



**The Omni Plantation
Amelia Island, Florida**

**Saturday, March 16, 2019
9:00 am**

BRING THIS AGENDA TO THE MEETING

**NOTE: The Agenda will be posted to the
meeting APP.**

Real Property, Probate and Trust Law Section
Executive Council Meeting
The Omni Plantation
Amelia Island, Florida,
March 16,2019

Agenda

Note: Agenda Items May Be Considered on a Random Basis

I. **Presiding** — Debra L. Boje, *Chair*

II. **Attendance** — Sarah Swaim Butters, *Secretary*

III. **Minutes of Previous Meeting** — Sarah Swaim Butters, *Secretary*

Motion to approve the minutes of December 8, 2018 meeting of Executive Council held at the Four Seasons, Orlando, Florida. **pp. 10-34**

IV. **Chair's Report** — *Debra L. Boje, Chair*

1. Recognition of Guests

2. Milestones

3. Recognition of General Sponsors and Friends of the Section **pp. 35-37**

4. Report of Interim Action by the Executive Committee

A. **Comments to Proposed IRS Proposed Section 2010 Regulations** – Approved submission of Joint Tax Section and RPPTL Section comments to the Internal Revenue Service Proposed Section 2010 Regulations proposed by the Estate & Trust Tax Planning Committee. **pp. 38 - 45**

B. **Amicus Brief** - Approved submission of an amicus brief in the case of *Johnson v. Townsend, et. al.* pending in the Fourth DCA.

C. **Uniform Guardianship and Protective Proceedings Jurisdiction Act** - Approved the following Legislative Position proposed by the Guardianship, Power of Attorney and Advanced Directives Committee.

(A) To Oppose Florida's adoption of the Uniform Guardianship and Protective Proceedings Jurisdiction Act (including the Florida Guardianship and Protective Proceedings Jurisdiction Act) unless the act is substantially revised to provide for better due process protections for incapacitated individuals more consistent with Florida's laws and rewritten with vocabulary consistent with Florida's guardianship

laws, (B) that this position is within the Section's purview; and, (C) authorize the expenditure of funds in support of the position. **pp.45 - 68**

D. Family Trust Companies Act - Approved the following Legislative Position proposed by the Estate & Trust Tax Planning Committee

(A)To support proposed legislation removing the scheduled repeal of the public records exemption for certain information held by the Office of Financial Regulation relating to a family trust company, licensed family trust company, or foreign licensed family trust company,(B) find that this position is within the Section's purview; and, (C) authorize the expenditure of funds in support of the position. **pp. 69 - 80**

E. Presumed Reasonable Fee Provisions §§733.6171 and 736.1007, Florida Statutes – Approved the following Legislative Position

(A)To oppose amendments to the personal representative and trustee attorney fee compensation statutes contained in the Florida Probate Code and the Florida Trust Code; (B) find that this position is within the Section's purview; and,(C) authorize the expenditure of funds in support of the position. **pp. 81 - 97**

5. **Ad Hoc Florida Bar Leadership Academy** – *Kristopher E. Fernandez and Brian E. Sparks, Co-Chairs*

Approved sponsoring Ashley Zohar as the Section's representative for the next Leadership Academy class, conditioned on Ms. Zohar being accepted by The Florida Bar into the class. **p.98**

6. Upcoming Executive Council Meetings **p.99**

V. [Liaison with Board of Governors Report](#) — Steven W. Davis

VI. [Chair-Elect's Report](#) — *Robert S. Freedman, Chair-Elect*

2019-2020 Meeting Schedule. **p. 100**

VII. [Treasurer's Report](#) — *Wm. Cary Wright, Treasurer*

Statement of Current Financial Conditions. **p. 101**

VIII. [Director of At-Large Members Report](#) — *Lawrence Jay Miller, Director*

IX. [CLE Seminar Coordination Report](#) — *Steven H. Mezer (Real Property) and John C. Moran (Probate & Trust), Co-Chairs* **p. 102**

X. [Legislation Committee](#) – *S. Katherine Frazier and Jon Scuderi, Co-Chairs*

XI. [General Standing Division](#) — *Robert S. Freedman, General Standing Division Director and Chair-Elect*

Informational Items:

1. **Liaison with Clerks of the Court** – *Laird A. Lile*
Report from Liaison.
2. **Law School Mentoring & Programing** – *Lynwood F. Arnold, Jr., Chair*
Report on committee activities.
3. **Ad Hoc Florida Bar Leadership Academy** – *Kristopher E. Fernandez and Brian E. Sparks, Co-Chairs*
Selection update
4. **Model and Uniform Acts** — *Bruce M. Stone and Richard W. Taylor, Co-Chairs*
Written report of the committee **p.103 - 105**
5. **Liaison with TFB Council of Sections** - *Debra L. Boje and Robert S. Freedman*
Report on Council of Sections' Proposal for Changing the Requirements for Amendments to Section By-Laws **pp. 106 - 110**
6. **Convention Coordination** - *Linda S. Griffin, Chair; Angela McClendon Adams and Tae Kelley Bronner, Co-Vice Chairs*
Update on Convention activities, Opal Sands, Clearwater Beach, Florida - May 30 – June 2, 2019.
7. **Fellows** – *Benjamin Frank Diamond and Jennifer Bloodworth, Co-Chairs*
Upcoming Applications for Fellows.
8. **Strategic Planning Committee** - *Debra L. Boje and Robert S. Freedman, Co-Chairs*
Discussion on Draft of 2019 Strategic Plan **pp. 111 - 155**

