOPER PRIOR TO CLOSING PURSUANT TO THIS CONTRACT MAY BE USED
723 FOR CONSTRUCTION PURPOSES BY THE DEVELOPER.

724 **Section 9.** Subsection (3) of Section 718.303 is amended to read as
725 follows:

726 **718.303 Obligations of owners and occupants, remedies.-**

727 (3) The association may levy reasonable fines for the failure of
728 the owner of the a unit or its tenant, guest, occupant, licensee,
729 or invitee to comply with any provision of the declaration, the
730 association bylaws, or reasonable rules of the association. A fine
731 may not become a lien against a unit. A fine may be levied by the
732 board on the basis of each day of a continuing violation, with a
733 single notice and opportunity for hearing before a committee as
734 provided in paragraph (b). However, the a fine may not exceed \$100
735 per violation, or \$1,000 in the aggregate for each continuous
736 violation.

737 (a) An association may suspend, for a reasonable period of time,
738 the right of a unit owner, or a ~~unit-owner's~~ unit's tenant, guest,
739 occupant, licensee, or invitee, to use the common elements, common
740 facilities, or any other association property for failure to comply
741 with any provision of the declaration, the association bylaws, or

742 reasonable rules of the association. This paragraph does not apply
743 to limited common elements intended to be used only by that unit,
744 common elements needed to access the unit, utility services
745 provided to the unit, parking spaces, or elevators.

746 (b) A fine or suspension levied by the board of administration may
747 not be imposed unless the board first provides ~~at least 14 days'~~
748 written notice to the unit owner and, if applicable, any tenant,
749 guest, occupant, licensee, or invitee of the unit owner sought to
750 be fined or suspended, and an opportunity ~~for~~ to attend a hearing
751 before a committee of at least three members appointed by the ~~board~~
752 association who are not officers, directors, or employees of the
753 association, or the spouse, parent, child, brother, or sister of an
754 officer, director, or employee. The hearing must be held regardless
755 of whether the person or persons sought to be fined and/or
756 suspended appear at the scheduled hearing. Notice of the hearing
757 shall be effective when deposited in the U.S. mail ~~and correctly~~
758 ~~addressed~~ 14 days in advance of the hearing date, or may be given
759 by electronic transmission to unit owners who have given written
760 consent to receive notice of association meetings electronically.
761 Notice of the hearing shall also be posted 48 hours in advance in
762 the location where notices of board meetings are posted, or in such
763 other manner that notice of board meetings is given, and shall be

764 open to attendance by unit owners. The role of the committee is
765 limited to determining whether to confirm or reject the fine or
766 suspension levied by the board. If the committee does not approve
767 the proposed fine or suspension by majority vote, the fine or
768 suspension may not be imposed. ~~If the proposed fine or suspension~~
769 ~~is approved by the committee, the fine payment is due 5 days after~~
770 ~~the date of the committee meeting at which the fine is approved.~~
771 The association must provide written notice of such fine or
772 suspension by mail or hand delivery to the unit owner and, if
773 applicable, to any tenant, guest, occupant, licensee, or invitee of
774 the unit owner. No fine shall be due and payable less than 10 days
775 after the notice has been sent by the association. When a fine is
776 levied against a tenant, guest, occupant, licensee, or invitee, the
777 unit owner shall be jointly and severally liable for the payment of
778 the fine. Any action to collect a fine or enforce a suspension
779 shall entitle the prevailing party to recover reasonable attorneys'
780 fees and costs.
781 **Section 10.** Subsection (5) of Section 718.405 is amended to read
782 as follows:
783 **718.405 Multicondominiums; muticondominium associations.—**
784 (5) This section does not prevent or restrict a multicondominium

785 association from adopting a consolidated or combined declaration of
786 condominium, which shall comply with s. 718.104, provided that such
787 consolidated or combination shall not serve to merge the
788 condominiums or change the legal descriptions of the condominium
789 parcels as set forth in s. 718.109, unless accomplished according
790 to law. This section is intended to clarify existing law and
791 applies to associations existing on the effective date of this act.

792 **Section 11.** Subsection (2) of Section 718.503 is amended to read
793 as follows:

794 **718.503 Developer disclosure prior to sale; nondeveloper unit owner**
795 **disclosure prior to sale; voidability.—**

796 (2) NONDEVELOPER DISCLOSURE.—

797 (a) Each unit owner who is not a developer as defined by this
798 chapter shall comply with the provisions of this subsection prior
799 to the sale of his or her unit. Each prospective purchaser who has
800 entered into a contract for the purchase of a condominium unit is
801 entitled, at the seller's expense, to a current copy of the
802 declaration of condominium, articles of incorporation of the
803 association, bylaws and rules of the association, the most recent
804 year-end financial information ~~required by s. 718.111~~, and the
805 document entitled "Frequently Asked Questions and Answers" required

806 | by s. 718.504. On and after January 1, 2009, the prospective
807 | purchaser shall also be entitled to receive from the seller a copy
808 | of a governance form. Such form shall be provided by the division
809 | summarizing governance of condominium associations. In addition to
810 | such other information as the division considers helpful to a
811 | prospective purchaser in understanding association governance, the
812 | governance form shall address the following subjects:

813 | (c) Each contract entered into after July 1, 1992, for the resale
814 | of a residential unit shall contain in conspicuous type either:

815 | 1. A clause which states: THE BUYER HEREBY ACKNOWLEDGES THAT BUYER
816 | HAS BEEN PROVIDED A CURRENT COPY OF THE DECLARATION OF CONDOMINIUM,
817 | ARTICLES OF INCORPORATION OF THE ASSOCIATION, BYLAWS AND RULES OF
818 | THE ASSOCIATION, AND A COPY OF THE CURRENT ANNUAL BUDGET OF THE
819 | ASSOCIATION AND THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND
820 | FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT MORE THAN 3 DAYS,
821 | EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, PRIOR TO
822 | EXECUTION OF THIS CONTRACT; or

823 | 2. A clause which states: THIS AGREEMENT IS VOIDABLE BY BUYER BY
824 | DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN
825 | 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE
826 | DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER AND RECEIPT BY
827 | BUYER OF A CURRENT COPY OF THE DECLARATION OF CONDOMINIUM, ARTICLES

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828 OF INCORPORATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY
829 OF THE CURRENT ANNUAL BUDGET OF THE ASSOCIATION AND THE MOST RECENT
830 ~~YEAR-END~~ FINANCIAL STATEMENT ~~INFORMATION~~ AND FREQUENTLY ASKED
831 QUESTIONS AND ANSWERS DOCUMENT IF SO REQUESTED IN WRITING. ANY
832 PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT.
833 BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN
834 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE
835 BUYER RECEIVES THE DECLARATION, ARTICLES OF INCORPORATION, BYLAWS
836 AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-
837 END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND
838 ANSWERS DOCUMENT IF REQUESTED IN WRITING. BUYER'S RIGHT TO VOID
839 THIS AGREEMENT SHALL TERMINATE AT CLOSING.

840 A contract that does not conform to the requirements of this
841 paragraph is voidable at the option of the purchaser prior to
842 closing.

843 **Section 13.** Subsection (8) of Section 720.301 is amended to read
844 as follows:

845 **720.301 Definitions.**—AS used in this chapter, the term:

846 (8) "Governing documents" means:

847 (a) The recorded declaration of covenants for a community and all
848 duly adopted and recorded amendments, supplements, and recorded

849 exhibits thereto;

850 (b) The articles of incorporation and bylaws of the homeowners'
851 association and any duly adopted amendments thereto; and

852 ~~(c) Rules and regulations adopted under the authority of the~~
853 ~~recorded declaration, articles of incorporation, or bylaws and duly~~
854 ~~adopted amendments thereto.~~

855 **Section 14.** Subsections (1), (2), (4) and (5) of Section 720.303
856 are amended to read as follows:

857 **720.303 Association powers and duties, meetings of board; official**
858 **records; budgets; financial reporting; association funds; recalls.—**

859 (1) POWERS AND DUTIES.—An association which operates a community as
860 defined in s. 720.301, must be operated by an association that is a
861 Florida corporation. After October 1, 1995, the association must be
862 incorporated and the initial governing documents must be recorded
863 in the official records of the county in which the community is
864 located. An association may operate more than one community. The
865 officers and directors of an association have a fiduciary
866 relationship to the members who are served by the association. The
867 powers and duties of an association include those set forth in this
868 chapter and, except as expressly limited or restricted in this
869 chapter, those set forth in the governing documents. After control

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870 of the association is obtained by members other than the developer,
871 the association may institute, maintain, settle, or appeal actions
872 or hearings in its name on behalf of all members concerning matters
873 of common interest to the members, including, but not limited to,
874 the common areas; roof or structural components of a building, or
875 other improvements for which the association is responsible;
876 mechanical, electrical, or plumbing elements serving an improvement
877 or building for which the association is responsible;
878 representations of the developer pertaining to any existing or
879 proposed commonly used facility; and protesting ad valorem taxes on
880 commonly used facilities. The association may defend actions in
881 eminent domain or bring inverse condemnation actions. Before
882 commencing litigation against any party in the name of the
883 association involving amounts in controversy in excess of \$100,000,
884 the association must obtain the affirmative approval of a majority
885 of the voting interests at a meeting of the membership at which a
886 quorum has been attained. This subsection does not limit any
887 statutory or common-law right of any individual member or class of
888 members to bring any action without participation by the
889 association. A member does not have authority to act for the
890 association by virtue of being a member. An association may have
891 more than one class of members and may issue membership

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892 certificates. ~~An association of 15 or fewer parcel owners may~~
893 ~~enforce only the requirements of those deed restrictions~~
894 ~~established prior to the purchase of each parcel upon an affected~~
895 ~~parcel owner or owners.~~

896 (2) BOARD MEETINGS.—

897 (b) Members have the right to attend all meetings of the board. The
898 right to attend such meetings includes the right to speak at such
899 meetings with reference to all ~~designated~~ items on which the board
900 will vote. The association may adopt written reasonable rules
901 expanding the right of members to speak and governing the
902 frequency, duration, and other manner of member statements, which
903 rules must be consistent with this paragraph and may include a
904 sign-up sheet for members wishing to speak. Notwithstanding any
905 other law, meetings between the board or a committee and the
906 association's attorney to discuss proposed or pending litigation or
907 meetings of the board held for the purpose of discussing personnel
908 matters are not required to be open to the members other than
909 directors.

910 (c) The bylaws shall provide the following for giving notice to
911 parcel owners and members of all board meetings and, if they do not
912 do so, shall be deemed to include the following:

913 1. Notices of all open board meetings must be posted in a

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914 conspicuous place in the community at least 48 hours in advance of
915 a meeting, except in an emergency. In the alternative, if notice is
916 not posted in a conspicuous place in the community, notice of each
917 open board meeting must be mailed or delivered to each member at
918 least 7 days before the meeting, except in an emergency.
919 Notwithstanding this general notice requirement, ~~for communities~~
920 ~~with more than 100 members,~~ the association bylaws may provide for
921 a reasonable alternative to posting or mailing of notice for each
922 board meeting, including publication of notice, provision of a
923 schedule of board meetings, or the conspicuous posting and repeated
924 broadcasting of the notice on a closed-circuit cable television
925 system serving the homeowners' association. ~~However,~~ if broadcast
926 notice is used in lieu of a notice posted physically in the
927 community, the notice must be broadcast at least four times every
928 broadcast hour of each day that a posted notice is otherwise
929 required. When broadcast notice is provided, the notice and agenda
930 must be broadcast in a manner and for a sufficient continuous
931 length of time so as to allow an average reader to observe the
932 notice and read and comprehend the entire content of the notice and
933 the agenda. In addition to or in lieu of any of the authorized
934 means of providing notice of a meeting of the board, the
935 association may, by rule, adopt a procedure for conspicuously

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936 posting the meeting notice and the agenda on a website serving the
937 association for at least the minimum period of time for which a
938 notice of a meeting is also required to be physically posted on the
939 property. The association may provide notice by electronic
940 transmission in a manner authorized by law for meetings of the
941 board of directors, committee meetings requiring notice under this
942 section, and annual and special meetings of the members to any
943 member who has provided a facsimile number or e-mail address to the
944 association to be used for such purposes; however, a member must
945 consent in writing to receiving notice by electronic transmission.

946 (4) OFFICIAL RECORDS.—The association shall maintain each of the
947 following items, when applicable, which constitute the official
948 records of the association:

949 (a) Copies of any plans, specifications, permits, and warranties
950 related to improvements constructed on the common areas or other
951 property that the association is obligated to maintain, repair, or
952 replace, which are in the association's possession.

953 (5) INSPECTION AND COPYING OF RECORDS.—The official records shall
954 be maintained within the state for at least 7 years and shall be
955 made available to a parcel owner for inspection or photocopying
956 within 45 miles of the community or within the county in which the
957 association is located within 10 business days after receipt by the

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958 board or its designee of a written request. This subsection may be
959 complied with by having a copy of the official records available
960 for inspection or copying in the community or, at the option of the
961 association, by making the records available to a parcel owner
962 electronically via the Internet or by allowing the records to be
963 viewed in electronic format on a computer screen and printed upon
964 request. If the association has a photocopy machine available where
965 the records are maintained, it must provide parcel owners with
966 copies on request during the inspection if the entire request is
967 limited to no more than 25 pages. An association shall allow a
968 member or his or her authorized representative to use a portable
969 device, including a smartphone, tablet, portable scanner, or any
970 other technology capable of scanning or taking photographs, to make
971 an electronic copy of the official records in lieu of the
972 association's providing the member or his or her authorized
973 representative with a copy of such records. The association may not
974 charge a fee to a member or his or her authorized representative
975 for the use of a portable device.

976 (c) The association may adopt reasonable written rules governing
977 the frequency, time, location, notice, records to be inspected, and
978 manner of inspections, but may not require a parcel owner to
979 demonstrate any proper purpose for the inspection, state any reason

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980 for the inspection, or limit a parcel owner's right to inspect
981 records to less than one 8-hour business day per month. The
982 association may impose fees to cover the costs of providing copies
983 of the official records, including the costs of copying and the
984 costs required for personnel to retrieve and copy the records if
985 the time spent retrieving and copying the records exceeds one-half
986 hour and if the personnel costs do not exceed \$20 per hour.
987 Personnel costs may not be charged for records requests that result
988 in the copying of 25 or fewer pages. The association may charge up
989 to 25 cents per page for copies made on the association's
990 photocopier. If the association does not have a photocopy machine
991 available where the records are kept, or if the records requested
992 to be copied exceed 25 pages in length, the association may have
993 copies made by an outside duplicating service and may charge the
994 actual cost of copying, as supported by the vendor invoice. The
995 association shall maintain an adequate number of copies of the
996 recorded governing documents, to ensure their availability to
997 members and prospective members. Notwithstanding this paragraph,
998 the following records are not accessible to members or parcel
999 owners:
1000 3. Personnel records of association or management company
1001 employees, including, but not limited to, disciplinary, payroll,

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1002 health, and insurance records. For purposes of this subparagraph,
1003 the term "personnel records" does not include written employment
1004 agreements with an association employee, ~~or~~ management company, or
1005 management company employee who spends at least twenty (20) hours
1006 per week of his or her paid time on the property operated by the
1007 association, or budgetary or financial records that indicate the
1008 compensation paid to an association or management company employee
1009 who spends at least twenty (20) hours per week of his or her paid
1010 time on the property operated by the association.

1011 **Section 15.** Subsection (2) of Section 720.305 is amended to read
1012 as follows:

1013 **720.305 Obligations of members; remedies at law or in equity; levy**
1014 **of fines and suspension of use rights.-**

1015 (2) The association may levy reasonable fines for the failure of
1016 the owner of a parcel or its tenant, guest, occupant, licensee, or
1017 invitee to comply with any provision of the declaration, the
1018 association bylaws, or reasonable rules of the association. A fine
1019 may not exceed \$100 per violation ~~against any member or any~~
1020 ~~member's tenant, guest, or invitee for the failure of the owner of~~
1021 ~~the parcel or its occupant, licensee, or invitee to comply with any~~
1022 ~~provision of the declaration, the association bylaws, or reasonable~~

1023 ~~rules of the association~~ unless otherwise provided in the governing
1024 documents. A fine may be levied by the board for each day of a
1025 continuing violation, with a single notice and opportunity for
1026 hearing, except that the fine may not exceed \$1,000 in the
1027 aggregate for each continuous violation unless otherwise provided
1028 in the governing documents. A fine of ~~less than~~ \$1,000 or more may
1029 ~~not~~ become a lien against a parcel if authorized by the
1030 declaration. ~~In any action to recover a fine, the prevailing party~~
1031 ~~is entitled to reasonable attorney fees and costs from the~~
1032 ~~nonprevailing party as determined by the court.~~

1033 (a) An association may suspend, for a reasonable period of time,
1034 the right of a ~~member~~ parcel owner, or a member's parcel's tenant,
1035 guest, occupant, licensee, or invitee, to use common areas and
1036 facilities for the failure of ~~the owner of~~ the parcel owner or its
1037 tenant, guest, occupant, licensee, or invitee to comply with any
1038 provision of the declaration, the association bylaws, or reasonable
1039 rules of the association. ~~This paragraph does not apply to that~~
1040 ~~portion of common areas used to provide access or utility services~~
1041 ~~to the parcel.~~ A suspension shall not apply to utility services
1042 provided to the parcel and may not prohibit an owner or a tenant,
1043 guest, occupant, licensee, or invitee of a parcel from having
1044 vehicular and pedestrian ingress to and egress from the parcel,

1045 including, but not limited to, the right to park.

1046 (b) A fine or suspension levied by the board of administration may

1047 not be imposed unless the board first provides ~~at least 14 days'~~

1048 written notice to the parcel owner and, if applicable, any tenant,

1049 guest, occupant, licensee, or invitee of the parcel owner, sought

1050 to be fined or suspended, and an opportunity ~~for~~ to attend a

1051 hearing before a committee of at least three members appointed by

1052 the board who are not officers, directors, or employees of the

1053 association, or the spouse, parent, child, brother, or sister of an

1054 officer, director, or employee. The hearing must be held regardless

1055 of whether the person or persons sought to be fined and/or

1056 suspended appear at the scheduled hearing. Notice of the hearing

1057 shall be effective when deposited in the U.S. mail and correctly

1058 addressed 14 days in advance of the hearing date, or may be given

1059 by electronic transmission to parcel owners who have given written

1060 consent to receive notice of association meetings electronically.

1061 Notice of the hearing shall also be posted 48 hours in advance in

1062 the location where notices of board meetings are posted, or in such

1063 other manner that notice of board meetings is given, and shall be

1064 open to attendance by owners. If the committee, ~~by majority vote,~~

1065 does not approve a proposed fine or suspension by majority vote,

1066 the ~~proposed~~ fine or suspension may not be imposed. The role of the

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1067 committee is limited to determining whether to confirm or reject
1068 the fine or suspension levied by the board. ~~If the proposed fine or~~
1069 ~~suspension levied by the board is approved by the committee, the~~
1070 ~~fine payment is due 5 days after the date of the committee meeting~~
1071 ~~at which the fine is approved.~~ The association must provide written
1072 notice of such fine or suspension by mail or hand delivery to the
1073 parcel owner and, if applicable, to any tenant, guest, occupant,
1074 licensee, or invitee of the parcel owner. No fine shall be due and
1075 payable less than 10 days after the notice has been sent by the
1076 association. When a fine is levied against a tenant, guest,
1077 occupant, licensee, or invitee, the parcel owner shall be jointly
1078 and severally liable for the payment of the fine. Any action to
1079 collect a fine or enforce a suspension shall entitle the prevailing
1080 party to recover attorneys' fees and costs.

1081 **Section 16.** Paragraphs (d), (e) and (g) of subsection (1),
1082 subsections (5), (7) and (8), paragraph (a) of subsection (9) and
1083 subsection (10) of Section 720.306 is amended to read as follows:

1084 **720.306 Meetings of members; voting and election procedures;**
1085 **amendments.—**

1086 (1) QUORUM; AMENDMENTS.—

1087 (d) The Legislature finds that the procurement of mortgagee consent

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1088 | to amendments that do not affect the rights or interests of
1089 | mortgagees is an unreasonable and substantial logistical and
1090 | financial burden on the parcel owners and that there is a
1091 | compelling state interest in enabling the members of an association
1092 | to approve amendments to the association's governing documents
1093 | through legal means. Accordingly, and notwithstanding any provision
1094 | of this paragraph to the contrary:

1095 | 1. As to any mortgage recorded on or after July 1, 2013, any
1096 | provision in the association's governing documents that requires
1097 | the consent or joinder of some or all mortgagees of parcels or any
1098 | other portion of the association's common areas to amend the
1099 | association's governing documents or for any other matter is
1100 | enforceable only as to amendments to the association's governing
1101 | documents that adversely affect the priority of the mortgagee's
1102 | lien or the mortgagee's rights to foreclose its lien or that
1103 | otherwise materially affect the rights and interests of the
1104 | mortgagees.

1105 | 2. As to mortgages recorded before July 1, 2013, any existing
1106 | provisions in the association's governing documents requiring
1107 | mortgagee consent are enforceable.

1108 | 3. In securing consent or joinder, the association is entitled to
1109 | rely upon the public records to identify the holders of outstanding

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1110 mortgages. The association may use the address provided in the
1111 original recorded mortgage document, unless there is a different
1112 address for the holder of the mortgage in a recorded assignment or
1113 modification of the mortgage, which recorded assignment or
1114 modification must reference the official records book and page on
1115 which the original mortgage was recorded. ~~Once the association has~~
1116 ~~identified the recorded mortgages of record, the association shall,~~
1117 ~~in writing, request of each parcel owner whose parcel is encumbered~~
1118 ~~by a mortgage of record any information that the owner has in his~~
1119 ~~or her possession regarding the name and address of the person to~~
1120 ~~whom mortgage payments are currently being made. Notice shall be~~
1121 ~~sent to such person if the address provided in the original~~
1122 ~~recorded mortgage document is different from the name and address~~
1123 ~~of the mortgagee or assignee of the mortgage as shown by the public~~
1124 ~~record. The association is deemed to have complied with this~~
1125 ~~requirement by making the written request of the parcel owners~~
1126 ~~required under this subparagraph. Any notices required to be sent~~
1127 ~~to the mortgagees under this subparagraph shall be sent to all~~
1128 ~~available addresses provided to the association.~~
1129 4. Any notice to the mortgagees required under subparagraph 3. may
1130 be sent by a method that establishes proof of delivery, and any
1131 mortgagee who fails to respond within 60 days after the date of

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

V

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1132 mailing is deemed to have consented to the amendment.
1133 5. For those amendments requiring mortgagee consent on or after
1134 July 1, 2013, in the event mortgagee consent is provided other than
1135 by properly recorded joinder, such consent shall be evidenced by
1136 affidavit of the association recorded in the public records of the
1137 county in which the declaration is recorded.
1138 6. Any amendment adopted without the required consent of a
1139 mortgagee is voidable only by a mortgagee who was entitled to
1140 notice and an opportunity to consent. An action to void an
1141 amendment is subject to the statute of limitations beginning 5
1142 years after the date of discovery as to the amendments described in
1143 subparagraph 1. and 5 years after the date of recordation of the
1144 certificate of amendment for all other amendments. This
1145 subparagraph applies to all mortgages, regardless of the date of
1146 recordation of the mortgage.
1147 (e) A proposal to amend the governing documents must contain the
1148 full text of the provision to be amended and may not be revised or
1149 amended by reference solely to the title or number. Proposed new
1150 language must be underlined, and proposed deleted language must be
1151 stricken. If the proposed change is so extensive that underlining
1152 and striking through language would hinder, rather than assist, the
1153 understanding of the proposed amendment, a notation must be

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1154 inserted immediately preceding the proposed amendment in
1155 substantially the following form: "Substantial rewording. See
1156 governing documents for current text." An amendment to a governing
1157 document is effective when recorded in the public records of the
1158 county in which the community is located, and as to the articles of
1159 incorporation, when also filed with the Florida Division of
1160 Corporations.

1161 (f) An immaterial error or omission in the amendment process does
1162 not invalidate an otherwise properly adopted amendment.

1163 ~~(g) A notice required under this section must be mailed or~~
1164 ~~delivered to the address identified as the parcel owner's mailing~~
1165 ~~address on the property appraiser's website for the county in which~~
1166 ~~the parcel is located, or electronically transmitted in a manner~~
1167 ~~authorized by the association if the parcel owner has consented, in~~
1168 ~~writing, to receive notice by electronic transmission.~~

1169 (5) NOTICE OF MEETINGS.- ~~The bylaws shall provide for giving notice~~
1170 ~~to members of all member meetings, and if they do not do so shall~~
1171 ~~be deemed to provide the following:~~ The association shall give all
1172 parcel owners and members actual notice of all membership meetings,
1173 which shall be mailed, delivered, or electronically transmitted to
1174 the members not less than 14 days prior to the meeting. Evidence of
1175 compliance with this 14-day notice shall be made by an affidavit

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1176 | executed by the person providing the notice and filed upon
1177 | execution among the official records of the association. In
1178 | addition to mailing, delivering, or electronically transmitting the
1179 | notice of any meeting, the association may, by reasonable rule,
1180 | adopt a procedure for conspicuously posting and repeatedly
1181 | broadcasting the notice and the agenda on a closed-circuit cable
1182 | television system serving the association. When broadcast notice is
1183 | provided, the notice and agenda must be broadcast in a manner and
1184 | for a sufficient continuous length of time so as to allow an
1185 | average reader to observe the notice and read and comprehend the
1186 | entire content of the notice and the agenda.

1187 | (7) ADJOURNMENT.—Unless the bylaws require otherwise, adjournment
1188 | of an annual or special meeting to a different date, time, or place
1189 | must be announced at that meeting before an adjournment is taken,
1190 | or notice must be given of the new date, time, or place pursuant to
1191 | s. 720.303(2). Any business that might have been transacted on the
1192 | original date of the meeting may be transacted at the adjourned
1193 | meeting. ~~If a new record date for the adjourned meeting is or must~~
1194 | ~~be fixed under s. 607.0707, notice~~ Notice of the adjourned meeting
1195 | must be given to ~~persons~~ members who are entitled to vote and are
1196 | members as of the ~~new record~~ date of the adjournment but were not
1197 | members as of the ~~previous record~~ date of the original meeting or a

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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1198 previous adjournment.

1199 (8) PROXY VOTING.—The members have the right, unless otherwise
1200 provided in this subsection or in the ~~governing documents~~
1201 declaration, articles of incorporation or bylaws, to vote in person
1202 or by proxy.

1203 (a) To be valid, a proxy must be dated, must state the date, time,
1204 and place of the meeting for which it was given, and must be signed
1205 by the authorized person who executed the proxy. A proxy is
1206 effective only for the specific meeting for which it was originally
1207 given, as the meeting may lawfully be adjourned and reconvened from
1208 time to time, and automatically expires 90 days after the date of
1209 the meeting for which it was originally given. A proxy is revocable
1210 at any time at the pleasure of the person who executes it. If the
1211 proxy form expressly so provides, any proxy holder may appoint, in
1212 writing, a substitute to act in his or her place.

1213 (b) ~~If the governing documents permit voting by~~ Unless prohibited
1214 by the governing documents, secret ballot ~~by members who are not in~~
1215 ~~attendance at a meeting of the members~~ shall be used for the
1216 election of directors⁷. ~~such~~ Such ballots must be placed in an
1217 inner envelope with no identifying markings and mailed or delivered
1218 to the association in an outer envelope bearing identifying
1219 information reflecting the name of the member, the lot or parcel

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1220 for which the vote is being cast, and the signature of the lot or
1221 parcel owner casting that ballot. If the eligibility of the member
1222 to vote is confirmed and no other ballot has been submitted for
1223 that lot or parcel, the inner envelope shall be removed from the
1224 outer envelope bearing the identification information, placed with
1225 the ballots which were personally cast, and opened when the ballots
1226 are counted. If more than one ballot is submitted for a lot or
1227 parcel, the ballots for that lot or parcel shall be disqualified.
1228 Any vote by ballot received after the closing of the balloting may
1229 not be considered.

1230 (9) ELECTIONS AND BOARD VACANCIES.—

1231 (a) Elections of directors must be conducted in accordance with the
1232 procedures set forth in the governing documents of the association.
1233 Except as provided in paragraph (b), all members of the association
1234 are eligible to serve on the board of directors, and a member may
1235 nominate himself or herself as a candidate for the board at a
1236 meeting where the election is to be held; provided, however, that
1237 if the election process allows candidates to ~~be-nominated~~ receive a
1238 notice of the election in advance of the annual meeting notice and
1239 nominate themselves in advance of the meeting, the association is
1240 not required to allow nominations at the meeting. An election is
1241 not required unless more candidates are nominated than vacancies

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1242 exist. If an election is not required because there are either an
1243 equal number or fewer qualified candidates than vacancies exist,
1244 and if nominations from the floor are not required pursuant to this
1245 section or the bylaws, write-in nominations are not permitted and
1246 such qualified candidates shall commence service on the board of
1247 directors, regardless of whether a quorum is attained at the annual
1248 meeting. Except as otherwise provided in the governing documents,
1249 boards of directors ~~must~~ shall be elected by a plurality of the
1250 votes cast by eligible voters. Any challenge to the election
1251 process must be commenced within 60 days after the election ~~results~~
1252 ~~are announced~~.

1253 (10) RECORDING.—Any parcel owner may ~~tape~~ record ~~or videotape~~ by
1254 audio or video means meetings of the board of directors and
1255 meetings of the members. The board of directors of the association
1256 may adopt reasonable rules governing the ~~taping~~ recording of
1257 meetings of the board and the membership.

1258 **Section 17.** This act shall take effect July 1, 2021

1 A bill to be entitled

2 An act relating to electronic legal documents; amending s. 117.285(6)(b); deleting
3 erroneous cross-reference; amending s. 709.2119(2)(c); revising statutory affidavit form to
4 comply with new notarization requirements; amending s. 732.401(2)(e); revising statutory
5 affidavit form to comply with new notarization requirements; amending s. 732.503(1); revising
6 statutory self-proof form to comply with new notarization requirements; amending s. 732.521(7);
7 correcting erroneous cross-reference; amending s. 732.703(5)(b)3. and 4.; revising statutory
8 affidavit form to comply with new notarization requirements; amending s. 747.051(1); revising
9 statutory affidavit form to comply with new notarization requirements; providing that the
10 amendments are remedial and retroactive; and providing an effective date.

11 Be it Enacted by the Legislature of the State of Florida:

12 Section 1. Subsection (6) of section 117.285, Florida Statutes, is amended to read:

13 (6) Pursuant to subpoena, court order, an authorized law enforcement inquiry, or other
14 lawful request, a RON service provider or online notary public shall provide:

15 (a) The last known address of each witness who witnessed the signing of an electronic
16 record using audio-video communication technology under this section.

17 (b) A principal's responses to the questions in paragraphs (5)(a) or ~~(5)(d)(b)~~, as
18 applicable.

19 (c) An uninterrupted and unedited copy of the recording of the audio-video
20 communication in which an online notarization is performed.

21 Section 2. Subsection (2)(c) of section 709.2119, Florida Statutes, is amended to read:

22 (c) A written affidavit executed by the agent under this subsection may, but need not, be
23 in the following form:

24 STATE OF _____

25 COUNTY OF _____

26 Before me, the undersigned authority, personally appeared (agent) ("Affiant") by
27 means of physical presence or online notarization, who swore or affirmed that:

28 1. Affiant is the agent named in the Power of Attorney executed by (principal)
29 ("Principal") on (date) .

30 2. This Power of Attorney is currently exercisable by Affiant. The principal is domiciled
31 in (insert name of state, territory, or foreign country).

32 3. To the best of Affiant's knowledge after diligent search and inquiry:

33 a. The Principal is not deceased;

34 b. Affiant's authority has not been suspended by initiation of proceedings to determine
35 incapacity or to appoint a guardian or a guardian advocate;

36 c. Affiant's authority has not been terminated by the filing of an action for dissolution or
37 annulment of Affiant's marriage to the principal, or their legal separation; and

38 d. There has been no revocation, or partial or complete termination, of the power of
39 attorney or of Affiant's authority.

40 4. Affiant is acting within the scope of authority granted in the power of attorney.

41 5. Affiant is the successor to (insert name of predecessor agent), who has resigned, died,
42 become incapacitated, is no longer qualified to serve, has declined to serve as agent, or is
43 otherwise unable to act, if applicable.

44 6. Affiant agrees not to exercise any powers granted by the Power of Attorney if Affiant
45 attains knowledge that the power of attorney has been revoked, has been partially or completely
46 terminated or suspended, or is no longer valid because of the death or adjudication of incapacity
47 of the Principal.

48 _____
49 (Affiant)

50 Sworn to (or affirmed) and subscribed before me by the means stated above, this ____ day
51 of (month) , (year) , by (name of person making statement) .

52 (Signature of Notary Public-State of Florida)

53 (Print, Type, or Stamp Commissioned Name of Notary Public)

54 Personally Known OR Produced Identification

55 (Type of Identification Produced)

56 Section 3. Subsection (2)(e) of section 732.401, Florida Statutes, is amended to read:

57 (e) The election shall be made by filing a notice of election containing the legal
58 description of the homestead property for recording in the official record books of the county or

59 counties where the homestead property is located. The notice must be in substantially the
60 following form:

61 ELECTION OF SURVIVING SPOUSE TO TAKE A
62 ONE-HALF INTEREST OF DECEDENT'S INTEREST
63 IN HOMESTEAD PROPERTY

64 STATE OF _____

65 COUNTY OF _____

66 1. The decedent, _____, died on _____. On the date of the decedent's
67 death, ~~T~~the decedent was married to _____, who survived the decedent.

68 2. At the time of the decedent's death, the decedent owned an interest in real property
69 that the affiant believes to be homestead property described in s. 4, Article X of the State
70 Constitution, which real property being in _____ County, Florida, and described
71 as: (description of homestead property) .

72 3. Affiant elects to take one-half of decedent's interest in the homestead as a tenant in
73 common in lieu of a life estate.

74 4. If affiant is not the surviving spouse, affiant is the surviving spouse's attorney in fact
75 or guardian of the property, and an order has been rendered by a court having jurisdiction of the
76 real property authorizing the undersigned to make this election.

77 _____
78 (Affiant)

79 Sworn to (or affirmed) and subscribed before me by means of physical presence or online
80 notarization, this day of (month), (year), by (affiant) .

81 (Signature of Notary Public-State of Florida)

82 (Print, Type, or Stamp Commissioned Name of Notary Public)

83 Personally Known OR Produced Identification

84 (Type of Identification Produced)

85 Section 4. Subsection (1) of section 732.503, Florida Statutes, is amended to read:

86 (1) A will or codicil executed in conformity with s. 732.520 may be made self-proved at
87 the time of its execution or at any subsequent date by the acknowledgement of it by the testator
88 and the affidavits of the witnesses, made before an officer authorized to administer oaths and

89 evidenced by the officer's certificate attached to or following the will, in substantially the
90 following form:

91 STATE OF FLORIDA
92 COUNTY OF _____

93 I, _____, declare to the officer taking my acknowledgment of this
94 instrument, and to the subscribing witnesses, that I signed this instrument as my will.

95 _____
96 Testator

97 We, _____ and _____,
98 have been sworn by the officer signing below, and declare to that officer on our oaths that the
99 testator declared the instrument to be the testator's will and signed it in our presence and that we
100 each signed the instrument as a witness in the presence of the testator and of each other.

101 _____
102 Witness

103 _____
104 _____
105 Witness

106 Acknowledged and subscribed before me by means of physical presence or online
107 notarization, by the testator, (type or print testator's name), who is personally known to me or
108 ~~who~~ has produced (state type of identification—see s. 117.05(5)(b)2.) as identification, and
109 sworn to and subscribed before me by means of physical presence or online notarization,
110 by the witnesses, (type or print name of first witness) who is personally known to me or ~~who~~
111 has produced (state type of identification—see s. 117.05(5)(b)2.) as identification, and sworn
112 to and subscribed before me by means of physical presence or online notarization, by the
113 witness (type or print name of second witness) who is personally known to me or ~~who~~ has
114 produced (state type of identification—see s. 117.05(5)(b)2.) as identification, and subscribed by
115 me in the presence of the testator and the subscribing witnesses, by the means stated above, by
116 means of physical presence or online notarization, all on (date).

117 (Signature of Officer)

118 (Print, type, or stamp commissioned name and affix official seal)

119 Section 5. Subsection (7) of section 732.521, Florida Statutes, is amended to read:

120 (7) “Qualified custodian” means a person who meets the requirements of s. ~~732.525(1)~~

121 732.524(1).

122 Section 6. Subsection (5)(b)3. of section 732.703., Florida Statutes, is amended to read:

123 3. If the death certificate is silent as to the decedent’s marital status at the time of his
124 or her death, the payor is not liable for making a payment on account of, or for
125 transferring an interest in, that portion of the asset to the primary beneficiary upon
126 delivery to the payor of an affidavit validly executed by the primary beneficiary in
127 substantially the following form:

128 STATE OF _____

129 COUNTY OF _____

130 Before me, the undersigned authority, personally appeared by means of physical
131 presence or online notarization, (type or print Affiant’s name) (“Affiant”), who swore or
132 affirmed that:

133 1. (Type or print name of Decedent) (“Decedent”) died on (type or print the date of
134 the Decedent’s death) .

135 2. Affiant is a “primary beneficiary” as that term is defined in Section 732.703, Florida
136 Statutes. Affiant and Decedent were married on (type or print the date of marriage) , and were
137 legally married to one another on the date of the Decedent’s death.

138 (Affiant)

139 Sworn to or affirmed before me by the means stated above, by the affiant, who is
140 personally known to me or who has produced (state type of identification) as identification,
141 this day of (month) , (year) .

142 (Signature of Officer)

143 (Print, Type, or Stamp Commissioned name of Notary Public)

144 Section 7. Subsection (5)(b)4. of section 732.703., Florida Statutes, is amended to read:

145 4. If the death certificate is silent as to the decedent’s marital status at the time of his
146 or her death, the payor is not liable for making a payment on account of, or for
147 transferring an interest in, that portion of the asset to the secondary beneficiary upon

148 delivery to the payor of an affidavit validly executed by the secondary beneficiary
149 **affidavit** in substantially the following form:

150 STATE OF _____

151 COUNTY OF _____

152 Before me, the undersigned authority, personally appeared **by means of physical**
153 **presence or online notarization**, (type or print Affiant's name) ("Affiant"), who swore or
154 affirmed that:

155 1. (Type or print name of Decedent) ("Decedent") died on (type or print the date of
156 the Decedent's death) .

157 2. Affiant is a "secondary beneficiary" as that term is defined in Section 732.703,
158 Florida Statutes. On the date of the Decedent's death, the Decedent was not legally married to
159 the spouse designated as the "primary beneficiary" as that term is defined in Section 732.703,
160 Florida Statutes.

161 (Affiant)

162 Sworn to or affirmed before me by **the means stated above, by** the affiant, who is
163 personally known to me or who has produced (state type of identification) as identification,
164 this _____ day of (month), (year) .

165 (Signature of Officer)

166 (Print, Type, or Stamp Commissioned name of Notary Public)

167 Section 8. Subsection (1). of section 747.051., Florida Statutes, is amended to read:

168 (1) If the wife of any person defined as an absentee in s. 747.01(1), or his next of kin if
169 said absentee has no wife, shall wish to sell or transfer any property of the absentee which has a
170 gross value of less than \$5,000, or shall require the consent of the absentee in any matter
171 regarding the absentee's children or in any other matter in which the gross value of the subject
172 matter is less than \$5,000, she may apply to the circuit court for an order authorizing said sale,
173 transfer, or consent without opening a full conservatorship proceeding as provided by this
174 chapter. She may make the application without the assistance of an attorney. Said application
175 shall be made by petition on the following form, which form shall be made readily available to
176 the applicant by the clerk of the circuit court:

177 **In the Circuit Court**

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In re: (Absentee) , case number _____.

PETITION FOR SUMMARY RELIEF

Petitioner, (Name) , whose residence is (Street & number) , (City or town) , and
(County) , Florida, and who is the (Describe relationship to absentee) of the absentee,
(Name) , states that the absentee has been (Imprisoned or missing in action) since (Date)
when (Describe details) . Petitioner desires to sell/transfer (Describe property) of the value
of (Value) because (Give reasons) . The terms of sale/transfer are (Give reasons) .
Petitioner requires the consent of the absentee for the purpose of _____.

(Petitioner)
State of Florida
County of _____

Sworn to (or affirmed) and subscribed before me **by means of physical presence or**
online notarization, this ___ day of _____, (year) , by (name of person making statement) .

(Signature of Notary Public--State of Florida)
(Print, Type, or Stamp Commissioned Name of Notary Public)
Personally Known _____ OR Produced Identification _____
Type of Identification Produced _____

Section 9. The changes made by this act are remedial in nature, and apply retroactively
as of January 1, 2020.

Section 10. This act shall take effect upon becoming law.

REAL PROPERTY, PROBATE AND TRUST LAW SECTION OF THE FLORIDA BAR

WHITE PAPER

AMENDMENTS TO SECTIONS 117.285(6)(b), 709.2119(2)(c), 732.401(2)(e), 732.503(1), 732.521(7), 732.703(5)(b)3. and 4., 747.051(1), FLORIDA STATUTES, CORRECTING GLITCHES IN CHAPTER 2019-71, LAWS OF FLORIDA, AND REVISING FORMS CONTAINED IN FLORIDA STATUTES SO THAT THE STATUTORY FORMS COMPLY WITH AMENDMENTS TO NOTARIZATION PROCEDURES SET FORTH IN SAID ACT.

I. SUMMARY

Chapter 2019-71, Laws of Florida (hereinafter “Chap. 2019-71”), includes provisions authorizing the remote, online notarization and witnessing of electronic documents through the use of specified audio-video communication technology. Chap. 2019-71 also includes provisions authorizing and/or regulating remote, online notarization and witnessing for electronic wills and other estate planning documents such as trusts, living wills, healthcare surrogate designations, and powers of attorney. As explained below, there are some glitches in Chap. 2019-71 and other glitches caused by that new legislation that need to be addressed. The glitches fall into two categories: (i) erroneous cross-references contained in Chap. 2019-71; and (ii) forms contained in the current statutes that, as a result of amendments in Chap. 2019-71, no longer comply with the new notarization requirements now in effect. The Real Property, Probate, and Trust Law Section’s proposed legislation addresses and fixes these glitches.

II. CURRENT SITUATION

A. Erroneous cross-references

1. Section 117.285(6)(b) refers to a “principal’s responses to the questions in paragraphs (5)(a) or (b)” of s. 117.285. However, as finally enacted, there are no questions in paragraph (5)(b) of s. 117.285; rather the questions are in paragraphs (5)(a) and (5)(d). Therefore, the reference to subparagraph (5)(b) in s. 117.285(6)(b) should be deleted and replaced with a reference to (5)(d).

2. Under Chap. 2019-71, for an electronic will that is executed in the presence of remote online witnesses to be self-proving, the testator must appoint a “qualified custodian” who meets the requirements set forth in s. 732.524(1), Florida Statutes. Section 732.521(7), which defines “qualified custodians,” contains an erroneous cross-reference to s. 732.525(1), rather than to 732.524(1).

Section 732.521(7) contains the following definition:

(7) “Qualified custodian” means a person who meets the requirements of s. 732.525(1).

The requirements of a qualified custodian are actually set forth in s. 732.524(1) (not in s. 725.525(1)). Accordingly, the erroneous cross-reference in s. 732.521(7) should be corrected so that it refers to the section which contains the requirements of a qualified custodian.

B. Statutory Forms That No Longer Comply With Notarization Requirements

Chap. 2019-71 contains amendments to s. 117.05(4)(c) requiring Florida notary publics to include a statement in the jurat or notarial certificate indicating whether the signer appeared before the notary public by means of physical presence or by means of audio-video communication technology. As a result of these amendments (effective January 1, 2020), the following Florida Statutes which contain forms that include jurats or notarial certificates no longer comply with the requirements of current law: ss. 709.2119(2)(c), 732.401(2)(e), 732.503(1), 732.703(5)(b)3. and 4., and 747.051(1).

As amended effective January 1, 2020, s. 117.05(4)(c), now states:

(4) When notarizing a signature, a notary public shall complete a jurat or notarial certificate in substantially the same form as those found in subsection (13). The jurat or certificate of acknowledgment shall contain the following elements:

* * * *

(c) Whether the signer personally appeared before the notary public at the time of the notarization by physical presence or by means of audio-video communication technology as authorized under part II of this chapter.

The forms found in subsection (13) of s. 117.05 satisfy this requirement by adding the following to the jurat or notarial certificate: “by means of physical presence or online notarization.”

The above-mentioned Florida Statutes should be revised so that the forms contained therein comply with the new requirements of s. 117.05(4)(c).

III. EFFECT OF PROPOSED CHANGES

The proposed amendments to ss. 117.285(6)(b) and 732.521(7) simply correct erroneous cross-references contained in those statutes.

The proposed amendments to ss. 709.2119(2)(c), 732.401(2)(e), 732.503(1), 732.703(5)(b)3. and 4., and 747.051(1) revise the forms contained in those statutes so that the jurats or notarial certificates in those statutory forms comply with the new requirements of s. 117.05(4)(c) which became effective January 1, 2020.

The proposed amendments to 732.503(1) may appear unnecessarily repetitive; however, that repetition is necessary. Section 732.503(1) permits a will or codicil to be made self-proving upon the acknowledgment of the testator and affidavit of the witnesses made before an officer authorized to administer oaths and evidenced by a certificate in substantially the form set forth in the statute. With the advent of electronic wills and remote witnesses, it is possible that the testator and witnesses will all be remote from the notary, that the testator and one witness will be physically present before the notary and the second witness is remote, or that the testator is physically present with the notary while both witnesses are remote. In order for the statutory

form to adequately address all possible execution scenarios, the notary will need to state the means by which each signer appeared before him/her.

There is an additional amendment to s. 732.503(1) adding boxes for the notary public to check in order to satisfy the requirement that the notary public state whether the signer is personally known or produced identification. Although language to this effect is currently in the statutory form, it is too often overlooked by the notary public. It is hoped that the inclusion of boxes will call this requirement to the notary's attention.

These glitch fixes should be retroactive to the date upon which most of Chap. 2019-17 became effective, i.e., January 1, 2020. The proposed amendments also include a provision making them effective upon becoming law.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The proposal does not have a fiscal impact on state or local governments.

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

The proposal does not have a direct economic impact on the private sector.

VI. CONSTITUTIONAL ISSUES

There appear to be no constitutional issues raised by this proposal.