XII. Probate and Trust Law Division Report — *William T. Hennessey, Director*

Action Items:

1. **Probate Law and Procedure Committee** — *M. Travis Hayes, Chair*
Motion to (A) adopt as a Section legislative position support for proposed legislation to improve notice of administration to surviving spouse to include notice that an extension of the deadline for taking an elective share may be requested prior to the expiration of the deadline for making the election, including changes

to Fla. Stat. § 733.212(2)(e); (B) find that such legislative position is within the purview of the RPPTL Section; and (C) expend Section funds in support of the proposed legislative position. [PT1], pp. **156 - 162**

2. Trust Law Committee — *Angela Adams, Chair*

Motion to (A) adopt as a Section legislative position support for the “Florida Directed Trust Act”, a modified version of the Uniform Directed Trust Act, which clarifies and changes various aspects of the Florida Statutes relating to directed trusts; (B) find that such legislative position is within the purview of the RPPTL Section; and (C) expend Section funds in support of the proposed legislative position. **pp. 163 - 196**

3. Probate and Trust Litigation Committee — *J. Richard Caskey, Chair*

Motion to (A) adopt as a Section legislative position support for proposed amendments clarifying the personal representative’s exclusive authority to pursue causes of action on behalf of the estate, including but not limited to claims for the return of probate assets wrongfully transferred prior to the decedent’s death, including changes to Fla. Stat. §§ 731.201(32), 733.607(1), 733.612(20), and 733.802(2); (B) find that such legislative position is within the purview of the RPPTL Section; and (C) expend Section funds in support of the proposed legislative position. **pp. 197 - 205**

Information Items:

1. Ad Hoc Guardianship Law Revision Committee- *Nicklaus Curley, Vice Chair*

Motion to (A) adopt as a Section legislative position support for adoption of the new Florida Guardianship Code chapter 745, Florida Statutes which improves upon Florida’s current guardianship code (Chapter 744); (B) find that such legislative position is within the purview of the RPPTL Section; and (C) expend Section funds in support of the proposed legislative position. **pp. 206 - 377**

2. Charitable Planning and Exempt Organizations – *Seth Kaplan, Chair*

Announcement of the creation of a new committee within the Probate and Trust Law Division.

XIII. [Real Property Law Division Report](#) — *Robert S. Swaine, Division Director*

Information Item:

1. Title Issues and Title Standards Committee — *Christopher Smart, Chair*

Discussion of proposed Title Standards for Enhanced Life Estate Deeds, regarding homestead and non-homestead real property. **pp. 378 - 383**

XIV. Probate and Trust Law Division Committee Reports — *William T. Hennessey, Director*

1. **Ad Hoc Guardianship Law Revision Committee** — David C. Brennan, Chair; Nicklaus J. Curley, Stacey B. Rubel and Sancha Brennan Whynot, Co-Vice Chairs
2. **Ad Hoc Committee on Electronic Wills** — Sarah S. Butters, Chair; Angela McClendon Adams, Thomas M. Karr, Co-Vice-Chairs
3. **Ad Hoc Florida Business Corporation Action Task Force** — Brian C. Sparks and M. Travis Hayes, Co-Chairs
4. **Ad Hoc Study Committee On Professional Fiduciary Licensing** — Angela McClendon Adams and Darby Jones, Co-Chairs
5. **Ad Hoc Study Committee on Estate Planning Conflict of Interest** — William T. Hennessey, Chair; Paul Edward Roman, Vice-Chair
6. **Ad Hoc Study Committee on Jurisdiction and Due Process**— Barry F. Spivey, Chair; Sean W. Kelley and Christopher Q. Winter, Co-Vice Chairs
7. **Asset Protection** — Brian M. Malec, Chair; Richard R. Gans and Michael A. Sneeringer, Co-Vice-Chairs
8. **Attorney/Trust Officer Liaison Conference** — Tattiana Patricia Brenes-Stahl, Chair; Tae Kelley Bronner, Stacey L. Cole (Corporate Fiduciary), Patrick C. Emans, Gail G. Fagan and Mitchell A. Hipsman, Co-Vice Chairs
9. **Elective Share Review Committee** — Lauren Young Detzel and Charles I. Nash, Co-Chairs; Jenna Rubin, Vice-Chair
10. **Estate and Trust Tax Planning** — Robert L. Lancaster, Chair; Tasha K. Pepper-Dickinson and Jenna G. Rubin, Co-Vice Chairs
11. **Guardianship, Power of Attorney and Advanced Directives** — Nicklaus Joseph Curley, Chair; Brandon D. Bellew, Darby Jones, and Stacey Beth Rubel Co-Vice Chairs
12. **IRA, Insurance and Employee Benefits** — L. Howard Payne Chair; Charles W. Callahan, III and Alfred J. Stashis, Co-Vice Chairs
13. **Liaisons with ACTEC** — Elaine M. Bucher, Bruce M. Stone, and Diana S.C. Zeydel
14. **Liaisons with Elder Law Section** — Charles F. Robinson 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; James R. George and R. Lee McElroy, IV, Co-Vice Chairs
18. **Probate Law and Procedure** — M. Travis Hayes, Chair; Amy B. Beller, Theodore S. Kypreos and Cristina Papanikos, Co-Vice Chairs
19. **Trust Law** — Angela McClendon Adams, Chair; Tami Foley Conetta, Jack A. Falk, Mary E. Karr, and Matthew H. Triggs, Co-Vice Chairs
20. **Wills, Trusts and Estates Certification Review Course** — Jeffrey S. Goethe, Chair; J. Allison Archbold, Rachel Lunsford, and Jerome L. Wolf, Co-Vice Chairs