VII. OTHER INTERESTED PARTIES

Elder Law Section of The Florida Bar

Notarize.com



The Florida Bar

651 East Jefferson Street
Tallahassee, FL 32399-2300

Joshua E. Doyle
Executive Director

850/561-5600
www.FLORIDABAR.org

LEGISLATIVE OR POLITICAL POSITION REQUEST FORM

GENERAL INFORMATION

Submitted by: *(list name of section, division, committee, TFB group, or individual name)*

Angela M. Adams, Chair, Ad Hoc Committee on Electronic Wills, RPPTL Section of The Florida Bar

Address: *(address and phone #)* 540 Fourth Street N, St. Petersburg, FL 33701; (727) 821-1249

Position Level: *(TFB section/division/committee)* TFB RPPTL Section/Probate & Trust/Ad Hoc Committee on Electronic Wills

PROPOSED ADVOCACY

- All requests for legislative and political positions must be presented to the Board of Governors by completing this form and attaching a copy of any existing or proposed legislation or a detailed presentation of the issue.
- Select Section I below if the issue is legislative, II if the issue is political. Regardless, Section III must be completed.

If Applicable, List the Following:

(Bill or PCB #)

(Sponsor)

Indicate Position: Support Oppose Technical or Other Non-Partisan Assistance

I. Proposed Wording of Legislative Position for Official Publication

Support amendments to s. 117.285(6)(b) and s. 732.521(7) to correct erroneous cross-references contained therein; support amendments to ss. 709.2119(2)(c), 732.401(2)(e), 732.503(1), 732.703(5)(b)3. and 4., and 747.051(1), to revise the forms contained in those statutes so that the jurats or notarial certificates in those statutory forms comply with the new requirements of s. 117.05(4)(c) which became effective January 1, 2020; support legislation making the amendments described herein retroactive to January 1, 2020; and support making the proposed legislation effective upon becoming law.

II. Political Proposals:

N/A

III. Reasons For Proposed Advocacy:

A. Is the proposal consistent with *Keller vs. State Bar of California*, 110 S. Ct. 2228 (1990), and *The Florida Bar v. Schwarz*, 552 So. 2d 1094 (Fla. 1981)?

Yes

B. Which goal or objective of the Bar’s strategic plan is advanced by the proposal?

N/A

C. Does the proposal relate to: (*check all that apply*)

- Regulating the profession
- Improving the quality of legal services
- Improving the functioning of the system of justice
- Increasing the availability of legal services to the public
- Regulation of trust accounts
- Education, ethics, competency, and integrity of the legal profession

D. Additional Information:

PRIOR POSITIONS TAKEN ON THIS ISSUE

Please indicate any prior Bar or section/divisions/committee positions on this issue, to include opposing positions. Contact the Governmental Affairs office if assistance is needed in completing this portion of the request form.

Most Recent Position

TFB Section/Division/Committee	Support/Oppose	Date
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Others (*attach list if more than one*)

TFB Section/Division/Committee	Support/Oppose	Date
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REFERRALS TO OTHER SECTIONS, COMMITTEES OR LEGAL ORGANIZATIONS

A request for action on a position must be circulated to sections and committees that might be interested in the issue. The Legislation Committee and Board of Governors may delay final action on a request if the below section is not completed. Please attach referrals and responses to this form. If you do not believe other sections and committees are affected and you did not circulate this form to them, please provide details below.

Referrals

Name of Group or Organization	Support, Oppose or No-Position
The Elder Law Section of The Florida Bar	
Notarize.com	

Reasons for Non-Referrals:

N/A

CONTACTS

Board & Legislation Committee Appearance *(list name, address and phone #)*

John C. Moran, Gunster, 777 South Flagler Drive, Suite 500 East, West Palm Beach, Florida 33401-6194; Telephone: (561) 655-1980; e-mail: jmoran@gunster.com

Appearances before Legislators *(list name and phone # of those having direct contact before House/Senate committees)*

Peter M. Dunbar and/or Martha Edenfield, Dean, Mead & Dunbar, P.A., 215 South Monroe Street, Suite 815, Tallahassee, Florida 32301; Telephone: (850) 999-4100

Meetings with Legislators/staff *(list name and phone # of those having direct contact with legislators)*

Peter M. Dunbar and/or Martha Edenfield, Dean, Mead & Dunbar, P.A., 215 South Monroe Street, Suite 815, Tallahassee, Florida 32301; Telephone: (850) 999-4100

Submit this form and attachments to the Office of General Counsel of The Florida Bar – <mailto:jhooks@floridabar.org>, (850) 561-5662. Upon receipt, staff will schedule your request for final Bar action; this may involve a separate appearance before the Legislation Committee unless otherwise advised.

BILL ORIGINAL YEAR

1 A bill to be entitled
 2 An act relating to the Florida Guardianship Code;
 3 creating parts I, II, III, IV, V, VI, VII, VIII, IX,
 4 X, XI, XII, XIII, XIV, and XV of chapter 745, F.S. ;
 5 providing a short title; providing general
 6 provisions and definitions; providing for venue;
 7 providing for proceedings to determine incapacity;
 8 providing for proceeding to restore the rights of an
 9 individual no longer incapacitated; providing for
 10 the qualifications of a guardian; providing for the
 11 appointment of a guardian; providing provisions
 12 relating to different types of guardians; providing
 13 provisions relating to the duties of guardians;
 14 providing provisions relating to the powers of
 15 guardians; providing oversight and monitoring of
 16 wards and guardians; providing provisions relating
 17 to the resignation and discharge of guardians;
 18 providing for the removal of guardians; providing
 19 for miscellaneous provisions relating to a
 20 guardian's authorities, the authority of multiple
 21 guardians; the effect of a guardianship proceeding
 22 on a power of attorney or trust, and prohibitions on
 23 abuse by a guardian; provisions relating to the
 24 Office of Public and Professional Guardians;
 25 provisions relating to Veteran Guardianships;
 26 repealing ch 744; providing an effective date.
 27
 28 Be It Enacted by the Legislature of the State of Florida:
 29
 30 Section 1. Part I of chapter 745, Florida Statutes, consisting

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BILL ORIGINAL YEAR

61 (4) This code shall be liberally construed to accomplish these
 62 purposes.
 63
 64 745.103 Applicability.
 65 This code shall take effect on _____. The procedures
 66 for enforcement of substantive rights and the administration of
 67 this Code shall be as provided in the Florida Probate Rules.
 68
 69 745.104 Rules of evidence.
 70 The Florida Evidence Code is applicable in incapacity and
 71 guardianship proceedings unless otherwise provided by this code.
 72
 73 745.105 Construction against implied repeal.
 74 This code is intended as unified coverage of its subject matter. No
 75 part of it shall be impliedly repealed by subsequent legislation if
 76 that construction can reasonably be avoided.
 77
 78 745.106 Definitions.
 79 As used in this code, the term:
 80 (1) "Accounting" means that verified document filed by a guardian
 81 of property pursuant to s. 745.805 or 745.806.
 82 (2) "Attorney for the alleged incapacitated person" means an
 83 attorney authorized by court order to represent a person in
 84 proceedings for determination of the person's incapacity, the
 85 existence of less restrictive alternatives, the appointment of a
 86 guardian, and as otherwise authorized in this code . The attorney
 87 advocates the preferences expressed by the alleged incapacitated
 88 person, to the extent consistent with the rules regulating The
 89 Florida Bar.
 90

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BILL ORIGINAL YEAR

31 of sections 745.101, 745.102, 745.103, 745.104, 745.105, 745.106,
 32 745.107, 745.108, 745.109, 745.110, 745.111, 745.112, 745.113, and
 33 745.114, is created to read:
 34 PART I
 35 GENERAL PROVISIONS
 36 745.101 Short title.
 37 This chapter may be cited as the "Florida Guardianship Code" and
 38 for purposes of this chapter is referred to as the "code".
 39
 40 745.102 Legislative intent.
 41 The Legislature recognizes the importance of protecting adults and
 42 minors in the state of Florida; and also finds that:
 43 (1) Adjudicating an adult partially or totally incapacitated
 44 deprives such person of important legal rights.
 45 (2) By recognizing that every person has unique needs and
 46 differing abilities, it is the purpose of this code to promote the
 47 public welfare by establishing a legal system that permits
 48 incapacitated persons to participate as fully as possible in
 49 decisions affecting them, assists them in meeting the essential
 50 requirements for their physical health and safety, protects their
 51 rights and dignity, manages their assets and financial resources,
 52 provides a mechanism for them to regain their rights and abilities
 53 to the maximum extent possible, and provides personal and financial
 54 care and protection while preserving their right to privacy of
 55 their personal, financial, medical and mental health information to
 56 the same extent as persons who are not incapacitated.
 57 (3) It is the intent of this code to recognize appropriate lesser
 58 restrictive means of assistance to incapacitated persons and
 59 alternatives to guardianship and to utilize the least restrictive
 60 means of assistance.

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91 (3) "Audit" means a systematic review of inventories, accountings,
 92 plans, guardianship reports, and substantiating documents to ensure
 93 compliance with this code and the Florida Probate Rules.
 94 (4) "Clerk" means the clerk or deputy clerk of the court.
 95 (5) "Corporate guardian" means a corporation authorized to exercise
 96 fiduciary or guardianship powers in this state and includes a
 97 nonprofit corporate guardian.
 98 (6) "Court" means the circuit court division in which the
 99 incapacity or guardianship proceeding is pending.
 100 (7) "Developmental disability" shall have the meaning specified in
 101 s. 393.063.
 102 (8) "Emergency temporary guardian" means a guardian appointed in
 103 accordance with s. 745.701, to serve until letters of guardianship
 104 are issued or until otherwise ordered by the court.
 105 (9) "Examiner" means a person qualified in accordance with s.
 106 745.306 and authorized and directed by the court to assess
 107 available information and to conduct an evaluation of a ward or
 108 alleged incapacitated person, and render a written opinion in an
 109 incapacity or restoration proceeding as provided in this code.
 110 (10) "Financial institution" means a trust company, a state banking
 111 corporation or state savings association authorized and qualified
 112 to exercise fiduciary powers in this state, or a national banking
 113 association or federal savings and loan association authorized and
 114 qualified to exercise fiduciary powers in this state may act as
 115 guardian of property of the ward.
 116 (11) "Foreign guardian" means a guardian appointed by a court of
 117 another state, territory or country.
 118 (12) "Guardian" means an individual or entity appointed by the
 119 court to act on behalf of a ward's person, property, or both, and
 120 includes an emergency temporary guardian.

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121 (a) "Limited guardian" means a guardian of person, property, or
 122 both who has been appointed by the court to exercise some, but not
 123 all, delegable rights and powers of a ward.
 124 (b) "Plenary guardian" means a guardian of person, property, or
 125 both who has been appointed by the court to exercise all delegable
 126 legal rights and powers of a ward.
 127 (13) "Guardian ad litem" means a person who is appointed by the
 128 court having jurisdiction of the guardianship, or a court in which
 129 a particular legal matter is pending, to represent a ward in a
 130 particular proceeding.
 131 (14) "Guardian advocate" means a person appointed by the court to
 132 represent a person with developmental disabilities under s. 393.12.
 133 As used in this chapter, the term does not apply to a guardian
 134 advocate appointed for a person determined incompetent to consent
 135 to treatment under s. 394.4598.
 136 (15) "Guardianship monitor" means a person appointed by the court
 137 under s. 745.1008 or 745.1009 to provide the court with information
 138 concerning a ward.
 139 (16) "Guardianship Plan" means the document filed by a guardian of
 140 person within 60 days after letters of guardianship are issued that
 141 provides for the initial plan of care to meet the medical, mental
 142 health, social, residential, personal care and other needs of the
 143 ward, in accordance with s. 745.810.
 144 (17) "Guardianship Report" means the document filed annually by a
 145 guardian of person that provides information regarding the
 146 treatment, services and care provided to the ward during the
 147 reporting period and the plan for addressing the ongoing or
 148 anticipated needs of the ward, in accordance with s. 745.811,
 149 745.812, and 745.813.

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179 (26) "Natural guardians." The persons designated under §
 180 745.712(1) are the natural guardians of a minor.
 181 (27) "Next of kin" means those persons who would be heirs at law of
 182 the ward or alleged incapacitated person if that person was
 183 deceased, and the lineal descendants, per stirpes, of the ward or
 184 alleged incapacitated person.
 185 (28) "Nonprofit corporate guardian" means a not for profit
 186 corporation organized under the laws of this state for religious or
 187 charitable purposes and authorized to exercise the powers of a
 188 professional guardian.
 189 (29) "Preneed guardian" means a guardian designated by a competent
 190 adult or by the natural guardian of a minor, to serve as guardian
 191 in the event of the adult's incapacity or the need for a court
 192 appointed guardian of a minor. The designation and appointment of
 193 a preneed guardian shall be as specified in s. 745.705 and s.
 194 745.706.
 195 (30) "Professional guardian" means a person who is serving as
 196 guardian for a non-relative and who has met the requirements of the
 197 Office of Public and Professional Guardians to qualify to serve as
 198 a guardian for unrelated wards, as specified in this code.
 199 (31) "Property" means both real and personal property or any
 200 interest in it, and anything that may be the subject of ownership.
 201 It includes rights of use under contractual arrangements and
 202 digital assets as defined in Chapter 740.
 203 (32) "Public guardian" means a guardian who has been appointed by,
 204 or has a contract with, the Office of the Public and Professional
 205 Guardians to provide guardianship services.
 206 (33) "Relative" of a ward means, for purposes related to
 207 professional guardians, a spouse, adopted child, anyone related by

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150 (18) "Incapacitated person" means a person who has been judicially
 151 determined to lack the capacity to manage at least some of the
 152 person's property as defined in subsection (23) or to meet at least
 153 some of the requirements for the person's health or safety as
 154 defined in subsection (24).
 155 (19) "Information Statement" means the verified document filed by a
 156 proposed guardian pursuant to s. 745.601.
 157 (20) "Interested person" means any person who may reasonably be
 158 expected to be affected by the outcome of a guardianship or
 159 incapacity proceeding. A guardian is always deemed an interested
 160 person in proceedings that affect the ward. A person is not deemed
 161 interested solely because of an anticipated expectancy of personal
 162 benefit. A person is not deemed interested solely because of
 163 having filed a request for copies and notices of proceedings. The
 164 meaning may vary from time to time and must be determined according
 165 to the particular purpose of, and matter involved in, any
 166 proceedings.
 167 (21) "Inventory" means the verified document filed by a guardian of
 168 property pursuant to s. 745.803.
 169 (22) "Letters" means authority granted by the court to a guardian
 170 to act on behalf of the ward.
 171 (23) "Manage property" means to make lucid decisions necessary to
 172 secure, safeguard, administer, and dispose of real and personal
 173 property, contractual rights, benefits, and income of a ward.
 174 (24) "Meet requirements for health or safety" means to make lucid
 175 decisions necessary to provide for a person's health care, food,
 176 shelter, clothing, personal hygiene, or other care needs of a ward.
 177 (25) "Minor" means a person under 18 years of age whose disability
 178 due to age has not been removed by marriage or otherwise.

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208 lineal or collateral consanguinity or a spouse of any such
 209 relative.
 210 (34) "Standby guardian" means a guardian designated by a currently
 211 serving guardian and appointed by the court to assume the position
 212 of guardian if the current guardian ceases to act. The appointment
 213 of a standby guardian shall be as specified in s. 745.702 and
 214 745.703.
 215 (35) "Surrogate guardian" means a guardian appointed for temporary
 216 service in accordance with s. 745.1311.
 217 (36) "Totally incapacitated" means judicially determined to be
 218 incapable of exercising any of the rights enumerated in s.
 219 745.303(2) and 745.303(3).
 220 (37) "Voluntary guardian" is a guardian of property appointed by
 221 the court pursuant to s. 745.707.
 222 (38) "Ward" means a person for whom a guardian has been appointed.
 223
 224 745.107 Additional definitions.
 225 The definitions contained in the Florida Probate Code and the
 226 Florida Probate Rules shall be applicable to actions under this
 227 code, unless the context requires otherwise, insofar as such
 228 definitions do not conflict with definitions contained in this
 229 code.
 230
 231 745.108 Verification of documents.
 232 When verification of a document is required in this code or by
 233 rule, the document filed shall include an oath or affirmation or
 234 the following statement: "Under penalties of perjury, I declare
 235 that I have read the foregoing and the facts alleged are true to
 236 the best of my knowledge and belief." Any person who shall
 237 willfully include a false statement in the document shall be guilty

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238 of perjury and upon conviction shall be punished as provided by
 239 law.
 240
 241 745.109 Costs.
 242 In all guardianship proceedings, costs may be awarded. When the
 243 costs are to be paid out of the property of the ward, the court may
 244 direct from what part of the property the costs shall be paid.
 245
 246 745.110 Notice and service.
 247 The methods of providing notice of proceedings under this code are
 248 those specified in the Florida Probate Rules except as provided in
 249 s. 745.302. When the ward or alleged incapacitated person has an
 250 attorney of record in the guardianship or incapacity proceeding,
 251 service on the ward or alleged incapacitated person shall be
 252 completed by service on the attorney in compliance with the Rules
 253 of Judicial Administration. When a totally incapacitated ward has
 254 no attorney of record in the guardianship proceeding, service on
 255 the guardian shall be deemed service on the ward.
 256
 257 745.111 Recording of hearings.
 258 (1) All hearings related to appointment or removal of a guardian,
 259 adjudication of incapacity, or restoration of capacity must be
 260 electronically or stenographically recorded by the court.
 261 (2) If an appeal is taken from any of these proceedings, a
 262 transcript must be furnished to an indigent ward at public expense.
 263
 264 745.112 Confidentiality of guardianship records.
 265 (1) Unless otherwise ordered by the court, all records relating to
 266 incapacity, guardianship, or the settlement of a minor's claim if a
 267 guardianship has not yet been established, are confidential and

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298 specified in subsection (9). For other professional services, the
 299 accounting must include statements demonstrating the fee
 300 arrangement and method of charging for the services rendered.
 301 (3) On audit of the guardian's accounting pursuant to s. 745.1001,
 302 the court may require the guardian to justify the fees paid.
 303 (4) The court may, on a case by case basis, require a petition for
 304 approval of guardian's and professional's fees in advance of
 305 payment. The court may not unreasonably limit the frequency of such
 306 petitions and must hear such petitions on an expedited basis.
 307 (5) When fees for a guardian or attorney are submitted to the court
 308 for determination, the court may consider the following criteria:
 309 (a) The time and labor required;
 310 (b) The novelty and difficulty of the questions involved and the
 311 skill required to perform the services properly;
 312 (c) The likelihood that the acceptance of the particular employment
 313 will preclude other employment of the person;
 314 (d) The fee customarily charged in the locality for similar
 315 services;
 316 (e) The nature and value of the incapacitated person's property,
 317 the amount of income earned by the estate, and the responsibilities
 318 and potential liabilities assumed by the person;
 319 (f) The results obtained;
 320 (g) The time limits imposed by the circumstances;
 321 (h) The nature and length of the relationship with the
 322 incapacitated person; and
 323 (i) The experience, reputation, diligence, and ability of the
 324 person performing the service.
 325 (6) In awarding fees to attorney guardians, the court must clearly
 326 distinguish between fees, costs, and expenses for legal services

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268 exempt from the provisions of s.119.07(1) and s. 24(a), Art. I of
 269 the State Constitution. The following persons shall have access to
 270 the records without court order:
 271 (a) The court;
 272 (b) The clerk;
 273 (c) The guardian;
 274 (d) The guardian's attorney;
 275 (e) The ward's attorney;
 276 (f) A guardian ad litem appointed on behalf of a ward;
 277 (g) The Office of Public and Professional Guardians or its designee
 278 pursuant to s 745.1414; and
 279 (h) A ward who is an adult and has not been adjudicated totally
 280 incapacitated.
 281 (2) The court may order release of all or part of the record for
 282 good cause shown. Unless waived by court order, the confidential
 283 status of the court record shall not be lost by either authorized
 284 or unauthorized disclosure to any person, organization, or agency.
 285 (3) Notwithstanding the provision of subsection (1), letters of
 286 guardianship shall be recorded by the clerk.
 287
 288 745.113 Guardian and professional's fees and expenses.
 289 (1) A guardian, attorney, accountant, appraiser, financial advisor
 290 or other professional who has rendered services to the ward or to
 291 the guardian to assist the guardian in providing services to the
 292 ward and complying with this code, is entitled to a reasonable fee
 293 for services rendered and to reimbursement for costs incurred on
 294 behalf of the ward.
 295 (2) Fees, costs and administration expenses may be paid as incurred
 296 and must be itemized on the guardian's annual accounting. Itemized
 297 statements of guardian and attorney fees must provide the detail

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327 and fees, costs, and expenses for guardian services and must
 328 determine that no conflict of interest exists.
 329 (7) Fees for legal services may include customary and reasonable
 330 charges for work performed by paralegals and legal assistants
 331 employed by and working under the direction of the attorney. Fees
 332 may not include general clerical and office administrative services
 333 and services that are unrelated to the guardianship. A petition for
 334 fees may not be approved without prior notice to the guardian and
 335 to the ward, unless the ward is a minor or is totally
 336 incapacitated.
 337 (8) Fees for a professional guardian's services may include
 338 customary and reasonable charges for work performed by employees of
 339 a guardian for the benefit of the ward. A petition for fees may not
 340 be approved without prior notice to the ward, unless the ward is a
 341 minor or is totally incapacitated.
 342 (9) Unless otherwise ordered by the court, all petitions for
 343 guardian's and attorney's fees must be accompanied by an itemized
 344 statement of the services performed for the fees sought to be
 345 recovered. The itemized statement must specify the name and title
 346 of the person providing the service, the nature of services, date
 347 of performance, time spent on each task and the fees for each
 348 entry.
 349 (10) When court proceedings are instituted to review or determine a
 350 guardian's or an attorney's fees, such proceedings are part of the
 351 guardianship administration process and the costs, including fees
 352 and costs for the guardian and guardian's attorney, an attorney
 353 appointed under s. 745.305, or an attorney who has rendered
 354 services to the ward, must be determined by the court and paid from
 355 the assets of the guardianship unless the court finds the requested
 356 compensation to be substantially unreasonable.

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357 (11) The court may determine that a request for compensation by the
 358 guardian, the guardian's attorney, an attorney appointed under s.
 359 745.305, an attorney who has rendered services to the ward or other
 360 professional employed by the guardian is reasonable without
 361 receiving expert testimony. An interested person or party may offer
 362 expert testimony for or against a request for compensation after
 363 giving notice to interested persons. Reasonable expert witness fees
 364 must be awarded by the court and paid from the assets of the
 365 guardianship estate using the standards established in subsection
 366 (5).

367
 368 745.114 Jurisdiction of the court.
 369 The circuit court has jurisdiction to adjudicate all matters in
 370 incapacity and guardianship proceedings.

371
 372 Section 2. Part II of chapter 745, Florida Statutes,
 373 consisting of sections 745.201, 745.202, 745.203, and 745.204, is
 374 created to read:

375 PART II
 376 VENUE

377 745.201 Venue.

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

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

382 (a) If the incapacitated person or minor is a resident of this
 383 state, the county in which the incapacitated person or minor
 384 resides provided, however, that if the adjudication of incapacity
 385 occurs in a county other than the county of residence pursuant to

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416 such change. In considering the petition, the court shall determine
 417 that such relocation serves the best interest of the ward.
 418 (2) A guardian who changes the residence of a ward from the ward's
 419 current county of residence to another county adjacent to the
 420 ward's county of residence shall notify the court having
 421 jurisdiction of the guardianship and next of kin whose addresses
 422 are known to the guardian within 15 days after relocation of the
 423 ward. Such notice shall state the reasons for the change of the
 424 ward's residence. Venue need not be changed unless otherwise
 425 ordered by the court.

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

433
 434 Section 3. Part III of chapter 745, Florida Statutes,
 435 consisting of sections 745.301, 745.302, 745.303, 745.304, 745.305,
 436 745.306, 745.307, 745.308, 745.309, 745.310, 745.311, and 745.312,
 437 is created to read:

438 PART III
 439 INCAPACITY

440 745.301 Petition to determine incapacity.

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

444 (2) The petition must be verified and must, to the best of
 445 petitioner's knowledge and belief,:

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386 subsection (1), venue for appointment of guardian must be the
 387 county in which the adjudication occurred.

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

391 (c) If the incapacitated person or minor is under the jurisdiction
 392 of a dependency court, venue may also be in the county having
 393 jurisdiction of the dependency case.

394
 395 745.202 Residence of ward.

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

400
 401 745.203 Change of venue.

402 When the residence of a ward is changed to another county, the
 403 guardian shall petition to have venue of the guardianship changed
 404 to the county of the acquired residence, except as provided in s.
 405 745.204.

406
 407 745.204 Change of ward's residence.

408 (1) A guardian who has power pursuant to this code to determine the
 409 residence of a ward may not, without court approval, change the
 410 residence of the ward from this state to another, or from one
 411 county of this state to another, unless such county is adjacent to
 412 the county of the ward's current residence. A guardian who seeks to
 413 change the residence of a ward from the ward's current county of
 414 residence to another county which is not adjacent to the ward's
 415 current county of residence must obtain court approval prior to

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446 (a) State the name, residence address of the petitioner, and
 447 petitioner's relationship to the alleged incapacitated person;
 448 (b) State the name, age, county of residence, residence address and
 449 current location of the alleged incapacitated person;
 450 (c) Specify the primary language spoken by the alleged
 451 incapacitated person, and if the person speaks English;
 452 (d) Allege that the petitioner believes the alleged incapacitated
 453 person to be incapacitated and specify the factual information on
 454 which such belief is based;
 455 (e) State the name and address of the alleged incapacitated
 456 person's attending or primary care physician and other medical and
 457 mental health professionals regularly treating the alleged
 458 incapacitated person, if known;
 459 (f) State which rights enumerated in s. 745.303 the alleged
 460 incapacitated person is incapable of exercising, to the best of
 461 petitioner's knowledge. If the petitioner has insufficient
 462 experience to make such judgment, the petition must so state; and
 463 (g) State the names, relationships, and addresses of the next of
 464 kin of the alleged incapacitated person, specifying the ages of any
 465 who are minors.

466
 467 745.302 Notice of petition to determine incapacity and for
 468 appointment of guardian.

469 (1) Notice of filing a petition to determine incapacity and a
 470 petition for the appointment of a guardian, if any, and copies of
 471 the petitions must be personally served on the alleged
 472 incapacitated person. The notice and copies of the petitions must
 473 be served by the clerk on the attorney for the alleged
 474 incapacitated person within 5 days of filing the petitions, and by
 475 the petitioner on all next of kin identified in the petition. The

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476 notice must state the time and place of the hearing on the
 477 petitions; that an attorney has been appointed to represent the
 478 alleged incapacitated person; and that, if the person is determined
 479 to be incapable of exercising certain rights, a guardian may be
 480 appointed to exercise those rights on the person's behalf.
 481 (2) The attorney for the alleged incapacitated person shall serve
 482 the notice and petition on the alleged incapacitated person within
 483 5 days of the attorney's appointment.
 484
 485 745.303 Rights of persons determined incapacitated.
 486 (1) A person who has been determined to be incapacitated retains
 487 the right:
 488 (a) To have an annual review of guardianship accountings and plans;
 489 (b) To have continuing review of the need for restriction of his or
 490 her rights;
 491 (c) To be restored to capacity at the earliest possible time;
 492 (d) To be treated humanely, with dignity and respect, and to be
 493 protected against abuse, neglect, and exploitation;
 494 (e) To have a qualified guardian;
 495 (f) To remain as independent as possible, including having his or
 496 her preference as to place and standard of living honored, either
 497 as expressed or demonstrated prior to the determination of
 498 incapacity or as he or she currently expresses such preference,
 499 insofar as such request is reasonable and financially feasible;
 500 (g) To be properly educated;
 501 (h) To receive prudent financial management for his or her property
 502 and to be informed how his or her property is being managed to the
 503 extent feasible, if he or she has lost the right to manage
 504 property;

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535 (e) To make any gift or disposition of property;
 536 (f) To determine his or her residence;
 537 (g) To consent to medical and mental health treatment and
 538 rehabilitation services;
 539 (h) To make decisions about his or her social environment or other
 540 social aspects of his or her life; and
 541 (i) To make decisions about travel and visitation.
 542 (4) A person who has been found to be totally incapacitated shall
 543 be deemed to have lost all rights other than those specified in
 544 subsection (1) and the guardian shall be deemed to have succeeded
 545 to all delegable rights, unless otherwise limited by this code or
 546 determined by the court.
 547
 548 745.304 Conduct of Hearing.
 549 At any hearing under this code, the alleged incapacitated person or
 550 the ward has the right to:
 551 (1) Testify;
 552 (2) Remain silent and refuse to testify. The person may not be held
 553 in contempt of court or otherwise penalized for refusing to
 554 testify. Refusal to testify may not be used as evidence of
 555 incapacity;
 556 (3) Present evidence;
 557 (4) Call witnesses;
 558 (5) Confront and cross-examine all witnesses; and
 559 (6) Have the hearing open to the public or closed to the public as
 560 the alleged incapacitated person or ward may choose. After a person
 561 has been determined to be incapacitated, this decision shall be
 562 made by the person's guardian, unless otherwise determined by the
 563 court.
 564

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505 (i) To receive services and rehabilitation necessary to maximize
 506 his or her quality of life;
 507 (j) To be free from discrimination because of his or her
 508 incapacity;
 509 (k) To have access to the courts;
 510 (l) To counsel;
 511 (m) To receive visitors and communicate with others;
 512 (n) To notice of all proceedings related to determination of
 513 capacity and appointment of a guardian; and
 514 (o) To privacy, including privacy of incapacity and guardianship
 515 proceedings.
 516 (2) Rights that may be removed from a person by an order
 517 determining incapacity but not delegated to a guardian include the
 518 right:
 519 (a) To marry. If the right to enter into a contract has been
 520 removed, the right to marry is subject to court approval;
 521 (b) To vote;
 522 (c) To have a driver's license and operate motor vehicles;
 523 (d) To travel; and
 524 (e) To seek or retain employment.
 525 (3) Rights that may be removed from a person by an order
 526 determining incapacity and which may be delegated to a guardian
 527 include the right:
 528 (a) To contract;
 529 (b) To sue and defend lawsuits;
 530 (c) To apply for government benefits and deal with all government
 531 entities, including taxing authorities;
 532 (d) To exercise all rights with regard to ownership and management
 533 of property, including among others, firearm rights under chapter
 534 790;

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565 745.305 Attorney for the alleged incapacitated person.
 566 (1) The court must appoint a qualified attorney to represent each
 567 alleged incapacitated person in all proceedings on petitions for
 568 determination of incapacity and appointment of guardian within 5
 569 days of filing the petitions. The alleged incapacitated person may
 570 substitute an attorney of his or her choice for the court appointed
 571 counsel with court approval. At any time prior to entry of an order
 572 allowing substitution, the court may hold a hearing to determine if
 573 the proposed attorney is qualified under this code and if such
 574 attorney is the choice of the alleged incapacitated person. The
 575 court may allow the court appointed counsel and private counsel
 576 chosen by the alleged incapacitated person to serve as co-counsel.
 577 (2) When a court appoints an attorney for an alleged incapacitated
 578 person, the court must appoint the office of criminal conflict and
 579 civil regional counsel or a private attorney as prescribed in s.
 580 27.511(6). A private attorney must be one who is included in the
 581 attorney registry compiled pursuant to s. 27.40. Appointments of
 582 private attorneys must be made on a rotating basis, taking into
 583 consideration conflicts arising under this code.
 584 (3) An attorney representing an alleged incapacitated person may
 585 not serve as guardian of the alleged incapacitated person or as
 586 counsel for the guardian of the alleged incapacitated person or the
 587 petitioner.
 588 (4) An attorney representing an alleged incapacitated person under
 589 this section must have completed a minimum of 8 hours of education
 590 in guardianship. A court may waive the initial training
 591 requirement.
 592 (5) An attorney for the alleged incapacitated person must be
 593 entitled to examine all medical and mental health records of the

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594 alleged incapacitated person and consult with the alleged
 595 incapacitated person's physicians.
 596 (6) Unless extended by the court, the attorney for the alleged
 597 incapacitated person's duties end upon (a) the court's
 598 determination that there is no need for appointment of a guardian
 599 or (b) issuance of letters of guardianship, other than letters of
 600 emergency temporary guardianship. The attorney shall be deemed
 601 discharged without further proceedings.
 602
 603 745.306 Appointment and qualification of examiners.
 604 (1) Within 5 days after a petition for determination of incapacity
 605 has been filed, the court must appoint three (3) qualified persons
 606 to examine the alleged incapacitated person. One must be a
 607 psychiatrist or other physician. The remaining examiners must be
 608 either a psychologist, another psychiatrist or other physician, a
 609 registered nurse, nurse practitioner, licensed social worker,
 610 attorney, a person with an advanced degree in gerontology from an
 611 accredited institution of higher education, or other person in the
 612 court's discretion. Examiners must have knowledge, skill,
 613 experience, training, or education which, in the court's
 614 discretion, qualifies them to render an opinion in an incapacity
 615 proceeding. Unless good cause is shown, the alleged incapacitated
 616 person's attending or primary care physician may not be appointed
 617 as an examiner. Any physician for the alleged incapacitated person
 618 must provide records and information, verbal and written, to an
 619 examiner upon the examiner's written request.
 620 (2) Examiners may not be related to or associated with one another,
 621 with the petitioner, with counsel for the petitioner or the
 622 proposed guardian, or with the person alleged to be totally or
 623 partially incapacitated. A petitioner may not serve as an examiner.

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654 Each year, the chief judge of the circuit must prepare a list of
 655 persons qualified to be examiners.
 656 (8) The clerk shall serve notice of the appointment to each
 657 examiner no later than 3 days after appointment.
 658
 659 745.307 Examination of alleged incapacitated person.
 660 (1) Each examiner, independent from the other examiners, must
 661 interview the alleged incapacitated person and must determine the
 662 alleged incapacitated person's ability to exercise those rights
 663 specified in s. 745.303. In addition to the examination, each
 664 examiner must have access to, and may consider, previous medical
 665 and mental health examinations of the person, including, but not
 666 limited to, habilitation plans, school records, psychological and
 667 psychosocial reports and other related information voluntarily
 668 offered for use by the alleged incapacitated person or the
 669 petitioner. The examiners may communicate among themselves as well
 670 as with the attorney for the alleged incapacitated person and the
 671 petitioner's counsel. In addition, the examiners shall be provided
 672 a copy of the petition to determine incapacity.
 673 (2) The examiner may exclude all persons, other than the alleged
 674 incapacitated person and the alleged incapacitated person's
 675 attorney, from being present at the time of the examination, unless
 676 otherwise ordered by the court.
 677 (3) Each examiner must, within 15 days after appointment, prepare
 678 and file with the clerk a report which describes the manner of
 679 conducting the examination and the methodology employed by the
 680 examiner. The examination must include:
 681 (a) If deemed relevant to the examinations and allowed by the
 682 alleged incapacitated person, a physical examination which shall
 683 only be conducted by an examiner who is a registered nurse, nurse

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624 (3) Examiners must be able to communicate, either directly or
 625 through an independent interpreter, in the language that the
 626 alleged incapacitated person speaks or in a medium understandable
 627 to the alleged incapacitated person if the alleged incapacitated
 628 person is able to communicate.
 629 (4) The examiners shall be appointed from a roster of qualified
 630 persons maintained by the clerk of court and may not be chosen or
 631 recommended by the petitioner, attorney for the alleged
 632 incapacitated person, or any interested person.
 633 (5) A person who has been appointed to serve as an examiner may not
 634 thereafter be appointed as a guardian for the person who was the
 635 subject of the examination.
 636 (6) An examiner must complete a minimum of 4 hours of initial
 637 training. The examiner must complete 2 hours of continuing
 638 education during each 2-year period after the initial education.
 639 The initial and continuing education programs must be approved by
 640 or developed under the supervision of the Office of Public and
 641 Professional Guardians in consultation with the Florida Conference
 642 of Circuit Court Judges, the Elder Law and the Real Property,
 643 Probate and Trust Law sections of The Florida Bar and the Florida
 644 State Guardianship Association. The court may waive the initial
 645 education requirement for a person who has served for not less than
 646 5 years as an examiner. An examiner who wishes to obtain continuing
 647 education on the Internet or by video course, must first obtain the
 648 approval of the chief judge in the county of the examiner's
 649 residence.
 650 (7) Each person appointed for the first time as an examiner must
 651 file an affidavit with the court stating that the examiner has
 652 completed the required courses or will do so no later than 4 months
 653 after his or her initial appointment unless waived by the court.

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684 practitioner, or physician. An examiner who is not a physician,
 685 registered nurse, or nurse practitioner may conduct a visual
 686 examination of the alleged incapacitated person's physical
 687 appearance to determine if there are any visible signs of abuse,
 688 injury or illness;
 689 (b) A mental health examination, which may consist of, but not be
 690 limited to, questions related to orientation, current events and
 691 personal identification; and
 692 (c) A functional assessment to evaluate the alleged incapacitated
 693 person's ability to perform activities of daily living which
 694 include: preparing food, eating, bathing, dressing, ambulation,
 695 toileting and mobility.
 696 If any of these aspects of the examination is not reported or
 697 cannot be accomplished for any reason, the written report must
 698 explain the reasons for its omission.
 699
 700 745.308 Examination reports.
 701 (1) Each examiner's written report must be verified and include, to
 702 the extent of the examiner's skill and experience:
 703 (a) A diagnosis, prognosis, and recommended level of care.
 704 (b) An evaluation of the ward or alleged incapacitated person's
 705 ability to retain her or his rights, including, without limitation,
 706 the rights to marry; vote; contract; manage or dispose of property;
 707 have a driver's license; determine her or his residence; consent to
 708 medical treatment; and make decisions affecting her or his social
 709 environment.
 710 (c) The results of the examination and the examiner's assessment of
 711 information provided by the attending or primary care physician, if
 712 any, and of any other reports or written material provided to the
 713 examiner. The examiner must consult the alleged incapacitated

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714 person's primary care physician or explain the reason why such
 715 consultation was not held.
 716 (d) A description of any functional areas in which the person lacks
 717 the capacity to exercise rights, the extent of that incapacity, and
 718 the factual basis for the determination that the person lacks that
 719 capacity.
 720 (e) The names of all persons present during the time the examiner
 721 conducted his or her examination. If a person other than the person
 722 who is the subject of the examination supplies answers posed to the
 723 alleged incapacitated person, the report must include the response
 724 and the name of the person supplying the answer.
 725 (f) The date, place and time the examiner conducted his or her
 726 examination.
 727 (2) The clerk must serve each examiner's report on the petitioner
 728 and on the attorney for the alleged incapacitated person within 3
 729 days after the report is filed and at least 10 days before the
 730 hearing on the petition, and shall file a certificate of service in
 731 the incapacity proceeding.
 732 (3) If any examiners' reports are not completed and served timely,
 733 the petitioner and attorney for the alleged incapacitated person
 734 may waive the 10 day service requirement and consent to the
 735 consideration of the report by the court at the adjudicatory
 736 hearing or may seek a continuance of the hearing.
 737
 738 745.309 Consideration of examination reports.
 739 (1) Unless there is objection by the alleged incapacitated person
 740 or petitioner, the court must consider the written examination
 741 reports without requiring testimony of the examiners.
 742 (2) The petitioner and the alleged incapacitated person may object
 743 to the introduction into evidence of all or any portion of the

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773 must be conducted in a manner consistent with due process and the
 774 requirements of part III of this code.
 775 (2) The alleged incapacitated person has the right to be present at
 776 the adjudicatory hearing and may waive that right.
 777 (3) In the adjudicatory hearing on a petition to determine
 778 incapacity, a finding of limited or total incapacity of the person
 779 must be established by clear and convincing evidence.
 780
 781 745.311 Order determining incapacity.
 782 (1) If the court finds that a person is incapacitated, the court
 783 must enter an order specifying the extent of incapacity. The order
 784 must specify the rights described in s. 745.303 (2) and (3) that
 785 the person is incapable of exercising.
 786 (2) In determining that a person is totally incapacitated, the
 787 order must contain findings of fact demonstrating that the
 788 individual is totally without capacity to meet essential
 789 requirements for the person's health and safety and manage
 790 property.
 791 (3) An order adjudicating a person to be incapacitated constitutes
 792 proof of such incapacity until further order of the court. To the
 793 extent the order finds that a person is incapacitated to make any
 794 gift or disposition of property, it shall constitute a rebuttable
 795 presumption that the person is incapacitated to execute documents
 796 having testamentary aspects. For purposes of this subsection, the
 797 term "testamentary aspects" means those provisions of a document
 798 that dispose of property on or after the death of the incapacitated
 799 person other than to the incapacitated person's estate.
 800 (4) After the order determining incapacity has been filed, the
 801 clerk must serve the order on the incapacitated person.

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744 examination reports by filing and serving a written objection on
 745 the other party no later than 5 days before the adjudicatory
 746 hearing. The objection must state the basis upon which the
 747 challenge to admissibility is made. If an objection is timely filed
 748 and served, the court must apply the rules of evidence in
 749 determining the reports' admissibility. For good cause shown, the
 750 court may extend the time to file and serve the written objection.
 751 (3) If all examiners conclude that the alleged incapacitated person
 752 is not incapacitated in any respect, the court must dismiss the
 753 petition unless a verified motion challenging the examiners'
 754 conclusions is filed by petitioner within 10 days after the last
 755 examination report is served. The verified motion must make a
 756 reasonable showing by evidence in the record or proffered, that a
 757 hearing on the petition to determine incapacity is necessary. The
 758 court must rule on the verified motion as soon as practicable. The
 759 court may hold a hearing to consider evidence concerning the
 760 propriety of dismissal or the need for further examination of the
 761 alleged incapacitated person. If the court finds that the verified
 762 motion is filed in bad faith, the court may impose sanctions under
 763 s. 745.312(3).
 764
 765 745.310 Adjudicatory hearing.
 766 (1) Upon appointment of the examiners, the court must set the date
 767 for hearing of the petition and the clerk must serve notice of
 768 hearing on the petitioner, the alleged incapacitated person, and
 769 next of kin identified in the petition for determination of
 770 incapacity. The date for the adjudicatory hearing must be set no
 771 more than 20 days after the required date for filing the reports of
 772 the examiners, unless good cause is shown. The adjudicatory hearing

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802 (5) If the order determining incapacity removes the right to have a
 803 driver's license and operate motor vehicles, the clerk must serve
 804 the order on the Florida Department of Highway Safety and Motor
 805 Vehicles.
 806 (6) Orders determining incapacity shall be recorded by the clerk in
 807 the public records in the county in which the order was entered.
 808 The recording of the order is notice of the incapacity.
 809
 810 745.312 Fees in incapacity proceedings.
 811 (1) The examiners and attorney appointed under this part are
 812 entitled to reasonable fees to be determined by the court.
 813 (2) If a guardian is appointed, the fees awarded under paragraph
 814 (1) shall be paid by the guardian from the property of the ward or,
 815 if the ward is indigent, by the state. The state shall have a
 816 creditor's claim against the ward's property for any amounts paid
 817 under this section. The state may file its claim within 90 days
 818 after the entry of an order awarding attorney and examiner fees. If
 819 the state does not file its claim within the 90-day period, the
 820 state is thereafter barred from asserting the claim. Upon petition
 821 by the state for payment of the claim, the court shall enter an
 822 order authorizing payment by the guardian from the property of the
 823 ward in the amount determined by the court, if any. The state shall
 824 keep a record of the payments.
 825 (3) If the petition to determine incapacity is dismissed, costs and
 826 attorney's fees of the proceeding may be assessed against the
 827 petitioner if the court finds the petition to have been filed in
 828 bad faith. The petitioner shall also reimburse the state courts
 829 system for any amounts paid under subparagraph 4 upon a finding of
 830 bad faith.

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831 (4) If the petition to determine incapacity is dismissed without a
832 finding of bad faith on the part of the petitioner, or there is a
833 finding of incapacity but no guardian is appointed, the emergency
834 temporary guardian, the attorney for emergency temporary guardian,
835 and the court appointed attorney shall be paid a reasonable fee in
836 the same manner as the payment made to private court-appointed
837 counsel set forth in s. 27.5304. The fees of the examiners shall be
838 paid upon court order as expert witness fees under s. 29.004(6).
839

840 Section 4. Part IV of chapter 745, Florida Statutes,
841 consisting of sections 745.401, 745.402, 745.403, 745.404, and
842 745.405, is created to read:

843 PART IV
844 RESTORATION TO CAPACITY

845 745.401 Suggestion of capacity.

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

848 (2) Suggestion of Capacity.--

849 (a) A guardian, the ward, or any other interested person, may file
850 a suggestion of capacity. The suggestion of capacity must describe
851 the changed circumstances which would indicate that the ward is
852 currently capable of exercising some or all of the rights which
853 were removed. If filed by a person other than the ward, the
854 suggestion of capacity must be verified.

855 (b) Within 5 days after a suggestion of capacity is filed, the
856 clerk shall serve notice of the filing of the suggestion of
857 capacity and a copy of the suggestion of capacity on the ward, the
858 guardian, the attorney for the ward, if any, the ward's known next
859 of kin, and any other interested persons designated by the court.

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890 (4) Notice of the hearing and copies of the objections and medical
891 examination report shall be served on the ward, the guardian, the
892 ward's next of kin, and any other interested persons as directed by
893 the court.

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

896
897 745.404 Consideration of examination report.

898 (1) Unless an objection is timely filed by the person who filed the
899 suggestion of capacity, the guardian, any person who has filed an
900 objection to the suggestion of capacity, or the incapacitated
901 person, the court may consider the examination report without
902 requiring testimony of the examiner. Any objection must be filed
903 and served on all other interested persons at least 5 days prior to
904 any hearing at which the report is to be considered.

905 (2) The person who filed the suggestion of capacity, the guardian,
906 any person who has filed an objection to the suggestion of
907 capacity, and the incapacitated person may object to the
908 introduction into evidence of all or any portion of the examination
909 report by filing and serving a written objection on the other party
910 no later than 5 days before the adjudicatory hearing. The objection
911 must state the basis upon which the challenge to admissibility is
912 made. If an objection is timely filed and served, the court shall
913 apply the rules of evidence in determining the report's
914 admissibility. For good cause shown, the court may extend the time
915 to file and serve the written objection.

916
917 745.405 Order restoring capacity.

918 (1) If the examination report concludes that the ward should be
919 restored to full capacity, there are no objections timely filed,

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860 Notice of the suggestion of capacity need not be served on the
861 person who filed the suggestion of capacity.

862 (c) The notice must specify that any objections to the suggestion
863 of capacity or to restoration of the ward's rights must be filed
864 within 10 days after service of the examination report required in
865 s. 745.402 is served.

866
867 745.402 Examination of ward.

868 (1) Within 5 days after a suggestion of capacity is filed, the
869 court must appoint a physician who is qualified to be an examiner
870 under 745.306 to examine the ward. The physician may have
871 previously served as an examiner in the ward's incapacity
872 proceeding. The physician must examine the ward and file a verified
873 report with the court within 15 days after appointment. The
874 examination must be conducted and the report prepared in the manner
875 specified under s. 745.307.

876 (2) Within 5 days after filing the report, the clerk must serve the
877 report on the guardian, the ward and on the ward's known next of
878 kin and interested persons who were served notice of the suggestion
879 of capacity.

880
881 745.403 Objection and hearing.

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

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

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

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890 (4) Notice of the hearing and copies of the objections and medical
891 examination report shall be served on the ward, the guardian, the
892 ward's next of kin, and any other interested persons as directed by
893 the court.

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

896
897 745.404 Consideration of examination report.

898 (1) Unless an objection is timely filed by the person who filed the
899 suggestion of capacity, the guardian, any person who has filed an
900 objection to the suggestion of capacity, or the incapacitated
901 person, the court may consider the examination report without
902 requiring testimony of the examiner. Any objection must be filed
903 and served on all other interested persons at least 5 days prior to
904 any hearing at which the report is to be considered.

905 (2) The person who filed the suggestion of capacity, the guardian,
906 any person who has filed an objection to the suggestion of
907 capacity, and the incapacitated person may object to the
908 introduction into evidence of all or any portion of the examination
909 report by filing and serving a written objection on the other party
910 no later than 5 days before the adjudicatory hearing. The objection
911 must state the basis upon which the challenge to admissibility is
912 made. If an objection is timely filed and served, the court shall
913 apply the rules of evidence in determining the report's
914 admissibility. For good cause shown, the court may extend the time
915 to file and serve the written objection.

916
917 745.405 Order restoring capacity.

918 (1) If the examination report concludes that the ward should be
919 restored to full capacity, there are no objections timely filed,

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920 and the court is satisfied that the examination report establishes
921 by a preponderance of the evidence that restoration of all of the
922 ward's rights is appropriate, the court must enter an order
923 restoring all of the rights which were removed from the ward
924 without hearing. The order must be entered within 10 days after
925 expiration of the time for objection.

926 (2) At the conclusion of any hearing to consider restoration of
927 capacity, the court shall make specific findings of fact, and based
928 on a preponderance of the evidence enter an order denying the
929 suggestion of capacity or restoring all or some of the rights of
930 the ward.

931 (3) If only some rights are restored to the ward, the order must
932 state which rights are restored and amended letters shall be issued
933 to reflect the changed authority of the guardian. A guardian of
934 person shall prepare a new guardianship plan which addresses only
935 the remaining rights retained by the guardian. The guardian must
936 file a copy of the new plan with the court within 60 days after
937 issuance of amended letters.

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

940
941 Section 5. Part V of chapter 745, Florida Statutes, consisting
942 of sections 745.501, 745.502, 745.503, 745.504, and 745.504, is
943 created to read:

944 PART V
945 QUALIFICATIONS OF GUARDIANS

946 745.501 Who may be appointed guardian of a resident ward.

947 (1) Unless disqualified as provided in s. 745.503:

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

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950 (b) A nonresident of the state may serve as guardian of a resident
 951 ward if the non-resident is:
 952 1. Related by lineal consanguinity to the ward;
 953 2. A legally adopted child or adoptive parent of the ward;
 954 3. A spouse, brother, sister, uncle, aunt, niece, or nephew of the
 955 ward, or someone related by lineal consanguinity to any such
 956 person; or
 957 4. The spouse of a person otherwise qualified under this section.
 958 (2) No judge shall act as guardian, except when he or she is
 959 related to the ward by blood, marriage, or adoption, or has
 960 maintained a close relationship with the ward or the ward's family,
 961 and serves without compensation.
 962
 963 745.502 Nonprofit corporate guardian.
 964 A nonprofit corporation organized for religious or charitable
 965 purposes and existing under the laws of this state may be appointed
 966 guardian for a ward. The corporation must employ at least one
 967 professional guardian.
 968
 969 745.503 Disqualified persons.
 970 (1) No person who has been convicted of a felony or who, due to
 971 incapacity or illness, is incapable of discharging guardianship
 972 duties shall be appointed to act as guardian. Further, no person
 973 who has been judicially determined to have committed abuse,
 974 abandonment, or neglect against a child as defined in s. 39.01 or
 975 s. 984.03(1), (2), and (37), or who has been found guilty of, or
 976 entered a plea of nolo contendere or guilty to, any offense
 977 prohibited under s. 435.03, chapter 825 or under any similar
 978 statutes of another jurisdiction, shall be appointed to act as a
 979 guardian.

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1010 745.504 Credit and criminal investigation.
 1011 (1) Within 3 days of filing a petition for appointment of a
 1012 nonprofessional guardian, the proposed guardian shall submit to an
 1013 investigation of the guardian's credit history and a level 2
 1014 background screening as required under s. 435.04. The court must
 1015 consider the credit and background screening reports before
 1016 appointing a guardian.
 1017 (2) For nonprofessional guardians, the court may require the
 1018 satisfactory completion of a criminal history record check as
 1019 described in this subsection. A nonprofessional guardian satisfies
 1020 the requirements of this section by undergoing a state and national
 1021 criminal history record check using fingerprints. A nonprofessional
 1022 guardian required to submit fingerprints shall have fingerprints
 1023 taken and forwarded, along with the necessary fee, to the
 1024 Department of Law Enforcement for processing. The results of the
 1025 fingerprint criminal history record check shall be transmitted to
 1026 the clerk, who shall maintain the results in the court file of the
 1027 nonprofessional guardian's case.
 1028 (3) For professional and public guardians, the court and Office of
 1029 Public and Professional Guardians shall accept the satisfactory
 1030 completion of a criminal history record check by any method
 1031 described in this subsection. A professional guardian satisfies the
 1032 requirements of this section by undergoing an electronic
 1033 fingerprint criminal history record check. A professional guardian
 1034 may use any electronic fingerprinting equipment used for criminal
 1035 history record checks. The Office of Public and Professional
 1036 Guardians shall adopt a rule detailing the acceptable methods for
 1037 completing an electronic fingerprint criminal history record check
 1038 under this section. The professional guardian shall pay the actual

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980 (2) Except as provided in subsection (3) or subsection (4), a
 981 person providing substantial services or products to the proposed
 982 ward in a professional or business capacity may not be appointed
 983 guardian and retain that previous professional or business
 984 relationship.
 985 (3) A creditor or provider of health care services to the ward,
 986 whether direct or indirect, may not be appointed the guardian of
 987 the ward, unless the court finds that there is no conflict of
 988 interest with the ward.
 989 (4) A person may not be appointed a guardian if he or she is in the
 990 employ of any person, agency, government, or corporation that
 991 provides services to the proposed ward in a professional or
 992 business capacity, except that a person so employed may be
 993 appointed if he or she is the spouse, adult child, parent, or
 994 sibling of the proposed ward or the court determines that any
 995 potential conflict of interest is insubstantial and that the
 996 appointment would be in the proposed ward's best interest.
 997 (5) The court may not appoint a guardian in any other circumstance
 998 in which the proposed guardian has a conflict of interest with the
 999 ward.
 1000 (6) If a guardian is at any time unqualified to serve under
 1001 subsections (1)-(5), the guardian shall file a resignation and
 1002 notice of disqualification within 20 days of learning that the
 1003 guardian is unqualified. A guardian who fails to comply with this
 1004 section may be personally liable for costs, including attorney
 1005 fees, incurred in any removal proceeding if the guardian is
 1006 removed. This liability extends to a guardian who does not know,
 1007 but should have known, of the facts that would have required the
 1008 guardian to resign or to file and serve notice as required herein.
 1009 This liability shall be cumulative to any other provided by law.

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1040 costs incurred by the Federal Bureau of Investigation and the
 1041 Department of Law Enforcement for the criminal history record
 1042 check. The entity completing the record check must immediately
 1043 transmit the results of the criminal history record check to the
 1044 clerk and the Office of Public and Professional Guardians. The
 1045 clerk shall maintain the results in the court file of the
 1046 professional guardian's case.
 1047 (4)(a) A professional guardian, and each employee of a professional
 1048 guardian, must complete, at the professional guardian's expense, a
 1049 level 2 background screening as set forth in s. 435.04 before and
 1050 at least once every 5 years after the date the guardian is
 1051 registered with the Office of Public and Professional Guardians. A
 1052 professional guardian, and each employee of a professional guardian
 1053 who has direct contact with the ward, or access to the ward's
 1054 assets, must complete, at his or her own expense, a level 1
 1055 background screening as set forth in s. 435.03 at least once every
 1056 2 years after the date the guardian is registered. However, a
 1057 professional guardian is not required to resubmit fingerprints for
 1058 a criminal history record check if the professional guardian has
 1059 been screened using electronic fingerprinting equipment and the
 1060 fingerprints are retained by the Department of Law Enforcement in
 1061 order to notify the clerk of any crime charged against the person
 1062 in this state or elsewhere. Each employee required to submit to a
 1063 level 2 background check must submit to the background check within
 1064 30 days of initial employment. Each employee required to submit to
 1065 a level 1 background check must submit to the background check
 1066 within 30 days of meeting the requirement for a level 1 background
 1067 check.
 1068 (b) All fingerprints electronically submitted to the Department of
 1069 Law Enforcement under this section shall be retained by the

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1070 Department in a manner provided by rule and entered in the
 1071 statewide automated biometric identification system authorized by
 1072 s. 943.05(2)(b). The fingerprints shall thereafter be available for
 1073 all purposes and uses authorized for arrest fingerprints entered in
 1074 the Criminal Justice Information Program under s. 943.051.
 1075 (c) The Department of Law Enforcement shall search all arrest
 1076 fingerprints received under s. 943.051 against the fingerprints
 1077 retained in the statewide automated biometric identification system
 1078 under paragraph (b). Any arrest record that is identified with the
 1079 fingerprints of a person described in this paragraph must be
 1080 reported to the clerk. The clerk must forward any arrest record
 1081 received for a professional guardian to the Office of Public and
 1082 Professional Guardians within 5 days of receipt. Each professional
 1083 guardian who elects to submit fingerprint information
 1084 electronically shall participate in this search process by paying
 1085 an annual fee to the Office of the Public and Professional
 1086 Guardians. The amount of the annual fee to be imposed for
 1087 performing these searches and the procedures for the retention of
 1088 professional guardian fingerprints and the dissemination of search
 1089 results shall be established by rule of the Department of Law
 1090 Enforcement. At least once every 5 years, the Office of Public and
 1091 Professional Guardians must request that the Department of Law
 1092 Enforcement forward the fingerprints maintained under this section
 1093 to the Federal Bureau of Investigation.
 1094 (5)(a) A professional guardian, and each employee of a professional
 1095 guardian who has direct contact with the ward or access to the
 1096 ward's assets, must allow, at his or her own expense, an
 1097 investigation of his or her credit history before and at least once
 1098 every 2 years after the date of the guardian's registration with
 1099 the Office of Public and Professional Guardians.

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1130 result of any investigation conducted under this section. A
 1131 professional guardian must pay the clerk of the court a fee of up
 1132 to \$7.50 for handling and processing professional guardian files.
 1133 Such documentation for a nonprofessional guardian shall be
 1134 maintained as a confidential record in the case file for such
 1135 guardianship.
 1136
 1137 745.505 Education requirements for nonprofessional guardians.
 1138 (1) Each ward is entitled to a guardian competent to perform the
 1139 duties of a guardian necessary to protect the interests of the
 1140 ward.
 1141 (2) Each person appointed by the court to be a guardian, other than
 1142 a parent who is the guardian of the property of a minor child, must
 1143 receive a minimum of 8 hours of instruction and training which
 1144 covers:
 1145 (a) The legal duties and responsibilities of the guardian;
 1146 (b) The rights of the ward;
 1147 (c) The use of guardianship assets;
 1148 (d) The availability of local resources to aid the ward; and
 1149 (e) The preparation of guardianship plans, reports, inventories,
 1150 and accountings.
 1151 (3) Each person appointed by the court to be the guardian of the
 1152 property of his or her minor child must receive a minimum of 4
 1153 hours of instruction and training that covers:
 1154 (a) The legal duties and responsibilities of a guardian of
 1155 property;
 1156 (b) The preparation of an initial inventory and guardianship
 1157 accountings; and
 1158 (c) Use of guardianship assets.

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1100 (b) Office of Public and Professional Guardians shall adopt a rule
 1101 detailing the acceptable methods for completing a credit
 1102 investigation under this section. If appropriate, the office may
 1103 administer credit investigations. If the office chooses to
 1104 administer the credit investigation, it may adopt a rule setting a
 1105 fee, not to exceed \$25, to reimburse the costs associated with the
 1106 administration of a credit investigation.
 1107 (6) Office of Public and Professional Guardians may inspect, at any
 1108 time, the results of any credit or criminal history record check of
 1109 a public or professional guardian conducted under this section. The
 1110 office shall maintain copies of the credit or criminal history
 1111 record check results in the guardian's registration file. If the
 1112 results of a credit or criminal investigation of a public or
 1113 professional guardian have not been forwarded to the Office of
 1114 Public and Professional Guardians by the investigating agency, the
 1115 clerk of the court shall forward copies of the results of the
 1116 investigations to the office upon receiving them.
 1117 (7) The requirements of this section do not apply to a trust
 1118 company, a state banking corporation or state savings association
 1119 authorized and qualified to exercise fiduciary powers in this
 1120 state, or a national banking association or federal savings and
 1121 loan association authorized and qualified to exercise fiduciary
 1122 powers in this state.
 1123 (8) At any time, the court may require a guardian or the guardian's
 1124 employees to submit to an investigation of the person's credit
 1125 history and complete a level 1 background screening as set forth in
 1126 s. 435.03. The court may consider the results of any such
 1127 investigation when considering removal of a guardian.
 1128 (9) The clerk shall maintain a file on each professional guardian
 1129 appointed by the court and retain in the file documentation of the

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1159 (4) Each person appointed by the court to be a guardian must
 1160 complete the required number of hours of instruction and education
 1161 within 4 months after appointment. The instruction and education
 1162 must be completed through a course approved by the chief judge of
 1163 the circuit court and taught by a court-approved person or
 1164 organization. Court-approved organizations may include, but are not
 1165 limited to, community or junior colleges, guardianship
 1166 organizations, and local bar associations or The Florida Bar.
 1167 (5) Expenses incurred by the guardian to satisfy the education
 1168 requirement may be paid from the ward's estate, unless the court
 1169 directs that such expenses be paid by the guardian individually.
 1170 (6) The court may waive some or all of the requirements of this
 1171 section or impose additional requirements. The court shall make its
 1172 decision on a case-by-case basis and, in making its decision, shall
 1173 consider the experience and education of the guardian, the duties
 1174 assigned to the guardian, and the needs of the ward.
 1175 (7) The provisions of this section do not apply to professional
 1176 guardians.
 1177
 1178 Section 6. Part VI of chapter 745, Florida Statutes,
 1179 consisting of sections 745.601, 745.602, 745.603, 745.604, 745.605,
 1180 745.606, 745.607, 745.608, 745.609, 745.610, and 745.611, is
 1181 created to read:
 1182
 1183 PART VI
 1184 APPOINTMENT OF GUARDIANS
 1185 745.601 Proposed guardian's information statement.
 1186 (1) At the time of filing a petition for appointment of guardian,
 1187 every proposed guardian must file a verified information statement
 which provides the following:

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1188 (a) details sufficient to demonstrate that the person is qualified
 1189 to be guardian pursuant to s. 745.501;
 1190 (b) the names of all wards for whom the person is currently acting
 1191 as guardian or has acted as guardian in the previous five years,
 1192 identifying each ward by court file number and circuit court in
 1193 which the case is or was pending, and stating whether the person is
 1194 or was acting as limited or plenary guardian of person or property
 1195 or both;
 1196 (c) any special experience, education or other skills that would be
 1197 of benefit in serving as guardian;
 1198 (d) the proposed guardian's relation to the ward, including whether
 1199 the person is providing any services to the ward, holds any joint
 1200 assets with the ward, or, if known, is beneficiary of any part of
 1201 the ward's estate.
 1202 (2) Subsection (1) does not apply to nonprofit corporate guardians
 1203 and public guardians.
 1204 (3) Nonprofit corporate guardians and public guardians must file
 1205 quarterly with the clerk statements that contain the information
 1206 required under subsection (1), rather than filing an information
 1207 statement with each petition to be appointed guardian.
 1208
 1209 745.602 Considerations in appointment of guardian.
 1210 (1) If the person designated is qualified to serve pursuant to
 1211 s.745.501, the court shall appoint any standby guardian or preneed
 1212 guardian, unless the court determines that appointing such person
 1213 is contrary to the best interest of the ward.
 1214 (2) If a guardian cannot be appointed under subsection (1), the
 1215 court may appoint any person who is fit and proper and qualified to
 1216 act as guardian, whether related to the ward or not. The court
 1217 shall give preference to the appointment of a person who:

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1248 (a) the name, age, residence address, and mailing address of the
 1249 alleged incapacitated person or minor and the nature of the
 1250 incapacity, if any;
 1251 (b) the extent of guardianship proposed, either plenary or limited;
 1252 (c) the residence address and mailing address of the petitioner;
 1253 (d) the names and mailing addresses of the next of kin of the
 1254 incapacitated person or minor, if known to the petitioner;
 1255 (e) the name of the proposed guardian and relationship of the
 1256 proposed guardian to the ward;
 1257 (f) the reasons why the proposed guardian should be appointed;
 1258 (g) the nature and value of property subject to the guardianship,
 1259 if any; and
 1260 (h) the identity of any pre-need guardian designation, healthcare
 1261 surrogate designation, and power of attorney, purportedly executed
 1262 by the alleged incapacitated person, the identity and county of
 1263 residence of any person designated to act under such documents, and
 1264 the efforts to locate such documents or persons designated to act.
 1265 (2) If a willing and qualified guardian cannot be located, the
 1266 petition must so state.
 1267 (3) The petition for appointment of a professional guardian must
 1268 comply with the provisions of subsection (1), and must state that
 1269 the nominated guardian is a professional guardian.
 1270
 1271 745.604 Notice of petition for appointment of guardian and hearing.
 1272 (1) When a petition for appointment of guardian for an
 1273 incapacitated person is heard at the conclusion of the hearing in
 1274 which the person is determined to be incapacitated, the court shall
 1275 hear the petition without further notice provided that notice of
 1276 hearing of the petition to appoint guardian was timely served. If
 1277 the petition is heard on a later date, reasonable notice of the

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1218 (a) is related by blood or marriage to the ward;
 1219 (b) has educational, professional, or business experience relevant
 1220 to the nature of the services sought to be provided;
 1221 (c) has the capacity to manage the assets involved; or
 1222 (d) has the ability to meet the requirements of the law and the
 1223 unique needs of the ward.
 1224 (3) The court shall also:
 1225 (a) consider the wishes expressed by an incapacitated person as to
 1226 who shall be appointed guardian.
 1227 (b) consider the preference of a minor who is age 14 or over as to
 1228 who should be appointed guardian.
 1229 (c) consider any person designated as guardian in any will in which
 1230 the ward is a beneficiary.
 1231 (d) consider the wishes of the ward's next of kin, when the ward
 1232 cannot express a preference.
 1233 (4) When a guardian is appointed, the court must make findings of
 1234 fact to support why the person was selected as guardian. Except
 1235 when a guardian is appointed under subsection (1), the court must
 1236 consider the factors specified in subsections (2) and (3).
 1237 (5) The court may hear testimony on the question of who is
 1238 qualified and entitled to preference in the appointment of a
 1239 guardian.
 1240 (6) The court may not give preference to the appointment of a
 1241 person under subsection (2) based solely on the fact that such
 1242 person was appointed to serve as an emergency temporary guardian.
 1243
 1244 745.603 Petition for appointment of guardian; contents.
 1245 (1) A petition to appoint a guardian must be verified by an adult
 1246 with personal knowledge of the information in the petition
 1247 alleging:

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1278 hearing must be served on the incapacitated person, any guardian
 1279 then serving, the person's next of kin, and such other interested
 1280 persons as the court may direct.
 1281 (2) When a petition for appointment of guardian of a minor is
 1282 filed, formal notice must be served on the minor's parents. When a
 1283 parent petitions for appointment as guardian for the parent's minor
 1284 child, formal notice shall be served on the other parent, unless
 1285 the other parent consents to the appointment. If the proposed
 1286 guardian has custody of the minor and the petition alleges that,
 1287 after diligent search, a parent cannot be found, the parent may be
 1288 served by informal notice, delivered to the parent's last known
 1289 address.
 1290
 1291 745.605 Order on petition for appointment of guardian.
 1292 (1) At the hearing on a petition for appointment of guardian, the
 1293 court must consider and find whether there is an alternative to
 1294 guardianship that will sufficiently address the needs of the
 1295 incapacitated person.
 1296 (2) The order appointing a guardian must state the nature of the
 1297 guardianship as either plenary or limited. If limited, the order
 1298 must state that the guardian may exercise only those delegable
 1299 rights which have been removed from the incapacitated person and
 1300 delegated to the guardian. The order shall specify the powers and
 1301 duties of the guardian.
 1302 (3) A plenary guardian of person shall exercise all delegable
 1303 rights and powers of the incapacitated person as it relates to
 1304 person and a plenary guardian of property shall exercise all
 1305 delegable rights and powers of the incapacitated person as it
 1306 relates to property.

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1307 (4) A ward for whom a limited guardian has been appointed retains
 1308 all legal rights except those that have been specifically delegated
 1309 to the guardian in the court's written order.
 1310 (5) The order appointing a guardian must contain a finding that
 1311 guardianship is the least restrictive alternative that is
 1312 appropriate for the ward, and must reserve to the incapacitated
 1313 person the right to make decisions in all matters commensurate with
 1314 the person's ability to do so.
 1315 (6) If a petition for appointment of guardian has been filed, the
 1316 court shall rule on the petition contemporaneously with the order
 1317 adjudicating a person to be incapacitated unless good cause is
 1318 shown to defer ruling. If a guardian is not appointed
 1319 contemporaneously with the order adjudicating the person to be
 1320 incapacitated, the court may appoint an emergency temporary
 1321 guardian in the manner and for the purposes specified in s.
 1322 745.701.
 1323 (7) The order appointing a guardian must specify the amount of bond
 1324 to be given by the guardian and must state whether the guardian
 1325 must place all, or part, of the property of the ward in a
 1326 restricted account in a financial institution designated pursuant
 1327 to s. 69.031.
 1328
 1329 745.606 Oath of guardian.
 1330 Before exercising authority as guardian, every guardian shall take
 1331 an oath that he or she will faithfully perform the duties as
 1332 guardian. This oath is not jurisdictional.
 1333
 1334 745.607 Bond of guardian.
 1335 (1) Before exercising authority as guardian, a guardian of property
 1336 of a ward shall file a bond with surety as prescribed in s. 45.011

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1367 defined in s. 517.021(6), if the dealer is a member of the Security
 1368 Investment Protection Corporation and is doing business in the
 1369 state.
 1370
 1371 745.608 Validity of bond.
 1372 No bond executed by any guardian shall be invalid because of an
 1373 informality in it or because of an informality or illegality in the
 1374 appointment of the guardian. The bond shall have the same force and
 1375 effect as if the bond had been executed in proper form and the
 1376 appointment had been legally made.
 1377
 1378 745.609 Liability of surety.
 1379 No surety for a guardian shall be charged beyond the property of
 1380 the ward.
 1381
 1382 745.610 Alternatives to guardianship.
 1383 (1) In each proceeding in which a guardian is appointed under this
 1384 chapter, the court shall make a finding whether the ward, prior to
 1385 adjudication of incapacity, has executed an advance directive under
 1386 chapter 765 or durable power of attorney under chapter 709. If any
 1387 advance directive or durable power of attorney is identified, the
 1388 court must consider and find whether there is an alternative to
 1389 guardianship that will sufficiently address the needs of the
 1390 incapacitated person and specify in the order appointing guardian
 1391 and letters what authority, if any, the guardian shall exercise
 1392 over the ward or the ward's assets and what authority, if any, the
 1393 surrogate or agent shall continue to exercise over the ward or the
 1394 ward's assets.
 1395 (2) Upon verified petition by an interested person or if requested
 1396 in a petition for appointment of guardian with notice to the

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1337 to be approved by the clerk or by the court. The bond shall be
 1338 payable to the Governor of the state and the Governor's successors
 1339 in office, conditioned on the faithful performance of all duties by
 1340 the guardian. In form the bond shall be joint and several. For good
 1341 cause, the court may waive bond.
 1342 (2) When the sureties on a bond are natural persons, the guardian
 1343 shall be required to file, with the annual guardianship report,
 1344 proof satisfactory to the court that the sureties are alive and
 1345 solvent.
 1346 (3) All bonds required by this part shall be in the sum that the
 1347 court deems sufficient after considering the value and nature of
 1348 the assets subject to guardianship.
 1349 (4) For good cause, the court may require, or increase or reduce,
 1350 the amount of bond or change or release the surety.
 1351 (5) When considering bond of professional guardians, the court may
 1352 take into account the blanket bond provided by such guardian,
 1353 provided that proof of insurance and effectiveness of the bond is
 1354 on file with the clerk. Additional bond may be required.
 1355 (6) Financial institutions and public guardians authorized by law
 1356 to be guardians shall not be required to file bonds.
 1357 (7) The premium of a guardian's required bond shall be paid as an
 1358 expense of the guardianship.
 1359 (8) When it is expedient in the judgment of the court having
 1360 jurisdiction of any guardianship property, because the size of the
 1361 bond required of the guardian is burdensome, or for other cause,
 1362 the court may order, in lieu of a bond or in addition to a lesser
 1363 bond, that the guardian place all or part of the property of the
 1364 ward in a designated financial institution under the same
 1365 conditions and limitations as are contained in s. 69.031. A
 1366 designated financial institution shall also include a dealer, as

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1397 surrogate, agent, and interested persons, the court may suspend,
 1398 modify, or revoke the authority of the surrogate or agent to make
 1399 health care or financial decisions for the ward. Any order
 1400 suspending, modifying, or revoking the authority of an agent or
 1401 surrogate must be supported by written findings of fact.
 1402 (3) If a durable power of attorney, health care surrogate
 1403 designation, trust or other relevant financial or personal care
 1404 document is discovered after issuance of letters of guardianship,
 1405 any interested person may file a petition seeking a determination
 1406 of the effect of any such document and what, if any, changes should
 1407 be made to the powers of the guardian.
 1408
 1409 745.611 Letters of guardianship.
 1410 (1) Letters of guardianship must be issued to the guardian and must
 1411 specify whether the guardianship pertains to the ward's person,
 1412 property, or both.
 1413 (2) The letters must state whether the guardianship is plenary or
 1414 limited. If limited, the letters must specify the powers and duties
 1415 of the guardian.
 1416 (3) The letters must state whether or not, and to what extent, the
 1417 guardian is authorized to act on behalf of the ward with regard to
 1418 any advance directive under chapter 765 or durable power of
 1419 attorney under chapter 709 previously executed by the ward.
 1420 (4) The duties and powers of the guardian accrue on the date
 1421 letters are issued and not the date the order appointing guardian
 1422 is entered.
 1423
 1424 Section 7. Part VII of chapter 745, Florida Statutes,
 1425 consisting of sections 745.701, 745.702, 745.703, 745.704, 745.705,
 1426 745.706, 745.707, 745.708, 745.709, 745.710, 745.711, 745.712,

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1427 745.713, and 745.714, is created to read:
 1428 PART VII
 1429 TYPES OF GUARDIANSHIP
 1430 745.701 Emergency temporary guardianship.
 1431 (1) A court, prior to appointment of a guardian but after a
 1432 petition for determination of incapacity has been filed or as
 1433 otherwise provided in this code, may appoint an emergency temporary
 1434 guardian for the person, property, or both, of an alleged
 1435 incapacitated person. The court must find that there appears to be
 1436 imminent danger that the physical or mental health or safety of the
 1437 person will be seriously impaired or that the person's property is
 1438 in danger of being wasted, misappropriated, or lost unless
 1439 immediate action is taken. The alleged incapacitated person or an
 1440 interested person may apply to the court in which the proceeding is
 1441 pending for appointment of an emergency temporary guardian. The
 1442 powers and duties granted must be described in the order appointing
 1443 the emergency temporary guardian consistent with s. 745.605(2).
 1444 (2) The court shall appoint counsel to represent the alleged
 1445 incapacitated person during any such proceedings. An emergency
 1446 temporary guardian may be appointed only after hearing with at
 1447 least 3 days' notice to the alleged incapacitated person, unless
 1448 the petitioner demonstrates that substantial harm to the alleged
 1449 incapacitated person would occur if the 3 days' notice is given and
 1450 that reasonable notice, if any, has been provided.
 1451 (3) If no guardian is appointed at the time an order determining
 1452 incapacity is entered, the court may appoint an emergency temporary
 1453 guardian on its own motion after hearing with notice to the
 1454 incapacitated person, and the person's next of kin, and such
 1455 interested persons as the court may direct.

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1485 (11) An emergency temporary guardian's authority and responsibility
 1486 begins upon issuance of letters of emergency temporary guardianship
 1487 in accordance with s. 745.611.
 1488 (12)(a) An emergency temporary guardian of property shall file a
 1489 petition for distribution and discharge and final accounting no
 1490 later than 45 days after the issuance of letters to the succeeding
 1491 guardian, death of the ward, or entry of an order denying the
 1492 petition to appoint guardian. The provisions of s. 745.1102 shall
 1493 apply. The final accounting must consist of a verified inventory of
 1494 the property, as provided in s. 745.803, as of the date letters of
 1495 emergency temporary guardianship were issued and an accounting that
 1496 complies with the requirements of the Florida Probate Rules.
 1497 (b) An emergency temporary guardian of person shall file a petition
 1498 for discharge and a final report no later than 45 days after the
 1499 issuance of letters to the succeeding guardian, death of the ward,
 1500 or entry of an order denying the petition to appoint guardian. The
 1501 provisions of s. 745.1106 shall apply. The final report shall
 1502 summarize the activities of the temporary guardian with regard to
 1503 residential placement, medical care, mental health and
 1504 rehabilitative services, and the social condition of the ward to
 1505 the extent of the authority granted to the temporary guardian in
 1506 the letters of emergency temporary guardianship. Upon the death of
 1507 the ward, s. 745.1107(5) shall apply.
 1508 (c) A copy of the final accounting or report of the emergency
 1509 temporary guardian shall be served on the succeeding guardian, the
 1510 ward if no guardian is appointed, or the personal representative of
 1511 the ward's estate.
 1512

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1456 (4) Upon a filing of notice of resignation by a guardian or upon
 1457 the guardian's suspension or removal, if no petition to appoint a
 1458 successor has been filed by the time of the resignation, suspension
 1459 or removal, the court may appoint an emergency temporary guardian
 1460 on its own motion or motion of any interested person, after hearing
 1461 with notice to the ward, the resigning or suspended guardian, and
 1462 such other interested persons as the court may direct.
 1463 (5) The authority of an emergency temporary guardian expires upon
 1464 the issuance of letters to a succeeding guardian, upon a
 1465 determination that the ward is not incapacitated as to the rights
 1466 and abilities specified in the order appointing emergency temporary
 1467 guardian, or upon the death of the ward, whichever occurs first.
 1468 (6) An emergency temporary guardian of property whose authority has
 1469 expired shall distribute assets only with prior court order
 1470 approving distribution.
 1471 (7) The emergency temporary guardian shall be discharged and
 1472 relieved of further responsibility upon approval of the final
 1473 accounting or report as specified in subsection (12) and
 1474 distribution of assets, if any, as directed by the court.
 1475 (8) The court may issue an injunction, restraining order, or other
 1476 appropriate writ to protect the physical or mental health or safety
 1477 or property of the person who is the ward of an emergency temporary
 1478 guardianship.
 1479 (9) The emergency temporary guardian shall take an oath to
 1480 faithfully perform the duties of a guardian before letters of
 1481 emergency temporary guardianship are issued.
 1482 (10) Before exercising authority as guardian, the emergency
 1483 temporary guardian of property may be required to file a bond in
 1484 accordance with s. 745.607.

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1513 745.702 Standby guardian of minor.
 1514 Upon petition by the natural guardians or a guardian appointed
 1515 under s. 745.713, the court may appoint a standby guardian of
 1516 person or property of a minor. The court may also appoint an
 1517 alternate to the guardian to act if the standby guardian does not
 1518 serve or ceases to serve after appointment. Notice of hearing on
 1519 the petition must be served on the natural guardians and on any
 1520 guardian currently serving unless the notice is waived in writing
 1521 by them or waived by the court for good cause shown.
 1522
 1523 745.703 Standby guardian of adult.
 1524 Upon petition by a currently serving guardian, a standby guardian
 1525 of person or property of an incapacitated person may be appointed
 1526 by the court. The court may also appoint an alternate to act if the
 1527 standby guardian does not serve or ceases to serve after
 1528 appointment. Notice of hearing must be served on the ward's next of
 1529 kin.
 1530
 1531 745.704 Appointment and powers of standby guardian.
 1532 (1) Upon filing a guardian's oath and designation of resident agent
 1533 and acceptance, a standby guardian or alternate may assume the
 1534 duties of guardianship immediately on the death, removal, or
 1535 resignation of an appointed guardian of a minor, or on the death or
 1536 adjudication of incapacity of the last surviving natural guardian
 1537 of a minor, or upon the death, removal, or resignation of the
 1538 guardian for an adult. A standby guardian of property may only
 1539 safeguard the ward's property before issuance of letters.
 1540 (2) A standby guardian shall petition for confirmation of
 1541 appointment and shall file an oath, designation of resident agent
 1542 and acceptance. Each proposed guardian shall post bond as set forth

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1543 in 745.607 and shall submit to a credit and a criminal history
 1544 record check as set forth in s. 745.504. If the court finds the
 1545 standby guardian to be qualified to serve as guardian under s.
 1546 745.501, the standby guardian shall be entitled to confirmation of
 1547 appointment as guardian. Letters must then be issued in the manner
 1548 provided in s. 745.611.
 1549 (3) After the assumption of duties by a standby guardian, the court
 1550 shall have jurisdiction over the guardian and the ward.
 1551
 1552 745.705 Preneed guardian for adult.
 1553 (1) A competent adult may name a preneed guardian by executing a
 1554 written declaration that names a guardian to serve in the event of
 1555 the declarant's incapacity.
 1556 (2) The declaration must be signed by the declarant in the presence
 1557 of two subscribing witnesses as defined in s. 732.504. A declarant
 1558 unable to sign the instrument may, in the presence of witnesses,
 1559 direct that another person sign the declarant's name as required
 1560 herein. The person designated as preneed guardian shall not act as
 1561 witness to the execution of the declaration. At least one person
 1562 who acts as a witness shall be neither the declarant's spouse nor
 1563 blood relative.
 1564 (3) The declarant may file the declaration with the clerk in
 1565 declarant's county of residence at any time. When a petition for
 1566 appointment of guardian is filed, the clerk shall produce the
 1567 declaration and serve a copy on the proposed ward and the
 1568 petitioner.
 1569 (4) Production of the declaration in a proceeding for appointment
 1570 of guardian shall constitute a rebuttable presumption that the
 1571 preneed guardian is entitled to serve as guardian. The court shall

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1601 least one person who acts as a witness shall be neither of the
 1602 natural guardians' spouse nor blood relative.
 1603 (4) The declarant may file the declaration with the clerk in the
 1604 county of the child's residence, at any time. When a petition for
 1605 appointment of guardian for the minor is filed, the clerk shall
 1606 produce the declaration and serve a copy on the minor and
 1607 petitioner.
 1608 (5) The declaration constitutes a rebuttable presumption that the
 1609 designated preneed guardian is entitled to serve as guardian. The
 1610 court is not bound to appoint the designated preneed guardian if
 1611 the person is found to be disqualified to serve as guardian.
 1612 (6) If the preneed guardian is unwilling or unable to serve, a
 1613 written declaration appointing an alternate preneed guardian
 1614 constitutes a rebuttable presumption that the alternate is entitled
 1615 to serve as guardian. The court is not bound to appoint the person
 1616 if the alternate is found to be disqualified to serve as guardian.
 1617 (7) The clerk shall maintain all declarations filed pursuant to
 1618 this section until the minor child named in the declaration has
 1619 reached the age of majority. The clerk may dispose of such written
 1620 declarations in accordance with law.
 1621
 1622 745.707 Voluntary guardianship of property.
 1623 (1) Upon petition by the proposed ward, the court must appoint a
 1624 guardian of property of a resident or nonresident person who,
 1625 though of sufficient mental capacity, chooses to have a guardian
 1626 manage all or part of his or her property. The petition must be
 1627 accompanied by a written statement from a licensed physician
 1628 specifying that the physician has examined the petitioner and that
 1629 the petitioner has capacity to understand the nature of the
 1630 guardianship and the delegation of authority. The examination must

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1572 not be bound to appoint the preneed guardian if the person is found
 1573 to be disqualified to serve as guardian.
 1574 (5) If the preneed guardian is unwilling or unable to serve, a
 1575 written declaration appointing an alternate preneed guardian
 1576 constitutes a rebuttable presumption that the alternate is entitled
 1577 to serve as guardian. The court is not bound to appoint the
 1578 alternate preneed guardian if the person is found to be
 1579 disqualified to serve as guardian.
 1580
 1581 745.706 Preneed guardian for minor.
 1582 (1) Natural guardians may nominate a preneed guardian of person or
 1583 property or both of their minor child by executing a written
 1584 declaration that names such guardian to serve if the minor's last
 1585 surviving natural guardian becomes incapacitated or dies or if the
 1586 natural guardian is disqualified. The declarant may also name an
 1587 alternate to the guardian to act if the designated preneed guardian
 1588 is unwilling or unable to serve.
 1589 (2) The declaration must specify the child's full legal name and
 1590 date of birth, the relationship of the declarant to the child, and
 1591 the proposed preneed guardian.
 1592 (3) The declaration must be signed at the end by all of the natural
 1593 guardians or the name of the natural guardians must be subscribed
 1594 at the end by another person in the natural guardians' presence and
 1595 at the natural guardians' direction. The natural guardians'
 1596 signing, or acknowledgement that another person has subscribed his
 1597 or her name to the declaration, must be in the presence of all
 1598 natural guardians and in the presence of two subscribing witnesses
 1599 as defined in s. 732.504. The person designated as preneed guardian
 1600 shall not act as witness to the execution of the declaration. At

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1631 have been conducted within 60 days prior to filing the petition.
 1632 Notice of hearing on any petition for appointment must be served on
 1633 the petitioner and on any person to whom the petitioner requests
 1634 that notice be given. Such request may be made in the petition for
 1635 appointment of guardian or in a subsequent written request for
 1636 notice signed by the petitioner.
 1637 (2) If requested in the petition for appointment of a guardian
 1638 brought under this section, the court may direct the guardian to
 1639 take possession of less than all of the ward's property and of the
 1640 rents, income, issues, and profits from it. In such case, the court
 1641 shall specify in its order the property to be included in the
 1642 guardianship. The duties and responsibilities of the guardian
 1643 appointed under this section will extend only to such property.
 1644 (3) Unless the voluntary guardianship is limited pursuant to
 1645 subsection (2), any guardian appointed under this section has the
 1646 same duties and responsibilities as are provided by law for plenary
 1647 guardians of the property.
 1648 (4) The guardian's accounting, any petition for authority to act
 1649 and notice of hearing must be served on the ward and on any person
 1650 to whom the ward has requested that notice be given, in a notice
 1651 filed with the court.
 1652 (5) A guardian must include in the annual accounting filed with the
 1653 court a written statement from a licensed physician who examined
 1654 the ward not more than 60 days before the accounting is filed with
 1655 the court. The written statement must specify whether the ward has
 1656 capacity to understand the nature of the guardianship and the
 1657 delegation of authority.
 1658 (6) If the physician's written statement specifies that the ward no
 1659 longer has the capacity to understand the nature of the
 1660 guardianship or the ward's delegation of authority, the guardian

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1661 must file a petition to determine incapacity and must continue to
 1662 serve as guardian pending further order of the court.
 1663 (7) A ward with capacity may terminate a voluntary guardianship by
 1664 filing a notice with the court that the voluntary guardianship is
 1665 terminated. The notice must be accompanied by a written statement
 1666 from a licensed physician specifying that the ward has the capacity
 1667 to understand the nature of the guardianship and the ward's
 1668 delegation of authority. A copy of the notice must be served on the
 1669 guardian and such other persons as the ward may specify.
 1670 (8) Upon a filing of notice of termination by the ward, the
 1671 guardian must account, unless waived by the ward, and petition for
 1672 discharge as specified in s. 745.1102.
 1673
 1674 745.708 Relocation of ward to Florida.
 1675 (1) Within 60 days of the residence of an adult ward of a foreign
 1676 guardian being moved to this state, the foreign guardian shall file
 1677 a petition for determination of incapacity of the ward, a petition
 1678 for appointment of guardian, and a certified copy of the guardian's
 1679 letters of guardianship or equivalent with the clerk in the county
 1680 in which the ward resides.
 1681 (2) Within 60 days of the residence of a minor ward of a foreign
 1682 guardian being relocated to this state, the foreign guardian shall
 1683 file a petition for appointment of guardian and a certified copy of
 1684 the guardian's letters of guardianship, or equivalent, with the
 1685 clerk in the county in which the ward resides.
 1686 (3) Until a guardian is appointed in this state for the ward or the
 1687 ward is determined to not require a guardian, the foreign
 1688 guardian's authority shall be recognized and given full faith and
 1689 credit in the courts of this state, provided the guardian is
 1690 qualified to serve as guardian of a resident ward. A foreign

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1721 state. A guardian appointed in another state, territory, or country
 1722 may maintain or defend any action in this state as a representative
 1723 of the ward unless a guardian has been appointed in this state.
 1724 (5) Thereafter, the guardianship shall be governed by this code.
 1725
 1726 745.710 Resident guardian of property of nonresident ward.
 1727 (1) The court may appoint a person qualified under s. 745.501 as
 1728 guardian of a nonresident ward's Florida property upon the petition
 1729 of a foreign guardian, next of kin, or creditor of the ward,
 1730 regardless of whether the ward has a foreign guardian.
 1731 (2) The petition for appointment of a guardian of property of a
 1732 nonresident ward shall comply with requirements of s. 745.603.
 1733 (3) If it is alleged that the person has been adjudicated to be
 1734 incapacitated, the petition shall be accompanied by a certified
 1735 copy of the adjudication of incapacity from the court having
 1736 jurisdiction in the state, territory, or country in which the
 1737 incapacitated person resides and shall state the incapacitated
 1738 person's residence and the name and residence of any guardian,
 1739 conservator or other fiduciary appointed for the ward.
 1740 (4) If a nonresident is temporarily residing in this state and is
 1741 not under an adjudication of incapacity made in some other state,
 1742 territory, or country, the procedure for determination of
 1743 incapacity and appointment of a guardian of the nonresident's
 1744 property shall be the same as for a resident of this state.
 1745 (5) When the ground for the appointment of a guardian is incapacity
 1746 for which the person has been adjudicated in another state,
 1747 territory, or country, formal notice of the petition and notice of
 1748 hearing on the petition shall be served on the foreign guardian or
 1749 other fiduciary appointed for the ward, if any, and on the ward.