XV. [Real Property Law Division Reports](#) — *Robert S. Swaine, Director*

1. **Attorney-Loan Officer Conference** — Robert G. Stern, Chair; Kristopher E. Fernandez and Wilhelmina F. Kightlinger, Co-Vice Chairs
2. **Commercial Real Estate** — Adele Ilene Stone, Chair; E. Burt Bruton, R. James Robbins, Jr. and Martin A. Schwartz, Co-Vice Chairs
3. **Condominium and Planned Development** — William P. Sklar, Chair; Alexander B. Dobrev, Vice Chair
4. **Condominium and Planned Development Law Certification Review Course** — Richard D. DeBoest, II and Sandra Krumbein, Co-Chairs
5. **Construction Law** — Scott P. Pence, Chair; Reese J. Henderson, Jr. and Neal A. Sivyer, Co-Vice Chairs
6. **Construction Law Certification Review Course** — Melinda S. Gentile and Deborah B. Mastin, Co-Chairs; Elizabeth B. Ferguson and Gregg E. Hutt, Co-Vice Chairs
7. **Construction Law Institute** — Sanjay Kurian, Chair; Diane S. Perera, Jason J. Quintero and Bryan R. Rendzio, Co-Vice Chairs.
8. **Development & Land Use Planning** — Julia L. Jennison, Chair; Colleen C. Sachs, Vice Chair
9. **Insurance & Surety** — Scott P. Pence and Michael G. Meyer, Co-Chairs; Frederick R. Dudley, 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 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 Estate Structures and Taxation** — Michael A. Bedke, Chair; Deborah Boyd and Lloyd Granet, Co-Vice Chairs
14. **Real Property Finance & Lending** — David R. Brittain and Richard S. McIver, Co-Chairs; Bridget M. Friedman and Robert G. Stern, Co-Vice Chairs
15. **Real Property Litigation** — Marty J. Solomon, Chair; Amber E. Ashton, Manuel Farach and Michael V. Hargett, Co-Vice Chairs
16. **Real Property Problems Study** — Lee A. Weintraub, Chair; Mark A. Brown, Jason Ellison, Stacy O. Kalmanson, and Susan Spurgeon, Co-Vice Chairs
17. **Residential Real Estate and Industry Liaison** — Salome J. Zikakis, Chair; Raul P. Ballaga, Louis E. “Trey” Goldman, James Marx and Nicole M. Villarroel, Co-Vice Chairs
18. **Title Insurance and Title Insurance Liaison** — Brian W. Hoffman, Chair; Cynthia A. Riddell, Vice Chair
19. **Title Issues and Standards** — Christopher W. Smart, Chair; Robert M. Graham, Brian W. Hoffman, Melissa Sloan Scaletta and Karla J. Staker, Co-Vice Chairs

XVI. General Standing Committee Reports — *Robert S. Freedman, General Standing Division Director and Chair-Elect*

1. **Ad Hoc Florida Bar Leadership Academy** — Kristopher E. Fernandez and Brian C. Sparks, Co-Chairs; J. Allison Archbold, Vice Chair
2. **Amicus Coordination** — Kenneth B. Bell, Gerald B. Cope, Jr., Robert W. Goldman and John W. Little, III, Co-Chairs
3. **Budget** — Wm. Cary Wright, Chair; Linda S. Griffin, Tae Kelley Bronner, and Pamela O. Price, Co-Vice Chairs
4. **CLE Seminar Coordination** — Steven H. Mezer and John C. Moran, Co-Chairs; Alexander H. Hamrick, Hardy L. Roberts, III, Paul E. Roman (Ethics), Silvia B. Rojas, Yoshimi O. Smith, Co-Vice Chairs
5. **Convention Coordination** — Linda S. Griffin, Chair; Angela McLendon Adams, Tae Kelley Bronner and Darby Jones, Co-Vice Chairs
6. **Fellows** — Jennifer Jones Bloodworth and Benjamin Diamond, Co-Chairs; Joshua Rosenberg and Angel Santos, Co-Vice Chairs
7. **Florida Electronic Filing & Service** — Rohan Kelley, Chair