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1691 guardian who fails to comply with the requirements of this section
 1692 shall have no authority to act on behalf of the ward in this state.
 1693 (4) This section does not foreclose the filing of a petition for
 1694 determination of incapacity or petition for appointment of guardian
 1695 by persons other than a foreign guardian.
 1696
 1697 745.709 Foreign guardian of nonresident ward.
 1698 (1) A guardian of property of a nonresident ward, is not required
 1699 to file a petition under this section in order to manage or secure
 1700 intangible personal property.
 1701 (2) A guardian of property of a nonresident ward, duly appointed by
 1702 a court of another state, territory, or country, who desires to
 1703 manage or serve any part or all of the real or tangible personal
 1704 property of the ward located in this state, may file a petition
 1705 showing his or her appointment, describing the property, stating
 1706 its estimated value, and showing the indebtedness, if any, existing
 1707 against the ward in this state, to the best of the guardian's
 1708 knowledge and belief.
 1709 (3) A guardian required to petition under subsection (2) shall
 1710 designate a resident agent, as required by the Florida Probate
 1711 Rules, file certified copies of letters of guardianship or other
 1712 authority and the guardian's bond or other security, if any. The
 1713 court shall determine if the foreign bond or other security is
 1714 sufficient to guarantee the faithful management of the ward's
 1715 property in this state. The court may require a guardian's bond in
 1716 this state in the amount it deems necessary and conditioned on the
 1717 proper management of the property of the ward coming into the
 1718 custody of the guardian in this state.
 1719 (4) The authority of the guardian of a nonresident ward shall be
 1720 recognized and given full faith and credit in the courts of this

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1750 (6) In the appointment of the guardian, the court shall be governed
 1751 by s. 745.602.
 1752 (7) The duties, powers, and liabilities of the guardian shall be
 1753 governed by this code.
 1754
 1755 745.711 Guardian advocates.
 1756 The court may appoint a guardian advocate, without adjudication of
 1757 incapacity, for a person with developmental disabilities if the
 1758 person is only partially incapacitated. Unless otherwise specified,
 1759 the proceeding shall be governed by the Florida Probate Rules. In
 1760 accordance with the legislative intent of this code, courts are
 1761 encouraged to consider appointing a guardian advocate, when
 1762 appropriate, as a less restrictive alternative to guardianship.
 1763
 1764 745.712 Natural guardians.
 1765 (1) Parents jointly are natural guardians of their minor children
 1766 including their adopted children, unless the parents' parental
 1767 rights have been terminated pursuant to chapter 39. If a child is
 1768 the subject of any proceeding under chapter 39, the parents may act
 1769 as natural guardians under this section unless the court division
 1770 with jurisdiction over guardianship proceedings or the court
 1771 division with jurisdiction over the chapter 39 proceeding finds
 1772 that it is not in the child's best interest. If one parent dies,
 1773 the surviving parent remains the sole natural guardian even if the
 1774 parent remarries. If the marriage between the parents is dissolved,
 1775 both parents remain natural guardians with shared parental
 1776 responsibility unless the court awards sole parental responsibility
 1777 to one parent, in which case the parent awarded parental
 1778 responsibility shall be the sole natural guardian. If the marriage
 1779 is dissolved and neither parent is awarded parental responsibility

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1780 of the child, neither shall act as natural guardian of the child.
 1781 The mother of a child born out of wedlock is the natural guardian
 1782 of the child and is entitled to primary residential care and
 1783 parental responsibility of the child unless the parents marry or
 1784 until an order determining paternity is entered by a court of
 1785 competent jurisdiction. In such event, the father shall also be
 1786 deemed a natural guardian.
 1787 (2) Natural guardians are authorized, on behalf of their minor
 1788 child if the total net amounts received do not exceed \$25,000.00,
 1789 to:
 1790 (a) Settle and consummate a settlement of any claim or cause of
 1791 action accruing to the minor child for damages to the person or
 1792 property of the minor child;
 1793 (b) Collect, receive, manage, and dispose of the proceeds of any
 1794 such settlement;
 1795 (c) Collect, receive, manage, and dispose of any real or personal
 1796 property distributed from an estate or trust;
 1797 (d) Collect, receive, manage, dispose of and make elections
 1798 regarding the proceeds from a life insurance policy or annuity
 1799 contract payable to, or otherwise accruing to the benefit of, the
 1800 child; and
 1801 (e) Collect, receive, manage, dispose of and make elections
 1802 regarding the proceeds of any benefit plan as defined by s.
 1803 710.102, of which the minor is a beneficiary, participant, or
 1804 owner, without appointment, authority, or bond.
 1805 (3) A guardianship shall be required when the total net amounts
 1806 received by, or on behalf of, the minor exceed \$50,000.00. When the
 1807 total net amounts received by, or on behalf of, the minor exceed
 1808 \$25,000.00 but does not exceed \$50,000.00, the court has the
 1809 discretion to determine whether the natural guardians are

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1840 (4) In its discretion, the court may appoint an attorney qualified
 1841 under s. 745.305(4) to represent the interests of a minor at the
 1842 hearing on the petition for appointment of a guardian.
 1843 (5) A petition to appoint guardian may be filed and a proceeding to
 1844 determine incapacity under chapter 745 Part III may be commenced
 1845 for a minor who is at least 17 years and 6 months of age at the
 1846 time of filing. The alleged incapacitated minor under this
 1847 subsection shall be provided all the due process rights conferred
 1848 upon an alleged incapacitated adult pursuant to this chapter and
 1849 applicable court rules. The order determining incapacity, order
 1850 appointing guardian, and the letters of guardianship may take
 1851 effect on or after the minor's 18th birthday.
 1852
 1853 745.714 Claims of minors.
 1854 (1)(a) If no guardian has been appointed pursuant to this code, the
 1855 court having jurisdiction over a claim may appoint a guardian ad
 1856 litem to represent the minor's interest before approving a
 1857 settlement of the minor's portion of the claim in any case in which
 1858 a minor has a claim for personal injury, property damage, wrongful
 1859 death, or other cause of action in which the proposed gross
 1860 settlement of the claim for all claimants, including immediate and
 1861 deferred benefits, exceeds \$25,000.
 1862 (b) The court shall appoint a guardian ad litem to represent the
 1863 minor's interest before approving a settlement of the minor's claim
 1864 in any case in which the proposed gross settlement of the claim,
 1865 for all claimants, including immediate and deferred benefits,
 1866 exceeds \$50,000.
 1867 (2) No bond shall be required of the guardian ad litem.
 1868 (3) The duty of a guardian ad litem is to protect the minor's
 1869 interests as described in this code.

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1810 authorized to take any actions enumerated in subsection (2) of this
 1811 statute or whether a guardianship is required.
 1812 (4) All instruments executed by a natural guardian for the benefit
 1813 of the ward under the powers specified in subsection (2) shall be
 1814 binding on the ward. The natural guardian may not, without court
 1815 order, use the property of the ward for the guardian's benefit or
 1816 to satisfy the guardian's support obligation to the ward.
 1817 (5) Prior to taking possession of any funds or other property as
 1818 authorized by subsection (2), a natural guardian must file with the
 1819 clerk in the county of the ward's residence a verified statement
 1820 identifying the child, nature and value of the property, and the
 1821 name, relationship, and current residence address of the natural
 1822 guardian.
 1823 (6) Any funds or other property collected by or put into the
 1824 possession of a natural guardian on behalf of a minor, remain the
 1825 property of the minor and, unless otherwise authorized by the
 1826 court, are not to be used by a natural guardian to fulfill the
 1827 natural guardian's parental obligations.
 1828
 1829 745.713 Guardians of minors.
 1830 (1) Upon petition of a parent, brother, sister, next of kin, or
 1831 other person interested in the welfare of a minor, a guardian for a
 1832 minor may be appointed by the court without the necessity of
 1833 adjudication of incapacity pursuant to chapter 745 Part III.
 1834 (2) Upon petition, the court may determine if the appointment of a
 1835 guardian of property of a minor is necessary as provided in s.
 1836 745.712(3).
 1837 (3) A minor is not required to attend the hearing on the petition
 1838 for appointment of a guardian, unless otherwise directed by the
 1839 court.

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1870 (4) A court shall not appoint a guardian ad litem for the minor if
 1871 a guardian of the minor has previously been appointed and the
 1872 guardian has no potential adverse interest to the minor.
 1873 (5) The court shall award reasonable fees and costs to the guardian
 1874 ad litem to be paid out of the gross proceeds of the settlement.
 1875 (6) All records relating to settlement of a claim pursuant to this
 1876 section is subject to the confidentiality provisions of s. 745.112.
 1877
 1878 Section 8. Part VIII of chapter 745, Florida Statutes,
 1879 consisting of sections 745.801, 745.802, 745.803, 745.804, 745.805,
 1880 745.806, 745.807, 745.808, 745.809, 745.810, 745.811, 745.812,
 1881 745.813, and 745.814, is created to read:
 1882
 1883 PART VIII
 1884 DUTIES OF GUARDIAN
 1885 745.801 Liability of guardian.
 1886 A guardian is not personally liable for the debts, contracts or
 1887 torts of the ward. A guardian may be personally liable to the ward
 1888 for failure to protect the ward within the scope of the guardian's
 1889 authority.
 1890 745.802 Duties of guardian of property.
 1891 (1) A guardian of property is a fiduciary and may exercise only
 1892 those rights that have been removed from the ward and delegated to
 1893 the guardian. The guardian of a minor's property must exercise the
 1894 powers of a plenary guardian of property.
 1895 (2) A guardian of property of the ward must:
 1896 (a) Protect and preserve the property and invest it prudently as
 1897 provided in chapter 518.
 1898 (b) Apply the property as provided in s. 745.1304.

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1899 (c) Keep clear, distinct, and accurate records of the
1900 administration of the ward's property.

1901 (d) Perform all other duties required of a guardian of property by
1902 law.

1903 (e) At the termination of the guardianship, deliver the property of
1904 the ward to the person lawfully entitled to it.

1905 (3) A guardian is a fiduciary who must observe the standards in
1906 dealing with guardianship property that would be observed by a
1907 prudent person dealing with the property of another, and, if the
1908 guardian has special skills or is appointed guardian on the basis
1909 of representations of special skills or expertise, the guardian is
1910 under a duty to use those skills.

1911 (4) A guardian of property, if authorized by the court, must secure
1912 the ward's property and of the income from it, whether accruing
1913 before or after the guardian's appointment, and of the proceeds
1914 arising from the sale, lease, or mortgage of the property. All of
1915 the property and the income from it are assets in the hands of the
1916 guardian for the payment of debts, taxes, claims, charges, and
1917 expenses of the guardianship and for the care, support,
1918 maintenance, and education of the ward or the ward's dependents, as
1919 provided by law.

1920 (5) A guardian of property must file a verified inventory of the
1921 ward's property as required by s. 745.803 and annual accountings in
1922 accordance with s. 745.805. This requirement also applies to a
1923 guardian who previously served as emergency temporary guardian for
1924 the ward.

1925 (6) A guardian must act within the scope of the authority granted
1926 by the court and as provided by law.

1927 (7) A guardian must act in good faith.

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1958 (3) Along with the verified inventory, the guardian must file a
1959 copy of statements of all of the ward's cash assets from all
1960 institutions in which funds are deposited. Statements must be for
1961 the period ending closest in time to the issuance of letters.

1962 (4) If the ward is a beneficiary of a trust, the inventory must
1963 identify the trust and the trustee.

1964 (5) The inventory shall specify whether the guardian of property
1965 will file the annual accounting on a designated fiscal year or
1966 calendar year basis.

1967 (6) If a guardian of property learns of any property that is not
1968 included in the inventory, the guardian shall file an amended or
1969 supplemental inventory to report such property within 60 days after
1970 the discovery.

1971

1972 745.804 Audit fee for inventory.

1973 (1) When the value of the ward's property, excluding real property,
1974 equals or exceeds \$25,000, a guardian shall pay from the ward's
1975 property to the clerk an audit fee of up to \$75, at the time of
1976 filing the verified inventory. Upon petition by the guardian, the
1977 court may waive the audit fee upon a showing of insufficient cash
1978 assets in the ward's estate or other good cause.

1979 (2) An audit fee may not be charged to any ward whose property,
1980 excluding real property, has a value of less than \$25,000.

1981

1982 745.805 Annual accounting.

1983 (1) A guardian of property must file an annual accounting with the
1984 court.

1985 (2) An annual accounting must include:

1986 (a) A full and correct itemization of the receipts and
1987 disbursements of all of the ward's property in the guardian's

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1928 (8) When making decisions on behalf of a ward, a guardian of
1929 property shall exercise reasonable care, diligence, and prudence.
1930 The guardian of property shall base all decisions on substituted
1931 judgment if there is competent, substantial evidence of what the
1932 ward would have wanted and the decision promotes the ward's best
1933 interest. If there is no competent, substantial evidence to support
1934 substituted judgment or the decision does not promote the ward's
1935 best interest, then the decision shall be made based on the ward's
1936 best interest.

1937 (9) When two or more guardians have been appointed, the guardians
1938 shall consult with each other on matters of mutual responsibility.
1939

1940 745.803 Verified inventory.

1941 (1) A guardian of property shall file a verified inventory of the
1942 ward's property within 60 days of issuance of letters.

1943 (2) The verified inventory must specify and describe the following:

1944 (a) All property of the ward, real and personal, that has come into
1945 the guardian's control or knowledge, including a statement of all
1946 encumbrances, liens, and other claims on any item, including any
1947 cause of action accruing to the ward, and any trusts of which the
1948 ward is a beneficiary.

1949 (b) The location of the real and personal property in sufficient
1950 detail so that it may be identified and located.

1951 (c) A description of all sources of income, including, without
1952 limitation, social security benefits and pensions.

1953 (d) The location of any safe-deposit boxes held by the ward
1954 individually or jointly with any other person.

1955 (e) identification by name, address, and occupation, of witnesses
1956 present, if any, during the initial examination of the ward's
1957 tangible personal property.

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1988 control or knowledge at the end of the accounting period and a
1989 statement of the ward's property in the guardian's control or
1990 knowledge at the end of the accounting period. If the guardian does
1991 not have control of an asset, the accounting must describe the
1992 asset and the reason it is not in the guardian's control. If the
1993 ward is a beneficiary of a trust, the accounting must identify the
1994 trust and the trustee, but they need not list the receipts and
1995 disbursements of the trust.

1996 (b) A copy of statements demonstrating all receipts and
1997 disbursements for each of the ward's cash accounts from each of the
1998 institutions in which cash is deposited.

1999 (3) A guardian must obtain a receipt, canceled check, or other
2000 proof of payment for all expenditures and disbursements made on
2001 behalf of the ward. A guardian must preserve all evidence of
2002 payment, along with other substantiating papers, for a period of 7
2003 years after the end of the accounting year. The receipts, proofs of
2004 payment, and substantiating papers need not be filed with the court
2005 but shall be made available for inspection at such time and place
2006 and before such persons as the court may order for cause, after
2007 hearing with notice to the guardian.

2008 (4) Unless otherwise directed by the court, a guardian of property
2009 may file the first annual accounting on either a fiscal year or
2010 calendar year basis. The guardian must notify the court as to the
2011 guardian's filing intention on the guardian's inventory. All
2012 subsequent annual accountings must be filed for the same accounting
2013 period as the first annual accounting. The first accounting period
2014 must end within 1 year after the end of the month in which the
2015 letters were issued to the guardian of property.

2016 (5) The annual accounting must be filed on or before the first day
2017 of the fourth month after the end of the accounting year.

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2018 (6) Unless the guardian is a plenary guardian of property or the
 2019 requirement is otherwise waived by the court, the annual accounting
 2020 must be served on the ward. The guardian shall serve a copy of the
 2021 annual accounting on interested persons as the court may authorize
 2022 or require.
 2023 (7) The court may waive the filing of an accounting if it
 2024 determines the ward receives income only from social security
 2025 benefits and the guardian is the ward's representative payee for
 2026 the benefits.
 2027
 2028 745.806 Simplified accounting.
 2029 (1) In a guardianship of property, when all assets of the estate
 2030 are in designated depositories under s. 69.031 and the only
 2031 transactions that occur in that account are interest accrual,
 2032 deposits from a settlement, financial institution service charges
 2033 and court authorized expenditures, the guardian may elect to file
 2034 an accounting consisting of:
 2035 (a) Statements demonstrating all receipts and disbursements of the
 2036 ward's account from the financial institution; and
 2037 (b) A statement made by the guardian under penalty of perjury that
 2038 the guardian has custody and control of the ward's property as
 2039 shown in the year-end statement.
 2040 (2) The accounting allowed by subsection (1) is in lieu of the
 2041 accounting and auditing procedures under s. 745.805. However, any
 2042 interested party may seek judicial review as provided in s.
 2043 745.1002.
 2044
 2045 745.807 Audit fee for accounting.

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2075 the guardian is a plenary guardian of property or unless otherwise
 2076 directed by the court.
 2077 (3) Nothing may be removed from the ward's safe-deposit box by the
 2078 guardian of property without court order.
 2079
 2080 745.809 Duties of guardian of person.
 2081 (1) A guardian of person is a fiduciary and may exercise only those
 2082 rights that have been removed from the ward and delegated to the
 2083 guardian. A guardian of a minor shall exercise the powers of a
 2084 plenary guardian.
 2085 (2) A guardian of person shall make decisions necessary to provide
 2086 medical, mental health, personal and residential care for the ward,
 2087 to the extent of the guardian's authority.
 2088 (3) A guardian of person must ensure that each of the guardian's
 2089 wards is personally visited by the guardian or, in the case of a
 2090 professional guardian, by one of the guardian's professional staff
 2091 at least once each calendar quarter. During the personal visit, the
 2092 guardian or the guardian's professional staff person shall assess:
 2093 (a) The ward's physical appearance and condition.
 2094 (b) The appropriateness of the ward's current residence.
 2095 (c) The need for any additional services and for continuation of
 2096 existing services, taking into consideration all aspects of the
 2097 ward's social, psychological, educational, direct service, health,
 2098 and personal care needs.
 2099 (d) The nature and extent of visitation and communication with the
 2100 ward's family and others.
 2101 (4) A guardian of person shall file an initial guardianship plan as
 2102 required by s. 745.810 and annual plans as required by s. 745.813.
 2103 (5) A guardian shall act within the scope of the authority granted
 2104 by the court and as provided by law.

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2046 (1) A guardian shall pay, from the ward's property, to the clerk an
 2047 audit fee based upon the following graduated fee schedule at the
 2048 time of filing the annual accounting:
 2049 (a) For property having a value of \$25,000 or less, there shall be
 2050 no audit fee.
 2051 (b) For property with total value of more than \$25,000 up to and
 2052 including \$100,000 the clerk may charge a fee of up to \$100.
 2053 (c) For property with total value of more than \$100,000 up to and
 2054 including \$500,000 the clerk may charge a fee of up to \$200.
 2055 (d) For property with a value in excess of \$500,000 the clerk may
 2056 charge a fee of up to \$400.
 2057 (2) Upon petition by the guardian, the court may waive the auditing
 2058 fee upon a showing of insufficient cash assets in the ward's
 2059 estate.
 2060
 2061 745.808 Safe-deposit box.
 2062 (1) A guardian's initial access to any safe-deposit box leased or
 2063 co-leased by the ward must be conducted in the presence of an
 2064 employee of the institution where the box is located. A written
 2065 inventory of the contents of the safe-deposit box also must be
 2066 compiled in the presence of the employee. The employee and guardian
 2067 must then confirm the contents of the safe-deposit box by executing
 2068 the safe-deposit box inventory in accordance with Florida Probate
 2069 Rule 5.020. The contents must then be replaced in the safe-deposit
 2070 box and the guardian must file the verified safe-deposit box
 2071 inventory within 10 days after the box is opened.
 2072 (2) A guardian of property must provide any co-lessee a copy of
 2073 each signed safe-deposit box inventory. A copy of each verified
 2074 safe deposit box inventory must also be provided to the ward unless

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2105 (6) A guardian shall act in good faith.
 2106 (7) When making decisions on behalf of a ward, a guardian of person
 2107 shall act in a manner consistent with the ward's constitutional
 2108 rights of privacy and self-determination, making decisions based on
 2109 substituted judgment if there is competent, substantial evidence of
 2110 what the ward would have wanted. If there is no competent,
 2111 substantial evidence of what the ward would have wanted, decisions
 2112 shall be based on the ward's best interest.
 2113 (8) A guardian of person is a fiduciary who must observe the
 2114 standards that would be observed by a prudent person making
 2115 decisions on behalf of another, and, if the guardian has special
 2116 skills or expertise, or is appointed in reliance upon the
 2117 guardian's representation that the guardian has special skills or
 2118 expertise, the guardian is under a duty to use those special skills
 2119 or expertise when acting on behalf of the ward.
 2120 (9) A guardian of person shall implement the guardianship plan.
 2121 (10) When two or more guardians have been appointed, the guardians
 2122 shall consult with each other on matters of mutual responsibility.
 2123 (11) Recognizing that every individual has unique needs and
 2124 abilities, a guardian who is given authority over a ward's person
 2125 shall, as appropriate under the circumstances:
 2126 (a) Consider the expressed desires of the ward as known by the
 2127 guardian when making decisions that affect the ward.
 2128 (b) Allow the ward to maintain contact with family and friends
 2129 unless the guardian believes that such contact may cause harm to
 2130 the ward.
 2131 (c) Not restrict the physical liberty of the ward more than
 2132 reasonably necessary to protect the ward or another person from
 2133 serious physical injury, illness, or disease.
 2134 (d) Assist the ward in developing or regaining capacity.

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2135 (e) Notify the court if the guardian believes that the ward has
 2136 regained capacity and that one or more of the rights that have been
 2137 removed should be restored to the ward.
 2138 (f) To the extent applicable, make provision for the medical,
 2139 mental, rehabilitative, or personal care services for the welfare
 2140 of the ward.
 2141 (g) To the extent applicable, acquire a clear understanding of the
 2142 risks and benefits of a recommended course of health care treatment
 2143 before making a health care decision.
 2144 (h) Evaluate the ward's medical and health care options, financial
 2145 resources, and desires when making residential decisions that are
 2146 best suited for the current needs of the ward.
 2147 (i) Advocate on behalf of the ward in institutional and other
 2148 residential settings and regarding access to home and community-
 2149 based services.
 2150 (j) When not inconsistent with the person's goals, needs, and
 2151 preferences, acquire an understanding of the available residential
 2152 options and give priority to home and other community-based
 2153 services and settings.
 2154
 2155 745.810 Guardianship plan.
 2156 (1) Each guardian of person, other than an emergency temporary
 2157 guardian, shall file a guardianship plan within 60 days after
 2158 letters of guardianship are issued.
 2159 (2) The guardianship plan shall include the following:
 2160 (a) The needed medical, mental health, rehabilitative and personal
 2161 care services for the ward;
 2162 (b) The social and personal services to be provided for the ward;
 2163 (c) The kind of residential setting best suited for the needs of
 2164 the ward;

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2195
 2196 745.811 Annual guardianship report for minor.
 2197 (1) An annual guardianship report for a minor ward shall provide
 2198 current information about ward. The report must specify the current
 2199 needs of the ward and how those needs are proposed to be met in the
 2200 coming year.
 2201 (2) Each report filed by the guardian of person of a minor must
 2202 include:
 2203 (a) Information concerning the residence of the ward, including the
 2204 ward's address at the time of filing the plan, name and address of
 2205 each location where the ward resided during the preceding year and
 2206 the length of stay of the ward at each location.
 2207 (b) A statement of whether the present residential setting is best
 2208 suited for the current needs of the ward.
 2209 (c) Plans for ensuring that the ward is in the best residential
 2210 setting to meet the ward's needs.
 2211 (d) Information concerning the medical and mental health condition
 2212 and treatment and rehabilitation needs of the minor, including:
 2213 1. A description of any professional medical treatment given to the
 2214 minor during the preceding year, including names of health care
 2215 providers, types of care and dates of service.
 2216 2. A report from the physician who examined the minor no more than
 2217 180 days before the beginning of the applicable reporting period
 2218 that contains an evaluation of the minor's physical and medical
 2219 conditions.
 2220 (e) Anticipated medical care needs and the plan for providing
 2221 medical services in the coming year.
 2222 (f) Information concerning education of the minor, including:
 2223 1. A summary of the minor's educational progress report.

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2165 (d) The ward's residence at the time of issuance of the letters of
 2166 guardianship, any anticipated change of residence and the reason
 2167 therefor;
 2168 (e) The health and accident insurance and any other private or
 2169 governmental benefits to which the ward may be entitled to meet any
 2170 part of the costs of medical, mental health, or other services
 2171 provided to the ward; and
 2172 (f) Any physical and mental examinations necessary to determine the
 2173 ward's medical and mental health treatment needs.
 2174 (3) The guardianship plan for an incapacitated person must consider
 2175 any recommendations specified in the court appointed examiners'
 2176 written reports or testimony.
 2177 (4) Unless the ward has been found to be totally incapacitated or
 2178 is a minor, the guardianship plan must contain an attestation that
 2179 the guardian has consulted with the ward and, to the extent
 2180 reasonable, has honored the ward's wishes consistent with the
 2181 rights retained by the ward.
 2182 (5) The guardianship plan may not contain requirements which
 2183 restrict the physical liberty of the ward more than reasonably
 2184 necessary to protect the ward from decline in medical and mental
 2185 health, physical injury, illness, or disease and to protect others
 2186 from injury, illness or disease.
 2187 (6) A guardianship plan continues in effect until it is amended or
 2188 replaced by an annual guardianship report, until the restoration of
 2189 capacity or death of the ward, or until the ward, if a minor,
 2190 reaches the age of 18 years whichever first occurs. If there are
 2191 significant changes in the capacity of the ward to meet the
 2192 essential requirements for the ward's health or safety, the
 2193 guardian may modify the guardianship plan and shall serve the
 2194 amended plan on all persons who served with the plan.

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2224 2. The social development of the minor, including a statement of
 2225 how well the minor communicates and maintains interpersonal
 2226 relationships.
 2227
 2228 745.812 Annual guardianship report for adults.
 2229 (1) An annual guardianship report for an adult ward shall provide
 2230 current information about the condition of the ward. The report
 2231 must specify the current needs of the ward and how those needs are
 2232 proposed to be met in the coming year.
 2233 (2) Each report for an adult ward must, if applicable, include:
 2234 (a) Information concerning the residence of the ward, including the
 2235 ward's address at the time of filing the plan, name and address of
 2236 each location where the ward resided during the preceding year, and
 2237 the length of stay of the ward at each location.
 2238 (b) A statement of whether the present residential setting is best
 2239 suited for the current needs of the ward.
 2240 (c) Plans for ensuring that the ward is in the best residential
 2241 setting to meet the ward's needs.
 2242 (d) Information concerning the medical and mental health condition
 2243 and treatment and rehabilitation needs of the ward, including:
 2244 1. A description of any professional medical and mental health
 2245 treatment given to the ward during the preceding year, including
 2246 names of health care providers, types of care, and dates of
 2247 service.
 2248 2. The report of a physician who examined the ward no more than 120
 2249 days before the beginning of the applicable reporting period. The
 2250 report must contain an evaluation of the ward's condition and a
 2251 statement of the current level of capacity of the ward. If the
 2252 guardian makes a statement in the report that a physician was not
 2253 reasonably available to examine the ward, the examination may be

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2254 performed by and the report may be prepared and signed by a
 2255 physician's assistant acting pursuant to s. 458.347(4) or s.
 2256 459.022(4) or an advanced practice registered nurse acting pursuant
 2257 to s. 464.012(3).
 2258 (e) The plan for providing medical, mental health, and
 2259 rehabilitative services for the ward in the coming year.
 2260 (f) Information concerning the social activities of the ward,
 2261 including:
 2262 1. The social and personal services currently used by the ward.
 2263 2. The social skills of the ward, including a statement of the
 2264 ward's ability to communicate and maintain interpersonal
 2265 relationships.
 2266 (g) Each report for an adult ward must address the issue of
 2267 restoration of rights to the ward and include:
 2268 1. A summary of activities during the preceding year that were
 2269 designed to improve the abilities of the ward.
 2270 2. A statement of whether the ward can have any rights restored.
 2271 3. A statement of whether restoration of any rights will be sought.
 2272 (h) The court, in its discretion, may require reexamination of the
 2273 ward by an appointed examiner at any time.
 2274
 2275 745.813 Annual guardianship report - filing.
 2276 Unless the court requires filing on a calendar-year basis, each
 2277 guardian of person shall file an annual guardianship report on or
 2278 before the first day of the fourth month after the last day of the
 2279 anniversary month the letters of guardianship were issued, and the
 2280 report must cover the coming plan year, ending on the last day in
 2281 such anniversary month. If the court requires calendar-year filing,
 2282 the guardianship report must be filed on or before April 1 of each
 2283 year.

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2314 (1) Take possession or control of property owned by the ward;
 2315 (2) Obtain the ward's legal and financial documents and tax records
 2316 from persons, financial institutions and other entities;
 2317 (3) Obtain a copy of any trust or any other instrument in which the
 2318 ward has a beneficial interest, obtain benefits due the ward as a
 2319 beneficiary of any trust or other instruments, and bind the ward
 2320 with regard to any trust consistent with Florida Statutes chapter
 2321 736.0303;
 2322 (4) Vote stocks or other securities in person or by general or
 2323 limited proxy or not vote stocks or other securities;
 2324 (5) Insure the assets of the estate against damage, loss, and
 2325 liability and insure himself or herself against liability as to
 2326 third persons;
 2327 (6) Execute and deliver in the guardian's name, as guardian, any
 2328 instrument necessary or proper to carry out and give effect to this
 2329 section;
 2330 (7) Pay taxes and assessments on the ward's property;
 2331 (8) Pay valid encumbrances against the ward's property in
 2332 accordance with their terms, but no prepayment may be made without
 2333 prior court approval;
 2334 (9) Pay reasonable living expenses for the ward, taking into
 2335 consideration the accustomed standard of living, age, health, and
 2336 financial resources of the ward. This subsection does not authorize
 2337 the guardian of a minor to expend funds for the ward's living
 2338 expenses if one or both of the ward's parents are alive;
 2339 (10) Exercise the ward's right to an elective share. The guardian
 2340 must comply with the requirements of s. 732.2125(2). The guardian
 2341 may assert any other right or choice available to a surviving
 2342 spouse in the administration of a decedent's estate;

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2284
 2285 745.814 Records retention.
 2286 (1) A guardian of property shall maintain documents and records
 2287 sufficient to demonstrate the accuracy of the initial inventory for
 2288 a period of 7 years after filing the inventory. The documents need
 2289 not be filed but must be available for inspection at such time and
 2290 place and before such persons as the court may order for cause,
 2291 after hearing with notice to the guardian. The guardian of property
 2292 shall also maintain documents and records sufficient to demonstrate
 2293 the accuracy of the annual accounting for a period of 7 years after
 2294 filing the accounting.
 2295 (2) A guardian of person shall maintain documents and records
 2296 sufficient to demonstrate the accuracy of the annual report for a
 2297 period of 4 years after the filing of the respective annual report.
 2298
 2299 Section 9. Part IX of chapter 745, Florida Statutes,
 2300 consisting of sections 745.901, 745.902, 745.903, 745.904, 745.905,
 2301 745.906, 745.907, and 745.908, is created to read:
 2302 PART IX
 2303 GUARDIAN POWERS
 2304 745.901 Powers and duties of guardian.
 2305 The guardian of an incapacitated person may exercise only those
 2306 rights that have been removed from the ward and delegated to the
 2307 guardian. A guardian of a minor shall exercise the powers of a
 2308 plenary guardian.
 2309
 2310 745.902 Power of guardian of property without court approval.
 2311 Without obtaining court approval, a plenary guardian of property,
 2312 or a limited guardian of property within the powers granted by the
 2313 letters of guardianship, may:

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2343 (11) Deposit or invest liquid assets of the estate, including money
 2344 received from the sale of other assets, in federally insured
 2345 interest-bearing accounts, readily marketable secured loan
 2346 arrangements, money market mutual funds, or other prudent
 2347 investments. The guardian may redeem or sell such deposits or
 2348 investments to pay the reasonable living expenses of the ward as
 2349 provided herein;
 2350 (12) When reasonably necessary, employ attorneys, accountants,
 2351 property managers, auditors, investment advisers, care managers,
 2352 agents, and other persons and entities to advise or assist the
 2353 guardian in the performance of guardianship duties;
 2354 (13) Sell or exercise stock subscription or conversion rights and
 2355 consent, directly or through a committee or other agent, to the
 2356 reorganization, consolidation, merger, dissolution, or liquidation
 2357 of a corporation or other business enterprise;
 2358 (14) Execute and deliver any instrument that is necessary or proper
 2359 to carry out the orders of the court;
 2360 (15) Hold a security in the name of a nominee or in other form
 2361 without disclosure of the interest of the ward, but the guardian is
 2362 liable for any act of the nominee in connection with the security
 2363 so held;
 2364 (16) Pay and reimburse incidental expenses in the administration of
 2365 the guardianship and for provision of services to the ward
 2366 including reasonable compensation to persons employed by the
 2367 guardian pursuant to subsection (12) from the assets of the ward.
 2368 These payments shall be reported on the guardian's annual
 2369 accounting, accompanied by itemized statements describing services
 2370 rendered and the method of charging for such services;
 2371 (17) Provide confidential information about a ward that is related
 2372 to an investigation arising under s. 745.1001 to the clerk, part

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2373 XIV of this chapter to an Office of Public and Professional
 2374 Guardians investigator, or part I of chapter 400 to a local or
 2375 state ombudsman council member conducting that investigation. Any
 2376 such clerk, Office of Public and Professional Guardians
 2377 investigator, or ombudsman shall have a duty to maintain the
 2378 confidentiality of the information provided;
 2379 (18) Fulfill financial obligations under the ward's contracts that
 2380 predate the guardianship;
 2381 (19) Maintain and repair the ward's property and purchase
 2382 furnishings, clothing, appliances and furniture for the ward;
 2383 (20) Pay calls, assessments and other sums chargeable against
 2384 securities owned by the ward that are obligations predating the
 2385 guardianship;
 2386 (21) Contract for residential care and placement for the ward and
 2387 for services pursuant to subsection (12); and
 2388 (22) Receive payment and satisfy judgments in favor of the ward.
 2389
 2390 745.903 Powers of guardian of property requiring court approval.
 2391 After obtaining approval of the court pursuant to a petition for
 2392 authorization to act, a plenary guardian of property, or a limited
 2393 guardian of property within the powers granted by the letters of
 2394 guardianship, may:
 2395 (1) Compromise, or refuse performance of a ward's contracts that
 2396 predate the guardianship, as the guardian may determine under the
 2397 circumstances;
 2398 (2) Execute, exercise, or release any non-fiduciary powers that the
 2399 ward might have lawfully exercised, consummated, or executed if not
 2400 incapacitated, if the best interest of the ward requires such
 2401 execution, exercise, or release;

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2432 relates solely to a post-death distribution. This subsection does
 2433 not preclude a challenge after the ward's death. Any judicial
 2434 proceeding specified in 736.0201 must be brought as an independent
 2435 proceeding and is not a part of the guardianship action;
 2436 (11) Sell, mortgage, or lease any real or personal property of the
 2437 ward, including homestead property, or any interest therein for
 2438 cash or credit, or for part cash and part credit, and with or
 2439 without security for unpaid balances;
 2440 (12) Continue any unincorporated business or venture in which the
 2441 ward was engaged;
 2442 (13) Purchase, in the name of the ward, real property in this state
 2443 in which the guardian has no interest;
 2444 (14) If the ward is married with property owned by the ward and
 2445 spouse as an estate by the entirety and the property is sold, the
 2446 proceeds shall retain the same entirety character as the original
 2447 asset, unless otherwise determined by the court;
 2448 (15) Exercise any option contained in any policy of insurance
 2449 payable to, or insuring to the benefit of, the ward;
 2450 (16) Prepay reasonable funeral, interment, and grave marker
 2451 expenses for the ward from the ward's property;
 2452 (17) Make gifts of the ward's property to members of the ward's
 2453 family for estate and income tax planning purposes or to continue
 2454 the ward's prior pattern of gifting;
 2455 (18) When the ward's will evinces an objective to obtain a United
 2456 States estate tax charitable deduction by use of a split interest
 2457 trust (as that term is defined in s. 736.1201), but the maximum
 2458 charitable deduction otherwise allowable will not be achieved in
 2459 whole or in part, execute a codicil on the ward's behalf amending
 2460 the will to obtain the maximum charitable deduction allowable

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2402 (3) Make extraordinary repairs or alterations in buildings or other
 2403 structures; demolish any improvements; raze existing walls or erect
 2404 new, party walls or buildings;
 2405 (4) Subdivide, develop, or dedicate land to public use; make or
 2406 obtain the vacation of plats and adjust boundaries; adjust
 2407 differences in valuation on exchange or partition by giving or
 2408 receiving consideration; or dedicate easements to public use
 2409 without consideration;
 2410 (5) Enter into a lease as lessor of the ward's property for any
 2411 purpose, with or without option to purchase or renew, for a term
 2412 within, or extending beyond, the period of guardianship;
 2413 (6) Enter into a lease or arrangement for exploration and removal
 2414 of minerals or other natural resources or enter into a pooling or
 2415 unitization agreement;
 2416 (7) Abandon property when it is valueless or is so encumbered or in
 2417 such condition that it is of no benefit to the ward;
 2418 (8) Borrow money, with or without security, and advance money for
 2419 the protection of the ward;
 2420 (9) Effect a fair and reasonable compromise or settlement with any
 2421 debtor or obligor or extend, renew, or in any manner modify the
 2422 terms of any obligation owing to the ward;
 2423 (10) Prosecute or defend claims or proceedings in any jurisdiction
 2424 for the protection of the ward and of a guardian in the performance
 2425 of guardianship duties, including the filing of a petition for
 2426 dissolution of marriage. Before authorizing a guardian to bring an
 2427 action described in s. 736.0207, the court shall first find that
 2428 the action appears to be in the ward's best interest during the
 2429 ward's probable lifetime. There shall be a rebuttable presumption
 2430 that an action challenging the ward's revocation of all or part of
 2431 a trust is not in the ward's best interests if the revocation

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2461 without diminishing the aggregate value of the benefits of any
 2462 beneficiary under the will;
 2463 (19) Create or amend revocable trusts or create irrevocable trusts
 2464 of property of the ward that may extend beyond the disability or
 2465 life of the ward in connection with estate, gift, income, or other
 2466 tax planning or to carry out other estate planning purposes. The
 2467 court shall retain oversight of the assets transferred to a trust,
 2468 unless otherwise ordered by the court. Before entering an order
 2469 authorizing creation or amendment of a trust, the court shall
 2470 appoint counsel to represent the ward in that proceeding. To the
 2471 extent this provision conflicts with provisions of Chapter 736,
 2472 Chapter 736 shall prevail;
 2473 (20) Renounce or disclaim any interest of the ward received by
 2474 testate or intestate succession, insurance benefit, annuity,
 2475 survivorship, or inter vivos transfer;
 2476 (21) Enter into contracts that are appropriate for, and in the best
 2477 interest of, the ward; and
 2478 (22) Pay for a minor ward's support, health, maintenance, and
 2479 education, if the ward's parents, or either of them, are alive.
 2480
 2481 745.904 Petition for authority to act.
 2482 (1) Requests by a guardian for authority to perform, or
 2483 confirmation of, any acts under s. 745.903 or s. 745.1309 shall be
 2484 by petition stating facts showing the expediency or necessity for
 2485 the action; a description of any property involved; and the price
 2486 and terms of a sale, mortgage, or other contract. The petition must
 2487 state whether or not the ward has been adjudicated incapacitated to
 2488 act with respect to the rights to be exercised.
 2489 (2) No notice of a petition to authorize sale or repair of
 2490 perishable or deteriorating property shall be required. Notice of a

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2491 petition to perform any other acts under s. 745.903 or s. 745.1309
 2492 must be given to the ward, to the next of kin, if any, and to those
 2493 interested persons whom the court has found to be entitled to
 2494 notice, as provided in the Florida Probate Rules, unless waived by
 2495 the court for good cause. Notice need not be given to a ward who is
 2496 a minor or who has been determined to be totally incapacitated.
 2497
 2498 745.905 Order authorizing action.
 2499 (1) If a sale or mortgage is authorized, the order shall:
 2500 (a) Describe the property;
 2501 (b) If the property is authorized for sale at private sale, the
 2502 price and the terms of sale; and
 2503 (c) If the sale is to be by public auction, the order shall state
 2504 that the sale shall be made to the highest bidder but that the
 2505 guardian reserves the right to reject all bids.
 2506 (2) An order for any other act permitted under s. 745.903 or s.
 2507 745.1309 shall describe the permitted act and authorize the
 2508 guardian to perform it.
 2509
 2510 745.906 Conveyance of various property rights by guardians of
 2511 property.
 2512 (1)(a) All legal or equitable interests in property owned as an
 2513 estate by the entireties by an incapacitated person for whom a
 2514 guardian of the property has been appointed may be sold,
 2515 transferred, conveyed, or mortgaged in accordance with s. 745.903,
 2516 if the spouse who is not incapacitated joins in the sale, transfer,
 2517 conveyance, or mortgage. When both spouses are incapacitated, the
 2518 sale, transfer, conveyance, or mortgage shall be by the guardians
 2519 only. The sale, transfer, conveyance, or mortgage may be
 2520 accomplished by one instrument or by separate instruments.

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2551 direct that such payments retain their status as to survivorship or
 2552 specify that such receipts be allocated in a manner other than
 2553 equal division.
 2554 (2) In determining the value of life estates or remainder
 2555 interests, the American Experience Mortality Tables may be used.
 2556 (3) Nothing in this section shall prohibit the court in its
 2557 discretion from appointing a sole guardian to serve as guardian for
 2558 both spouses.
 2559 (4) Any contingent or expectant interest in property, including
 2560 marital property rights and any right of survivorship incident to
 2561 joint tenancy or tenancy by the entireties, may be conveyed or
 2562 released in accordance with s. 745.903.
 2563
 2564 745.907 Settlement of claims
 2565 (1) When a settlement of any claim by or against an adult ward,
 2566 whether arising as a result of personal injury or otherwise, and
 2567 whether arising before or after appointment of a guardian, is
 2568 proposed, but before an action to enforce it is begun, on petition
 2569 by the guardian of property stating the facts of the claim or
 2570 dispute and the proposed settlement, and on evidence that is
 2571 introduced, the court may enter an order authorizing the settlement
 2572 if satisfied that the settlement will be in the best interest of
 2573 the ward. The order shall relieve the guardian from any further
 2574 responsibility in connection with the claim or dispute when
 2575 settlement has been made in accordance with the order. The order
 2576 authorizing the settlement may also determine whether an additional
 2577 bond is required and, if so, shall fix the amount of it.
 2578 (2) In the same manner as provided in subsection (1) or as
 2579 authorized by s. 745.713, the natural guardians or guardian of a
 2580 minor may settle any claim by or on behalf of a minor that does not

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2521 (b) In authorizing or confirming the sale and conveyance of real or
 2522 personal property owned by the ward and the ward's spouse as an
 2523 estate by the entireties or as joint tenants with right of
 2524 survivorship, the court may provide that one-half of the net
 2525 proceeds of the sale shall go to the guardian of the ward and the
 2526 other one-half to the ward's spouse, or the court may provide for
 2527 the proceeds of the sale to retain the same character as to
 2528 survivorship as the original asset.
 2529 (c) A guardian of property shall collect all payments coming due on
 2530 intangible property, such as notes and mortgages and other
 2531 securities owned by the ward and the ward's spouse as an estate by
 2532 the entireties or as joint tenants with right of survivorship, and
 2533 shall retain one-half of all principal and interest payments so
 2534 collected and shall pay the other one-half of the collections to
 2535 the spouse who is not incapacitated. If both spouses are
 2536 incapacitated, the guardian of either shall collect the payments,
 2537 retain one-half of the principal and interest payments, and pay the
 2538 other one-half to the guardian of the other spouse. The court may
 2539 direct that such payments retain their status as to survivorship or
 2540 specify that such receipts be allocated in a manner other than
 2541 equal division.
 2542 (d) The guardian of an incapacitated person shall collect all
 2543 payments of rents on real estate held as an estate by the
 2544 entireties and, after paying all charges against the property, such
 2545 as taxes, insurance, maintenance, and repairs, shall retain one-
 2546 half of the net rents so collected and pay the other one-half to
 2547 the spouse who is not incapacitated. If both spouses are
 2548 incapacitated, the guardian of property of either may collect the
 2549 rent, pay the charges, retain one-half of the net rent, and pay the
 2550 other one-half to the guardian of the other spouse. The court may

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2581 exceed \$25,000.00 without bond. A guardianship shall be required
 2582 when the amount of the net settlement to the ward exceeds
 2583 \$50,000.00. When the amount of the net settlement to the ward
 2584 exceeds \$25,000.00 but does not exceed \$50,000.00, the court has
 2585 the discretion to determine whether the natural guardians may
 2586 settle the claim or whether a guardianship shall be required. No
 2587 guardianship of the minor is required when the amount of the net
 2588 settlement is less than \$25,000.00.
 2589 (3) No settlement after an action has been commenced by or on
 2590 behalf of a ward shall be effective unless approved by the court
 2591 having jurisdiction of the guardianship.
 2592 (4) In making a settlement under court order as provided in this
 2593 section, the guardian is authorized to execute any instrument that
 2594 may be necessary to effect the settlement. When executed, the
 2595 instrument shall be a complete release of the guardian.
 2596
 2597 745.908 Authority for extraordinary actions.
 2598 (1) Without first obtaining authority from the court, as described
 2599 in this section, a guardian shall not:
 2600 (a) Commit a ward with developmental disabilities to a facility,
 2601 institution, or licensed service provider without formal placement
 2602 proceeding, pursuant to chapters 393.
 2603 (b) Consent on behalf of the ward to the performance on the ward of
 2604 any experimental biomedical or behavioral procedure or to the
 2605 participation by the ward in any biomedical or behavioral
 2606 experiment. The court may permit such performance or participation
 2607 only if:
 2608 1. It is of direct benefit to, and is intended to preserve the life
 2609 of or prevent serious impairment to the mental or physical health,
 2610 of the ward; or

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2611 2. It is intended to assist the ward to develop or regain the
 2612 ward's abilities.
 2613 (c) Consent on behalf of the ward to termination of the ward's
 2614 parental rights.
 2615 (d) Consent on behalf of the ward to the performance of a
 2616 sterilization or abortion procedure on the ward.
 2617 (2) Before the court may grant authority to a guardian to exercise
 2618 any of the powers specified in this section, the court must:
 2619 (a) Appoint an attorney to represent the ward. The attorney must
 2620 have the opportunity to meet with the ward and present evidence and
 2621 cross-examine witnesses at any hearing on the petition for
 2622 authority to act;
 2623 (b) Consider independent medical, psychological, and social
 2624 evaluations with respect to the ward presented by competent
 2625 professionals. The court may appoint experts to assist in the
 2626 evaluations. Unless an objection is filed by the ward or
 2627 petitioner, the court may consider at the hearing written
 2628 evaluation reports without requiring testimony. Any objection to
 2629 such consideration must be filed and served on interested persons
 2630 at least 3 days prior to the hearing;
 2631 (c) Find by clear and convincing evidence that the ward lacks the
 2632 capacity to make a decision about the issues before the court and
 2633 that the ward's capacity is not likely to change in the foreseeable
 2634 future; and
 2635 (d) Find by clear and convincing evidence that the authority being
 2636 requested is consistent with the ward's intentions expressed prior
 2637 to incapacity or, in the absence of evidence of the ward's
 2638 intentions, is in the best interests of the ward.
 2639
 2640 745.909 Do Not Resuscitate Order.