8. **Information Technology** — Neil Barry Shoter, Chair; Erin Christy, Alexander B. Dobrev, Jesse Friedman, Keith S. Kromash, William A. Parady, Hardy Roberts, and Michael Sneeringer, Co-Vice Chairs
9. **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
10. **Law School Mentoring & Programing** — Lynwood F. Arnold, Jr., Chair; Phillip A. Baumann, Guy Storms Emerich and Elizabeth Hughes, Co-Vice Chairs
11. **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 Art Menor (Real Property), Co-Vice Chairs
12. **Legislative Update (2018)** — Stacy O. Kalmanson, Chair; Brenda Ezell, Michael Travis Hayes, Thomas Karr, Kymberlee Curry Smith, Jennifer S. Tobin and Salome J. Zikakis, Co-Vice Chairs
13. **Legislative Update (2019)** — Stacy O. Kalmanson and Thomas Karr, Co-Chairs; Brenda Ezell, Theodore Stanley Kypreos, Jennifer S. Tobin and Salome J. Zikakis, Co-Vice Chairs
14. **Liaison with:**
 - a. **American Bar Association (ABA)** — Edward F. Koren, Julius J. Zschau, George J. Meyer and Robert S. Freedman
 - 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 Linda R. Allan, Judge Jaimie R. Goodman, Judge Hugh D. Hayes, Judge Margaret Hudson, Judge Janis B. Keyser, Judge Maria M. Korvick, Judge Norma S. Lindsey, Judge Celeste H. Muir, Judge Robert Pleus, Jr., Judge Morris Silberman, Judge Mark Speiser, Judge Richard J. Suarez, Judge Patricia V. Thomas, and Judge Jessica J. Ticktin
 - f. **Out of State Members** — Nicole Kibert Basler, John E. Fitzgerald, Jr., and Michael P. Stafford
 - g. **TFB Board of Governors** — Steven W. Davis
 - h. **TFB Business Law Section** — Gwynne A. Young and Manuel Farach
 - i. **TFB CLE Committee** — Steven H. Mezer
 - j. **TFB Council of Sections** — Debra L. Boje and Robert S. Freedman
 - k. **TFB Pro Bono Committee** — Melisa Van Sickle
15. **Long-Range Planning** — Robert S. Freedman, Chair
16. **Meetings Planning** — George J. Meyer, Chair
17. **Membership and Inclusion** — Annabella Barboza and Brenda Ezell, Co-Chairs; S. Dresden Brunner, Vinette Dawn Godelia, and Kymberlee Curry Smith
18. **Model and Uniform Acts** — Bruce M. Stone and Richard W. Taylor, Co-Chairs

19. **Professionalism and Ethics** — Gwynne A. Young, Chair; Alexander B. Dobrev, Andrew B. Sasso, and Laura Sundberg, Co-Vice Chairs
20. **Publications (ActionLine)** — Jeffrey Alan Baskies and Michael A. Bedke, Co-Chairs (Editors in Chief); George D. Karibjanian, Sean M. Lebowitz, Paul E. Roman and Lee Weintraub, Co-Vice Chairs.
21. **Publications (Florida Bar Journal)** — Jeffrey S. Goethe (Probate & Trust) and Douglas G. Christy (Real Property), Co-Chairs; Brian Sparks (Editorial Board — Probate & Trust), Cindy Basham (Editorial Board — Probate & Trust), Michael A. Bedke (Editorial Board — Real Property), Homer Duvall (Editorial Board — Real Property) and J. Allison Archbold (Editorial Board), Co-Vice Chairs
22. **Sponsor Coordination** — Jason J. Quintero and J. Eric Virgil, Co-Chairs; Patrick C. Eman, Marsha G. Madorsky, Deborah L. Russell, J. Michael Swaine, and Arlene C. Udick, Co-Vice Chairs
23. **Strategic Planning** — Debra L. Boje and Robert S. Freedman, Co-Chairs

XVII. [Adjourn](#): Motion to Adjourn.

**Minutes of the Real Property, Probate and
Trust Law Section Executive Council Meeting
The Four Seasons
Orlando, FL
December 8, 2018**

I. Call to Order — Debra L. Boje, Chair

The Meeting was called to order by Debra L. Boje, Chair at 9:15 am. A round of applause was made for the extravagant location and excellent events. The Council members also enjoyed the Disney themed gifts (candy) to help get through the early morning meeting.

II. Attendance — Sarah Butters, Secretary

The attendance sheet was passed by Sarah Butters, Secretary.

III. Approval of Minutes of Previous Meeting — Sarah Butters, Secretary

Sarah presented the Minutes of the September meeting of the Executive Council held at the Westin Hotel, Rome, Italy, presented at pp. 10 – 26 of the Agenda. One amendment to the Minutes was necessary to reflect the attendance of Michael Gelfand at that meeting. A motion to approve the minutes passed unanimously.

IV. Chair's Report — Debra L. Boje, Chair

1. Recognition of Guests – The Chair welcomed Josh Doyle, Director of the Florida Bar who was a guest at the meeting.
2. Recognition of General Sponsors and Friends of the Section - The Chair next recognized the Section's generous sponsors, as set forth on pages 27 – 29 of the Agenda. The Chair particularly welcomed David Shanks of Stewart Title and Fontaine Lee of Cumberland Trust Company.