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2671 consisting of sections 745.1001, 745.1002, 745.1003, 745.1004,
 2672 745.1005, 745.1006, 745.1007, 745.1008, and 745.1009, is created to
 2673 read:
 2674 PART X
 2675 OVERSIGHT AND MONITORING
 2676 745.1001 Duties of the clerk - General.
 2677 In addition to the duty to serve as custodian of guardianship
 2678 files, the clerk shall have the duties specified below:
 2679 (1) Within 30 days after the date of filing an initial guardianship
 2680 plan or annual report of a guardian of person, the clerk shall
 2681 examine the initial guardianship plan or annual report to assess
 2682 whether it provides information required by this code and the
 2683 Florida Probate Rules. Within such time, the clerk shall provide
 2684 the court and the guardian a written statement of the clerk's
 2685 findings.
 2686 (2) Within 60 days after the filing of an inventory or annual
 2687 accounting by a guardian of property, the clerk shall audit the
 2688 inventory or accounting to assess whether it provides information
 2689 required by this code and the Florida Probate Rules. Within such
 2690 time, the clerk shall provide the court and the guardian a written
 2691 audit report of the clerk's findings.
 2692 (3) The clerk shall provide written notice to the court and
 2693 guardian when an inventory, accounting, plan or report is not
 2694 timely filed.
 2695 (4) If the clerk has reason to believe further review is
 2696 appropriate, the clerk may request and review records and documents
 2697 that reasonably impact guardianship assets, including, but not
 2698 limited to, the beginning inventory balance and any fees charged to
 2699 the guardianship. As a part of this review, the clerk may conduct
 2700 audits and may cause the plan and annual guardianship report and

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2641 (1) After obtaining approval of the court that a Do Not Resuscitate
 2642 Order is appropriate under s. 745.809(7) pursuant to a petition for
 2643 authorization to act, a plenary guardian of person, or a limited
 2644 guardian of person within the powers granted by the letters of
 2645 guardianship may authorize a Do Not Resuscitate Order for the ward
 2646 under Florida Statutes s. 401.45. A guardian may not authorize a Do
 2647 Not Resuscitate Order without prior court approval except as
 2648 provided in subsection 3 below.
 2649 (2) A preliminary hearing on the petition for court approval must
 2650 be held within 72 hours after the filing of the petition. At that
 2651 time the court must review the petition and supporting
 2652 documentation. In its discretion the court shall either:
 2653 (a) rule on the relief requested immediately after the preliminary
 2654 hearing; or
 2655 (b) conduct an evidentiary hearing not later than 4 days after the
 2656 preliminary hearing and rule on the relief requested immediately
 2657 after the evidentiary hearing.
 2658 (3) Court approval is not required prior to the authorize of a Do
 2659 Not Resuscitate Order by the guardian of person when:
 2660 (a) the Ward authorized a Do Not Resuscitate Order prior to the
 2661 Ward's incapacity and the Do Not Resuscitate Order was entered in
 2662 the Ward's medical records; or
 2663 (b) the Ward has explicitly requested a Do Not Resuscitate Order be
 2664 entered in the Ward's living will, designation of healthcare
 2665 surrogate, or other valid written advance directive.
 2666 When a Do Not Resuscitate Order is signed without court approval,
 2667 the guardian of person must file a copy of the Do Not Resuscitate
 2668 Order with the Court within 10 days of execution.
 2669
 2670 Section 10. Part X of chapter 745, Florida Statutes,

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2701 accounting to be audited. The clerk shall notify in writing the
 2702 court and the guardian of the results of any such audit. Any fee or
 2703 cost incurred by the guardian in responding to the review or audit
 2704 may not be paid or reimbursed by the ward's assets if there is a
 2705 finding of wrongdoing by the guardian.
 2706 (5) If a guardian fails to produce records and documents to the
 2707 clerk upon request, the clerk may request that the court enter an
 2708 order pursuant to s. 745.1004 by filing an affidavit that
 2709 identifies the records and documents requested and shows good cause
 2710 as to why the documents and records requested are needed to
 2711 complete the audit.
 2712 (6) Upon application to the court pursuant to subsection (5), the
 2713 clerk may issue subpoenas to nonparties to compel production of
 2714 books, papers, and other documentary evidence. Before issuance of a
 2715 subpoena, the clerk must serve notice on the guardian and the ward,
 2716 unless the ward is a minor or totally incapacitated, of the intent
 2717 to serve subpoenas to nonparties.
 2718 (a) The clerk must attach the affidavit and the proposed subpoena
 2719 to the notice, and the subpoena must:
 2720 1. State the time, place, and method for production of the
 2721 documents or items, and the name and address of the person who is
 2722 to produce the documents or items, if known, or, if not known, a
 2723 general description sufficient to identify the person or the
 2724 particular class or group to which the person belongs;
 2725 2. Include a description of the items to be produced;
 2726 3. State that the person who will be asked to produce the documents
 2727 or items has the right to object to the production under this
 2728 section and that if an objection is filed the person is not
 2729 required to surrender the documents or items.

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2730 (b) A copy of the notice and proposed subpoena may not be furnished
 2731 to the person upon whom the subpoena is to be served.
 2732 (c) If the guardian or ward serves an objection to production under
 2733 this subsection within 10 days after service of the notice, the
 2734 subpoena may not be served on the nonparty until resolution of the
 2735 objection. If an objection is not made within 10 days after service
 2736 of the notice, the clerk may issue the subpoena to the nonparty.
 2737 The court may shorten the period within which a guardian or ward is
 2738 required to file an objection upon a showing by the clerk by
 2739 affidavit that the ward's property is in imminent danger of being
 2740 wasted, misappropriated, or lost unless immediate action is taken.
 2741
 2742 745.1002 Judicial review of guardianship inventories and
 2743 accountings.
 2744 (1) Within 45 days after the filing of the clerk's audit report,
 2745 the court shall review guardianship inventories and accountings to
 2746 ensure that they comply with the requirements of law. The court may
 2747 appoint a general or special magistrate to assist the court in its
 2748 review function. Upon examining a guardianship inventory or
 2749 accounting, the court shall enter an order approving or
 2750 disapproving such document or requiring the guardian to provide
 2751 more information or cure deficiencies found in the inventory or
 2752 accounting.
 2753 (2) If the court finds, upon review of the inventory or accounting
 2754 and the clerk's audit report, that the document complies with the
 2755 requirements of law, the court must approve the inventory or
 2756 accounting. If the audit report indicates that there are
 2757 deficiencies in the inventory or accounting, the court shall notify
 2758 the guardian, in writing, of the deficiencies determined by the
 2759 clerk and provide a reasonable time within which the guardian must

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2789 (2) If the court finds, upon review of the plan or report and the
 2790 clerk's written statement, that the document complies with the
 2791 requirements of law, the court may approve the plan or report. If
 2792 the clerk's written statement indicates that there are deficiencies
 2793 in the plan or report, the court shall notify the guardian, in
 2794 writing, of the deficiencies determined by the clerk and provide a
 2795 reasonable time within which the guardian must correct such
 2796 deficiencies or otherwise respond by written response to the court.
 2797 If the guardian does not respond within the time specified by the
 2798 court, or if the guardian's response indicates a need for further
 2799 action, the court may conduct a hearing, with notice to the
 2800 guardian, to determine if a revised plan or report must be filed or
 2801 if the guardian should provide proof of any matter specified
 2802 therein.
 2803 (3) After a guardian has cured any deficiencies in the plan or
 2804 report to the satisfaction of the court, the guardian's plan or
 2805 report must be approved.
 2806 (4) If an objection to a plan or report is filed by an interested
 2807 person, the objection may be set for hearing with reasonable notice.
 2808 If a notice of hearing on the objection is not served within 30
 2809 days of filing of the objection, the objection is deemed abandoned.
 2810 At the conclusion of the hearing, the court shall enter an order
 2811 either approving the plan or report or ordering modifications to
 2812 it. If an objection is found to have been filed in bad faith, the
 2813 court may award taxable costs including reasonable attorney's fees.
 2814
 2815 745.1004 Order requiring guardianship documents; contempt.
 2816 When a guardian fails to file a plan, report, inventory or
 2817 accounting, the court shall order the guardian to file such
 2818 document within 15 days after the service of the order on the

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2760 correct such deficiencies or otherwise respond by written response
 2761 to the court. If the guardian does not respond within the time
 2762 specified by the court, or if the guardian's response indicates a
 2763 need for further action, the court may conduct a hearing, with
 2764 notice to the guardian, to determine if a revised inventory or
 2765 accounting must be filed or if the guardian should provide proof of
 2766 any matter specified therein.
 2767 (3) After a guardian has cured any deficiencies in the inventory or
 2768 accounting to the satisfaction of the court, the guardian's
 2769 inventory or accounting must be approved.
 2770 (4) If an objection to an inventory or accounting is filed by an
 2771 interested person, the objection may be set for hearing with
 2772 reasonable notice. If a notice of hearing on the objection is not
 2773 served within 30 days of filing of the objection, the objection is
 2774 deemed abandoned. At the conclusion of the hearing, the court shall
 2775 enter an order either approving the inventory or accounting or
 2776 ordering modifications to it. If an objection is found to have been
 2777 filed in bad faith, the court may award taxable costs, including
 2778 reasonable attorney's fees.
 2779
 2780 745.1003 Judicial review of guardianship plans and reports.
 2781 (1) Within 45 days after the filing of the clerk's written
 2782 statement, the court must review guardianship plans and reports to
 2783 ensure that they comply with the requirements of law. The court may
 2784 appoint a general or special magistrate to assist the court in its
 2785 review function. Upon examining a guardianship plan or report, the
 2786 court must enter an order approving or disapproving such document
 2787 or requiring the guardian to provide more information or cure
 2788 deficiencies found in the plan or report.

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2819 guardian or show cause, in writing, why the guardian should not be
 2820 compelled to do so. A copy of the order shall be served on the
 2821 guardian. If the guardian fails to file the document within the
 2822 time specified by the order without good cause, the court shall
 2823 order the guardian to show cause why the guardian should not be
 2824 held in contempt of court. At the conclusion of the hearing, the
 2825 court may sanction the guardian, if good cause is not demonstrated.
 2826 No fine may be paid from property of the ward.
 2827
 2828 745.1005 Action on review of guardianship report.
 2829 If it appears from the annual guardianship report that:
 2830 (1) The condition of the ward requires further examination;
 2831 (2) Any change in the proposed care, maintenance, or treatment of
 2832 the ward is needed;
 2833 (3) The ward is qualified for restoration of some or all rights;
 2834 (4) The condition or maintenance of the ward requires the
 2835 performance or doing of any other thing for the best interest of
 2836 the ward which is not indicated in the plan; or
 2837 (5) There is any other action necessary to protect the interests of
 2838 the ward,
 2839 the court may direct the guardian to appear at a hearing with
 2840 appropriate notice to the guardian, to address such issues. The
 2841 court may enter such order as it finds appropriate to protect the
 2842 ward.
 2843
 2844 745.1006 Petition for interim judicial review
 2845 (1) At any time, any interested person may petition the court for
 2846 review alleging that the guardian is not complying with a
 2847 guardianship plan or report, is exceeding the guardian's authority
 2848 under such document, or is acting in a manner contrary to s.

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2849 745.809. The petition for review must state the interest of the
 2850 petitioner, nature of the objection to the guardian's action or
 2851 proposed action, and facts in support of the petition. Upon
 2852 hearing, the court may prohibit or enjoin any action that is
 2853 contrary to the guardian's obligations under s. 745.809.
 2854 (2) The court may award taxable costs and attorney's fees if the
 2855 petition is found to have been filed in bad faith.
 2856
 2857 745.1007 Production of property.
 2858 On the petition of an interested person, the court may require a
 2859 guardian of property to produce satisfactory evidence that the
 2860 property of the ward for which the guardian is responsible is in
 2861 the guardian's possession or under the guardian's control. The
 2862 court may order the guardian to produce the property for inspection
 2863 by the court or under the court's direction.
 2864
 2865 745.1008 Guardianship monitors.
 2866 (1) The court may, upon petition by an interested person or upon
 2867 its own motion, appoint a monitor after hearing with notice to the
 2868 petitioner, guardian, and the ward. The court must not appoint as a
 2869 monitor an employee of the court, the clerk, a family member of the
 2870 ward, or any person with a personal interest in the proceedings.
 2871 (2) The order of appointment must be served on the guardian, the
 2872 ward, and such interested persons as the court may direct.
 2873 (3) The order of appointment must specify the facts supporting the
 2874 order, scope of the investigation, powers and duties of the monitor
 2875 and time frame within which the investigation must be completed.
 2876 (4) The monitor is deemed an interested person until discharged and
 2877 may not have ex parte communications with the court.

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2907 (1) The court may, upon petition by an interested person or upon
 2908 its own motion, appoint a guardianship monitor qualified under s.
 2909 745.1008(1) on an emergency basis without notice. The court must
 2910 find that there appears to be imminent danger that the physical or
 2911 mental health or safety of the ward will be seriously impaired or
 2912 that the ward's property is in danger of being wasted,
 2913 misappropriated, or lost unless immediate action is taken.
 2914 (2) The order appointing an emergency guardianship monitor shall
 2915 specify the facts supporting the order, scope of the investigation,
 2916 powers and duties of the monitor and the time frame within which
 2917 the investigation must be completed. The order appointing an
 2918 emergency guardianship monitor shall be served on the guardian, the
 2919 ward, and such interested persons as the court may direct.
 2920 (3) The monitor shall file a report of the monitor's findings and
 2921 recommendations. The report shall be verified and may be supported
 2922 by documents or other evidence.
 2923 Copies of the report and all documents shall be served on:
 2924 (a) the guardian,
 2925 (b) the ward and
 2926 (c) such other interested persons as the court may determine
 2927 appropriate after the court has made a determination under
 2928 subsection (4).
 2929 (4) Upon review of the report, the court shall determine whether
 2930 further action is necessary to protect the person or property of
 2931 the ward.
 2932 (5)(a) If it appears from the monitor's report that further action
 2933 to protect the interests of the ward is necessary, the court shall,
 2934 after a hearing with notice, enter any order necessary to protect
 2935 the ward or the ward's property, including requiring the guardian
 2936 to amend a plan or report, requiring an accounting or amended

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2878 (5) The monitor may investigate, seek information, examine
 2879 documents, and interview the ward and guardian and shall file a
 2880 written report of the monitor's findings and recommendations. The
 2881 report shall be verified and may be supported by documents or other
 2882 evidence. Copies of the report and all documents shall be served on
 2883 the guardian, the ward, unless the ward is a minor or is totally
 2884 incapacitated, and such other interested persons as the court may
 2885 determine. The guardian and the ward may seek information from the
 2886 monitor using discovery methods authorized in the Florida Probate
 2887 Rules.
 2888 (6) If it appears from the monitor's report that further action to
 2889 protect the interests of the ward is necessary, the court shall,
 2890 after a hearing with notice, enter any order necessary to protect
 2891 the ward or the ward's property, including requiring the guardian
 2892 to amend a plan or report, requiring an accounting or amended
 2893 accounting, ordering production of assets, freezing assets,
 2894 suspending a guardian, or initiating proceedings to remove a
 2895 guardian.
 2896 (7) Unless otherwise prohibited by law, a monitor may be allowed a
 2897 reasonable fee as determined by the court and paid from the
 2898 property of the ward. No full-time state, county, or municipal
 2899 employee or officer shall be paid a fee for such investigation and
 2900 report. If the court finds a petition to appoint a monitor or a
 2901 written communication by a third party which results in appointment
 2902 of a monitor to have been filed in bad faith, the costs of the
 2903 proceeding and attorney's fees shall be awarded after hearing with
 2904 notice to the petitioner or third party.
 2905
 2906 745.1009 Emergency guardianship monitor.

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2937 accounting, ordering production of assets, freezing assets,
 2938 suspending a guardian, or initiating proceedings to remove a
 2939 guardian.
 2940 (b) At any time prior to the hearing, the court may issue a
 2941 temporary injunction, a restraining order, or an order freezing
 2942 assets; may suspend the guardian; may appoint a guardian ad litem;
 2943 or may issue any other appropriate order to protect the health,
 2944 safety, or property of the ward. A copy of all such orders or
 2945 injunctions shall be transmitted by the court or under its
 2946 direction to all parties at the time of entry of the order or
 2947 injunction.
 2948 Nothing in subsection (5) shall be construed to preclude the
 2949 mandatory reporting requirements of chapter 39.
 2950 (6) Unless otherwise prohibited by law, a monitor may be allowed a
 2951 reasonable fee as determined by the court and paid from the
 2952 property of the ward. No full-time state, county, or municipal
 2953 employee or officer shall be paid a fee for such investigation and
 2954 report. If the court finds the petition to appoint a court monitor
 2955 or a written communication by a third party which results in
 2956 appointment of a monitor to have been filed in bad faith, the costs
 2957 of the proceeding and attorney's fees, shall be awarded after
 2958 hearing with notice to the petitioner or third party.(7) The
 2959 monitor shall be deemed an interested person until discharged and
 2960 may not have ex parte communications with the court.
 2961
 2962 Section 11. Part XI of chapter 745, Florida Statutes,
 2963 consisting of sections 745.1101, 745.1102, 745.1103, 745.1104,
 2964 745.1105, 745.1106, 745.1107, 745.1108, 745.1109, and 745.1110, is
 2965 created to read:
 2966

PART XI

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2967 RESIGNATION AND DISCHARGE
 2968 745.1101 Resignation of guardian.
 2969 (1) A guardian may resign at any time.
 2970 (2) A resigning guardian shall retain the duties and
 2971 responsibilities of a guardian until discharged by the court as
 2972 specified in this part.
 2973 (3) A resigning guardian shall file a resignation with the court
 2974 and, unless waived, serve a notice of resignation on:
 2975 (a) next of kin of the ward;
 2976 (b) the ward, unless the ward has been found to be totally
 2977 incapacitated or is a minor; and
 2978 (c) a successor or proposed successor guardian, if any.
 2979
 2980 745.1102 Resignation and discharge of guardian of property.
 2981 (1) A successor guardian of property must be appointed if a
 2982 guardian dies, becomes incapacitated, resigns or is removed.
 2983 (2) A resigning guardian of property must file:
 2984 (a) a petition for distribution and discharge,
 2985 (b) final accounting, and
 2986 (c) notice of filing petition for distribution and discharge and
 2987 final accounting
 2988 and must serve such documents on any successor guardian and such
 2989 interested persons as the court may direct.
 2990 (3) The guardian's final accounting is subject to audit by the
 2991 clerk in the manner and within the time specified in s. 745.1001,
 2992 unless waived by the successor guardian.
 2993 (4) The petition for distribution and discharge must include a
 2994 schedule of unpaid expenses of the ward and administration expenses
 2995 to be paid prior to discharge.

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3025 extent consistent with the rules regulating the Florida Bar. The
 3026 attorney for the ward may assist in locating a successor guardian.
 3027 (10) A successor guardian may be appointed and have letters issued
 3028 after a guardian has resigned and before an order of discharge of
 3029 the resigned guardian has been entered. The successor guardian
 3030 succeeds to the powers specified in the letters of guardianship and
 3031 such guardian's authority shall inure as of the date of issuance of
 3032 letters.
 3033
 3034 745.1103 Termination of guardianship of property
 3035 (1) When a ward becomes sui juris, has been restored to capacity as
 3036 to all rights related to the ward's property, the guardianship has
 3037 terminated as a result of the relocation of the ward's residence to
 3038 an out-of-state jurisdiction, or the guardianship is otherwise
 3039 terminated, the guardian must file a final accounting and petition
 3040 for discharge. The accounting and petition, together with a notice
 3041 of filing the final accounting and petition for discharge, must be
 3042 served on the ward. The ward may waive audit of the guardian's
 3043 final accounting.
 3044 (2) When the ward's property has been exhausted except for clothing
 3045 and minimal personal effects and the guardian receives no income on
 3046 behalf of the ward, the guardian may file a final accounting and
 3047 petition for discharge. The final accounting and petition for
 3048 discharge, together with a notice of filing the final accounting
 3049 and petition for discharge, must be served on the ward and such
 3050 interested persons as the court may direct.
 3051 (3) When a ward dies, the guardian must file a final accounting and
 3052 petition for distribution and discharge within 45 days after the
 3053 guardian has been served with letters of administration or letters
 3054 of curatorship of the ward's estate. The petition for distribution

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2996 (5) The notice of filing petition for distribution and discharge
 2997 and final accounting must specify that interested persons have 30
 2998 days from the date of receipt of the notice to file any objections
 2999 with the court. If no objections are timely filed, the court may
 3000 enter an order authorizing distribution of assets without further
 3001 notice or hearing. If objections are timely filed, the objections
 3002 must be resolved as provided in the Florida Probate Rules.
 3003 (6) Upon approval of a resigned guardian's final accounting and
 3004 petition for distribution and discharge, the guardian is entitled
 3005 to distribute assets and, upon proof of distribution, to be
 3006 discharged regardless of whether a successor guardian has been
 3007 appointed.
 3008 (7) If no successor guardian is appointed at the time the petition
 3009 for distribution and discharge is filed, the court may appoint an
 3010 emergency temporary guardian.
 3011 (8) Prior to discharge, a resigning guardian shall deliver all
 3012 assets of the ward and copies of all asset records to a successor
 3013 guardian, an emergency temporary guardian, or as otherwise directed
 3014 by the court.
 3015 (9) Upon petition by an interested person or on the court's own
 3016 motion, an attorney may be appointed to represent the ward in the
 3017 discharge proceedings. When a court appoints an attorney for the
 3018 ward, the court must appoint the office of criminal conflict and
 3019 civil regional counsel or a private attorney as prescribed in s.
 3020 27.511(6). A private attorney must be one who is included in the
 3021 attorney registry compiled pursuant to s. 27.40. Appointments of
 3022 private attorneys must be made on a rotating basis, taking into
 3023 consideration conflicts arising under this code. The attorney for
 3024 the ward represents the preferences expressed by the ward, to the

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3055 and discharge and final accounting and notice of filing shall be
 3056 served on the personal representative or curator. The personal
 3057 representative or curator may waive preparation or audit of the
 3058 guardian's final accounting subject to the provisions of s.
 3059 745.1104.
 3060 (4) If no objections are timely filed by the ward, in the case of a
 3061 ward who has become sui juris or has been restored to capacity, or
 3062 by the personal representative or curator, in the case of a
 3063 deceased ward, the guardian may distribute the ward's assets as
 3064 directed by the court and, upon proof of such distribution, shall
 3065 be entitled to discharge.
 3066 (5) If objections to the final accounting or petition for discharge
 3067 are timely filed, the objections shall be resolved as provided in
 3068 the Florida Probate Rules.
 3069 (6) The guardian applying for discharge may retain from the funds
 3070 in the guardian's possession a sufficient amount to pay the final
 3071 costs of administration, including guardian and attorney's fees.
 3072 (7) The court retains jurisdiction over the guardian until the
 3073 guardian is discharged.
 3074
 3075 745.1104 Discharge of guardian of property named as personal
 3076 representative.
 3077 (1) A guardian of property who is subsequently appointed sole
 3078 personal representative of a deceased ward's estate must serve a
 3079 copy of the guardian's final accounting and petition for
 3080 distribution and discharge, together with a notice of filing the
 3081 final accounting and petition for distribution and discharge, on
 3082 the beneficiaries of the ward's estate who will be affected by the
 3083 report. If the beneficiary of the estate is a trust of which the
 3084 guardian is sole trustee, the final accounting must be served on

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3085 qualified beneficiaries of the trust as defined in s. 736.0103. The
 3086 beneficiaries of the estate or qualified beneficiaries of the trust
 3087 may waive preparation or audit of the guardian's final accounting.
 3088 (2) All such beneficiaries shall have 30 days from receipt of the
 3089 final accounting and petition for distribution and discharge to
 3090 file objections thereto. If objections are timely filed, the
 3091 objections shall be resolved as provided in the Florida Probate
 3092 Rules.
 3093 (3) The guardian may not be discharged until:
 3094 (a) All objections have been resolved;
 3095 (b) The final accounting of the guardian is approved by the court
 3096 or waived by the persons entitled to notice under subsection (1);
 3097 and
 3098 (c) All property has been distributed to the ward's estate or the
 3099 persons entitled to it.
 3100
 3101 745.1105 Termination of guardianship of property on change of
 3102 residence of ward to foreign jurisdiction.
 3103 (1) When the residence of a ward has changed to another state or
 3104 country, and the foreign court having jurisdiction over the ward at
 3105 the ward's new residence has issued letters or the equivalent, the
 3106 guardian of property in this state may file a final accounting and
 3107 petition for discharge.
 3108 (2) The guardian shall serve the petition for discharge and final
 3109 accounting on the new guardian, the ward's next of kin and all
 3110 known creditors of the ward with a notice directing that any
 3111 objections must be filed within 30 days. If an objection is timely
 3112 filed, any interested person may set the objection for hearing. If
 3113 no notice of hearing is served within 60 days after filing the
 3114 objection, the objection is deemed abandoned.

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3145 (b) If the value of the funds is over \$500, the clerk shall publish
 3146 the notice once a month for 2 consecutive months in a newspaper of
 3147 general circulation in the county.
 3148 (4) Pursuant to subsection (3), after the expiration of 6 months
 3149 from the posting or first publication, the clerk shall deposit the
 3150 funds with the Chief Financial Officer after deducting the clerk's
 3151 fees and the costs of publication.
 3152 (a) Upon receipt of the funds, the Chief Financial Officer shall
 3153 deposit them in a separate fund devoted to the provision of
 3154 guardianship services to indigent wards. All interest and all
 3155 income that may accrue from the money while so deposited shall
 3156 belong to the fund. The funds so deposited shall constitute and be
 3157 a permanent appropriation for payments by the Chief Financial
 3158 Officer as required by court orders entered as provided by
 3159 paragraph (b).
 3160 (b) On petition to the court that directed deposit of the funds and
 3161 informal notice to the Department of Legal Affairs and the ward's
 3162 next of kin, any person claiming entitlement to the funds may
 3163 petition for a court order directing the payment of the funds to the
 3164 petitioner. Such petition must be filed within 5 years after
 3165 deposit of the funds with the Chief Financial Officer. All funds
 3166 deposited with the Chief Financial Officer and not claimed within 5
 3167 years from the date of deposit shall escheat to the state to be
 3168 deposited in the Department of Elderly Affairs Administrative Trust
 3169 Fund to be used solely for the provision of guardianship services
 3170 for indigent wards as determined by the Secretary of the Department
 3171 of Elderly Affairs.
 3172 (c) Upon depositing the funds with the clerk, a guardian of
 3173 property may file a final accounting and petition for discharge
 3174 under s. 745.1103.

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3115 (3) Upon disposition of all objections, or if no objection is
 3116 filed, distribution shall be made by the Florida guardian. On proof
 3117 that the remaining property in the guardianship has been received
 3118 by the foreign guardian, the Florida guardian of property shall be
 3119 discharged.
 3120 (4) The Florida guardian's final accounting shall not be subject to
 3121 audit.
 3122
 3123 745.1106 Disposition of unclaimed funds held by guardian.
 3124 (1) When a ward dies and the guardian cannot distribute the ward's
 3125 property because no estate proceeding has been instituted, the
 3126 guardian of property shall be considered an interested person
 3127 pursuant to s. 733.202 and may, after a reasonable time, petition
 3128 for appointment of a personal representative or curator. In the
 3129 alternative, the guardian may follow the procedures set forth in
 3130 subsection (3).
 3131 (2) When a guardian is unable to locate the ward after diligent
 3132 search, the guardian may file a petition pursuant to s. 731.103(3)
 3133 and, upon a determination of death, may proceed under subsections
 3134 (1) or (3).
 3135 (3) The court may order the guardian of property to sell the
 3136 property of the ward and deposit the proceeds and cash on hand
 3137 after retaining the amounts provided for in paragraph (d) with the
 3138 clerk. The clerk shall acknowledge receipt of the funds and deposit
 3139 them in the registry of the court, to be disposed of as follows:
 3140 (a) If the value of the funds is \$500 or less, the clerk shall post
 3141 a notice for 30 days at the courthouse specifying the amount, the
 3142 name of the ward, the guardianship court file number, the name and
 3143 mailing address of the guardian, and other pertinent information
 3144 that will put interested persons on notice.

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3175 (d) A guardian depositing assets with the clerk is permitted to
 3176 retain from the assets in the guardian's possession a sufficient
 3177 amount to pay the final costs of administration, including guardian
 3178 and attorney's fees accruing prior to the order of discharge. Any
 3179 surplus funds so retained must be deposited with the clerk prior to
 3180 discharge of the guardian of property.
 3181
 3182 745.1107 Resignation and discharge of guardian of person.
 3183 (1) A successor guardian of person must be appointed if a guardian
 3184 dies, becomes incapacitated, resigns or is removed.
 3185 (2) A resigning guardian of person must file a resignation and
 3186 petition for discharge and must serve such documents on any
 3187 successor guardian and such interested persons as the court may
 3188 direct. The guardian is entitled to discharge upon proof that the
 3189 guardian has fully discharged the guardian's duties and proof of
 3190 delivery to a successor guardian or emergency temporary guardian of
 3191 copies of all records of medical, personal and residential care for
 3192 the ward.
 3193 (3) Upon petition by an interested person or on the court's own
 3194 motion, an attorney may be appointed to represent the ward in the
 3195 discharge proceedings. When a court appoints an attorney for a
 3196 ward, the court must appoint the office of criminal conflict and
 3197 civil regional counsel or a private attorney as prescribed in s.
 3198 27.511(6). A private attorney must be one who is included in the
 3199 attorney registry compiled pursuant to s. 27.40. Appointments of
 3200 private attorneys must be made on a rotating basis, taking into
 3201 consideration conflicts arising under this code. The attorney for
 3202 the ward represents the preferences expressed by the ward, to the
 3203 extent consistent with the rules regulating the Florida Bar. The
 3204 attorney for the ward may assist in locating a successor guardian.

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3205 (4) A successor guardian of person may be appointed and have
 3206 letters issued after a guardian has resigned and before an order of
 3207 discharge of the resigned guardian has been entered. The successor
 3208 guardian shall exercise the powers specified in the letters of
 3209 guardianship and such guardian's authority inures as of the date of
 3210 issuance of letters.
 3211 (5) If no successor guardian is appointed at the time the petition
 3212 for discharge is filed, the court may appoint an emergency
 3213 temporary guardian.
 3214
 3215
 3216 745.1108 Termination of guardianship of person.
 3217 (1) When a ward becomes sui juris, has been restored to capacity as
 3218 to all rights related to the ward's person, the guardianship has
 3219 terminated as a result of the relocation of the ward's residence to
 3220 an out-of-state jurisdiction, or the guardianship is otherwise
 3221 terminated, except as provided in subsection (5), a guardian of
 3222 person must file a petition for discharge, specifying the grounds
 3223 therefor. The petition for discharge must be served on the ward.
 3224 (2) When the guardian has been unable to locate the ward after
 3225 diligent search, a guardian of person may file a petition for
 3226 discharge, specifying the guardian's attempts to locate the ward.
 3227 (3) In the case of a ward who has become sui juris or has been
 3228 restored to capacity, a copy of the petition for discharge and a
 3229 notice of hearing on said petition shall be served on the ward,
 3230 unless waived.
 3231 (4) If a guardian has been unable to locate the ward, the guardian
 3232 shall serve the petition for discharge and a notice of hearing on
 3233 the ward's next of kin and such other persons as the court may, in
 3234 its discretion, direct.

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3265 or the guardian's surety, as to matters adequately disclosed to
 3266 interested persons.
 3267 (2) As to matters not adequately disclosed to interested persons,
 3268 any action against the guardian, as such and individually, shall be
 3269 barred unless commenced within 2 years of entry of the order of
 3270 discharge.
 3271
 3272 Section 12. Part XII of chapter 745, Florida Statutes,
 3273 consisting of sections 745.1201, 745.1202, 745.1203, 745.1204,
 3274 745.1205, and 745.1206, is created to read:
 3275 PART XII
 3276 REMOVAL OF GUARDIANS
 3277 745.1201 Reasons for removal of guardian.
 3278 A guardian may be removed for any of the following reasons, and the
 3279 removal shall be in addition to any other penalties prescribed by
 3280 law:
 3281 (1) Fraud in obtaining appointment.
 3282 (2) Failure to discharge guardianship duties.
 3283 (3) Abuse of guardianship powers.
 3284 (4) An incapacity or illness, including substance abuse, which
 3285 renders the guardian incapable of discharging the guardian's
 3286 duties.
 3287 (5) Willful failure to comply with any order of the court.
 3288 (6) Failure to account for property sold or to produce the ward's
 3289 property when so required.
 3290 (7) Waste, embezzlement, or other mismanagement of the ward's
 3291 property.
 3292 (8) Failure to give bond or security when required by the court or
 3293 failure to file with the annual guardianship plan the evidence
 3294 required by s. 745.607 that the sureties on the guardian's bond are

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3235 (5) A guardian of person is discharged without further proceedings
 3236 upon filing a certified copy of the ward's death certificate,
 3237 together with a notice of discharge.
 3238 (6) The court retains jurisdiction over the guardian until the
 3239 guardian is discharged.
 3240
 3241 745.1109 Termination of guardianship of person on change of
 3242 residence of ward to foreign jurisdiction.
 3243 (1) When the residence of a ward has changed to another state or
 3244 country and the foreign court having jurisdiction of the ward at
 3245 the ward's new place of residence has issued letters or the
 3246 equivalent, the guardian of person in this state may file a
 3247 petition for discharge and serve it on the new foreign guardian and
 3248 the ward's next of kin with a notice directing that any objections
 3249 must be filed within 30 days.
 3250 (2) If an objection is timely filed, any interested person may set
 3251 the objection for hearing. If no notice of hearing is served within
 3252 60 days after filing the objection, the objection is deemed
 3253 abandoned.
 3254 (3) Upon disposition of all objections, or if no objection is
 3255 filed, the guardian of person shall be discharged.
 3256
 3257 745.1110 Order of discharge.
 3258 (1) If the court is satisfied that the guardian has faithfully
 3259 discharged the guardian's duties and, in the case of a guardian of
 3260 property, has delivered the property of the ward to the person
 3261 entitled, and that the interests of the ward are protected, the
 3262 court must enter an order discharging the guardian from any further
 3263 duties and liabilities as guardian. The discharge shall also act as
 3264 a bar to any action against the guardian, as such and individually,

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3295 alive and solvent.
 3296 (9) Conviction of a felony.
 3297 (10) Appointment of a receiver, trustee in bankruptcy, or
 3298 liquidator for any corporate guardian.
 3299 (11) Development of a conflict of interest between the ward and the
 3300 guardian.
 3301 (12) Having been found guilty of, regardless of adjudication, or
 3302 entered a plea of nolo contendere or guilty to, any offense
 3303 described in s. 435.04(2), s. 741.28 or under any similar statute
 3304 of another jurisdiction.
 3305 (13) A failure to fulfill the guardianship education requirements.
 3306 (14) A material change in the ward's financial circumstances so
 3307 that the guardian is no longer qualified to manage the finances of
 3308 the ward, or the previous degree of management is no longer
 3309 required.
 3310 (15) After appointment, the guardian becomes a disqualified person
 3311 as specified in s. 745.503.
 3312 (16) Upon a showing that removal of the current guardian is in the
 3313 best interest of the ward.
 3314
 3315 745.1202 Proceedings for removal of a guardian.
 3316 A petition to remove a guardian may be filed by any surety,
 3317 interested person, or by the ward. Formal notice shall be served on
 3318 the guardian. After hearing, the court may enter an order that is
 3319 proper considering the pleadings and the evidence.
 3320
 3321 745.1203 Accounting upon removal.
 3322 A removed guardian of property shall file with the court a true,
 3323 complete, and final accounting of the ward's property within 30
 3324 days after removal and shall serve a copy on the successor

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3325 guardian, if any; the attorney for the ward, if any; and the ward,
 3326 unless the ward is a minor or has been determined to be totally
 3327 incapacitated to manage or dispose of property.
 3328
 3329 745.1204 Appointment of successor guardian upon removal.
 3330 (1) If there is still the need for a guardian of the ward, the
 3331 court must appoint a successor guardian as permitted under s.
 3332 745.501.
 3333 (2) If no successor guardian has been appointed when a guardian is
 3334 removed, the court shall appoint an attorney to represent the ward
 3335 and the accounting shall be served on the ward. The ward may
 3336 propose a successor guardian and the court may appoint an emergency
 3337 temporary guardian to serve until letters are issued to a successor
 3338 guardian.
 3339
 3340 745.1205 Surrender of property upon removal.
 3341 A removed guardian of property shall deliver to the successor or
 3342 emergency temporary guardian all property of the ward and copies of
 3343 all records under the guardian's control within 30 days after
 3344 notice of issuance of letters to the successor or emergency
 3345 temporary guardian, unless otherwise ordered by the court.
 3346
 3347 745.1206 Proceedings for contempt.
 3348 If a removed guardian of property fails to file a true, complete,
 3349 and final accounting or turn over to the successor or emergency
 3350 temporary guardian the property of the ward and copies of all
 3351 guardianship records that are in the guardian's control, the court
 3352 shall issue an order requiring the guardian to show cause for such
 3353 failure. If reasonable cause is shown by the guardian, the court
 3354 shall set a reasonable time within which to comply, and, on failure

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3385 trust amendment shall be promptly reported in the guardianship
 3386 proceeding by the guardian of property.
 3387 (2) Any judicial determination concerning the validity or effect of
 3388 the ward's health care surrogate designation shall be promptly
 3389 reported in the guardianship proceeding by the guardian of person.
 3390 (3) During the guardianship, an interested person may file a
 3391 petition alleging that, due to a change in circumstances or the
 3392 discovery of an alternative not previously considered by the court,
 3393 there is an alternative to guardianship which will sufficiently
 3394 address the problems of the ward and the court shall consider the
 3395 continued need for a guardian and the extent of the continued need
 3396 for delegation of the ward's rights, if any.
 3397
 3398 745.1304 Support of ward's dependents.
 3399 (1) A guardian of property shall first apply the ward's income to
 3400 the ward's care, support, education, maintenance, health care and
 3401 cost of funeral and burial or cremation. The guardian shall not use
 3402 the ward's property for support of the ward's dependents unless
 3403 approved by the court. The court may approve the guardian to use
 3404 the ward's income for the care, support, education, maintenance,
 3405 cost of final illness, and cost of funeral and burial or cremation
 3406 of the dependents of the ward, to the extent funds are available
 3407 for such use, without jeopardizing the needs of the ward, taking
 3408 into consideration the resources of the dependents. If the income
 3409 is not sufficient for these purposes, the court may approve the
 3410 expenditure of principal for such purposes.
 3411 (2) The word "dependents," as used in subsection (1) means, in
 3412 addition to those persons who are legal dependents of a ward under
 3413 existing law, the ward's spouse, the ward's parents, and persons to
 3414 whom the ward was providing support prior to the ward's incapacity.

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3355 to comply with this or any subsequent order, the removed guardian
 3356 may be held in contempt. Proceedings for contempt may be instituted
 3357 by the court, by any interested person, including the ward, or by a
 3358 successor or emergency temporary guardian.
 3359
 3360 Section 13. Part XIII of chapter 745, Florida Statutes,
 3361 consisting of sections 745.1301, 745.1302, 745.1303, 745.1304,
 3362 745.1305, 745.1306, 745.1307, 745.1308, 745.1309, 745.1310,
 3363 745.1311, 745.1312, 745.1313, 745.1314, and 745.1315, is created to
 3364 read:
 3365 PART XIII
 3366 MISCELLANEOUS
 3367 745.1301 Suspension of statutes of limitation in favor of guardian.
 3368 If a person entitled to bring an action is declared incapacitated
 3369 before expiration of the time limited for the commencement of the
 3370 action and the cause of the action survives, the action may be
 3371 commenced by a guardian of property after such expiration and
 3372 within 1 year from the date of the issuance of letters or the time
 3373 otherwise limited by law, whichever is longer.
 3374
 3375 745.1302 Appraisals.
 3376 On petition by an interested person, the court may appoint
 3377 appraisers to appraise property of the ward that is subject to the
 3378 guardianship. This section does not limit the power of a guardian
 3379 of property to employ appraisers without court order pursuant to s.
 3380 745.902(12).
 3381
 3382 745.1303 Determination regarding alternatives to guardianship.
 3383 (1) Any judicial determination concerning the validity or effect of
 3384 the ward's power of attorney, durable power of attorney, trust or

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3415 745.1305 Petition for support of ward's dependents.
 3416 (1) A spouse or dependent of the ward, as defined in s. 745.1304,
 3417 may petition for an order directing the guardian of property to
 3418 contribute to the support of the person from the income or property
 3419 of the ward. The court may enter an order for support of the spouse
 3420 or dependent out of the ward's income and property that is subject
 3421 to the guardianship. The grant or denial of an order for support
 3422 shall not preclude a further petition for support or for increase,
 3423 decrease, modification, or termination of allowance for support by
 3424 either the petitioner or the guardian. Delivery to the recipient
 3425 shall be a release of the guardian for payments made pursuant to
 3426 the order.
 3427 (2) If the property of the ward is derived in whole or in part from
 3428 payments of compensation, adjusted compensation, pension,
 3429 insurance, or other benefits made directly to the guardian by the
 3430 United States Department of Veterans Affairs, notice of the
 3431 petition for support shall be given by the petitioner to the office
 3432 of the United States Department of Veterans Affairs having
 3433 jurisdiction over the area in which the court is located and the
 3434 chief attorney for the Department of Veterans' Affairs in this
 3435 state at least 15 days before the hearing on the petition.
 3436 (3) The court may not authorize payments from an incapacitated
 3437 ward's income or property unless the ward has been adjudicated
 3438 incapacitated to manage such income or property in accordance with
 3439 s. 745.311.
 3440 (4) In a voluntary guardianship, a petition for support may be
 3441 granted only upon the written consent of the ward.
 3442
 3443
 3444 745.1306 Payments to guardian of person.

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3445 If there is more than one guardian, either guardian may petition
 3446 for an order directing the guardian of property to pay to the
 3447 guardian of person periodic amounts for the support, care,
 3448 maintenance, education, and other needs of the ward. The amount may
 3449 be increased or decreased from time to time. If an order is
 3450 entered, proof of delivery to the guardian of person for payments
 3451 made shall be a sufficient release of the guardian who makes the
 3452 payments pursuant to the order. The guardian of property shall not
 3453 be bound to see to the application of the payments and the guardian
 3454 of person shall not be required to file an accounting for the funds
 3455 received, unless otherwise ordered to do so by the court.
 3456
 3457 745.1307 Actions by and against guardian or ward.
 3458 If an action is brought by a guardian against the ward, by a ward
 3459 against the guardian, or in which the interest of the guardian is
 3460 adverse to that of the ward, a guardian ad litem shall be appointed
 3461 to represent the ward in that proceeding. In any litigation between
 3462 the guardian and the ward, the guardian ad litem may petition the
 3463 court for removal of the guardian.
 3464
 3465 745.1308 Guardian forbidden to borrow or purchase; exceptions.
 3466 (1) A professional guardian may not purchase property or borrow
 3467 money from the ward.
 3468 (2) A guardian who is not a professional guardian may purchase
 3469 property from the ward if the property is to be purchased at fair
 3470 market value and the court gives prior authorization for the
 3471 transaction.
 3472 (3) A guardian who is not a professional guardian may borrow money
 3473 from the ward if the loan is to be made at the prevailing interest
 3474 rate, with adequate security, and the court gives prior

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3505 fiduciary duty, the court shall take action to protect the ward and
 3506 the ward's assets upon petition by an interested person.
 3507
 3508 745.1310 Purchasers and lenders protected.
 3509 No person or entity purchasing, leasing, or taking a mortgage,
 3510 pledge, or other lien from a guardian shall be bound to see that
 3511 the money or other things of value paid to the guardian are
 3512 actually needed or properly applied. The person or entity is not
 3513 otherwise bound as to the proprieties or expediences of the acts
 3514 of the guardian.
 3515
 3516 745.1311 Temporary delegation of authority to surrogate.
 3517 (1) A guardian may designate a surrogate guardian to exercise the
 3518 powers of the guardian if the guardian is unavailable to act. A
 3519 person designated as a surrogate guardian under this section must
 3520 be a professional guardian or a member of the Florida Bar qualified
 3521 to act under s. 745.501.
 3522 (2)(a) A guardian must file a petition with the court requesting
 3523 permission to designate a surrogate guardian.
 3524 (b) If the court approves the designation, the order must specify
 3525 the name and business address of the surrogate guardian and the
 3526 duration of appointment, which may not exceed 30 days. The court
 3527 may extend the appointment for good cause shown. The surrogate
 3528 guardian may exercise all powers of the guardian unless limited by
 3529 court order. The surrogate guardian must file with the court an
 3530 oath swearing or affirming that the surrogate guardian will
 3531 faithfully perform the duties delegated. The court may require the
 3532 surrogate guardian to post a bond.
 3533 (3) This section does not limit the responsibility of the guardian
 3534 to the ward and to the court. The guardian is liable for the acts

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3475 authorization for the transaction.
 3476
 3477 745.1309 Conflicts of interest; prohibited activities; court
 3478 approval; breach of fiduciary duty.
 3479 (1) The fiduciary relationship which exists between the guardian
 3480 and the ward may not be used for the private gain of the guardian
 3481 other than the remuneration for services rendered for the ward. The
 3482 guardian may not incur any obligation on behalf of the ward which
 3483 conflicts with the proper discharge of the guardian's duties.
 3484 (2) Unless prior court approval is obtained, or unless such
 3485 relationship existed prior to appointment of the guardian, a
 3486 guardian may not:
 3487 (a) Have any interest, financial or otherwise, direct or indirect,
 3488 in any business transaction or activity with the ward;
 3489 (b) Acquire an ownership, possessory, security, or other pecuniary
 3490 interest adverse to the ward;
 3491 (c) Be designated as a beneficiary, co-owner or recipient of any
 3492 property or benefit of the ward unless such designation or transfer
 3493 was made by the ward prior to the ward's incapacity; or
 3494 (d) Directly or indirectly purchase, rent, lease, or sell any
 3495 property or services from or to any business entity of which the
 3496 guardian or the guardian's spouse or any of the guardian's lineal
 3497 heirs, or collateral kindred, is an officer, partner, director,
 3498 shareholder, or proprietor, or has any financial interest.
 3499 (3) Any activity prohibited by this section is voidable during the
 3500 term of the guardianship or by the personal representative of the
 3501 ward's estate, and the guardian is subject to removal and to
 3502 imposition of personal liability through a proceeding for
 3503 surcharge, in addition to any other remedies otherwise available.
 3504 (4) In the event of a breach by the guardian of the guardian's

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3535 of the surrogate guardian. The guardian may terminate the authority
 3536 of the surrogate guardian by filing a written notice of termination
 3537 with the court.
 3538 (4) The surrogate guardian is subject to the jurisdiction of the
 3539 court as if appointed to serve as guardian.
 3540
 3541 745.1312 Multiple guardians.
 3542 (1) When separate guardians of person and property have been
 3543 appointed, the guardians must consult with each other when the
 3544 decision of one may affect the duties and responsibilities of the
 3545 other. If there is disagreement as to a proposed action, the
 3546 decision of the guardian within whose authority the decision lies
 3547 shall prevail. The other guardian may petition for judicial review
 3548 pursuant to s. 745.1006.
 3549 (2) If there are two guardians of person or two guardians of
 3550 property and there are disagreements between the co-guardians as to
 3551 a proposed action, neither may act as to such proposed action
 3552 without court order.
 3553 (3) If there are three or more guardians of person or property, a
 3554 majority of them may act. A guardian who serves on all other
 3555 guardians a written objection to a proposed action shall not be
 3556 liable for the action taken. Any guardian may petition the court
 3557 for direction as to such matter.
 3558
 3559 745.1313 Effect of power of attorney and trust.
 3560 (1) An interested person may file a verified petition in a
 3561 guardianship proceeding seeking authority for the guardian to file
 3562 an action to have a ward's trust, trust amendment or power of
 3563 attorney determined to be invalid pursuant to s. 745.903(10). The
 3564 petition must allege that the petitioner has a good faith belief

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3565 that the ward's trust, trust amendment, or durable power of
 3566 attorney is invalid, and state a reasonable factual basis for that
 3567 belief.
 3568 (2) The petition shall be served on all interested persons by the
 3569 petitioner.
 3570 (3) The court shall consider such petition at a hearing with notice
 3571 to all interested persons and may, for cause, find that such trust,
 3572 trust amendment or durable power of attorney is not an appropriate
 3573 alternative to guardianship of property.
 3574 (4) The appointment of a guardian does not limit the court's power
 3575 to determine that certain authority granted under a durable power
 3576 of attorney is to remain exercisable by the agent.
 3577
 3578 745.1314 Suspension of power of attorney before incapacity
 3579 determination.
 3580 (1) At any time during proceedings to determine incapacity but
 3581 before the entry of an order determining incapacity, the authority
 3582 granted under an alleged incapacitated person's power of attorney
 3583 to a parent, spouse, child, or grandchild is suspended when an
 3584 interested person files a verified petition stating that a specific
 3585 power of attorney should be suspended for any of the following
 3586 grounds:
 3587 (a) The agent's decisions are not in accord with the alleged
 3588 incapacitated person's known desires;
 3589 (b) The power of attorney is invalid;
 3590 (c) The agent has failed to discharge the agent's duties or
 3591 incapacity or illness renders the agent incapable of discharging
 3592 the agent's duties;
 3593 (d) The agent has abused the agent's powers; or

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3624
 3625 745.1315 Abuse, neglect, or exploitation by a guardian.
 3626 (1) A guardian may not abuse, neglect, or exploit a ward.
 3627 (2) A guardian has committed exploitation when the guardian:
 3628 (a) Commits fraud in obtaining appointment as a guardian;
 3629 (b) Abuses the guardian's powers; or
 3630 (c) Wastes, embezzles, or intentionally mismanages the assets of
 3631 the ward.
 3632 (3) A person who believes that a guardian is abusing, neglecting,
 3633 or exploiting a ward shall report the incident to the central abuse
 3634 hotline of the Department of Children and Families.
 3635 (4) This section shall be interpreted in conformity with s.
 3636 825.103.
 3637
 3638 Section 14. Part XIV of chapter 745, Florida Statutes,
 3639 consisting of sections 745.1401, 745.1402, 745.1403, 745.1404,
 3640 745.1405, 745.1406, 745.1407, 745.1408, 745.1409, 745.1410,
 3641 745.1411, 745.1412, 745.1413, 745.1414, 745.1415, 745.1416,
 3642 745.1417, 745.1418, 745.1419, and 745.1420, is created to read:
 3643 PART XIV
 3644 PUBLIC AND PROFESSIONAL GUARDIANS
 3645 745.1401 Office of Public and Professional Guardians.
 3646 There is created the Office of Public and Professional Guardians
 3647 within the Department of Elderly Affairs.
 3648 (1) The Secretary of Elderly Affairs shall appoint the executive
 3649 director, who shall be the head of the Office of Public and
 3650 Professional Guardians. The executive director must be a member of
 3651 The Florida Bar, knowledgeable of guardianship law and of the
 3652 social services available to meet the needs of incapacitated
 3653 persons, shall serve on a full-time basis, and shall personally, or

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3594 (e) There is a danger that the property of the alleged
 3595 incapacitated person may be wasted, misappropriated, or lost unless
 3596 the authority under the power of attorney is suspended.
 3597 Grounds for suspending a power of attorney do not include the
 3598 existence of a dispute between the agent and the petitioner which
 3599 is more appropriate for resolution in some other forum or a legal
 3600 proceeding other than a guardianship proceeding.
 3601 (2) The verified petition must:
 3602 (a) Identify one or more of the grounds in subsection (1);
 3603 (b) Include specific statements of fact showing that grounds exist
 3604 to justify the relief sought; and
 3605 (3) Upon the earlier of (a) the filing of a response to the
 3606 petition by the agent under the power of attorney, or (b) 10 days
 3607 after the service of the petition on the agent under the power of
 3608 attorney, the court shall schedule the petition for an expedited
 3609 hearing. Unless an emergency arises and the agent's response sets
 3610 forth the nature of the emergency, the property or matter involved,
 3611 and the power to be exercised by the agent, notice must be given to
 3612 all interested persons, the alleged incapacitated person, and the
 3613 alleged incapacitated person's attorney. The court order following
 3614 the hearing must set forth what powers the agent is permitted to
 3615 exercise, if any, pending the outcome of the petition to determine
 3616 incapacity.
 3617 (4) In addition to any other remedy authorized by law, a court may
 3618 award reasonable attorney fees and costs to an agent who
 3619 successfully challenges the suspension of the power of attorney if
 3620 the petitioner's petition was made in bad faith.
 3621 (5) The suspension of authority granted to persons other than a
 3622 parent, spouse, child, or grandchild shall be as provided in
 3623 s. 709.2109.