Chip Waller rose to thank the Chair for what he described as the best location the Section may have ever had. The Council appeared to agree by offering a rowdy applause in support.
3. Milestones – The Chair congratulated the Hearn Family on the addition of Ricky Hearn's child. The Chair also announced the retirement of section member, Judge Trish Thomas, from the bench. The Chair also introduced her replacement on the probate bench, Judge Mary Hatcher.
4. Update on Hurricane Michael Relief Efforts – The Section raised funds and donated through Amazon for the hurricane relief efforts. Council member Colleen Sachs, who practices in the area, coordinated efforts. Mary Ann and Jeff Obos drove supplies from Tallahassee to Panhandle locations. Council member Jerry Aron went to impacted areas and camped out with his chainsaw to help people clear land and assist people in need.

There is a continuing need for warm weather donations for people living in tent cities. Blankets and other items can be sent to Colleen or Mary Ann.

The No Place Like Home Program is also assisting in helping residents prove title to homes so they can qualify for FEMA assistance.

The Section is also making available a training video that the Section prepared to assist attorneys in representing residents with issues during Hurricane Irma.

A lot of need remains in Marianna and most of the relief efforts are starting to pull out.

5. Upcoming Executive Council Meetings

The Chair then directed everyone's attention to the upcoming Council meeting listed on page 30 of the Agenda. The next meeting is at the Amelia Island Omni Resort on March 13-17. This meeting is over Spring Break so it will be family friendly.

The Chair offered apologies regarding this meeting's hotel registration process and complications created by our room block guarantee.

This year's annual convention will be at the Opal Sands Resort on May 30-June 2. This hotel is gorgeous and nearly every room has an ocean view.

The Chair also announced the winner of the holiday cookie contest. Congrats to Ashley McCrae for her Glitter Macaroons.

The Section is also collecting donations towards a holiday gift for Section administrators, Mary Ann and Hilary.

V. Liaison with Board of Governors Report— Steven W. Davis, Liaison

Chair Elect of the Florida Bar, John Stewart, thanked the Section for their support in all the various programs and projects on behalf with the Bar. Thanks to Hilary and Mary Ann for their excellent work as well. The Section was reminded that FL Bar committee appointment applications are open now. Please apply and please let Section leadership know you have applied so that we can advocate for appointment.

The Bar is engaged in a study of professionalism and ethical issues related to Google advertising. The Bar is also working on a FL Realtor/Attorney Joint Committee to work on issues that interest the two professions.

VI. Chair-Elect's Report— Robert S. Freedman, Chair- Elect

Rob pointed everyone to the 2019-2020 Meeting Schedule found at page 31 of the Agenda and summarized as follows:

- We will return to the Breakers in Palm Beach in July 2019
- JW Marriot Marquis in Miami in November 2019
- Grand Hyatt in Tampa – January/Feb 2020
- Orlando Loews Sapphire Falls for Section Convention
- Hotel Okura Amsterdam – April 1-5, 2020 – The Section will be there for tulip season. Some

highlights include four stops at Van Gogh Museum, National Maritime Museum, and the Executive Council meeting at The Hague. Rob is taking volunteers to lead unsanctioned tours of the Red Light District and famed Amsterdam Coffee Shops.

VII. Treasurer's Report— Wm. Cary Wright, Treasurer

Treasurer Wright announced that the Statement of Current Financial Conditions is contained in the Agenda at page 32. The Section is currently tracking within our 2018-2019 budget based on numbers that include expenses through the Breakers meeting.

VIII. Director of At-Large Members Report— Lawrence Jay Miller, Director

Larry reported that the No Place Like Home program is pairing with North Florida Legal Services in Tallahassee is assisting with contacting lawyers in the Panhandle area that know of residents in need of assistance due to Hurricane Michael. Larry reminded everyone that the application deadline for ALM is fast approaching. Even current ALMs need to re-apply, as well as anyone seeking a new appointment as an ALM.

IX. CLE Seminar Coordination Report— Steven H. Mezer (Real Property) and John C. Moran (Probate & Trust), Co-Chairs

John Moran sported Gator tattoos all over his face as a result of losing a bet with Bill Hennessey over the loss of FSU's football team to UF. Notwithstanding his humiliation, John reported that the CLEs on the probate side are busy. On Tuesday they will hold a webinar on the new evidence ruling from the Florida Supreme Court. They are also starting a webinar practice series on deficient IRA beneficiary designations, spousal rights and defective trusts. These webinars can be viewed live or downloaded later for online viewing.

Steve Mezer reported that the CLE quantity and quality is tracking above last year. The Section is always in need speakers with fresh content ideas. CLE topics currently being planned include medical marijuana, certification review and a 4 part series on the Marketable Record Title Act.

X. General Standing Division— Robert S. Freedman, General Standing Division Director and Chair-Elect

Action Items:

1. Homestead Issues Study – Jeffrey S. Goethe and J. Michael Swaine, Co-Chairs

Jeff explained that the current law and resulting confusion regarding homestead treatment of cooperative property. The proposed definition is intended to make clear that there is exclusive use and right of possession in an identifiable unit of the co-ops to make it clear that co-ops are interests in real property and can be homestead.

A motion was made and seconded (A) to adopt as a Section position proposed legislation to amend Section 719.103(25), Florida Statutes, to provide much needed clarification and guidance regarding the inurement of the constitutional exemption from creditors' claims upon the death of a Florida resident who owns a leasehold cooperative unit; (B) to find that such legislative position is within the purview of the RPPTL Section; and (C) to expend Section funds in support of the proposed legislative position.