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3654 through a representative of the office, carry out the purposes and
 3655 functions of the Office of Public and Professional Guardians in
 3656 accordance with state and federal law. The executive director shall
 3657 serve at the pleasure of and report to the secretary.
 3658 (2) The executive director shall, within available resources:
 3659 (a) Have oversight responsibilities for all public and professional
 3660 guardians.
 3661 (b) Establish standards of practice for public and professional
 3662 guardians by rule, in consultation with professional guardianship
 3663 associations and other interested stakeholders, no later than
 3664 October 1, 2016. The executive director shall provide a draft of
 3665 the standards to the Governor, the Legislature, and the secretary
 3666 for review by August 1, 2016.
 3667 (c) Review and approve the standards and criteria for the
 3668 education, registration, and certification of public and
 3669 professional guardians in Florida.
 3670 (3) The executive director's oversight responsibilities of
 3671 professional guardians must be finalized by October 1, 2016, and
 3672 shall include, but are not limited to:
 3673 (a) Developing and implementing a monitoring tool to ensure
 3674 compliance of professional guardians with the standards of practice
 3675 established by the Office of Public and Professional Guardians.
 3676 This monitoring tool may not include a financial audit as required
 3677 by the clerk of the circuit court under s. 745.1001.
 3678 (b) Developing procedures, in consultation with professional
 3679 guardianship associations and other interested stakeholders, for
 3680 the review of an allegation that a professional guardian has
 3681 violated the standards of practice established by the Office of
 3682 Public and Professional Guardians governing the conduct of
 3683 professional guardians.

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3684 (c) Establishing disciplinary proceedings, conducting hearings, and
 3685 taking administrative action pursuant to chapter 120.
 3686 (4) The executive director's oversight responsibilities of public
 3687 guardians shall include, but are not limited to:
 3688 (a) Reviewing the current public guardian programs in Florida and
 3689 other states.
 3690 (b) Developing, in consultation with local guardianship offices and
 3691 other interested stakeholders, statewide performance measures.
 3692 (c) Reviewing various methods of funding public guardianship
 3693 programs, the kinds of services being provided by such programs,
 3694 and the demographics of the wards. In addition, the executive
 3695 director shall review and make recommendations regarding the
 3696 feasibility of recovering a portion or all of the costs of
 3697 providing public guardianship services from the assets or income of
 3698 the wards.
 3699 (d) By January 1 of each year, providing a status report and
 3700 recommendations to the secretary which address the need for public
 3701 guardianship services and related issues.
 3702 (e) Developing a guardianship training program curriculum that may
 3703 be offered to all guardians, whether public or private.
 3704 (5) The executive director may provide assistance to local
 3705 governments or entities in pursuing grant opportunities. The
 3706 executive director shall review and make recommendations in the
 3707 annual report on the availability and efficacy of seeking Medicaid
 3708 matching funds. The executive director shall diligently seek ways
 3709 to use existing programs and services to meet the needs of public
 3710 wards.
 3711 (6) The executive director may conduct or contract for
 3712 demonstration projects authorized by the Department of Elderly
 3713 Affairs, within funds appropriated or through gifts, grants, or

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3743 (4) Prior to registering a professional guardian, the Office of
 3744 Public and Professional Guardians must receive and review copies of
 3745 the credit and criminal investigations conducted under s. 745.504.
 3746 The credit and criminal investigations must have been completed
 3747 within the previous 2 years.
 3748 (5) The executive director of the Office of Public and Professional
 3749 Guardians may deny registration to a professional guardian if the
 3750 executive director determines that the guardian's proposed
 3751 registration, including the guardian's credit or criminal
 3752 investigations, indicates that registering the professional
 3753 guardian would violate any provision of this chapter. If a
 3754 guardian's proposed registration is denied, the guardian has
 3755 standing to seek judicial review of the denial pursuant to chapter
 3756 120.
 3757 (6) The Department of Elderly Affairs may adopt rules necessary to
 3758 administer this section.
 3759 (7) A trust company, a state banking corporation or state savings
 3760 association authorized and qualified to exercise fiduciary powers
 3761 in this state, or a national banking association or federal savings
 3762 and loan association authorized and qualified to exercise fiduciary
 3763 powers in this state, may, but is not required to, register as a
 3764 professional guardian under this section. If a trust company, state
 3765 banking corporation, state savings association, national banking
 3766 association, or federal savings and loan association described in
 3767 this subsection elects to register as a professional guardian under
 3768 this subsection, the requirements of subsections (3) and (4) do not
 3769 apply and the registration must include only the name, address, and
 3770 employer identification number of the registrant, the name and
 3771 address of its registered agent, if any, and the documentation
 3772 described in paragraph (3)(b).

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3714 contributions for such purposes, to determine the feasibility or
 3715 desirability of new concepts of organization, administration,
 3716 financing, or service delivery designed to preserve the civil and
 3717 constitutional rights of persons of marginal or diminished
 3718 capacity. Any gifts, grants, or contributions for such purposes
 3719 shall be deposited in the Department of Elderly Affairs
 3720 Administrative Trust Fund.
 3721
 3722 745.1402 Professional guardian registration.
 3723 (1) A professional guardian must register with the Office of Public
 3724 and Professional Guardians established in part XIV of this chapter.
 3725 (2) Annual registration shall be made on forms furnished by the
 3726 Office of Public and Professional Guardians, and accompanied by the
 3727 applicable registration fee as determined by rule. The fee may not
 3728 exceed \$100.
 3729 (3) Registration must include the following:
 3730 (a) Sufficient information to identify the professional guardian,
 3731 as follows:
 3732 1. If the professional guardian is a natural person, the name,
 3733 address, date of birth, and employer identification or social
 3734 security number of the person.
 3735 2. If the professional guardian is a partnership or association,
 3736 the name, address, and employer identification number of the
 3737 entity.
 3738 (b) Documentation that the bonding and educational requirements of
 3739 s. 745.1403 have been met.
 3740 (c) Sufficient information to distinguish a guardian providing
 3741 guardianship services as a public guardian, individually, through
 3742 partnership, corporation, or any other business organization.

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3773 (8) The Department of Elderly Affairs may contract with the Florida
 3774 Guardianship Foundation or other not-for-profit entity to register
 3775 professional guardians.
 3776 (9) The department or its contractor shall ensure that the clerks
 3777 of the court and the chief judge of each judicial circuit receive
 3778 information about each registered professional guardian.
 3779 (10) A state college or university or an independent college or
 3780 university that is located and chartered in Florida, that is
 3781 accredited by the Commission on Colleges of the Southern
 3782 Association of Colleges and Schools or the Accrediting Council for
 3783 Independent Colleges and Schools, and that confers degrees as
 3784 defined in s. 1005.02(7) may, but is not required to, register as a
 3785 professional guardian under this section. If a state college or
 3786 university or independent college or university elects to register
 3787 as a professional guardian under this subsection, the requirements
 3788 of subsections (3) and (4) do not apply and the registration must
 3789 include only the name, address, and employer identification number
 3790 of the registrant.
 3791
 3792 745.1403 Regulation of professional guardians; application; bond
 3793 required; educational requirements.
 3794 (1) The provisions of this section are in addition to and
 3795 supplemental to any other provision of this code, except s.
 3796 745.505.
 3797 (2) Each professional guardian who files a petition for appointment
 3798 after October 1, 1997, shall post a blanket fiduciary bond with the
 3799 clerk of the circuit court in the county in which the guardian's
 3800 primary place of business is located. The guardian shall provide
 3801 proof of the fiduciary bond to the clerks of each additional
 3802 circuit court in which the guardian is serving as a professional

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3803 guardian. The bond shall be maintained by the guardian in an amount
 3804 not less than \$50,000. The bond must cover all wards for whom the
 3805 guardian has been appointed at any given time. The liability of the
 3806 provider of the bond is limited to the face amount of the bond,
 3807 regardless of the number of wards for whom the professional
 3808 guardian has been appointed. The act or omissions of each employee
 3809 of a professional guardian who has direct contact with the ward or
 3810 access to the ward's assets is covered by the terms of such bond.
 3811 The bond must be payable to the Governor of the State of Florida
 3812 and the Governor's successors in office and conditioned on the
 3813 faithful performance of all duties by the guardian. In form the
 3814 bond must be joint and several. The bond is in addition to any
 3815 bonds required under s. 745.607. This subsection does not apply to
 3816 any attorney who is licensed to practice law in this state and who
 3817 is in good standing, to any financial institution as defined in s.
 3818 745.106, or a public guardian. The expenses incurred to satisfy the
 3819 bonding requirements prescribed in this section may not be paid
 3820 with the assets of any ward.
 3821 (3) Each professional guardian defined in s. 745.106(30) and public
 3822 guardian must receive a minimum of 40 hours of instruction and
 3823 training. Each professional guardian must receive a minimum of 16
 3824 hours of continuing education every 2 calendar years after the year
 3825 in which the initial 40-hour educational requirement is met. The
 3826 instruction and education must be completed through a course
 3827 approved or offered by the Office of Public and Professional
 3828 Guardians. The expenses incurred to satisfy the educational
 3829 requirements prescribed in this section may not be paid with the
 3830 assets of any ward. This subsection does not apply to any attorney
 3831 who is licensed to practice law in this state or an institution
 3832 acting as guardian under s. 745.1402(7).

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3862 (a) Proof that the guardian has actively acted as a professional
 3863 guardian for 5 years or more; and
 3864 (b) A letter from a circuit judge before whom the professional
 3865 guardian practiced at least 1 year which states that the
 3866 professional guardian had demonstrated to the court competency as a
 3867 professional guardian.
 3868 (9) The court may not appoint any professional guardian who is not
 3869 registered by the Office of Public and Professional Guardians.
 3870 (10) This section does not apply to a professional guardian or the
 3871 employees of that professional guardian when that guardian is a
 3872 trust company, a state banking corporation, state savings
 3873 association authorized and qualified to exercise fiduciary powers
 3874 in this state, or a national banking association or federal savings
 3875 and loan association authorized and qualified to exercise fiduciary
 3876 powers in this state.
 3877 745.1404 Complaints; disciplinary proceedings; penalties;
 3878 enforcement.
 3879 (1) By October 1, 2016, the Office of Public and Professional
 3880 Guardians shall establish procedures to:
 3881 (a) Review and, if determined legally sufficient, investigate any
 3882 complaint that a professional guardian has violated the standards
 3883 of practice established by the Office of Public and Professional
 3884 Guardians governing the conduct of professional guardians. A
 3885 complaint is legally sufficient if it contains ultimate facts that
 3886 show a violation of a standard of practice by a professional
 3887 guardian has occurred.
 3888 (b) Initiate an investigation no later than 10 business days after
 3889 the Office of Public and Professional Guardians receives a
 3890 complaint.
 3891

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3833 (4) Each professional guardian must allow, at the guardian's
 3834 expense, an investigation of the guardian's credit history, and the
 3835 credit history of employees of the guardian, in a manner prescribed
 3836 by the Department of Elderly Affairs.
 3837 (5) As required in s. 745.504, each professional guardian shall
 3838 allow a level 2 background screening of the guardian and employees
 3839 of the guardian in accordance with the provisions of s. 435.04.
 3840 (6) Each professional guardian is required to demonstrate
 3841 competency to act as a professional guardian by taking an
 3842 examination approved by the Department of Elderly Affairs.
 3843 (a) The Department of Elderly Affairs shall determine the minimum
 3844 examination score necessary for passage of guardianship
 3845 examinations.
 3846 (b) The Department of Elderly Affairs shall determine the procedure
 3847 for administration of the examination.
 3848 (c) The Department of Elderly Affairs or its contractor shall
 3849 charge an examination fee for the actual costs of the development
 3850 and the administration of the examination. The examination fee for
 3851 a guardian may not exceed \$500.
 3852 (d) The Department of Elderly Affairs may recognize passage of a
 3853 national guardianship examination in lieu of all or part of the
 3854 examination approved by the Department of Elderly Affairs, except
 3855 that all professional guardians must take and pass an approved
 3856 examination section related to Florida law and procedure.
 3857 (7) The Department of Elderly Affairs shall set the minimum score
 3858 necessary to demonstrate professional guardianship competency.
 3859 (8) The Department of Elderly Affairs shall waive the examination
 3860 requirement in subsection (6) if a professional guardian can
 3861 provide:

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3892 (c) Complete and provide initial investigative findings and
 3893 recommendations, if any, to the professional guardian and the
 3894 person who filed the complaint within 60 days after receipt.
 3895 (d) Obtain supporting information or documentation to determine the
 3896 legal sufficiency of a complaint.
 3897 (e) Interview a ward, family member, or interested party to
 3898 determine the legal sufficiency of a complaint.
 3899 (f) Dismiss any complaint if, at any time after legal sufficiency
 3900 is determined, it is found there is insufficient evidence to
 3901 support the allegations contained in the complaint.
 3902 (g) Coordinate, to the greatest extent possible, with the clerks of
 3903 court to avoid duplication of duties with regard to the financial
 3904 audits prepared by the clerks pursuant to s. 745.1001.
 3905 (2) The Office of Public and Professional Guardians shall establish
 3906 disciplinary proceedings, conduct hearings, and take administrative
 3907 action pursuant to chapter 120. Disciplinary actions may include,
 3908 but are not limited to, requiring a professional guardian to
 3909 participate in additional educational courses provided or approved
 3910 by the Office of Public and Professional Guardians, imposing
 3911 additional monitoring by the office of the guardianships to which
 3912 the professional guardian is appointed, and suspension or
 3913 revocation of a professional guardian's registration.
 3914 (3) In any disciplinary proceeding that may result in the
 3915 suspension or revocation of a professional guardian's registration,
 3916 the Department of Elderly Affairs shall provide the professional
 3917 guardian and the person who filed the complaint:
 3918 (a) A written explanation of how an administrative complaint is
 3919 resolved by the disciplinary process.
 3920 (b) A written explanation of how and when the person may
 3921 participate in the disciplinary process.

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3922 (c) A written notice of any hearing before the Division of
 3923 Administrative Hearings at which final agency action may be taken.
 3924 (4) If the office makes a final determination to suspend or revoke
 3925 the professional guardian's registration, it must provide such
 3926 determination to the court of competent jurisdiction for any
 3927 guardianship case to which the professional guardian is currently
 3928 appointed.
 3929 (5) If the office determines or has reasonable cause to suspect
 3930 that a vulnerable adult has been or is being abused, neglected, or
 3931 exploited as a result of a filed complaint or during the course of
 3932 an investigation of a complaint, it shall immediately report such
 3933 determination or suspicion to the central abuse hotline established
 3934 and maintained by the Department of Children and Families pursuant
 3935 to s. 415.103.
 3936 (6) By October 1, 2016, the Department of Elderly Affairs shall
 3937 adopt rules to implement the provisions of this section.
 3938
 3939 745.1405 Grounds for discipline; penalties; enforcement.
 3940 (1) The following acts by a professional guardian shall constitute
 3941 grounds for which the disciplinary actions specified in subsection
 3942 (2) may be taken:
 3943 (a) Making misleading, deceptive, or fraudulent representations in
 3944 or related to the practice of guardianship.
 3945 (b) Violating any rule governing guardians or guardianships adopted
 3946 by the Office of Public and Professional Guardians.
 3947 (c) Being convicted or found guilty of, or entering a plea of
 3948 guilty or nolo contendere to, regardless of adjudication, a crime
 3949 in any jurisdiction which relates to the practice of or the ability
 3950 to practice as a professional guardian.

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3981 willfully impeding or obstructing another person's attempt to do
 3982 so. Such reports or records shall include only those that are
 3983 signed in the guardian's capacity as a professional guardian.
 3984 (k) Using the position of guardian for the purpose of financial
 3985 gain by a professional guardian or a third party, other than the
 3986 funds awarded to the professional guardian by the court pursuant to
 3987 s. 745.113.
 3988 (l) Violating a lawful order of the Office of Public and
 3989 Professional Guardians or failing to comply with a lawfully issued
 3990 subpoena of the Office of Public and Professional Guardians.
 3991 (m) Improperly interfering with an investigation or inspection
 3992 authorized by statute or rule or with any disciplinary proceeding.
 3993 (n) Using the guardian relationship to engage or attempt to engage
 3994 the ward, or an immediate family member or a representative of the
 3995 ward, in verbal, written, electronic, or physical sexual activity.
 3996 (o) Failing to report to the Office of Public and Professional
 3997 Guardians in writing within 30 days after being convicted or found
 3998 guilty of, or entered a plea of nolo contendere to, regardless of
 3999 adjudication, a crime in any jurisdiction.
 4000 (p) Being unable to perform the functions of a professional
 4001 guardian with reasonable skill by reason of illness or use of
 4002 alcohol, drugs, narcotics, chemicals, or any other type of
 4003 substance or as a result of any mental or physical condition.
 4004 (q) Failing to post and maintain a blanket fiduciary bond pursuant
 4005 to s. 745.1403.
 4006 (r) Failing to maintain all records pertaining to a guardianship
 4007 for a reasonable time after the court has closed the guardianship
 4008 matter.
 4009 (s) Violating any provision of this chapter or any rule adopted
 4010 pursuant thereto.

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3951 (d) Failing to comply with the educational course requirements
 3952 contained in s. 745.1403.
 3953 (e) Having a registration, a license, or the authority to practice
 3954 a regulated profession revoked, suspended, or otherwise acted
 3955 against, including the denial of registration or licensure, by the
 3956 registering or licensing authority of any jurisdiction, including
 3957 its agencies or subdivisions, for a violation under Florida law or
 3958 similar law under a foreign jurisdiction. The registering or
 3959 licensing authority's acceptance of a relinquishment of
 3960 registration or licensure, stipulation, consent order, or other
 3961 settlement offered in response to or in anticipation of the filing
 3962 of charges against the registration or license shall be construed
 3963 as an action against the registration or license.
 3964 (f) Knowingly filing a false report or complaint with the Office of
 3965 Public and Professional Guardians against another guardian.
 3966 (g) Attempting to obtain, obtaining, or renewing a registration or
 3967 license to practice a profession by bribery, by fraudulent
 3968 misrepresentation, or as a result of an error by the Office of
 3969 Public and Professional Guardians which is known by the
 3970 professional guardian and not disclosed to the Office of Public and
 3971 Professional Guardians.
 3972 (h) Failing to report to the Office of Public and Professional
 3973 Guardians any person who the professional guardian knows is in
 3974 violation of this chapter or the rules of the Office of Public and
 3975 Professional Guardians.
 3976 (i) Failing to perform any statutory or legal obligation placed
 3977 upon a professional guardian.
 3978 (j) Making or filing a report or record that the professional
 3979 guardian knows to be false, intentionally or negligently failing to
 3980 file a report or record required by state or federal law, or

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4011 (2) When the Office of Public and Professional Guardians finds a
 4012 professional guardian guilty of violating subsection (1), it may
 4013 enter an order imposing one or more of the following penalties:
 4014 (a) Refusal to register an applicant as a professional guardian.
 4015 (b) Suspension or permanent revocation of a professional guardian's
 4016 registration.
 4017 (c) Issuance of a reprimand or letter of concern.
 4018 (d) Requirement that the professional guardian undergoes treatment,
 4019 attends continuing education courses, submits to reexamination, or
 4020 satisfies any terms that are reasonably tailored to the violations
 4021 found.
 4022 (e) Requirement that the professional guardian pay restitution to a
 4023 ward or the ward's estate, if applicable, of any funds obtained or
 4024 disbursed through a violation of any statute, rule, or other legal
 4025 authority.
 4026 (f) Requirement that the professional guardian undergo remedial
 4027 education.
 4028 (3) In determining what action is appropriate, the Office of Public
 4029 and Professional Guardians must first consider what sanctions are
 4030 necessary to safeguard wards and to protect the public. Only after
 4031 those sanctions have been imposed may the Office of Public and
 4032 Professional Guardians consider and include in the order
 4033 requirements designed to mitigate the circumstances and
 4034 rehabilitate the professional guardian.
 4035 (4) The Office of Public and Professional Guardians shall adopt by
 4036 rule and periodically review the disciplinary guidelines applicable
 4037 to each ground for disciplinary action that may be imposed by the
 4038 Office of Public and Professional Guardians pursuant to this
 4039 chapter.

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4040 (5) It is the intent of the Legislature that the disciplinary
 4041 guidelines specify a meaningful range of designated penalties based
 4042 upon the severity and repetition of specific offenses and that
 4043 minor violations be distinguished from those which endanger the
 4044 health, safety, or welfare of a ward or the public; that such
 4045 guidelines provide reasonable and meaningful notice to the public
 4046 of likely penalties that may be imposed for proscribed conduct; and
 4047 that such penalties be consistently applied by the Office of Public
 4048 and Professional Guardians.
 4049 (6) The Office of Public and Professional Guardians shall by rule
 4050 designate possible mitigating and aggravating circumstances and the
 4051 variation and range of penalties permitted for such circumstances.
 4052 (a) An administrative law judge, in recommending penalties in any
 4053 recommended order, must follow the disciplinary guidelines
 4054 established by the Office of Public and Professional Guardians and
 4055 must state in writing any mitigating or aggravating circumstance
 4056 upon which a recommended penalty is based if such circumstance
 4057 causes the administrative law judge to recommend a penalty other
 4058 than that provided in the disciplinary guidelines.
 4059 (b) The Office of Public and Professional Guardians may impose a
 4060 penalty other than those provided for in the disciplinary
 4061 guidelines upon a specific finding in the final order of mitigating
 4062 or aggravating circumstances.
 4063 (7) In addition to, or in lieu of, any other remedy or criminal
 4064 prosecution, the Office of Public and Professional Guardians may
 4065 file a proceeding in the name of the state seeking issuance of an
 4066 injunction or a writ of mandamus against any person who violates
 4067 any provision of this chapter or any provision of law with respect
 4068 to professional guardians or the rules adopted pursuant thereto.

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4099 a staff or contract with professionally qualified individuals to
 4100 carry out the guardianship functions, including an attorney who has
 4101 experience in probate areas and another person who has a master's
 4102 degree in social work, or a gerontologist, psychologist, registered
 4103 nurse, or nurse practitioner. A public guardian that is a nonprofit
 4104 corporate guardian under s. 745.502 must receive tax-exempt status
 4105 from the United States Internal Revenue Service.
 4106 (2) The executive director shall appoint or contract with a public
 4107 guardian from the list of candidates described in subsection (1). A
 4108 public guardian must meet the qualifications for a guardian as
 4109 prescribed in s. 745.501(1)(a). Upon appointment of the public
 4110 guardian, the executive director shall notify the chief judge of
 4111 the judicial circuit and the Chief Justice of the Supreme Court of
 4112 Florida, in writing, of the appointment.
 4113 (3) If the needs of the county or circuit do not require a full-
 4114 time public guardian, a part-time public guardian may be appointed
 4115 at reduced compensation.
 4116 (4) A public guardian, whether full-time or part-time, may not hold
 4117 any position that would create a conflict of interest.
 4118 (5) The public guardian is to be appointed for a term of 4 years,
 4119 after which the public guardian's appointment must be reviewed by
 4120 the executive director, and may be reappointed for a term of up to
 4121 4 years. The executive director may suspend a public guardian with
 4122 or without the request of the chief judge. If a public guardian is
 4123 suspended, the executive director shall appoint an acting public
 4124 guardian as soon as possible to serve until such time as a
 4125 permanent replacement is selected. A public guardian may be removed
 4126 from office during the term of office only by the executive
 4127 director who must consult with the chief judge prior to said

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4069 (8) Notwithstanding chapter 120, if the Office of Public and
 4070 Professional Guardians determines that revocation of a professional
 4071 guardian's registration is the appropriate penalty, the revocation
 4072 is permanent.
 4073 (9) If the Office of Public and Professional Guardians makes a
 4074 final determination to suspend or revoke the professional
 4075 guardian's registration, the office must provide the determination
 4076 to the court of competent jurisdiction for any guardianship case to
 4077 which the professional guardian is currently appointed.
 4078 (10) The purpose of this section is to facilitate uniform
 4079 discipline for those actions made punishable under this section
 4080 and, to this end, a reference to this section constitutes a general
 4081 reference under the doctrine of incorporation by reference.
 4082 (11) The Office of Public and Professional Guardians shall adopt
 4083 rules to administer this section.
 4084
 4085 745.1406 Office of Public and Professional Guardians; appointment,
 4086 notification.
 4087 (1) The executive director of the Office of Public and Professional
 4088 Guardians, after consultation with the chief judge and other
 4089 circuit judges within the judicial circuit and with appropriate
 4090 advocacy groups and individuals and organizations who are
 4091 knowledgeable about the needs of incapacitated persons, may
 4092 establish, within a county in the judicial circuit or within the
 4093 judicial circuit, one or more offices of public guardian and, if so
 4094 established, shall create a list of persons best qualified to serve
 4095 as the public guardian, who have been investigated pursuant to s.
 4096 745.504. The public guardian must have knowledge of the legal
 4097 process and knowledge of social services available to meet the
 4098 needs of incapacitated persons. The public guardian shall maintain

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4128 removal. A recommendation of removal made by the chief judge must
 4129 be considered by the executive director.
 4130 (6) Public guardians who have been previously appointed by a chief
 4131 judge prior to the effective date of this act pursuant to this
 4132 section may continue in their positions until the expiration of
 4133 their term pursuant to their agreement. However, oversight of all
 4134 public guardians shall transfer to the Office of Public and
 4135 Professional Guardians upon the effective date of this act. The
 4136 executive director of the Office of Public and Professional
 4137 Guardians shall be responsible for all future appointments of
 4138 public guardians pursuant to this act.
 4139
 4140 745.1407 Powers and duties.
 4141 (1) A public guardian may serve as a guardian of a person
 4142 adjudicated incapacitated under this chapter if there is no family
 4143 member or friend, other person, bank, or corporation willing and
 4144 qualified to serve as guardian.
 4145 (2) The public guardian shall be vested with all the powers and
 4146 duties of a guardian under this chapter, except as otherwise
 4147 provided by law.
 4148 (3) The public guardian shall primarily serve incapacitated persons
 4149 who are of limited financial means, as defined by contract or rule
 4150 of the Department of Elderly Affairs. The public guardian may serve
 4151 incapacitated persons of greater financial means to the extent the
 4152 Department of Elderly Affairs determines to be appropriate.
 4153 (4) The public guardian shall be authorized to employ sufficient
 4154 staff to carry out the duties of the public guardian's office.
 4155 (5) The public guardian may delegate to assistants and other
 4156 members of the public guardian's staff the powers and duties of the
 4157 office of public guardian, except as otherwise limited by law. The

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4158 public guardian shall retain ultimate responsibility for the
 4159 discharge of the public guardian's duties and responsibilities.
 4160 (6) Upon appointment as guardian of an incapacitated person, a
 4161 public guardian shall endeavor to locate a family member or friend,
 4162 other person, bank, or corporation who is qualified and willing to
 4163 serve as guardian. Upon determining that there is someone qualified
 4164 and willing to serve as guardian, either the public guardian or the
 4165 qualified person shall petition the court for appointment of a
 4166 successor guardian.
 4167 (7) A public guardian may not commit a ward to a treatment
 4168 facility, as defined in s. 394.455(47), without an involuntary
 4169 placement proceeding as provided by law.
 4170 (8) When a person is appointed successor public guardian, the
 4171 successor public guardian immediately succeeds to all rights,
 4172 duties, responsibilities, and powers of the preceding public
 4173 guardian.
 4174 (9) When the position of public guardian is vacant, subordinate
 4175 personnel employed under subsection (4) shall continue to act as if
 4176 the position of public guardian were filled.
 4177
 4178 745.1408 Costs of public guardian.
 4179 (1) All costs of administration, including filing fees, shall be
 4180 paid from the budget of the office of public guardian. No costs of
 4181 administration, including filing fees, shall be recovered from the
 4182 assets or the income of the ward.
 4183 (2) In any proceeding for appointment of a public guardian, or in
 4184 any proceeding involving the estate of a ward for whom a public
 4185 guardian has been appointed guardian, the court shall waive any
 4186 court costs or filing fees.
 4187

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4218
 4219 745.1411 Surety bond.
 4220 Upon taking office, a public guardian shall file a bond with surety
 4221 as prescribed in s. 45.011 to be approved by the clerk. The bond
 4222 shall be payable to the Governor and the Governor's successors in
 4223 office, in the penal sum of not less than \$5,000 nor more than
 4224 \$25,000, conditioned on the faithful performance of all duties by
 4225 the guardian. The amount of the bond shall be fixed by the majority
 4226 of the judges within the judicial circuit. In form the bond shall
 4227 be joint and several. The bond shall be purchased from the funds of
 4228 the local office of public guardian.
 4229
 4230 745.1412 Reports and standards.
 4231 (1) The public guardian shall keep and maintain proper financial,
 4232 case control, and statistical records on all matters in which the
 4233 public guardian serves as guardian.
 4234 (2) No report or disclosure of the ward's personal and medical
 4235 records shall be made, except as authorized by law.
 4236 (3) A public guardian shall file an annual report on the operations
 4237 of the office of public guardian, in writing, by September 1 for
 4238 the preceding fiscal year with the Office of Public and
 4239 Professional Guardians, which shall have responsibility for
 4240 supervision of the operations of the office of public guardian.
 4241 (4) Within 6 months of appointment as guardian of a ward, the
 4242 public guardian shall submit to the clerk of the court for
 4243 placement in the ward's guardianship file and to the executive
 4244 director of the Office of Public and Professional Guardians a
 4245 report on the public guardian's efforts to locate a family member or
 4246 friend, other person, bank, or corporation to act as guardian of

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4188 745.1409 Preparation of budget.
 4189 Each public guardian, whether funded in whole or in part by money
 4190 raised through local efforts, grants, or any other source or
 4191 whether funded in whole or in part by the state, shall prepare a
 4192 budget for the operation of the office of public guardian to be
 4193 submitted to the Office of Public and Professional Guardians. As
 4194 appropriate, the Office of Public and Professional Guardians will
 4195 include such budgetary information in the Department of Elderly
 4196 Affairs' legislative budget request. The office of public guardian
 4197 shall be operated within the limitations of the General
 4198 Appropriations Act and any other funds appropriated by the
 4199 Legislature to that particular judicial circuit, subject to the
 4200 provisions of chapter 216. The Department of Elderly Affairs shall
 4201 make a separate and distinct request for an appropriation for the
 4202 Office of Public and Professional Guardians. However, this section
 4203 may not be construed to preclude the financing of any operations of
 4204 the office of public guardian by moneys raised through local effort
 4205 or through the efforts of the Office of Public and Professional
 4206 Guardians.
 4207
 4208 745.1410 Procedures and rules.
 4209 The public guardian, subject to the oversight of the Office of
 4210 Public and Professional Guardians, is authorized to:
 4211 (1) Formulate and adopt necessary procedures to assure the
 4212 efficient conduct of the affairs of the ward and general
 4213 administration of the office and staff.
 4214 (2) Contract for services necessary to discharge the duties of the
 4215 office.
 4216 (3) Accept the services of volunteer persons or organizations and
 4217 provide reimbursement for proper and necessary expenses.

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4247 the ward and a report on the ward's potential to be restored to
 4248 capacity.
 4249 (5)(a) Each office of public guardian shall undergo an independent
 4250 audit by a qualified certified public accountant at least once
 4251 every 2 years. A copy of the audit report shall be submitted to the
 4252 Office of Public and Professional Guardians.
 4253 (b) In addition to regular monitoring activities, the Office of
 4254 Public and Professional Guardians shall conduct an investigation
 4255 into the practices of each office of public guardian related to the
 4256 managing of each ward's personal affairs and property. If feasible,
 4257 the investigation shall be conducted in conjunction with the
 4258 financial audit of each office of public guardian under paragraph
 4259 (a).
 4260 (6) A public guardian shall ensure that each of the guardian's
 4261 wards is personally visited by the public guardian or by one of the
 4262 guardian's professional staff at least once each calendar quarter.
 4263 During this personal visit, the public guardian or the professional
 4264 staff person shall assess:
 4265 (a) The ward's physical appearance and condition;
 4266 (b) The appropriateness of the ward's current living situation; and
 4267 (c) The need for any additional services and the necessity for
 4268 continuation of existing services, taking into consideration all
 4269 aspects of social, psychological, educational, direct service,
 4270 health, and personal care needs.
 4271 (7) The ratio for professional staff to wards shall be 1
 4272 professional to 40 wards. The Office of Public and Professional
 4273 Guardians may increase or decrease the ratio after consultation
 4274 with the local public guardian and the chief judge of the circuit
 4275 court. The basis for the decision to increase or decrease the

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4276 prescribed ratio must be included in the annual report to the
 4277 secretary.
 4278
 4279 745.1413 Public records exemption.
 4280 The home addresses, telephone numbers, dates of birth, places of
 4281 employment, and photographs of current or former public guardians
 4282 and employees with fiduciary responsibility; the names, home
 4283 addresses, telephone numbers, dates of birth, and places of
 4284 employment of the spouses and children of such persons; and the
 4285 names and locations of schools and day care facilities attended by
 4286 the children of such persons are exempt from s. 119.07(1) and s.
 4287 24(a), Art. I of the State Constitution. As used in this section,
 4288 the term "employee with fiduciary responsibility" means an employee
 4289 of a public guardian who has the ability to direct any transactions
 4290 of a ward's funds, assets, or property; who under the supervision
 4291 of the guardian, manages the care of the ward; or who makes any
 4292 health care decision, as defined in s. 765.101, on behalf of the
 4293 ward. This exemption applies to information held by an agency
 4294 before, on, or after July 1, 2018. An agency that is the custodian
 4295 of the information specified in this section shall maintain the
 4296 exempt status of that information only if the current or former
 4297 public guardians and employees with fiduciary responsibility submit
 4298 to the custodial agency a written request for maintenance of the
 4299 exemption. This section is subject to the Open Government Sunset
 4300 Review Act in accordance with s. 119.15 and shall stand repealed on
 4301 October 2, 2023, unless reviewed and saved from repeal through
 4302 reenactment by the Legislature.
 4303
 4304 745.1414 Access to records by the Office of Public and Professional
 4305 Guardians; confidentiality.

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4336 moneys; to acquire, receive, hold, invest, and administer, in its
 4337 own name, securities, funds, objects of value, or other property,
 4338 real or personal; and to make expenditures to or for the direct or
 4339 indirect benefit of the Office of Public and Professional
 4340 Guardians; and
 4341 (c) Determined by the Office of Public and Professional Guardians
 4342 to be consistent with the goals of the office, in the best
 4343 interests of the state, and in accordance with the adopted goals
 4344 and mission of the Department of Elderly Affairs and the Office of
 4345 Public and Professional Guardians.
 4346 (2) CONTRACT.- The direct-support organization shall operate under
 4347 a written contract with the Office of Public and Professional
 4348 Guardians. The written contract must provide for:
 4349 (a) Certification by the Office of Public and Professional
 4350 Guardians that the direct-support organization is complying with
 4351 the terms of the contract and is doing so consistent with the goals
 4352 and purposes of the office and in the best interests of the state.
 4353 This certification must be made annually and reported in the
 4354 official minutes of a meeting of the direct-support organization.
 4355 (b) The reversion of monies and property held in trust by the
 4356 direct-support organization:
 4357 1. To the Office of Public and Professional Guardians if the
 4358 direct-support organization is no longer approved to operate for
 4359 the office;
 4360 2. To the Office of Public and Professional Guardians if the
 4361 direct-support organization ceases to exist;
 4362 3. To the Department of Elderly Affairs if the Office of Public and
 4363 Professional Guardians ceases to exist; or
 4364 4. To the state if the Department of Elderly Affairs ceases to
 4365 exist.

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4306 (1) Notwithstanding any other provision of law to the contrary, any
 4307 medical, financial, or mental health records held by an agency, or
 4308 the court and its agencies, or financial audits prepared by the
 4309 clerk of the court pursuant to s. 745.1001 and held by the court,
 4310 which are necessary as part of an investigation of a guardian as a
 4311 result of a complaint filed with the Office of Public and
 4312 Professional Guardians to evaluate the public guardianship system,
 4313 to assess the need for additional public guardianship, or to
 4314 develop required reports, shall be provided to the Office of Public
 4315 and Professional Guardians or its designee upon that office's
 4316 request. Any confidential or exempt information provided to the
 4317 Office of Public and Professional Guardians shall continue to be
 4318 held confidential or exempt as otherwise provided by law.
 4319 (2) All records held by the Office of Public and Professional
 4320 Guardians relating to the medical, financial, or mental health of
 4321 vulnerable adults as defined in chapter 415, persons with a
 4322 developmental disability as defined in chapter 393, or persons with
 4323 a mental illness as defined in chapter 394, shall be confidential
 4324 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 4325 Constitution.
 4326
 4327 745.1415 Direct-support organization; definition; use of property;
 4328 board of directors; audit; dissolution.
 4329 (1) DEFINITION.- As used in this section, the term "direct-support
 4330 organization" means an organization whose sole purpose is to
 4331 support the Office of Public and Professional Guardians and is:
 4332 (a) A not-for-profit corporation incorporated under chapter 617 and
 4333 approved by the Department of State;
 4334 (b) Organized and operated to conduct programs and activities; to
 4335 raise funds; to request and receive grants, gifts, and bequests of

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4366 The fiscal year of the direct-support organization shall begin on
 4367 July 1 of each year and end on June 30 of the following year.
 4368 (c) The disclosure of the material provisions of the contract, and
 4369 the distinction between the Office of Public and Professional
 4370 Guardians and the direct-support organization, to donors of gifts,
 4371 contributions, or bequests, including such disclosure on all
 4372 promotional and fundraising publications.
 4373 (3) BOARD OF DIRECTORS.- The Secretary of Elderly Affairs shall
 4374 appoint a board of directors for the direct-support organization
 4375 from a list of nominees submitted by the executive director of the
 4376 Office of Public and Professional Guardians.
 4377 (4) USE OF PROPERTY.-The Department of Elderly Affairs may permit,
 4378 without charge, appropriate use of fixed property and facilities of
 4379 the department or the Office of Public and Professional Guardians
 4380 by the direct-support organization. The department may prescribe
 4381 any condition with which the direct-support organization must
 4382 comply in order to use fixed property or facilities of the
 4383 department or the Office of Public and Professional Guardians.
 4384 (5) MONIES.-Any monies may be held in a separate depository account
 4385 in the name of the direct-support organization and subject to the
 4386 provisions of the written contract with the Office of Public and
 4387 Professional Guardians. Expenditures of the direct-support
 4388 organization shall be expressly used to support the Office of
 4389 Public and Professional Guardians. The expenditures of the direct-
 4390 support organization may not be used for the purpose of lobbying as
 4391 defined in s. 11.045.
 4392 (6) PUBLIC RECORDS.-Personal identifying information of a donor or
 4393 prospective donor to the direct-support organization who desires to
 4394 remain anonymous is confidential and exempt from s. 119.07(1) and
 4395 s. 24(a), Art. I of the State Constitution.

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4396 (7) AUDIT.—The direct-support organization shall provide for an
 4397 annual financial audit in accordance with s. 215.981.
 4398 (8) DISSOLUTION.—A not-for-profit corporation incorporated under
 4399 chapter 617 that is determined by a circuit court to be
 4400 representing itself as a direct-support organization created under
 4401 this section, but that does not have a written contract with the
 4402 Office of Public and Professional Guardians in compliance with this
 4403 section, is considered to meet the grounds for a judicial
 4404 dissolution described in s. 617.1430(1)(a). The Office of Public
 4405 and Professional Guardians shall be the recipient for all assets
 4406 held by the dissolved corporation which accrued during the period
 4407 that the dissolved corporation represented itself as a direct-
 4408 support organization created under this section.
 4409
 4410 745.1416 Joining Forces for Public Guardianship grant program;
 4411 purpose.
 4412 The Legislature establishes the Joining Forces for Public
 4413 Guardianship matching grant program for the purpose of assisting
 4414 counties to establish and fund community-supported public
 4415 guardianship programs. The Joining Forces for Public Guardianship
 4416 matching grant program shall be established and administered by the
 4417 Office of Public and Professional Guardians within the Department
 4418 of Elderly Affairs. The purpose of the program is to provide
 4419 startup funding to encourage communities to develop and administer
 4420 locally funded and supported public guardianship programs to
 4421 address the needs of indigent and incapacitated residents.
 4422 (1) The Office of Public and Professional Guardians may distribute
 4423 the grant funds as follows:
 4424 (a) As initial startup funding to encourage counties that have no
 4425 office of public guardian to establish an office, or as initial

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4455 county may not exceed 75 percent of the total amount of grant funds
 4456 awarded within that county in year one.
 4457 (b) In the third year that grant funds are awarded, the cumulative
 4458 sum of the award provided to one or more applicants within the same
 4459 county may not exceed 60 percent of the total amount of grant funds
 4460 awarded within that county in year one.
 4461 (c) In the fourth year that grant funds are awarded, the cumulative
 4462 sum of the award provided to one or more applicants within the same
 4463 county may not exceed 45 percent of the total amount of grant funds
 4464 awarded within that county in year one.
 4465 (d) In the fifth year that grant funds are awarded, the cumulative
 4466 sum of the award provided to one or more applicants within the same
 4467 county may not exceed 30 percent of the total amount of grant funds
 4468 awarded within that county in year one.
 4469 (e) In the sixth year that grant funds are awarded, the cumulative
 4470 sum of the award provided to one or more applicants within the same
 4471 county may not exceed 15 percent of the total amount of grant funds
 4472 awarded within that county in year one.
 4473 The Office of Public and Professional Guardians may not award grant
 4474 funds to any applicant within a county that has received grant
 4475 funds for more than 6 years.
 4476 (4) Grant funds shall be used only to provide direct services to
 4477 indigent wards, except that up to 10 percent of the grant funds may
 4478 be retained by the awardee for administrative expenses.
 4479 (5) Implementation of the program is subject to a specific
 4480 appropriation by the Legislature in the General Appropriations Act.
 4481
 4482 745.1417 Program administration; duties of the Office of Public and
 4483 Professional Guardians.

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4426 startup funding to open an additional office of public guardian
 4427 within a county whose public guardianship needs require more than
 4428 one office of public guardian.
 4429 (b) As support funding to operational offices of public guardian
 4430 that demonstrate a necessity for funds to meet the public
 4431 guardianship needs of a particular geographic area in the state
 4432 which the office serves.
 4433 (c) To assist counties that have an operating public guardianship
 4434 program but that propose to expand the geographic area or
 4435 population of persons they serve, or to develop and administer
 4436 innovative programs to increase access to public guardianship in
 4437 this state.
 4438 Notwithstanding this subsection, the executive director of the
 4439 office may award emergency grants if the executive director
 4440 determines that the award is in the best interests of public
 4441 guardianship in this state. Before making an emergency grant, the
 4442 executive director must obtain the written approval of the
 4443 Secretary of Elderly Affairs. Subsections (2), (3), and (4) do not
 4444 apply to the distribution of emergency grant funds.
 4445 (2) One or more grants may be awarded within a county. However, a
 4446 county may not receive an award that equals, or multiple awards
 4447 that cumulatively equal, more than 20 percent of the total amount
 4448 of grant funds appropriated during any fiscal year.
 4449 (3) If an applicant is eligible and meets the requirements to
 4450 receive grant funds more than once, the Office of Public and
 4451 Professional Guardians shall award funds to prior awardees in the
 4452 following manner:
 4453 (a) In the second year that grant funds are awarded, the cumulative
 4454 sum of the award provided to one or more applicants within the same

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4484 The Office of Public and Professional Guardians shall administer
 4485 the grant program. The office shall:
 4486 (1) Publicize the availability of grant funds to entities that may
 4487 be eligible for the funds.
 4488 (2) Establish an application process for submitting a grant
 4489 proposal.
 4490 (3) Request, receive, and review proposals from applicants seeking
 4491 grant funds.
 4492 (4) Determine the amount of grant funds each awardee may receive
 4493 and award grant funds to applicants.
 4494 (5) Develop a monitoring process to evaluate grant awardees, which
 4495 may include an annual monitoring visit to each awardee's local
 4496 office.
 4497 (6) Ensure that persons or organizations awarded grant funds meet
 4498 and adhere to the requirements of this act.
 4499
 4500 745.1418 Eligibility.
 4501 (1) Any person or organization that has not been awarded a grant
 4502 must meet all of the following conditions to be eligible to receive
 4503 a grant:
 4504 (a) The applicant must meet or directly employ staff that meet the
 4505 minimum qualifications for a public guardian under this chapter.
 4506 (b) The applicant must have already been appointed by, or is
 4507 pending appointment by, the Office of Public and Professional
 4508 Guardians to become an office of public guardian in this state.
 4509 (2) Any person or organization that has been awarded a grant must
 4510 meet all of the following conditions to be eligible to receive
 4511 another grant:
 4512 (a) The applicant must meet or directly employ staff that meet the
 4513 minimum qualifications for a public guardian under this chapter.

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4514 (b) The applicant must have been appointed by, or is pending
 4515 reappointment by, the Office of Public and Professional Guardians
 4516 to be an office of public guardian in this state.
 4517 (c) The applicant must have achieved a satisfactory monitoring
 4518 score during the applicant's most recent evaluation.
 4519
 4520 745.1419 Grant application requirements; review criteria; awards
 4521 process.
 4522 Grant applications must be submitted to the Office of Public and
 4523 Professional Guardians for review and approval.
 4524 (1) A grant application must contain:
 4525 (a) The specific amount of funds being requested.
 4526 (b) The proposed annual budget for the office of public guardian
 4527 for which the applicant is applying on behalf of, including all
 4528 sources of funding, and a detailed report of proposed expenditures,
 4529 including administrative costs.
 4530 (c) The total number of wards the applicant intends to serve during
 4531 the grant period.
 4532 (d) Evidence that the applicant has:
 4533 1. Attempted to procure funds and has exhausted all possible other
 4534 sources of funding; or
 4535 2. Procured funds from local sources, but the total amount of the
 4536 funds collected or pledged is not sufficient to meet the need for
 4537 public guardianship in the geographic area that the applicant
 4538 intends to serve.
 4539 (e) An agreement or confirmation from a local funding source, such
 4540 as a county, municipality, or any other public or private
 4541 organization, that the local funding source will contribute
 4542 matching funds to the public guardianship program totaling not less
 4543 than \$1 for every \$1 of grant funds awarded. For purposes of this

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4573 2. Meet all of the requirements for being awarded a grant under
 4574 this act; and
 4575 3. Demonstrate a need for grant funds during the current fiscal
 4576 year due to a loss of local funding formerly raised through court
 4577 filing fees.
 4578 (b) In each fiscal year after the first year that grant funds are
 4579 distributed, the Office of Public and Professional Guardians may
 4580 give priority to awarding grant funds to those entities that:
 4581 1. Meet all of the requirements of this section and ss. 745.1416,
 4582 745.1417, and 745.1418 for being awarded grant funds; and
 4583 2. Submit with their application an agreement or confirmation from
 4584 a local funding source, such as a county, municipality, or any
 4585 other public or private organization, that the local funding source
 4586 will contribute matching funds totaling an amount equal to or
 4587 exceeding \$2 for every \$1 of grant funds awarded by the office. An
 4588 entity may submit with its application agreements or confirmations
 4589 from multiple local funding sources showing that the local funding
 4590 sources will pool their contributed matching funds to the public
 4591 guardianship program for a combined total of not less than \$2 for
 4592 every \$1 of grant funds awarded. In-kind contributions allowable
 4593 under this section shall be evaluated by the Office of Public and
 4594 Professional Guardians and may be counted as part or all of the
 4595 local matching funds.
 4596
 4597 745.1420 Confidentiality.
 4598 (1) The following are confidential and exempt from the provisions
 4599 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
 4600 when held by the Department of Elderly Affairs in connection with a
 4601 complaint filed and any subsequent investigation conducted pursuant
 4602 to this part, unless the disclosure is required by court order:

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4544 section, an applicant may provide evidence of agreements or
 4545 confirmations from multiple local funding sources showing that the
 4546 local funding sources will pool their contributed matching funds to
 4547 the public guardianship program for a combined total of not less
 4548 than \$1 for every \$1 of grant funds awarded. In-kind contributions,
 4549 such as materials, commodities, office space, or other types of
 4550 facilities, personnel services, or other items as determined by
 4551 rule shall be considered by the office and may be counted as part
 4552 or all of the local matching funds.
 4553 (f) A detailed plan describing how the office of public guardian
 4554 for which the applicant is applying on behalf of will be funded in
 4555 future years.
 4556 (g) Any other information determined by rule as necessary to assist
 4557 in evaluating grant applicants.
 4558 (2) If the Office of Public and Professional Guardians determines
 4559 that an applicant meets the requirements for an award of grant
 4560 funds, the office may award the applicant any amount of grant funds
 4561 the executive director deems appropriate, if the amount awarded
 4562 meets the requirements of this act. The office may adopt a rule
 4563 allocating the maximum allowable amount of grant funds which may be
 4564 expended on any ward.
 4565 (3) A grant awardee must submit a new grant application for each
 4566 year of additional funding.
 4567 (4)(a) In the first year of the Joining Forces for Public
 4568 Guardianship program's existence, the Office of Public and
 4569 Professional Guardians shall give priority in awarding grant funds
 4570 to those entities that:
 4571 1. Are operating as appointed offices of public guardians in this
 4572 state;

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4603 (a) Personal identifying information of a complainant or ward.
 4604 (b) All personal health and financial records of a ward.
 4605 (c) All photographs and video recordings.
 4606 (2) Except as otherwise provided in this section, information held
 4607 by the department is confidential and exempt from s. 119.07(1) and
 4608 s. 24(a), Art. I of the State Constitution until the investigation
 4609 is completed or ceases to be active, unless the disclosure is
 4610 required by court order.
 4611 (3) This section does not prohibit the department from providing
 4612 such information to any law enforcement agency, any other
 4613 regulatory agency in the performance of its official duties and
 4614 responsibilities, or the clerk of the circuit court pursuant to s.
 4615 745.1001.
 4616 (4) The exemption under this section applies to all documents
 4617 received by the department in connection with a complaint before,
 4618 on, or after July 1, 2017.
 4619 (5) This section is subject to the Open Government Sunset Review
 4620 Act in accordance with s. 119.15 and shall stand repealed on
 4621 October 2, 2022, unless reviewed and saved from repeal through
 4622 reenactment by the Legislature.
 4623 Section 15, Part XV of chapter 745, Florida Statutes,
 4624 consisting of sections 745.1501, 745.1502, 745.1503, 745.1504,
 4625 745.1505, 745.1506, 745.1507, 745.1508, 745.1509, 745.1510,
 4626 745.1511, 745.1512, 745.1513, 745.1514, 745.1515, 745.1516,
 4627 745.1517, 745.1518, 745.1519, 745.1520, 745.1521, 745.1522,
 4628 745.1523, 745.1524, 745.1525, and 745.1526, is created to read:
 4629 PART XV
 4630 VETERANS' GUARDIANSHIP
 4631 745.1501 Short title; scope of part.

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4632 (1) This part shall be known and may be cited as the "Veterans'
 4633 Guardianship Law."
 4634 (2) The application of this part is limited to veterans and other
 4635 persons who are entitled to receive benefits from the United States
 4636 Department of Veterans Affairs. This part is not intended to
 4637 replace the general law relating to guardianship except insofar as
 4638 this part is inconsistent with the general law relating to
 4639 guardianship; in which event, this part and the general law
 4640 relating to guardianship shall be read together, with any conflict
 4641 between this part and the general law of guardianship to be
 4642 resolved by giving effect to this part.
 4643
 4644 745.1502 Definitions.
 4645 As used in this part, the term:
 4646 (1) "Adjudication by a court of competent jurisdiction" means a
 4647 judicial decision or finding that a person is or is not
 4648 incapacitated as provided in chapter 745 Part III.
 4649 (2) "Adjudication by the United States Department of Veterans
 4650 Affairs" means a determination or finding that a person is
 4651 competent or incompetent on examination in accordance with the laws
 4652 and regulations governing the United States Department of Veterans
 4653 Affairs.
 4654 (3) "Secretary" means the Secretary of Veterans Affairs as head of
 4655 the United States Department of Veterans Affairs or her or his
 4656 successor.
 4657 (4) "Benefits" means arrears of pay, bonus, pension, compensation,
 4658 insurance, and all other moneys paid or payable by the United
 4659 States through the United States Department of Veterans Affairs by
 4660 reason of service in the Armed Forces of the United States.

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4691 745.1504 Procedure for commitment of veteran to United States
 4692 Department of Veterans Affairs hospital.
 4693 The procedure for the placement into a United States Department of
 4694 Veterans Affairs hospital of a ward hereunder shall be the
 4695 procedure prescribed in s. 394.4672.
 4696
 4697 745.1505 Appointment of guardian for ward authorized.
 4698 (1) Whenever, pursuant to any law of the United States or
 4699 regulation of the United States Department of Veterans Affairs, the
 4700 secretary requires, prior to the payment of benefits, that a
 4701 guardian be appointed for a ward, the appointment may be made in
 4702 the manner hereinafter provided.
 4703 (2) When a petition is filed for the appointment of a guardian of a
 4704 minor ward, a certificate of the secretary or the secretary's
 4705 authorized representative setting forth the age of such minor, as
 4706 shown by the records of the United States Department of Veterans
 4707 Affairs, and a statement that the appointment of a guardian is a
 4708 condition precedent to the payment of any moneys due to the minor
 4709 by the United States Department of Veterans Affairs are prima facie
 4710 evidence of the necessity for such appointment.
 4711 (3) When a petition is filed for the appointment of a guardian of a
 4712 mentally incompetent ward, a certificate of the secretary or the
 4713 secretary's authorized representative, setting forth the fact that
 4714 the person has been found incompetent and has been rated
 4715 incompetent by the United States Department of Veterans Affairs, on
 4716 examination in accordance with the laws and regulations governing
 4717 the United States Department of Veterans Affairs, and that the
 4718 appointment of a guardian is a condition precedent to the payment
 4719 of any moneys due to such person by the United States Department of

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4661 (5) "Estate" means income on hand and assets acquired in whole or
 4662 in part with income.
 4663 (6) "Guardian" means any person acting as a fiduciary for a ward's
 4664 person or the ward's estate, or both.
 4665 (7) "Income" means moneys received from the United States
 4666 Department of Veterans Affairs as benefits, and revenue or profit
 4667 from any property acquired in whole or in part with such moneys.
 4668 (8) "Person" means an individual, a partnership, a corporation, or
 4669 an association.
 4670 (9) "United States Department of Veterans Affairs" means the United
 4671 States Department of Veterans Affairs or its predecessors or
 4672 successors.
 4673 (10) "Ward" means a beneficiary of the United States Department of
 4674 Veterans Affairs.
 4675
 4676 745.1503 Secretary of Veterans Affairs as party in interest.
 4677 The Secretary of Veterans Affairs shall be a party in interest in
 4678 any proceeding for the appointment or removal of a guardian or for
 4679 the removal of the disability of minority or mental incapacity of a
 4680 ward, and in any suit or other proceeding affecting in any manner
 4681 the administration by the guardian of the estate of any present or
 4682 former ward whose estate includes assets derived in whole or in
 4683 part from benefits heretofore or hereafter paid by the United
 4684 States Department of Veterans Affairs. Not less than 15 days prior
 4685 to hearing in such matter, notice in writing of the time and place
 4686 thereof shall be given by mail (unless waived in writing) to the
 4687 office of the United States Department of Veterans Affairs having
 4688 jurisdiction over the area in which any such suit or any such
 4689 proceeding is pending.
 4690

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4720 Veterans Affairs, is prima facie evidence of the necessity for such
 4721 appointment.
 4722
 4723 745.1506 Petition for appointment of guardian.
 4724 (1) A petition for the appointment of a guardian may be filed in
 4725 any court of competent jurisdiction by, or on behalf of, any person
 4726 who under existing law is entitled to priority of appointment. If
 4727 no person is so entitled, or if the person so entitled neglects or
 4728 refuses to file such a petition within 30 days after the mailing of
 4729 notice by the United States Department of Veterans Affairs to the
 4730 last known address of such person, indicating the necessity for
 4731 filing the petition, a petition for such appointment may be filed
 4732 in any court of competent jurisdiction by, or on behalf of, any
 4733 responsible person residing in this state.
 4734 (2)(a) The petition for appointment shall set forth:
 4735 1. The name, age, and place of residence of the ward;
 4736 2. The names and places of residence of the nearest relative, if
 4737 known;
 4738 3. The fact that the ward is entitled to receive moneys payable by
 4739 or through the United States Department of Veterans Affairs;
 4740 4. The amount of moneys then due and the amount of probable future
 4741 payments;
 4742 5. The name and address of the person or institution, if any,
 4743 having actual custody of the ward; and
 4744 6. The name, age, relationship, if any, occupation, and address of
 4745 the proposed guardian.
 4746 (b) In the case of a mentally incompetent ward, the petition shall
 4747 show that the ward has been found incompetent and has been rated
 4748 incompetent on examination by the United States Department of

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4749 Veterans Affairs, in accordance with the laws and regulations
 4750 governing the United States Department of Veterans Affairs.
 4751
 4752 745.1507 Notice by court of petition filed for appointment of
 4753 guardian.
 4754 (1) When a petition for the appointment of a guardian has been
 4755 filed pursuant to s. 745.1506, the court shall cause such notice to
 4756 be given as provided by the general guardianship law. In addition,
 4757 notice of the petition shall be given to the office of the United
 4758 States Department of Veterans Affairs having jurisdiction over the
 4759 area in which the court is located.
 4760 (2) A copy of the petition provided for in s. 745.1506 shall be
 4761 mailed by the clerk of the court to the person or persons for whom
 4762 a guardian is to be appointed, the clerk of court mailing the copy
 4763 of the petition to the last known address of such person or persons
 4764 not less than 5 days prior to the date set for the hearing of the
 4765 petition by the court.
 4766
 4767 745.1508 Persons who may be appointed guardian.
 4768 (1) Notwithstanding any law with respect to priority of persons
 4769 entitled to appointment, or nomination in the petition, the court
 4770 may appoint some other individual or a bank or trust company as
 4771 guardian if the court determines that the appointment of the other
 4772 individual or bank or trust company would be in the best interest
 4773 of the ward.
 4774 (2) It is unlawful for a circuit judge to appoint either herself or
 4775 himself, or a member of her or his family, as guardian for any
 4776 person entitled to the benefits provided for in 38 U.S.C., as
 4777 amended, except in a case when the person entitled to such benefits
 4778 is a member of the family of the circuit judge involved.

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4809 right to receive for the account of the ward any moneys due from
 4810 the United States Government in the way of arrears of pay, bonus,
 4811 compensation or insurance, or other sums due by reason of his or
 4812 her service (or the service of the person through whom the ward
 4813 claims) in the Armed Forces of the United States and any other
 4814 moneys due from the United States Government, payable through its
 4815 agencies or entities, together with the income derived from
 4816 investments of these moneys.
 4817
 4818 745.1512 Guardian's application of estate funds for support and
 4819 maintenance of person other than ward.
 4820 A guardian shall not apply any portion of the estate of her or his
 4821 ward to the support and maintenance of any person other than her or
 4822 his ward, except upon order of the court after a hearing, notice of
 4823 which has been given to the proper office of the United States
 4824 Department of Veterans Affairs as provided in s. 745.1513.
 4825
 4826 745.1513 Petition for support, or support and education, of ward's
 4827 dependents; payments of apportioned benefits prohibit contempt
 4828 action against veteran.
 4829 (1) Any person who is dependent on a ward for support may petition
 4830 a court of competent jurisdiction for an order directing the
 4831 guardian of the ward's estate to contribute from the estate of the
 4832 ward to the support, or support and education, of the dependent
 4833 person, when the estate of the ward is derived in whole or in part
 4834 from payments of compensation, adjusted compensation, pension,
 4835 insurance, or other benefits made directly to the guardian of the
 4836 ward by the United States Department of Veterans Affairs. A notice
 4837 of the application for support, or support and education, shall be
 4838 given by the applicant to the office of the United States

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4779
 4780 745.1509 Bond of guardian.
 4781 When the appointment of a guardian is made, the guardian shall
 4782 execute and file a bond to be approved by the court in an amount
 4783 not less than the sum of the amount of moneys then due to the ward
 4784 and the amount of moneys estimated to become payable during the
 4785 ensuing year. The bond shall be in the form, and shall be
 4786 conditioned, as required of guardians appointed under the general
 4787 guardianship laws of this state. The court has the power to
 4788 require, from time to time, the guardian to file an additional
 4789 bond.
 4790
 4791 745.1510 Inventory of ward's property; guardian's failure to file
 4792 inventory; discharge; forfeiture of commissions.
 4793 Every guardian shall, within 30 days after his or her qualification
 4794 and whenever subsequently required by the circuit judge, file in
 4795 the circuit court a complete inventory of all the ward's personal
 4796 property in his or her hands and, also, a schedule of all real
 4797 estate in the state belonging to his or her ward, describing it and
 4798 its quality, whether it is improved or not, and, if it is improved,
 4799 in what manner, and the appraised value of same. The failure on the
 4800 part of the guardian to conform to the requirements of this section
 4801 is a ground for the discharge of the guardian, in which case the
 4802 guardian shall forfeit all commissions.
 4803
 4804 745.1511 Guardian empowered to receive moneys due ward from the
 4805 United States Government.
 4806 A guardian appointed under the provisions of s. 745.1506 may
 4807 receive income and benefits payable by the United States through
 4808 the United States Department of Veterans Affairs and also has the

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4839 Department of Veterans Affairs having jurisdiction over the area in
 4840 which the court is located at least 15 days before the hearing on
 4841 the application.
 4842 (2) The grant or denial of an order for support, or support and
 4843 education, does not preclude a further petition for an increase,
 4844 decrease, modification, or termination of the allowance for such
 4845 support, or support and education, by either the petitioner or the
 4846 guardian.
 4847 (3) The order for the support, or support and education, of the
 4848 petitioner is valid for any payment made pursuant to the order, but
 4849 no valid payment can be made after the termination of the
 4850 guardianship. The receipt of the petitioner shall be a sufficient
 4851 release of the guardian for payments made pursuant to the order.
 4852 (4) When a claim for apportionment of benefits filed with the
 4853 United States Department of Veterans Affairs on behalf of a
 4854 dependent or dependents of a disabled veteran is approved by the
 4855 United States Department of Veterans Affairs, subsequent payments
 4856 of such apportioned benefits by the United States Department of
 4857 Veterans Affairs prohibit an action for contempt from being
 4858 instituted against the veteran.
 4859
 4860 745.1514 Exemption of benefits from claims of creditors.
 4861 Except as provided by federal law, payments of benefits from the
 4862 United States Department of Veterans Affairs or the Social Security
 4863 Administration to or for the benefit of a disabled veteran or the
 4864 veteran's surviving spouse or dependents are exempt from the claims
 4865 of creditors and shall not be liable to attachment, levy, or
 4866 seizure by or under any legal or equitable process whatever, either
 4867 before or after the receipt of the payments by the guardian or the
 4868 beneficiary.

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4869
 4870 745.1515 Investment of funds of estate by guardian.
 4871 Every guardian shall invest the funds of the estate in such manner
 4872 or in such securities, in which the guardian has no interest, as
 4873 allowed by chapter 518.
 4874
 4875 745.1516 Guardian's petition for authority to sell ward's real
 4876 estate; notice by publication; penalties.
 4877 (1) When a guardian of the estate of a minor or an incompetent
 4878 ward, which guardian has the control or management of any real
 4879 estate that is the property of such minor or incompetent, deems it
 4880 necessary or expedient to sell all or part of the real estate, the
 4881 guardian shall apply, either in term time or in vacation by
 4882 petition to the judge of the circuit court for the county in which
 4883 the real estate is situated, for authority to sell all or part of
 4884 the real estate. If the prayer of the petition appears to the judge
 4885 to be reasonable and just and financially beneficial to the estate
 4886 of the ward, the judge may authorize the guardian to sell the real
 4887 estate described in the petition under such conditions as the
 4888 interest of the minor or incompetent may, in the opinion of the
 4889 judge, seem to require.
 4890 (2) The authority to sell the real estate described in the petition
 4891 shall not be granted unless the guardian has given previous notice,
 4892 published once a week for 4 successive weeks in a newspaper
 4893 published in the county where the application is made, of his or
 4894 her intention to make application to the judge for authority to
 4895 sell such real estate, the guardian setting forth in the notice the
 4896 time and place and to what judge the application will be made. If
 4897 the lands lie in more than one county, the application for such
 4898 authority shall be made in each county in which the lands lie.

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4928 to the United States Department of Veterans Affairs not less than
 4929 15 days prior to the date fixed for the hearing.
 4930 (3) The court need not appoint a guardian ad litem to represent the
 4931 ward at the hearing provided for in subsection (2). If the
 4932 residence of the next kin of the ward is known, notice by
 4933 registered mail shall be sent to such relative. Notice also shall
 4934 be served on the ward; or, if the ward is mentally incapable of
 4935 understanding the matter at issue, the notice may be served on the
 4936 person in charge of the institution where the ward is detained, or
 4937 on the person having charge or custody of the ward.
 4938 (4) When a hearing on an account is required by the court or
 4939 requested in the petition of an interested party as provided in
 4940 subsection (2), the judge of the court on the day of the hearing as
 4941 provided for in subsection (2) shall carefully examine the vouchers
 4942 and audit and state the account between the guardian and ward.
 4943 Proper evidence shall be required in support of any voucher or item
 4944 of the account that may appear to the court not to be just and
 4945 proper, such evidence to be taken by affidavit or by any other
 4946 legal mode. If any voucher is rejected, the item or items covered
 4947 by the disapproval of any voucher or vouchers shall be taxed
 4948 against the guardian personally. After such examination, the court
 4949 shall render a decree upon the account, which shall be entered on
 4950 the record, and the account and vouchers shall be filed. Such
 4951 partial settlement shall be taken and presumed as correct on final
 4952 settlement of the guardianship.
 4953 (5) If a guardian fails to file any account of the moneys received
 4954 by him or her from the United States Department of Veterans Affairs
 4955 on account of his or her ward within 30 days after such account is
 4956 required by either the court or the United States Department of
 4957 Veterans Affairs, or fails to furnish the United States Department

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4899 (3) The failure on the part of the guardian to comply with the
 4900 provisions of this section makes the guardian and the guardian's
 4901 bond agents individually responsible for any loss that may accrue
 4902 to the estate of the ward involved, and is a ground for the
 4903 immediate removal of such guardian as to his or her functions, but
 4904 does not discharge the guardian as to his or her liability or
 4905 discharge the liabilities of his or her sureties.
 4906
 4907 745.1517 Guardian's accounts, filing with court and certification
 4908 to United States Department of Veterans Affairs; notice and hearing
 4909 on accounts; failure to account.
 4910 (1) Every guardian who receives on account of his or her ward any
 4911 moneys from the United States Department of Veterans Affairs shall
 4912 annually file with the court on the anniversary date of the
 4913 appointment, in addition to such other accounts as may be required
 4914 by the court, a full, true, and accurate account under oath, which
 4915 account is an account of all moneys so received by him or her and
 4916 of all disbursements from such moneys, and which account shows the
 4917 balance of the moneys in his or her hands at the date of such
 4918 filing and shows how the moneys are invested. A certified copy of
 4919 each of such accounts filed with the court shall be sent by the
 4920 guardian to the office of the United States Department of Veterans
 4921 Affairs having jurisdiction over the area in which such court is
 4922 located. If the requirement of certification is waived in writing
 4923 by the United States Department of Veterans Affairs, an uncertified
 4924 copy of each of such accounts shall be sent.
 4925 (2) The court, at its discretion or upon the petition of an
 4926 interested party, shall fix a time and place for the hearing on
 4927 such account; and notice of the hearing shall be given by the court

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4958 of Veterans Affairs a copy of his or her accounts as required by
 4959 subsection (1), such failure shall be a ground for the removal of
 4960 the guardian.
 4961
 4962 745.1518 Certified copies of public records made available.
 4963 When a copy of any public record is required by the United States
 4964 Department of Veterans Affairs to be used in determining the
 4965 eligibility of any person to participate in benefits made available
 4966 by the United States Department of Veterans Affairs, the official
 4967 charged with the custody of such public record shall, without
 4968 charge, provide to the applicant for such benefits or any person
 4969 acting on her or his behalf, or to the authorized representative of
 4970 the United States Department of Veterans Affairs, a certified copy
 4971 of such record. For each and every certified copy so furnished by
 4972 the official, the official shall be paid by the board of county
 4973 commissioners the fee provided by law for copies.
 4974
 4975 745.1519 Clerk of the circuit court; fees; duties.
 4976 Upon the filing of the petition for guardianship, granting of same,
 4977 and entering decree thereon, the clerk of the circuit court is
 4978 entitled to the service charge as provided by law, which shall
 4979 include the cost of recording the petition, bond, and decree and
 4980 the issuing of letters of guardianship. The certificate of the
 4981 secretary or the secretary's authorized representative provided for
 4982 in s. 745.1505 need not be recorded but must be kept in the file.
 4983 Upon issuing letters of guardianship or letters appointing a
 4984 guardian for the estate of a minor or incompetent, the clerk of the
 4985 circuit court shall send to the regional office of the United
 4986 States Department of Veterans Affairs having jurisdiction in this
 4987 state two certified copies of the letters and two certified copies

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4988 of the bond approved by the court, without charge or expense to the
 4989 estate involved. The clerk of the circuit court shall also send a
 4990 certified copy of such letters to the property appraiser and to the
 4991 tax collector in each county in which the ward owns real property.
 4992
 4993 745.1520 Attorney's fee.
 4994 The fee for the attorney filing the petition and conducting the
 4995 proceedings shall be fixed by the court in an amount as small as
 4996 reasonably possible, not to exceed \$250. However, this section is
 4997 not to be interpreted to exclude a petition for extraordinary
 4998 attorney's fees, properly filed, and if approved by the United
 4999 States Department of Veterans Affairs, does not necessitate a
 5000 hearing before the court for approval, but the court shall enter
 5001 its order for withdrawal of said attorney's fees from the ward's
 5002 guardianship account accordingly.
 5003
 5004 745.1521 Guardian's compensation; bond premiums.
 5005 The amount of compensation payable to a guardian shall not exceed 5
 5006 percent of the income of the ward during any year and may be taken,
 5007 by the guardian, on a monthly basis. In the event of extraordinary
 5008 services rendered by such guardian, the court may, upon petition
 5009 and after hearing on the petition, authorize additional
 5010 compensation for the extraordinary services, payable from the
 5011 estate of the ward. Provided that extraordinary services approved
 5012 by the United States Department of Veteran's Affairs do not require
 5013 a court hearing for approval of the fees, but shall require an
 5014 order authorizing the guardian to withdraw the amount from the
 5015 guardianship account. No compensation shall be allowed on the
 5016 corpus of an estate received from a preceding guardian. The
 5017 guardian may be allowed from the estate of her or his ward

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5048 745.1524 Notice of appointment of general guardian; closing of
 5049 veteran's guardianship; transfer of responsibilities and penalties
 5050 to general guardian.
 5051 When the appointment of a general guardian has been made in the
 5052 proper court and such guardian has qualified and taken charge of
 5053 the other property of the ward, the general guardian shall file
 5054 notice of such appointment in the court in which the veteran's
 5055 guardianship is pending and have the veteran's guardianship settled
 5056 up and closed so that the general guardian may take charge of the
 5057 moneys referred to and described in ss. 745.1505(2) and (3) and
 5058 745.1511. When the appointment of a general guardian, whether for
 5059 an incompetent or minor child or another beneficiary entitled to
 5060 the benefits provided in 38 U.S.C., as amended, has been confirmed
 5061 by the court having jurisdiction, such general guardian is
 5062 responsible and is subject to the provisions and penalties
 5063 contained in 38 U.S.C., as amended, as well as the requirements
 5064 pertaining to guardians as set forth in this part.
 5065
 5066 745.1525 Construction and application of part.
 5067 This part shall be construed liberally to secure the beneficial
 5068 intents and purposes of this part and applies only to beneficiaries
 5069 of the United States Department of Veterans Affairs. It shall be so
 5070 interpreted and construed as to effectuate its general purpose of
 5071 making the welfare of such beneficiaries the primary concern of
 5072 their guardians and of the court.
 5073
 5074 745.1526 Annual guardianship report.
 5075 Guardians appointed under the Veterans' Guardianship Law shall not
 5076 be required to comply with the provisions of s. 745.805 or s.
 5077 745.813.

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5018 reasonable premiums paid by the guardian to any corporate surety
 5019 upon the guardian's bond.
 5020
 5021 745.1522 Discharge of guardian of minor or incompetent ward.
 5022 When a minor ward, for whom a guardian has been appointed under the
 5023 provisions of this part or other laws of this state, attains his or
 5024 her majority and, if such minor ward has been incompetent, is
 5025 declared competent by the United States Department of Veterans
 5026 Affairs and the court, or when an incompetent ward who is not a
 5027 minor is declared competent by the United States Department of
 5028 Veterans Affairs and the court, the guardian shall, upon making a
 5029 satisfactory accounting, be discharged upon a petition filed for
 5030 that purpose.
 5031
 5032 745.1523 Final settlement of guardianship; notice required;
 5033 guardian ad litem fee; papers required by United States Department
 5034 of Veterans Affairs.
 5035 On the final settlement of the guardianship, the notice provided
 5036 herein for partial settlement must be given and the other
 5037 proceedings conducted as in the case of partial settlement, except
 5038 that a guardian ad litem may be appointed to represent the ward,
 5039 the fee of which guardian ad litem shall in no case exceed \$150.
 5040 However, if the ward has been pronounced competent, is shown to be
 5041 mentally sound, appears in court, and is 18 years of age, the
 5042 settlement may be had between the guardian and the ward under the
 5043 direction of the court without notice to the next of kin, or the
 5044 appointment of a guardian ad litem. A certified copy of the final
 5045 settlement so made in every case must be filed with the United
 5046 States Department of Veterans Affairs by the clerk of the court.
 5047

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5078
 5079 Section 16. Chapter 744 is repealed.
 5080
 5081 Section 17. This act shall take effect on July 1, 2020 and
 5082 shall apply to all proceedings pending before such date and all
 5083 proceedings commenced on or after the effective date.
 5084

1 **732.507 Effect of subsequent marriage, birth, adoption, or dissolution of marriage.**

2 (1) Neither subsequent marriage, birth, nor adoption of descendants shall revoke the prior will
3 of any person, but the pretermitted child or spouse shall inherit as set forth in ss. 732.301 and
4 732.302, regardless of the prior will.

5 (2) Any provision of a will ~~executed by a married person~~ that affects the testator's spouse ~~of~~
6 ~~that person shall become~~ is void upon ~~the divorce of that person or upon the dissolution or~~
7 ~~annulment of of marriage of the testator and such spouse, whether the marriage occurred before or~~
8 ~~after the marriage. After the execution of such will. Upon dissolution, divorce, or annulment of~~
9 ~~marriage,~~ the will shall be ~~administered and~~ construed as if ~~the former~~ such spouse ~~had~~ died at the
10 time of the dissolution, ~~divorce, or annulment~~ of ~~the~~ marriage, ~~unless.~~

11 (a) Dissolution of marriage occurs at the time the decedent's marriage is judicially dissolved
12 or declared invalid by court order.

13 (b) This subsection (2) shall not apply to invalidate a provision of a will or:

- 14 1. Executed by the testator after the dissolution or divorce of the marriage;
- 15 2. If there is a specific intention to the contrary stated in the will; or
- 16 3. If the dissolution of marriage judgment expressly provides otherwise.

1 **736.1105 ~~Dissolution of marriage; effect on revocable trust.~~** — Unless the trust instrument
2 ~~or the judgment for dissolution of marriage or divorce expressly provides otherwise, if a revocable~~
3 ~~trust is executed by a husband or wife as settlor prior to annulment of the marriage or entry of a~~
4 ~~judgment for dissolution of marriage or divorce of the settlor from the settlor's spouse, any~~
5 ~~provision of the trust that affects the settlor's spouse will become void upon annulment of the~~
6 ~~marriage or entry of the judgment of dissolution of marriage or divorce and any such trust shall be~~
7 ~~administered and construed as if the settlor's spouse had died on the date of the annulment or on~~
8 ~~entry of the judgment for dissolution of marriage or divorce.~~ **Effect of subsequent marriage,**
9 **birth, adoption, or dissolution of marriage.**

10 (1) Neither subsequent marriage, birth, nor adoption of descendants shall revoke the revocable
11 trust of any person.

12 (2) Any provision of a revocable trust that affects the settlor's spouse is void upon dissolution
13 of marriage of the settlor and such spouse, whether the marriage occurred before or after the
14 execution of such revocable trust. Upon dissolution of marriage, the revocable trust shall be
15 construed as if such spouse died at the time of the dissolution of marriage.

16 (a) Dissolution of marriage occurs at the time the decedent's marriage is judicially dissolved
17 or declared invalid by court order.

18 (b) This subsection (2) shall not apply to invalidate a provision of a revocable trust:

19 1. Executed by the settlor after the dissolution of the marriage;

20 2. If there is a specific intention to the contrary stated in the revocable trust; or

21 3. If the dissolution of marriage judgment expressly provides otherwise.

Real Property, Probate and Trust Law Section of The Florida Bar
White Paper
Proposed Revisions to Sections 732.507 and 736.1105, *Florida Statutes*

I. SUMMARY.

The proposed legislation would revise and restate Sections 732.507 and 736.1105, *Florida Statutes*, to clarify that the provisions of a will or revocable trust that provide for a former spouse shall be disregarded regardless of whether the instrument was executed prior to the marriage or during the marriage, unless otherwise saved by clear intent to the contrary or by court order.

II. CURRENT SITUATION.

The Will statute: Current §732.507, *Florida Statutes*, dealing with the effect of subsequent dissolution of marriage, provides under subsection (2) in pertinent part:

“Any provision of a will executed by a married person that affects the spouse of that person shall become void upon divorce.... After the ... divorce ... the will shall be administered and construed as if the former spouse had died at the time of ... divorce ... unless the will or the dissolution or divorce judgment expressly provides otherwise.” [*underline emphasis added.*]

The Trust statute: Section 736.1105, dealing with the effect of subsequent dissolution of marriage as to a trust provision, provides under subsection (2) in pertinent part:

“736.1105 Dissolution of marriage; effect on revocable trust. Unless the trust instrument or the judgment for dissolution of marriage or divorce expressly provides otherwise, if a revocable trust is executed by a husband or wife as settlor prior to annulment of the marriage or entry of a judgment for dissolution of marriage or divorce of the settlor from the settlor’s spouse, any provision of the trust that affects the settlor’s spouse will become void upon annulment of the marriage or entry of the judgment of dissolution of marriage or divorce and any such trust shall be administered and construed as if the settlor’s spouse had died on the date of the annulment or on entry of the judgment for dissolution of marriage or divorce.” [*underline emphasis added.*]

Section 732.703 deals with the effect of divorce, essentially in beneficiary designations and pay-on-death/transfer-on-death situations. Subsection 2 of that statute provides that:

“A designation made by or on behalf of the decedent providing for the payment or transfer at death of an interest in an asset to or for the benefit of the decedent’s former spouse is void as of the time the decedent’s marriage was judicially dissolved or declared invalid by court order prior to the decedent’s death....”

A clear and important distinction between the two Will and Trust statutes at issue is that neither of those statutes contains requirement that the disposition at death *be made during the marriage*. Instead, §732.703 simply provides that any such designation to or for the benefit of an ex-spouse, whenever made, is void (unless otherwise saved, ratified or judicially required, for example).

In 2018 DCA case, *Gordon v. Fishman* (253 So. 3d 1218, 2^d DCA 2018), an unmarried testator executed a will that included a devise to his fiancée. The testator married his fiancée, then divorced, then died without changing his will. The 2^d DCA in the *Gordon* case held that §732.507(2) is not applicable to treat the ex-spouse as predeceasing the testator because the will was not made *while the decedent was married*. The court simply points to the statutory requirement that for §732.507(2) to apply, the will must have been executed *during marriage*. The unintended consequence is that the ex-spouse *does* inherit under the will, simply because the will was executed prior to marriage.

Absent a specific intention expressed in the will, or savings provision such as ratification or judicial requirement incidental to divorce, an ex-spouse should be treated as predeceasing the testator or trust settlor – regardless of when the will or revocable trust is executed.

III. EFFECT OF PROPOSED CHANGES GENERALLY.

The proposed revisions to the statutes would clarify that the devise by a decedent to an ex-spouse under will or revocable trust would be rendered void, unless otherwise saved by court order, agreement or specific contrary indication, regardless of whether the testator or trust settlor was married to the ex-spouse at the time of the devise.

IV. ANALYSIS.

Section 732.507(2) will be clarified by eliminating the provision “executed by a married person,” with the following:

(2) Any provision of a will that affects the testator’s spouse is void upon dissolution of marriage of the testator and such spouse, whether the marriage occurred before or after the execution of such will. Upon dissolution of marriage, the will shall be construed as if such spouse died at the time of the dissolution of marriage.

The current statute refers to divorce in an awkward manner. The statute could be clarified by using the definition of divorce under Chapter 61. To do so, the following subparagraph (a) is recommended to be added to §732.507(2):

(a) Dissolution of marriage occurs at the time the decedent’s marriage is judicially dissolved or declared invalid by court order.

Lastly, the circumstances where the statutory presumption of predeceasing *do not* apply should be clarified as subparagraph (b) to §732.507(2):

(b) This subsection (2) shall not apply to invalidate a provision of a will:

1. Executed by the testator after the dissolution of the marriage;
2. If there is a specific intention to the contrary stated in the will; or
3. If the dissolution of marriage judgment expressly provides otherwise.

Altogether, *the Will statute proposed revision to section 732.507*, is as follows:

732.507. Effect of subsequent marriage, birth, adoption, or dissolution of marriage.

(1) Neither subsequent marriage, birth, nor adoption of descendants shall revoke the prior will of any person, but the pretermitted child or spouse shall inherit as set forth in ss. 732.301 and 732.302, regardless of the prior will.

(2) Any provision of a will that affects the testator’s spouse is void upon dissolution of marriage of the testator and such spouse, whether the

marriage occurred before or after the execution of such will. Upon dissolution of marriage, the will shall be construed as if such spouse died at the time of the dissolution of marriage.

(a) Dissolution of marriage occurs at the time the decedent's marriage is judicially dissolved or declared invalid by court order.

(b) This subsection (2) shall not apply to invalidate a provision of a will:

1. Executed by the testator after the dissolution of the marriage;

2. If there is a specific intention to the contrary stated in the will; or

3. If the dissolution of marriage judgment expressly provides otherwise.

The Trust Code section should also be revised in the same manner, and the ***proposed revised §736.1105*** is as follows:

736.1105. Effect of subsequent marriage, birth, adoption, or dissolution of marriage.

(1) Neither subsequent marriage, birth, nor adoption of descendants shall revoke the revocable trust of any person.

(2) Any provision of a revocable trust that affects the settlor's spouse is void upon dissolution of marriage of the settlor and such spouse, whether the marriage occurred before or after the execution of such revocable trust. Upon dissolution of marriage, the revocable trust shall be construed as if such spouse died at the time of the dissolution of marriage.

(a) Dissolution of marriage occurs at the time the decedent's marriage is judicially dissolved or declared invalid by court order.

(b) This subsection (2) shall not apply to invalidate a provision of a revocable trust:

1. Executed by the settlor after the dissolution of the marriage;

2. If there is a specific intention to the contrary stated in the revocable trust; or

3. If the dissolution of marriage judgment expressly provides otherwise.

The recommended statutory revisions do not impact descendants or heirs of the ex-spouse.

Because the modification (and the existing statute) invalidates any provision of a will or revocable trust that affects the ex-spouse, this includes the right to serve as fiduciary.

The present Will and Trust statutes are inadequate and leave a trap for the unwary at the conclusion of what is typically a stressful time – divorce. A divorced party such as the decedent in *Gordon* would need to know that, although the Probate Code solves the problem of having provided for a former spouse, it only applies if the will or revocable trust was executed during the marriage. Once revised the statutes will clarify that a provision under a will or revocable trust that affects an ex-spouse is void regardless of whether the instrument was executed before or during the marriage, unless otherwise saved through specific intent or court order.

The proposed statutory revisions address the anomalous situation illustrated in *Gordon v. Fishman* – where the ex-spouse of a deceased testator or settlor takes under the will or revocable trust simply because the testamentary instrument was executed prior to the marriage. Amending §732.507 and §736.1105 in that manner will harmonize the statutes with §732.703, which makes no reference to marital status of the decedent, and eliminates this unintended consequence.

This legislative action is not regarded as remedial, and if enacted would only apply to decedents dying after the effective date.

V. **FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS** – None.

VI. **DIRECT IMPACT ON PRIVATE SECTOR** – None.

VII. **CONSTITUTIONAL ISSUES** – None apparent.

VIII. **OTHER INTERESTED PARTIES** – Elder Law, Family Law.



The Florida Bar

651 East Jefferson Street
Tallahassee, FL 32399-2300

Joshua E. Doyle
Executive Director

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LEGISLATIVE OR POLITICAL POSITION REQUEST FORM

GENERAL INFORMATION

Submitted by: *(list name of section, division, committee, TFB group, or individual name)*

M. Travis Hayes, Chair, Probate Law and Procedure Committee, RPPTL

Address: *(address and phone #)* 5551 Ridgewood Drive, Suite 501, Naples, FL 34108
239/514-1000 extension 2015

Position Level: *(TFB section/division/committee)* TFB RPPTL/Probate/Probate Law and Procedure

PROPOSED ADVOCACY

- All requests for legislative and political positions must be presented to the Board of Governors by completing this form and attaching a copy of any existing or proposed legislation or a detailed presentation of the issue.
- Select Section I below if the issue is legislative, II if the issue is political. Regardless, Section III must be completed.

If Applicable, List the Following:

(Bill or PCB #)

(Sponsor)

Indicate Position: Support Oppose Technical or Other Non-Partisan Assistance

I. Proposed Wording of Legislative Position for Official Publication

To support revisions to Sections 732.507 and 736.1105, Florida Statutes, to clarify uncertainty contained within the Florida Probate Code and the Florida Trust Code, dealing with devises through will or trust to the former spouse of a decedent.

II. Political Proposals:

III. Reasons For Proposed Advocacy:

A. Is the proposal consistent with *Keller vs. State Bar of California*, 110 S. Ct. 2228 (1990), and *The Florida Bar v. Schwarz*, 552 So. 2d 1094 (Fla. 1981)?

Yes.

B. Which goal or objective of the Bar's strategic plan is advanced by the proposal?

N/A

C. Does the proposal relate to: (check all that apply).

- Regulating the profession.
- Improving the quality of legal services
- Improving the functioning of the system of justice
- Increasing the availability of legal services to the public
- Regulation of trust accounts
- Education, ethics, competency, and integrity of the legal profession

D. Additional information:

The proposed statutory revisions address the anomalous situation illustrated in *Gordon v. Fishman* — where the ex-spouse of a deceased testator or settlor takes under the will or revocable trust simply because the testamentary instrument was executed prior to the marriage. Amending §732.607 and §736.1106 in that manner will harmonize the statutes with §732.703, which makes no reference to marital status of the decedent, and eliminates this unintended consequences.

PRIOR POSITIONS TAKEN ON THIS ISSUE

Please indicate any prior Bar or section/divisions/committee positions on this issue, to include opposing positions. Contact the Governmental Affairs office if assistance is needed in completing this portion of the request form.

Most Recent Position

_____	_____	_____
TFB Section/Division/Committee	Support/Oppose	Date

Others (attach list if more than one)

_____	_____	_____
TFB Section/Division/Committee	Support/Oppose	Date

REFERRALS TO OTHER SECTIONS, COMMITTEES OR LEGAL ORGANIZATIONS

A request for action on a position must be circulated to sections and committees that might be interested in the issue. The Legislation Committee and Board of Governors may delay final action on a request if the below section is not completed. Please attach referrals and responses to this form. If you do not believe other sections and committees are affected and you did not circulate this form to them, please provide details below.

Referrals

Name of Group or Organization	Support, Oppose or No-Position
Florida Bar Family Law Section	
Florida Bar Elder Law Section	

Reasons for Non-Referrals:

CONTACTS

Board & Legislation Committee Appearance *(list name, address and phone #)*

Jon Scuderi, Legislative Co-Chair of the RPPTL Section
 850 Park Shore Drive, Suite 203, Naples, FL 34102
 239/436-1988

Appearances before Legislators *(list name and phone # of those having direct contact before House/Senate committees)*

Peter M. Dunbar and Martha Edenfield; Dean Mead & Dunbar, P.A.
 215 South Monroe Street, Suite 815, Tallahassee, FL 32501
 850/999-4100

Meetings with Legislators/staff *(list name and phone # of those having direct contact with legislators)*

Same

Submit this form and attachments to the Office of General Counsel of The Florida Bar - <mailto:jhooks@floridabar.org>; (850) 561-5662. Upon receipt, staff will schedule your request for final Bar action; this may involve a separate appearance before the Legislation Committee unless otherwise advised.