There was no discussion or debate. The Motion passed unanimously.

2. 2019-2020 Budget — Wm. Cary Wright, Treasurer and Chair, Budget Committee

A motion was made and seconded to approve the proposed Real Property, Probate and Trust Law Section Budget for the fiscal year 2019 – 2020, found at page 52 – 60 of the Agenda. The Section unanimously passed the proposed budget.

Cary thanked the Budget Committee for their hard work.

Informational Items:

1. Ad Hoc Florida Bar Leadership Academy — Kristopher E. Fernandez and Brian E. Sparks, Co-Chairs

Kris reported on the William Reece Smith Jr. Leadership Academy application process and qualifications. The Section gives up to two scholarships for \$3,500 to assist with cost of participating in the FL Bar's Leadership Academy. Applications must apply to the academy and be accepted by the FL Bar, and then RPPTL will consider offering a scholarship to assist with the cost. You cannot be considered for a Section scholarship if you are not a Section member and you must first be accepted to the Academy.

2. Liaison with Clerks of the Court — Laird A. Lile, Liaison

Laird mentioned that they are working on a list of optimum probate documents to be recorded, which will assist with title issues years down the line. The Clerks are interested in the storage issues related to e-wills and also looking at the guardianship laws of FL and the report that the Florida Supreme Court's guardianship workgroup recently issued. Nick Curley and the Guardianship Committee are looking at implementing some of these recommendations from that report. Justice Canady recently commented that the RPPTL is a "powerhouse Section" that the Court has recognized and appreciates for their hard work.

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

Lynwood reported that this is a new committee that was severed off from Membership and Inclusion Committee. Lynwood introduced a few law school students that were in attendance. The Committee is doing a lot of on campus events at all 11 law schools throughout the state, including Lunch and Learns, practice panels and other learning/mentoring events. Many schools have Student RPPTL Clubs that support the Sections' initiatives. Rep. Diamond is coming to speak at FSU's student section this Spring.

4. Sponsorship Committee — Jason J. Quintero and Eric C. Virgil, Co-Chairs

Eric reported that the committee has been successful in recruiting 2 new Friends of the Section and 2 new committee sponsors to be announced soon. The committee will be sending out a survey in the Spring of questions to help them better identify new potential sponsor and how to better ensure a that the sponsors get a return on their investment.

5. Professionalism and Ethics — Gwynne A. Young, Chair

Andy Sasso reported that the committee is working on a rule regarding representing clients

with diminished capacity, including consideration of replacing the current Rules Regulating the Florida Bar 4-1.14 (Representing a Client Under a Disability) with ABA Model Rule of Professional Conduct 1.14 (Client with Diminished Capacity).

6. Professionalism and Ethics — Gwynne A. Young, Chair

Yoshi Smith moderated a skit about out of state lawyers making wills for FL residents and the ethics of reviewing estate planning documents prepared by out of state lawyers. Theo Kypreos and Gutman Skrande took the lead roles as ethically challenged lawyers.

7. Standing Committee on E-Wills and Remote Notary –

Bill Hennessey gave a report on the current status of e-wills legislation. The Section continues to work with stakeholders on issues related to remote witnessing. Burt Bruton gave an update on Remote Notary and where we left off last year on the issues that continue to divide the Section from the other stakeholders. Specifically, the banking powers issue in DPOAs and universal recognition of remote notarization remain an issue.

Angela Adams clarified that when she was at the Breakers in July 2018 and asked for an amendment to the Remote Notarization legislative position, she did not realize that the Section's Officers could not change that position with a super-majority vote of the Council. As a result, the Section has to oppose any legislation unless it requires in person witnessing for DPOAs that include banking provisions. Angela did not intend to impose that kind of inflexible position, so she would like to amend the minutes to reflect that.

Procedurally, in order to amend the minutes, we need to waive the rules to take up a motion because the item was not disclosed on the agenda.

A Motion to Waive the rules was made and Seconded. It passed unanimously without debate.

A Motion to Amend the minutes was then made and seconded. That also passed unanimously.

XI. Probate and Trust Law Division Report — William T. Hennessey, Director

Bill thanked the committee sponsors.

Information Items:

1. Probate and Trust Litigation Committee — J. Richard Caskey, Chair

Rich explained the proposal to clarify that only a PR should bring claims in a decedent's name, and that beneficiaries should not be permitted to bring separate claims based on their beneficial interest.

Liz Hughes and Kady Huss did the heavy lifting on the proposed legislation and white paper. Liz explained that there is a 4th DCA case that allowed a beneficiary to pursue assets for the estate and even stated that the PR is not an indispensable party in that proceeding. The Committee continues to receive feedback on the proposal and will have a revision to the proposed change to Section 733.802 based on comments received. Look

for the final product as an action item at the next meeting.

2. Trust Law Committee — Angela Adams, Chair

Angela Adams explained the proposal which would support the adoption of the “Florida Directed Trust Act”, a modified version of the Uniform Directed Trust Act, which clarifies and changes various aspects of the Florida Statutes relating to directed trusts.

Chip Waller questioned whether the Act would have any application on how real property is held in trusts. Chip asked that the Real Property Division vet that inquiry.

3. Probate Law and Procedure Committee — M. Travis Hayes, Chair

Travis explained the proposed position to support proposed legislation to improve notice of administration to surviving spouse to include notice that an extension of the deadline for taking an elective share may be requested prior to the expiration of the deadline for making the election, including changes to Fla. Stat. § 733.212(2)(e). There are other proposals that committees are considering so there may be a further changes to the notice.

Laird suggested that we create a separate notice specific to a surviving spouse, which the committee is planning to study.

4. Small Accounts Legislation (from the supplemental agenda) – Bill Hennessey, Division Director

Bill explained that this legislation came up in 2018 and the Executive Committee took a position to oppose it. That position was later ratified by the Executive Council when the positions were renewed at the annual convention. So the Section currently has a position to oppose this legislation.

The Committee believes that the current position needs to be amended to allow our lobbyists to address additional concerns.

But because this is a late addition to the agenda, a Motion was made to waive the rules. Rohan Kelley raised the issue that we should not be waiving rules lightly and that we have too many late and supplemental items on our Agenda. Rohan believes that this was potentially foreseeable so it should not have been rushed.

A Motion was made to waive Article VIII Section 4(A) of the Section Bylaws, which requires that proposed legislative positions be placed on the agenda and supporting documentation distributed to the Executive Council at least one week prior to the Executive Council meeting, to permit the Section to consider the revised Section position stated below.

The Motion to waive the rules passed with one no vote from Rohan.

Motion was made and seconded follows: (A) amend the current position of RPPTL Section relating to small accounts to read as follows: Oppose proposed legislation that would allow banks or other financial institutions in Florida to distribute funds from any account in the name of the decedent (with no pay-on-death or survivor designation) in the absence of an appropriate probate proceeding or other court proceeding, specifically including HB 1241/SB 892 unless safeguards are put in place to protect the rights and interests of persons rightfully entitled to the proceeds, the constitutional rights of the decedent to direct the

disposition of his or her property, and the rights of creditors to recover debts through a probate proceeding; (B) find that such legislative position is within the purview of the RPPTL Section; and (C) expend Section funds in support of the proposed legislative position.

Fletch Belcher asked for clarification of the amendment, specifically related to whether it would allow a compromise to distribute accounts in excess of \$10,000. Nick Curley expressed concern that we should stand firm in opposition if we cannot envision how we would ever get to a position of support. Tae Bronner believes we could get to “yes” if certain safeguards are in place, like dollar limits, central filings with the Court, intestate estates only, remaining liable to creditors, and diligent search for creditors.

The Motions passed unanimously.

XII. [Real Property Law Division Report](#) — Robert S. Swaine, Division Director

Rob shot a live video for our wounded soldier, Bob Swaine, who is home sick this weekend.

Rob thanked the committee sponsors.

Action Items:

1. Condominium pre-suit dispute resolution (from the supplemental agenda)

Bill Sklar explained the need for a position on pre-suit dispute resolution for HOA disputes.

Bill made a Motion was made to waive Article VIII Section 4(A) of the Section Bylaws, which requires that proposed legislative positions be placed on the agenda and supporting documentation distributed to the Executive Council at least one week prior to the Executive Council meeting, to permit the Section to consider the revised Section position stated below. Motion passed unanimously.

A Motion was then made and seconded to (A) adopt as a Section legislative position support for proposed changes to Section 718.1255, F.S., pertaining to pre-suit resolution of condominium disputes, (B) find that such legislative position is within the purview of the RPPTL Section; and (C) expend Section funds in support of the proposed legislative position.

Shawn Brown explained the committee’s work over the last 5 weeks and that it is consistent with what they intended in 2016. Motion passed unanimously.

Santa then appeared to wish everyone a Happy Holiday and to warn the crowd that he is always watching, particularly Rob Freedman.

2. Title Issues and Title Standards Committee — Christopher Smart, Chair

This proposed action item was removed from consideration so that the Committee could implement some of the comments received since the Agenda was published.

XV. [Adjourn](#): Motion to Adjourn.

Chair Boje then reminded the Council of the dinner with Art Smith this evening and that there are some last minute tickets still available. The meeting was then adjourned.

ATTENDANCE ROSTER
REAL PROPERTY PROBATE & TRUST LAW SECTION
EXECUTIVE COUNCIL MEETINGS
2018-2019

Executive Committee	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
Boje, Debra Lynn Chair		√	√	√	√		
Freedman, Robert S. Chair-Elect & General Standing Div. Director	√		√	√	√		
Hennessey, William Probate & Trust Law Div. Director		√	√		√		
Swaine, Robert S. Real Property Div. Director	√		√				
Butters, Sarah S. Secretary		√	√		√		
Wright, Wm. Cary Treasurer	√		√	√	√		
Frazier, S. Katherine Legislation Co-Chair Real Property	√		√		√		
Scuderi, Jon Legislation Co-Chair Probate		√	√		√		
Moran, John C. CLE Co-Chair Probate		√	√		√		
Mezer, Steven H. CLE Co-Chair Real Property	√		√		√		
Miller, Lawrence J. Director, At Large Members		√			√		
O'Malley, Andrew Immediate Past Chair	√				√		