A bill to be entitled

An act permitting personal representatives to post a fiduciary bond in lieu of the imposition of a restricted depository account.

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

Section 1. Section 69.031, Florida Statutes, is revised to read:

69.031 Designated financial institutions for assets property in hands of guardians, curators, administrators, trustees, receivers, or other officers.—

(1) When it is expedient in the judgment of any court having jurisdiction of any estate in process of administration by any guardian, curator, executor, administrator, trustee, receiver, or other officer, because the size of the bond required of the officer is burdensome or for other cause, the court may order part or all of the personal assets property of the estate placed with a bank, trust company, or savings and loan association (which savings and loan association is a member of the Federal Savings and Loan Insurance Corporation and doing business in this state) designated by the court, consideration being given to any bank, trust company or savings and loan association proposed by the officer. Notwithstanding the foregoing, in probate proceedings and in accordance with s. 733.402, the court shall allow the officer at any time to elect to post and maintain bond for the value of the personal property (or such other reasonable amount determined by the court) whereupon the court shall vacate or terminate any order establishing the depository. When the assets property are is placed with the designated financial institution, it shall file a receipt therefor in the name of the estate and give the officer a copy. Such receipt shall acknowledge the assets property

received by the financial institution. All interest, dividends, principal and other debts collected by the financial institution on account thereof shall be held by the financial institution in safekeeping, subject to the instructions of the officer authorized by order of the court directed to the financial institution.

(2) Accountings shall be made to the officer at reasonably frequent intervals. After the receipt for the original assets has been filed by the financial institution, the court shall waive the bond given or to be given or reduce it so that it shall apply only to the estate remaining in the hands of the officer, whichever the court deems proper.

(3) When the court has ordered any assets of an estate to be placed with a designated financial institution, any person or corporation having possession or control of any of the assets, or owing interest, dividends, principal or other debts on account thereof, shall pay and deliver such assets, interest, dividends, principal and other debts to the financial institution on its demand whether the officer has duly qualified or not, and the receipt of the financial institution relieves the person or corporation from further responsibility therefor.

(4) Any bank, trust company, or savings and loan association which is designated under this section, may accept or reject the designation in any instance, and shall file its acceptance or rejection with the court making the designation within 15 days after actual knowledge of the designation comes to the attention of the financial institution, and if the financial institution accepts, it shall be allowed a reasonable amount for its services and expenses which the court may allow as a charge against the assets placed with the financial institution.

Section 2. This act shall take effect upon becoming law.

WHITE PAPER

Proposed Revisions to §69.031, Florida Statutes

I. SUMMARY

The proposed amendments to §69.031, Florida Statutes permit personal representatives to post a fiduciary bond in lieu of the imposition of a restricted depository account. This legislation promotes Florida's strong public policy of a speedy and efficient resolution of probates, ensures uniformity of estate administration among Florida's various counties, protects the interests of estate beneficiaries and creditors, and effectuates testamentary intent granting broad administrative powers to personal representatives. The bill does not have a fiscal impact on state funds.

II. CURRENT SITUATION

Currently, §69.031(1), Florida Statutes provides:

When it is expedient in the judgment of any court having jurisdiction of any estate in process of administration by any guardian, curator, executor, administrator, trustee, receiver, or other officer, *because the size of the bond required of the officer is burdensome or for other cause, the court may order part or all of the personal assets of the estate placed with a bank, trust company, or savings and loan association*

In several circuit courts, §69.031(1) has been used to require restricted depository accounts for all probate estates. This state of affairs was recognized and rejected by the Fourth District Court of Appeal in a recent case. Goodstein v. Goodstein, 263 So. 3d 78, 80 (Fla. 4th DCA 2019) (“The emphasized language makes it clear and unambiguous that a blanket policy providing for a depository to be used in all probate cases is improper.”). Despite that holding, the practice continues in several judicial circuits, including the Eleventh Judicial Circuit (Miami-Dade County) and the Fifteenth Judicial Circuit (Palm Beach Counties). Those two circuits alone represented nearly sixteen percent (16%) of all new probate actions in the 2017-18 fiscal year, the most recent year for which data was available at the time of this writing.¹

The practice of imposing mandatory restricted depository accounts is meant as an extraordinary remedy, applicable to only a limited number of estates, and imposed only after a court makes specific factual findings. See Goodstein at 81. Those courts ordering restricted depository accounts on all estates as a *de facto* rule not only disrupt the statutory balance between powers and duties of a personal representative, but also create a parallel probate process for decedents dying in just those counties.

A restricted depository account obliges personal representatives to obtain court approval prior to making even routine expenditures on behalf of the estate, which further clogs already strained court dockets and inevitably results in substantial delays in administration. Moreover, the accounts compel personal representatives to make the otherwise unnecessary expenditure of estate funds to pay their counsel to draft and file a pleading seeking that payment. For estates with

¹ See Florida Office of the State Courts Administrator, FY 2017-18 Statistical Reference Guide at 6-4, <https://www.flcourts.org/content/download/430407/4673785/Chapter-6-Probate-FY-2017-18.pdf> (retrieved February 23, 2020).

unhappy or apathetic beneficiaries, the practice effectively requires full (and sometimes contested) evidentiary hearings to establish the propriety of the expenditures. The cost of these additional proceedings is significant and is often substantial in relation to the overall size of estates. Residuary beneficiaries bear the burden of the increased costs, though the rights of estate creditors could be impacted as well where an estate is insolvent.

That level of court supervision of the personal representative is not contemplated by the Florida Probate Code, which, by default, grants personal representatives broad power to deal with estate assets. Testators are presumed to understand the law applicable to their last wills and testaments but cannot be presumed to know the peculiar *de facto* policies adopted by their circuit court. Those testators expect that their personal representatives will be empowered to deal with their assets in much the same way that they would during their life and testators often go through great pains to select trusted and qualified persons or institutions to serve in that role. Accordingly, testators dying in those counties have their testamentary intent impaired as a result of the mandatory restricted depository accounts.

III. EFFECT OF PROPOSED CHANGES

The proposed legislation makes two changes to §69.031, Florida Statutes. The first change is substantive and is the principal change in the proposed legislation: in situations where the probate court has properly made a determination under Goodstein that a restricted depository account is appropriate, §69.031, Florida Statutes is amended to add a provision permitting the personal representative to post and maintain a bond (for the value of the estate’s personal property or “such other reasonable amount determined by the court”) in lieu of the restricted depository account. Thus, personal representatives who are able to obtain a sufficient fiduciary bond may elect into the default statutory regime granting them the ability to freely deal in the assets of the estate. Estate beneficiaries and creditors are protected by the bond in the event of a breach by a personal representative who has insufficient assets to satisfy the judgement against him or her. All parties would benefit from reduced costs and increased efficiency.

The second change, revising “assets” to “property” is stylistic in nature, but brings the statute into conformity with the Florida Statutes, generally. While the term “personal property” appears throughout the Florida Statutes, the term “personal assets” seems only to be used to differentiation between the assets of an individual and that of an entity.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS – None.

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR – None.

VI. CONSTITUTIONAL ISSUES – None.

VII. OTHER INTERESTED PARTIES – Elder Law Section of the Florida Bar; Florida Bankers Association.





The Florida Bar

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Executive Director

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LEGISLATIVE OR POLITICAL POSITION REQUEST FORM

GENERAL INFORMATION

Submitted by: *(list name of section, division, committee, TFB group, or individual name)*

Travis Hayes, Chair, Probate Law & Procedure Committee, RPPTL

Address: *(address and phone #)*
(239) 514-1000

5551 Ridgewood Drive, Suite 501, Naples, Florida 34108

Position Level: *(TFB section/division/committee)*

FB RPPTL/Probate/Probate Law & Procedure Committee

PROPOSED ADVOCACY

- All requests for legislative and political positions must be presented to the Board of Governors by completing this form and attaching a copy of any existing or proposed legislation or a detailed presentation of the issue.
- Select Section I below if the issue is legislative, II if the issue is political. Regardless, Section III must be completed.

If Applicable, List the Following:

(Bill or PCB #)

(Sponsor)

Indicate Position: Support Oppose Technical or Other Non-Partisan Assistance

I. Proposed Wording of Legislative Position for Official Publication

Support revisions Section 69.031, Florida Statutes, permitting personal representatives to post a fiduciary bond in lieu of the imposition of a restricted depository account.

II. Political Proposals:

III. Reasons For Proposed Advocacy:

A. Is the proposal consistent with *Keller vs. State Bar of California*, 110 S. Ct. 2228 (1990), and *The Florida Bar v. Schwarz*, 552 So. 2d 1094 (Fla. 1981)?

Yes.

B. Which goal or objective of the Bar's strategic plan is advanced by the proposal?

N/A

C. Does the proposal relate to: (*check all that apply*)

- Regulating the profession
- Improving the quality of legal services
- Improving the functioning of the system of justice
- Increasing the availability of legal services to the public
- Regulation of trust accounts
- Education, ethics, competency, and integrity of the legal profession

D. Additional Information:

PRIOR POSITIONS TAKEN ON THIS ISSUE

Please indicate any prior Bar or section/divisions/committee positions on this issue, to include opposing positions. Contact the Governmental Affairs office if assistance is needed in completing this portion of the request form.

Most Recent Position

_____	_____	_____
TFB Section/Division/Committee	Support/Oppose	Date

Others (*attach list if more than one*)

_____	_____	_____
TFB Section/Division/Committee	Support/Oppose	Date

REFERRALS TO OTHER SECTIONS, COMMITTEES OR LEGAL ORGANIZATIONS

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Referrals

Name of Group or Organization	Support, Oppose or No-Position
Elder Law Section of the Florida Bar	
Florida Bankers Association	

Reasons for Non-Referrals:

CONTACTS

Board & Legislation Committee Appearance *(list name, address and phone #)*

Jon Scuderi, Legislative Co-Chair of the RPPTL Section, 850 Park Shore Drive, Suite 203, Naples, Florida 34102, 239-436-1988

Appearances before Legislators *(list name and phone # of those having direct contact before House/Senate committees)*

Peter M. Dunbar and Martha Edenfield, Dean, Mead & Dunbar, P.A., 215 South Monroe Street, Suite 815, Tallahassee, Florida 32301, Telephone: (850) 999-4100

Meetings with Legislators/staff *(list name and phone # of those having direct contact with legislators)*

Peter M. Dunbar and Martha Edenfield, Dean, Mead & Dunbar, P.A., 215 South Monroe Street, Suite 815, Tallahassee, Florida 32301, Telephone: (850) 999-4100

Submit this form and attachments to the Office of General Counsel of The Florida Bar – <mailto:jhooks@floridabar.org>, (850) 561-5662. Upon receipt, staff will schedule your request for final Bar action; this may involve a separate appearance before the Legislation Committee unless otherwise advised.

PART XV
COMMUNITY PROPERTY TRUSTS

736.1501. Short title. - This chapter may be cited as the “Florida Community Property Trust Act of 2021.”

736.1502. Definitions. – Unless the context otherwise requires, as used in this act:

(1) “Community property” means the property and the appreciation of and income from the property owned by a qualified trustee of a Florida community property trust during the marriage of the Settlor spouses. The property owned by a Florida community property trust pursuant to this act and the appreciation of and income from such property shall be deemed to be community property for purposes of the laws of this state.

(2) “Decree” means a judgment or other order of a court of competent jurisdiction.

(3) “Dissolution” means either:

(a) Termination of a marriage by a decree of dissolution, divorce, annulment or declaration of invalidity; or

(b) Entry of a decree of legal separation maintenance.

(4) “During marriage” means a period that begins at marriage and ends upon the dissolution of marriage or upon the death of a spouse.

(5) “Florida community property trust” means an express trust that complies with s. 736.1503.

(6) “Qualified trustee” means either:

(a) A natural person who is a resident of this state; or

(b) A company authorized to act as a fiduciary in this state.

(7) “Settlor spouses” means a married couple that establishes a Florida community property trust pursuant to this act.

736.1503. Requirements for community property trust. – An arrangement is a Florida community property trust if one or both Settlor spouses transfer property to a trust, that:

(1) Expressly declares that the trust is a Florida community property trust within the meaning of this act.

(2) Has at least one trustee who is a qualified trustee whose powers include, or are limited to, maintaining records for the trust on an exclusive or a nonexclusive basis and preparing or arranging for the preparation of, on an exclusive or a nonexclusive basis, any income tax returns that must be filed by the trust. Both spouses or either spouse may be a trustee.

(3) Is signed by both Settlor spouses.

(4) Contains the following language in capital letters at the beginning of the Florida community property trust agreement:

THE CONSEQUENCES OF THIS FLORIDA COMMUNITY PROPERTY TRUST MAY BE VERY EXTENSIVE, INCLUDING, BUT NOT LIMITED TO, YOUR RIGHTS WITH RESPECT TO CREDITORS AND OTHER THIRD PARTIES, AND YOUR RIGHTS WITH YOUR SPOUSE DURING THE COURSE OF YOUR MARRIAGE, AT THE TIME OF A DIVORCE, AND UPON THE DEATH OF YOU OR YOUR SPOUSE. ACCORDINGLY, THIS TRUST AGREEMENT SHOULD ONLY BE SIGNED AFTER CAREFUL CONSIDERATION. IF YOU HAVE ANY QUESTIONS ABOUT THIS TRUST

48 AGREEMENT, YOU SHOULD SEEK COMPETENT AND INDEPENDENT
49 LEGAL ADVICE.

50
51 **736.1504. Agreement establishing Florida community property trust;**
52 **amendments and revocation.**

53 (1) In the agreement establishing a Florida community property trust, the Settlor
54 spouses may agree upon:

55 (a) The rights and obligations in the property transferred to the trust,
56 notwithstanding when and where the property is acquired or located;

57 (b) The management and control of the property transferred into the trust;

58 (c) The disposition of the property transferred to the trust on dissolution, death,
59 or the occurrence or nonoccurrence of another event, subject to ss. 736.1507 and 736.1508;

60 (d) Whether the trust is revocable or irrevocable; and

61 (e) Any other matter that affects the property transferred to the trust and does
62 not violate public policy or a statute imposing a criminal penalty, or result in the property not being
63 treated as community property under the laws of any jurisdiction.

64 (2) In the event of the death of a Settlor spouse, the surviving spouse may amend a
65 Florida community property trust regarding the disposition of that spouse's one-half share of the
66 community property, regardless of whether the agreement provides that the Florida community
67 property trust is irrevocable.

68 (3) A Florida community property trust may be amended or revoked by the Settlor
69 spouses unless the agreement itself specifically provides that the Florida community property trust
70 is irrevocable.

71 (4) Notwithstanding any other provision of this code, the Settlor spouses shall be
72 deemed to be the only qualified beneficiaries of a Florida community property trust until the death
73 of one of the Settlor spouses, regardless of whether the trust is revocable or irrevocable. After the
74 death of one of the Settlor spouses, the surviving spouse shall be deemed to be the only qualified
75 beneficiary as to his or her share of the Florida community property trust.

76
77 **736.1505. Classification of property as community property; enforcement;**
78 **duration; management and control; effect of distributions. –**

79 (1) Whether or not both, one or neither is domiciled in this state, Settlor spouses may
80 classify any or all of their property as community property by transferring that property to a Florida
81 community property trust and providing in the trust that the property is community property
82 pursuant to the provisions of this act.

83 (2) A Florida community property trust is enforceable without consideration.

84 (3) All property owned by a Florida community property trust will be community
85 property under the laws of this jurisdiction during the marriage of the Settlor spouses.

86 (4) The right to manage and control property that is transferred to a Florida community
87 property trust is determined by the terms of the trust agreement.

88 (5) When property is distributed from a Florida community property trust, it shall no
89 longer constitute community property within the meaning of this act, provided that community
90 property as classified by a jurisdiction other than this state retains its character as community
91 property to the extent otherwise provided by ss. 732.216-732.228.

92
93 **736.1506. Satisfaction of obligations. –** Except as provided in s. 4, Art. X of the State
94 Constitution:

95 (1) An obligation incurred by only one spouse before or during the marriage may be
96 satisfied from that spouse's one-half share of a Florida community property trust.

97 (2) An obligation incurred by both spouses during the marriage may be satisfied from
98 a Florida community property trust of the Settlor spouses.
99

100 **736.1507. Death of a spouse.** - Upon the death of a spouse, one-half of the aggregate
101 value of the property held in a Florida community property trust established by the Settlor spouses
102 reflects the share of the surviving spouse and is not subject to testamentary disposition by the
103 decedent spouse or distribution under the laws of succession of this state. The other one-half of
104 the value of that property reflects the share of the decedent spouse and is subject to testamentary
105 disposition or distribution under the laws of succession of this state. Unless provided otherwise in
106 the Florida community property trust agreement, the trustee has the power to distribute assets of
107 the trust in divided or undivided interests and to adjust resulting differences in valuation. A
108 distribution in kind may be made on the basis of a non pro rata division of the aggregate value of
109 the trust assets, on the basis of a pro rata division of each individual asset, or by using both
110 methods. The decedent's spouse's one-half share shall not be included in the elective estate.
111

112 **736.1508. Dissolution of marriage.** - Upon the dissolution of the marriage of the
113 Settlor spouses, the Florida community property trust shall terminate and the trustee shall distribute
114 one-half of the trust assets to each spouse, with each spouse receiving one-half of each asset, unless
115 otherwise agreed to in writing by both spouses. For purposes of this act, s. 61.075 shall not apply
116 to the disposition of the assets and liabilities held in a Florida community property trust.
117

118 **736.1509. Right of child to support.** - A Florida community property trust shall not
119 adversely affect the right of a child of the Settlor spouses to support which either spouse would be
120 required to give under the applicable laws of the Settlor spouses' state of domicile.
121

122 **736.1510. Homestead property.** -

123 (1) Property which is transferred to or acquired subject to a Florida community
124 property trust may continue to qualify or may initially qualify as the Settlor spouses' homestead
125 within the meaning of s. 4(a)(1), Art. X of the State Constitution and for all purposes of the
126 statutory law of this state, provided that the property would qualify as the Settlor spouses'
127 homestead if title was held in one or both of the Settlor spouses' individual names.

128 (2) The Settlor spouses shall be deemed to have beneficial title in equity to the
129 homestead property held subject to a Florida community property trust for all purposes, including
130 for purposes of s. 196.031.
131

132 **736.1511. Application of Internal Revenue Code; community property classified**
133 **by another jurisdiction.** - For purposes of the application of s. 1014(b)(6) of the Internal Revenue
134 Code of 1986, 26 U.S.C. s. 1014(b)(6), as of January 1, 2021, a Florida community property trust
135 is considered a trust established under the community property laws of this state. Community
136 property as classified by a jurisdiction other than this state which is transferred to a Florida
137 community property trust retains its character as community property while in the trust. If the trust
138 is revoked and property is transferred on revocation of the trust, the community property as
139 classified by a jurisdiction other than this state retains its character as community property to the
140 extent otherwise provided by ss. 732.216-732.228.
141

142 **736.1512. Unenforceable trusts.** - A Florida community property trust executed
143 during marriage is not enforceable if the spouse against whom enforcement is sought proves that:
144 (1) The trust was unconscionable when made;
145 (2) The spouse against whom enforcement is sought did not execute the Florida
146 community property trust agreement voluntarily; or
147 (3) Before execution of the Florida community property trust agreement, the spouse
148 against whom enforcement is sought:
149 (a) Was not given a fair and reasonable disclosure of the property and financial
150 obligations of the other spouse;
151 (b) Did not voluntarily sign a written waiver expressly waiving right to disclosure
152 of the property and financial obligations of the other spouse beyond the disclosure provided; and
153 (c) Did not have notice of the property or financial obligations of the other
154 spouse.
155 (4) Whether a Florida community property trust is unconscionable shall be determined
156 by a court as a matter of law.
157 (5) The fact that the Settlor spouses did not have separate legal representation shall not
158 result in a Florida community property trust being deemed to be unenforceable, subject to the
159 provisions of paragraphs (1), (2) and (3).
160
161 **736.1513. Applicability.** – This act applies to all Florida community property trusts
162 created on or after July 1, 2021.

Real Property, Probate and Trust Law Section of The Florida Bar

White Paper on Proposed Enactment of Sections 736.1501-736.1513 of the Florida Statutes (Florida Community Property Trust Act of 2021)

I. SUMMARY

The proposed legislation originates from The Estate and Trust Tax Planning Committee (the “Committee”) of the Real Property, Probate and Trust Section of The Florida Bar (the “RPPTL Section”).

The focus of clients’ Florida estate planning attorneys and other advisors has shifted from wealth transfer taxes to federal income tax. With today’s all-time-high federal estate tax exemption (currently \$11,580,000 per person) and a relatively low transfer tax rate, coupled with the increased federal income tax top marginal rate, planning that maximizes Florida heirs’ federal income tax basis in appreciated assets often trumps wealth transfer tax concerns. In this new tax planning world, an often overlooked provision — section 1014(b)(6) of the Internal Revenue Code — assumes a more prominent role. Under that section, the surviving spouse of a marriage in a community property state will receive a fair market value basis, determined as of the date of the deceased spouse’s death, in all of the couple’s property (referred to as a “step-up” in basis). In contrast, the surviving spouse of a marriage in a common law state, such as Florida, will receive a step-up in basis only in the property owned by the deceased spouse; the tax basis of property owned by the surviving spouse is unaffected by the death of the other spouse and does not receive a step-up in basis.

The disparate outcomes in common law states and community property states are illustrated in the following fact pattern. A married couple, Michael and Colleen, own appreciated undeveloped real estate, purchased several years ago, with a current tax basis of \$100,000 and a \$1 million fair market value. The title to the property is held in their joint names. Michael dies, and the real estate is sold at year’s end for its \$1 million fair market value. In a common law state, section 1014(a)(1) of the Internal Revenue Code results in a \$550,000 income tax basis to Colleen. Michael’s basis in his half of the property increases from the original \$50,000 to \$500,000 (the date of death value), plus Colleen’s basis in her half of the property remains \$50,000. The subsequent sale of the property produces a \$450,000 gain (\$1 million amount realized less \$550,000 basis) and a tax liability of \$107,100 (\$450,000 x 23.8 percent (20 percent long-term capital gains tax rate plus 3.8 percent unearned income tax rate)). In contrast, in a community property state, section 1014(b)(6) of the Internal Revenue Code results in a \$1 million income tax basis to Colleen due to the step-up in basis. In light of that adjustment, the subsequent sale of the property produces zero gain (\$1 million amount realized less \$1 million basis) and zero tax liability.

Additionally, many residents of Florida have moved to our state with community property (or the proceeds therefrom), whether acquired in one of the ten community property states or in a foreign jurisdiction with a community property regime. It is anticipated that many new residents will be moving to Florida with community property in the future due to the increasing amount of

people establishing residency in Florida after moving from other states.¹ It is important for all Florida attorneys to be aware of how to plan for this type of property. While there are indications, such as the case of *Quintana v. Ordone*, 195 So.2d 577 (Fla. 3d DCA 1967), and Florida’s adoption of a version of the Uniform Disposition of Community Property Rights at Death Act (discussed *infra*), that community property will retain its character when brought to Florida, there remains uncertainty as to whether the Internal Revenue Service will challenge the status of community property for a Florida decedent for purposes of section 1014(b)(6) of the Internal Revenue Code. Florida residents should not be deprived of tax benefits afforded to residents of other states.

For the reasons set forth herein, Florida should consider adopting Florida community property trust legislation, similar to that of Alaska, Tennessee and South Dakota (and Ohio, Michigan, and North Carolina are considering community property legislation), to allow Florida married residents to treat their property, acquired by a married couple as separate property, as community property, and provide Florida married residents who moved to Florida with community property (or the proceeds therefrom) certainty that such property remains community property.

The proposed legislation would create a new Part XV of the Florida Trust Code and enact Sections 736.1501-736.1513 of the Florida Statutes, referred to as the “Florida Community Property Trust Act of 2021.” The proposed legislation would allow spouses to transfer property to a trust known as a “Florida community property trust” (“FCPT”).

II. CURRENT SITUATION

A. Community Property.

Community property results in a “double step-up in basis” on the death of the first spouse, because of the interplay of sections 1014(a), (b)(1) and (b)(6) of the Internal Revenue Code (“Code”).

Section 1014(a)(1) of the Code looks at the recipient of property (i.e. the legatee or devisee) and sets forth what the basis will be in such recipient’s hands. It states in part that when a recipient is “acquiring property from a decedent” or if the recipient is that person “to whom property passed from a decedent,” and if such property has not been sold, exchanged or otherwise disposed of before the decedent’s death, the recipient’s basis shall be the fair market value of such property at the decedent’s date of death (i.e., the recipient gets a new basis, and, in our lingo, it results in a “step-up” in basis).

Section 1014(b) of the Code has ten subsections, namely sections 1014(b)(1) through (10) inclusive. Those ten subsections attempt to define the two phrases used in section 1014(a) of the Code, namely “acquired property from a decedent” and “property passed from a decedent.” Section 1014(b) of the Code is referred to as a “deeming” provision because it provides if “X” happens; then it is “considered to be” “Y.” The statute does not provide if “X” happens; then it

¹ Florida remains the largest recipient of state-to-state migration in the United States (<https://www.census.gov/library/stories/2019/04/moves-from-south-west-dominant-recent-migration-flows.html>), and is the top choice among retirees (<https://smartasset.com/retirement/where-are-retirees-moving-2018-edition>).

“is” “Y.” The words “considered to be” are analogous to “deemed to be” or “shall be treated as if.” Those words (i.e., “considered to be”) create a legal fiction.

The other relevant provisions for determining the basis of community property are: (1) section 1014(b)(1) of the Code that determines the basis of one-half of the community property owned by the decedent spouse; and (2) section 1014(b)(6) which determines the other half of the property owned by the surviving spouse.

Section 1014(b)(1) of the Code provides that the property passing from the decedent by bequest, devise, or inheritance to the surviving spouse gets a basis step-up. With community property, this means that the decedent spouse’s one-half gets a basis step-up.

Section 1014(b)(6) of the Code provides that the surviving spouse’s other half gets a basis adjustment, if (1) the property is community property under the community property laws of any State, or possession of the United States or a foreign country, and (2) at least one-half of the community property was included in the decedent spouse’s gross estate.

Thus, the interrelationship between sections 1014(a), (b)(1) and (b)(6) of the Code allow for the double basis step-up for community property, and the focus would be on section 1014(b)(6) since it allows a surviving spouse to adjust such survivor’s basis.

A significant issue for couples moving to Florida from community property states is whether their real and personal property is community property after they have become residents of Florida. Specifically, whether personal property that was once community property of a couple when they lived in a community property state is still community property at the time of the death of the first spouse to die, if the couple had migrated to Florida to become Florida residents.

B. What do other States do to address community property?

1. Community Property States.

Wisconsin, Washington, Texas, New Mexico, Nevada, Louisiana, Idaho, California and Arizona are known as the traditional community property states. Alaska allows a married couple to establish community property by entering into a community property agreement (it is an “opt-in” community property state). Puerto Rico, which is the largest United States territory by population (and one of every three migrants to the US mainland from Puerto Rico settles in Florida), is also a community property jurisdiction.

2. States Allowing Community Property Trusts.

Three states, Alaska, Tennessee and South Dakota, currently provide that property acquired by a married couple is separate property, but allow the couple to elect to treat it as community property. This is in contrast with the general rule in most community property states that all property acquired by a couple is community property unless they have clearly provided to the contrary. Alaska, Tennessee and South Dakota permit the creation of a trust to hold property and community property, and treat the assets held in the trust as community property (even if the couple do not reside within the state). Other states, including Ohio, Michigan and North Carolina, are considering the enactment of similar legislation.

C. Community Property Trusts and Their Treatment by the IRS.

1. Commissioner v. Harmon. During the 1940s, Hawaii, Michigan, Nebraska, Oklahoma, Oregon, and Pennsylvania enacted laws allowing residents to opt-in to community property treatment of assets. In *Commissioner v. Harmon*, 323 U.S. 44 (1944), the United States Supreme Court ruled that an Oklahoma statute allowing spouses to elect community property treatment under that state's law would not be recognized for federal income tax reporting. Some argue that the IRS will rely on the ruling in *Harmon* to disallow the full step-up in basis for community property acquired through an opt-in community property state, such as Alaska, Tennessee or South Dakota.

However, many practitioners believe that the *Harmon* decision does not affect the community property classification under an opt-in system. In Revenue Ruling 77-359, the IRS concluded that the conversion of separate property to community property by residents of a community property state would be effective for gift tax purposes while ineffective for the transmutation of income from such property. Based on this Revenue Ruling, it appears that the IRS will treat the underlying property as community property and will not distinguish between elective and default community property regimes (unless it is for purposes of income splitting).

2. Due Process. Section 1 of the 14th Amendment of the United States Constitution provides in part "nor shall any State deprive any person of life, liberty, or property, without due process of law." A move across state lines cannot deprive a spouse of the vested property rights the spouse has under the laws of community property because there would be no due process to cause the change. Similarly, under basic conflict of laws principles, a right belonging to either or both spouses in property is not affected by a change in domicile by the couple to a different state. See Restatement (Second) Conflict of Laws § 259.

3. Application of Basis Rules. IRS Publication 555 (entitled "Community Property"), most recently revised and released in 2016, does not consider "the federal tax treatment of income or property subject to the 'community property' election under Alaska state laws." IRS Publication 555 only speaks to Alaska's opt-in community property regime, and not to the efficacy of Alaska community property trusts. The IRS likely views these type of community property systems as providing too much flexibility to the taxpayers to opt in and out of community property status, and that the Alaska-type system is more akin to a tax avoidance ploy rather than a state property law system. With that being said, no reported cases or IRS rulings have addressed the federal income tax capital gains basis step-up for property held in a community property trust established in Alaska, Tennessee or South Dakota. Also, no known challenges have been made to the community property classifications in these states for income tax purposes.

4. Opt-in v. Opt-Out. Some practitioners have suggested that a state cannot allow an opt-in to community property treatment for purposes of IRC § 1014(b)(6) (based mostly on the ruling in *Harmon*), but in each of the nine states where community property is the default method of ownership, spouses may opt out of the community property regime by agreement. To allow spouses to opt-in, where separate property is the default, should be considered the same.

E. Florida and Its Treatment of Community Property.

Florida adopted the Florida Uniform Disposition of Community Property Rights at Death Act (“FUDCPRDA”) in 1992 with the adoption of Sections 732.216-732.228 of the Florida Statutes. The purpose of the FUDCPRDA, a Uniform Act, is described, with respect to non-community property states (such as Florida), to preserve “the rights of each spouse in property that was community property before the spouses moved to the non-community property state, unless they have severed or altered their community property rights.” See Uniform Law Commission, Disposition of Community Property Rights at Death Act (1971).² The FUDCPRDA preserves the rights in what was community property for the benefit of the surviving spouse when the decedent spouse dies, and does not (a) create community property rights in the property after the spouses have become residents of the new state, and (b) state whether the property is community property. Except for Florida specific concepts such as homestead and tenants by the entirety, Florida’s adoption of the FUDCPRDA mostly resembles the Uniform Act. In drafting its statutes in conformity with the FUDCPRDA, Florida arguably preserves the rights of each spouse in property which was community property prior to a change of domicile from a community property state to Florida, but like the FUDCPRDA, Florida’s application solely covers such dispositive rights at death.

*Quintana v. Ordonez*³ is one of the few reported Florida cases to address community property. In *Quintana*, plaintiffs, children of the deceased by a prior marriage, sought a declaration determining the rights of the defendant surviving spouse, and the estate of the deceased in certain property. *Id.* at 578. The decedent and his spouse were domiciled in Cuba, a community property jurisdiction, through most of the decedent’s lifetime. *Id.* The decedent purchased shares of a Florida corporation while still domiciled in Cuba. *Id.* Following his death, a promissory note payable to the decedent and a contract for sale of some of the shares was received. *Id.* at 578-79. The court relied on the Restatement Conflict of Laws to determine that the “[i]nterests of one spouse in movables acquired by the other during the marriage are determined by the law of the domicile of the parties when the movables are acquired.” *Id.* at 579. Citing to the Civil Code of Cuba, the court found that under the laws of Cuba, the stock did not vest solely in the decedent; the surviving spouse “had a vested interest in the stock equal to that of her husband”, and this interest “was not affected by the subsequent change of domicile from Cuba to Florida.” *Id.* at 580. As to the promissory note and contract for sale, the court indicated that if a portion of the consideration belonged to the surviving spouse and title was taken in the decedent’s name along, a resulting trust arose in favor of the surviving spouse “by implication of law to the extent that consideration furnished by her is used.” *Id.* As such, the decedent’s estate, holding legal title to the promissory note and contract for sale, held a one-half interest in trust for the surviving spouse.

Together, *Quintana*, as well as Florida’s enactment of the FUDCPRDA, have signaled to some Florida attorneys that Florida recognizes community property. However, taking a look at Florida’s adoption of the FUDCPRDA after *Quintana* and noting that *Quintana* merely created a resulting trust for the surviving spouse, one might more appropriately conclude that while

² <https://www.uniformlaws.org/committees/community-home?CommunityKey=cc060023-d743-4d32-b7e5-35b12cba4fb8>

³ 195 So.2d 577 (Fla.3d DCA 1967).

Florida does not recognize community property, it must recognize the rights of a Florida domiciliary in community property imported from a community property jurisdiction.

Additionally, a recent Fourth District Court of Appeals case illustrates the uncertainty surrounding the application of the FUDCPRDA and its effect on Florida residents who move to our state with community property. In *Johnson v. Townsend*⁴, a married couple moved to Florida from Texas (a community property state). When the husband died in January 2015, he was survived by his wife and children from a prior marriage. In March 2015, the husband's will was admitted to probate and his wife was appointed personal representative. In September 2017 (over two and a half years after the husband's death), the wife filed a FUDCPRDA claim seeking to receive her one-half interest in the community property acquired while the couple were residents of Texas. The Fourth District Court of Appeals ruled that the wife's FUDCPRDA claim was a creditor claim which was subject to the two-year statute of repose contained in the Florida Probate Code. The wife was therefore barred from receiving her one-half interest in the community property since she did not file a timely creditor claim. Many Florida practitioners disagree with this result. Regardless of whether or not this case was correctly decided, *Johnson v. Townsend* clearly illustrates the ambiguities contained in the FUDCPRDA and that current law regarding the treatment of community property in Florida is a potential trap for the unwary.

III. EFFECT OF PROPOSED LEGISLATION **(DETAILED ANALYSIS OF PROPOSED STATUTE)**

A. Effect of Proposed Legislation.

1. In General. The proposed legislation would create Sections 736.1501-736.1513 of the Florida Statutes (the "Florida Community Property Trust Act of 2021"), and allow spouses to transfer property to a FCPT. Adoption of the proposed legislation enables surviving spouses who have property passing through a FCPT to receive a 100% step-up in basis on that property for federal income tax purposes, regardless of the order of the spouses' deaths, thus creating a benefit similar to that of surviving spouses in community property states. Many public policies of Florida and some facets of Florida law already support this type of legislation.

Based on the current uncertainties involved with Florida community property rights and the potential that the IRS may deny the full step-up in basis for community property (or community property proceeds) brought into Florida under current law, married couples moving to Florida from community property jurisdictions would be the most obvious beneficiaries if Florida passed this type of legislation. Community property trusts would also be advantageous for Florida married couples whose assets are not currently deemed to be community property, but have one or more of the following characteristics: (1) a long-term stable marriage (so that the trust will truly get the step-up at death; although the trust may also function as to trust property as a postnuptial agreement on dissolution of the marriage, that is not its primary intent); (2) the couple has highly appreciated property, stocks or real estate (owned by one or both spouse); (3) an over-weighted financial portfolio that the couple has delayed selling because of exposure to capital gains tax; (4) rental real estate or other real property that the surviving spouse would not want to manage and may immediately want to sell; (5) property that could benefit from the 100% step-up in basis, such as those who own self-created intellectual property, negative basis, highly

⁴ 259 So.3d 851 (Fla. 3rd DCA 2018).

depreciated property, gold, artwork, or other collectibles (which may be subject to a minimum 28% long-term capital gain rate); and/or (6) no present or foreseeable creditor concerns. Even if a Florida couple does meet some of the criteria, it is important to keep in mind that not all of the couple's property has to be transferred to the FCPT.

2. More Clarity Regarding Full Step-Up in Basis. The community property trust platform would provide more clarity and certainty than relying on Florida's version of the UDCPRDA and the limited case law available.

3. Evening the Playing Field with Community Property State Residents. With respect to the benefits of the federal income tax laws' step-up in basis, allowing the creation of FCPTs would equalize the benefits of Florida married couples to those in community property states, regardless of the property regimes the states have adopted.

4. Simplicity. Allowing Florida married couples to transfer assets to a FCPT would simplify the estate planning process. For example, there would not be a need to equalize the couple's assets between the spouses. It would give planners a simpler method to divide assets between spouses if necessary to fund a trust for estate planning purposes, such as tax planning and long-term care planning, while also obtaining the tax benefits afforded community property. Income tax basis planning would also be much easier to accomplish (e.g., this would be an alternative to trying to transfer low-basis stock to spouse most likely to be the first to die to get the step-up in basis at death). Additionally, there would not be the temptation to implement other types of untested and more complicated trusts which attempt to achieve the full step-up in basis, including joint exempt step-up trusts (JESTs) and step-up grantor retained interest trusts (SUGRITs).

5. No Need for Tracing. If a Florida married couple utilized a FCPT, there would be a clear bifurcation between community and separate property. Currently, community property rights for Florida residents requires tracing in order to identify community property and to quantify the amount of community property versus separate property. This can be labor intensive and could in essence turn into a forensic accounting project. In making the required community versus separate property determination, the attorney also needs to ascertain how the property is treated under the laws of the couple's prior community property jurisdiction as part of the tracing process. Allowing a Florida couple's community property to be segregated in a Florida community property trust will alleviate (if not eliminate) the need for the time-consuming tracing process.

6. Evidence of Couples' Intent. If a Florida married couple transfer assets to a FCPT, it makes it very evident that they wish for those assets to be treated as the couples' community property and to acquire the rights (and to relinquish others) associated with this type of property classification. This evidence of the couples' intent should diminish post-death litigation regarding whether property is community or separate.

B. Specific Statutory Provisions.

1. 736.1501. Short title. This section explains that the proposed legislation would add Part XV to the Florida Trust Code and refer to the new chapter as the "Florida Community Property Trust Act of 2021."

2. 736.1502. Definitions. This section defines terms that appear throughout the proposed legislation. Specifically, it defines the terms “community property”, “decree”, “dissolution”, “during marriage”, “Florida community property trust”, “qualified trustee”, and “settlor spouses”.

3. 736.1503. Requirements for community property trust. This section describes the requirements for creating a FCPT. The proposed legislation would mandate that the capitalized language in § 736.1503(4), which is intended to provide clear notice to the couple creating the trust of its effect on the trust property, be contained at the beginning of a FCPT.

4. 736.1504. Agreement establishing Florida community property trust; amendments and revocation. This section describes the terms that may be agreed to by spouses in a FCPT. It describes the procedure for a FCPT amendment. It provides that only the married couple who establish the trust shall be deemed to be qualified beneficiaries of a FCPT until the death of one of the spouses.

5. 736.1505. Classification of property as community property; enforcement; duration; management and control; effect of distributions. This section describes the classification of property transferred to a FCPT. It provides that upon distribution from a FCPT, property no longer constitutes community property within the meaning of the proposed legislation. This makes it clear that assets shall only be community property under Florida if held in a FCPT.

6. 736.1506. Satisfaction of obligations. This section describes creditors’ rights against a married couple who have established a FCPT.

7. 736.1507. Death of a spouse. This section describes the treatment of the surviving spouse’s share of a FCPT. It also describes the treatment of the deceased spouse’s share of a FCPT.

8. 736.1508. Dissolution of marriage. This section provides that upon the dissolution of the settlor spouses’ marriage, the FCPT shall terminate and the trustee of the FCPT shall distribute one-half of the FCPT assets to each spouse.

9. 736.1509. Right of child to support. This section provides that a FCPT shall not affect the right of a child of either settlor who is required to be provided child support.

10. 736.1510. Homestead property. This section provides that Homestead property transferred to a FCPT shall continue to qualify as Homestead.

11. 736.1511. Application of Internal Revenue Code; community property classified by another jurisdiction. This section provides that property transferred to a FCPT is “community property” within the meaning of section 1014(b)(6) of the Code. Community property transferred into a FCPT from another state retains its character as community property while in the FCPT. If a FCPT is revoked, community property transferred out of the FCPT as classified by a jurisdiction other than Florida retains its character as community property unless otherwise provided by the FUDCPRDA.

12. 736.1512. Unenforceable trusts. This section explains that a FCPT executed during a marriage may be unenforceable if one of the spouses proves that the FCPT was unconscionable when made, was not voluntarily created, or that the spouse against whom enforcement is sought was not given a fair and reasonable disclosure of the property and financial obligations of the other spouse, did not voluntarily sign a waiver expressly waiving right to disclosure of the property and financial obligations of the other spouse beyond the disclosure provided, and did not have notice of the property or financial obligations of the other spouse.

13. 736.1513. Applicability. This section provides that following enactment of the proposed legislation, a FCPT could be created beginning on July 1, 2021.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

Adoption of this legislative proposal by the Florida Legislature should have a fiscal impact on state and local governments by allowing additional wealth to be managed by Florida corporate trustees, with the result of increased fiduciary commissions becoming subject to the state's corporate income tax. Future Florida residents will also be more comfortable bringing property into the state from community property jurisdictions and purchasing property in Florida with community property proceeds since there will be certainty regarding community property maintaining its character and income tax treatment under Florida law. It should also result in Florida residents not transferring assets out of the State of Florida to jurisdictions that allow for the creation of community property trusts.

V. DIRECT IMPACT ON PRIVATE SECTOR

Adoption of this legislative proposal by the Florida Legislature would benefit members of the private sector (i.e., Florida attorneys, trustees, persons employed by trustees and trust beneficiaries) by allowing the use of trusts, created by Florida attorneys and administered by Florida corporate trustees, that otherwise could be created in other states to the detriment of Florida attorneys possessing the knowledge to create such trusts and Florida corporate trustees who have the expertise to administer such trusts. Allowing such trusts provides Florida residents with an opportunity to utilize a Federal income tax benefit that could only be allowed to residents in community property states.

VI. CONSTITUTIONAL ISSUES

There are no known Constitutional issues.

VII. OTHER INTERESTED PARTIES

Other groups that may have an interest in the legislative proposal include the Family, Tax and Business Law Sections of The Florida Bar, and the Florida Bankers Association.



The Florida Bar

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Executive Director

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LEGISLATIVE OR POLITICAL POSITION REQUEST FORM

GENERAL INFORMATION

Submitted by: *(list name of section, division, committee, TFB group, or individual name)*

Robert L. Lancaster, Chair, Estate & Trust Tax Planning Committee, RPPTL Section

Address: *(address and phone #)* 3001 Tamiami Trail North, Suite 400, Naples, Florida 34103
(239) 262-8311

Position Level: *(TFB section/division/committee)* TFB / RPPTL / Probate & Trust Law /
Estate & Trust Tax Planning

PROPOSED ADVOCACY

- All requests for legislative and political positions must be presented to the Board of Governors by completing this form and attaching a copy of any existing or proposed legislation or a detailed presentation of the issue.
- Select Section I below if the issue is legislative, II if the issue is political. Regardless, Section III must be completed.

If Applicable, List the Following:

(Bill or PCB #)

(Sponsor)

Indicate Position: Support Oppose Technical or Other Non-Partisan Assistance

I. Proposed Wording of Legislative Position for Official Publication

To support the enactment of a new Part XV of the Florida Trust Code, entitled the "Florida Community Property Trust Act of 2021." The proposed legislation would permit married couples to create community property in Florida by transferring assets to a Florida Community Property Trust established pursuant to the proposed Act. The trust assets would be community property under the laws of the State of Florida for purposes of I.R.C. s. 1014(b)(6), which could provide substantial tax benefits to married couples who establish Florida Community Property Trusts. The proposed legislation is limited in application to assets which are transferred to and held in Florida Community Property Trusts.

II. Political Proposals:

III. Reasons For Proposed Advocacy:

A. Is the proposal consistent with *Keller vs. State Bar of California*, 110 S. Ct. 2228 (1990), and *The Florida Bar v. Schwarz*, 552 So. 2d 1094 (Fla. 1981)?

Yes.

B. Which goal or objective of the Bar's strategic plan is advanced by the proposal?

N/A.

C. Does the proposal relate to: (*check all that apply*)

- Regulating the profession
- Improving the quality of legal services
- Improving the functioning of the system of justice
- Increasing the availability of legal services to the public
- Regulation of trust accounts
- Education, ethics, competency, and integrity of the legal profession

D. Additional Information:

PRIOR POSITIONS TAKEN ON THIS ISSUE

Please indicate any prior Bar or section/divisions/committee positions on this issue, to include opposing positions. Contact the Governmental Affairs office if assistance is needed in completing this portion of the request form.

Most Recent Position

_____	_____	_____
TFB Section/Division/Committee	Support/Oppose	Date

Others (*attach list if more than one*)

_____	_____	_____
TFB Section/Division/Committee	Support/Oppose	Date

REFERRALS TO OTHER SECTIONS, COMMITTEES OR LEGAL ORGANIZATIONS

A request for action on a position must be circulated to sections and committees that might be interested in the issue. The Legislation Committee and Board of Governors may delay final action on a request if the below section is not completed. Please attach referrals and responses to this form. If you do not believe other sections and committees are affected and you did not circulate this form to them, please provide details below.

Referrals

Name of Group or Organization	Support, Oppose or No-Position
Florida Bar Family Law Section	
Florida Bar Tax Section	
Florida Bankers Association	

Reasons for Non-Referrals:

CONTACTS

Board & Legislation Committee Appearance *(list name, address and phone #)*

Jon Scuderi, Legislative Co-Chair of the RPPTL Section
850 Park Shore Drive, Suite 203, Naples, Florida 34103
(239) 436-1988

Appearances before Legislators *(list name and phone # of those having direct contact before House/Senate committees)*

Peter M. Dunbar and Martha Edenfield; Dean Mead & Dunbar, P.A.
215 South Monroe Street, Suite 815, Tallahassee, Florida 32501
(850) 999-4100

Meetings with Legislators/staff *(list name and phone # of those having direct contact with legislators)*
Same.

Submit this form and attachments to the Office of General Counsel of The Florida Bar – <mailto:jhooks@floridabar.org>, (850) 561-5662. Upon receipt, staff will schedule your request for final Bar action; this may involve a separate appearance before the Legislation Committee unless otherwise advised.