Executive Council Members	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
Acosta, Jolyon Delphin		√	√		√		
Adams, Angela M.		√	√		√		
Akins, David J.		√	√	√	√		
Allan, Hon. Linda R.							
Altman, Stuart H.		√	√		√		

Executive Council Members	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	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	√		√		√		
Basham, Cindy		√					
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		√	√		√		

Executive Council Members	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
Brenes-Stahl, Tattiana		√	√		√		
Brennan, David C. Past Chair		√	√				
Brittain, David R.	√		√		√		
Bronner, Tae K.		√	√		√		
Brown, Mark A.	√		√		√		
Brown, Shawn	√		√		√		
Brunner, S. Dresden		√			√		
Bruton, Jr., Ed Burt	√		√		√		
Bucher, Elaine M.		√	√		√		
Butler, Johnathan		√	√		√		
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	√						
Costello, T. John, Jr.		√					
Curley, Nick		√	√	√	√		
Davis, Steven W.	√		√				

Executive Council Members	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
DeBoest II, Richard Dearborn	√		√		√		
Detzel, Lauren Y.		√			√		
Diamond, Benjamin F.		√	√		√		
Diamond, Sandra F. Past Chair		√			√		
Direktor, Kenneth S.	√						
Dobrev, Alex	√		√		√		
Dollinger, Jeffrey	√				√		
Dribin, Michael Past Chair		√	√		√		
Dudley, Frederick R.	√						
Duffey, Patrick J.		√	√		√		
Duvall, III, Homer	√		√		√		
Duz, Ashley Nichole		√	√		√		
Eckhard, Rick	√				√		
Ellison, Jason M.	√		√		√		
Emans, Patrick C		√	√		√		
Emerich, Guy S.		√	√		√		
Ertl, Christene M.	√		√				
Ezell, Brenda B.	√		√	√	√		
Fagan, Gail		√	√	√	√		
Falk, Jr., Jack A.		√	√		√		
Farach, Manuel	√		√		√		
Faulkner, Debra Ann		√					
Felcoski, Brian J. Past Chair		√	√		√		
Ferguson, Elizabeth B.	√		√				

Executive Council Members	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
Fernandez, Kristopher E.	√		√		√		
Fields, Alan B.	√				√		
Fitzgerald, Jr., John E.		√			√		
Flood, Gerard J.		√	√				
Foreman, Michael L.		√	√		√		
Freeman, Gill				√			
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 Randall							
Graham, Robert M.	√		√		√		
Granet, Lloyd	√		√		√		
Griffin, Linda S.		√	√	√	√		
Grimsley, John G. Past Chair		√					

Executive Council Members	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
Grosso, Jennifer		√			√		
Gunther, Eamonn W.		√	√		√		
Gurgold, Eric		√	√		√		
Guttmann, III, Louis B Past Chair	√		√				
Hamrick, Alexander H		√	√		√		
Hancock, Patricia J.	√						
Hargett, Michael Van	√		√		√		
Harriett-Wartenberg, Stephanie		√					
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.	√		√	√	√		
Horstkamp, Julie A.	√		√				
Hudson, Hon. Margaret "Midge"			√				
Hughes, Elizabeth		√	√		√		
Hutt, Gregg Evan	√		√		√		
Isphording, Roger O. Past Chair		√		√	√		
Jennison, Julia Lee	√		√		√		

Executive Council Members	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
Johnson, Amber Jade		√	√		√		
Jones, Darby		√	√		√		
Jones, Frederick W.	√		√	√			
Jones, Patricia P.H.	√		√	√			
Judd, Robert B.		√	√		√		
Kalmanson, Stacy O.	√		√		√		
Kangas, Michael R.		√			√		
Karibjanian, George		√					
Karr, Mary E.		√	√				
Karr, Thomas M.		√	√		√		
Kayser, Joan B. Past Chair		√					
Keane, Cristin C.	√						
Kelley, Rohan Past Chair		√		√	√		
Kelley, Sean W.		√			√		
Kelley, Shane		√	√		√		
Keyser, Hon. Janis Brustares							
Khan, Nishad	√		√	√	√		
Kibert-Basler, Nicole	√		√		√		
Kightlinger, Wilhelmina F.	√						
Kinsolving, Ruth Barnes, Past Chair	√				√		
Koren, Edward F. Past Chair		√	√				
Korvick, Hon. Maria			√	√			
Kotler, Alan Stephen		√	√		√		
Kromash, Keith S.		√					

Executive Council Members	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
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 M.		√	√		√		
Leebrick, Brian D.	√						
Lile, Laird A. Past Chair		√	√	√	√		
Lindsey, Hon. Norma							
Little, III, John W.	√		√				
Lopez, Sophia A.		√		√	√		
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.	√		√				
McElroy, IV, Robert Lee		√	√		√		

Executive Council Members	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
McIver, Richard	√		√		√		
McRae, Ashley E.	√		√		√		
Melanson, Noelle M.		√	√		√		
Menor, Arthur J.	√				√		
Meyer, George F. Past Chair	√		√		√		
Meyer, Michael	√		√				
Middlebrook, Mark T.		√	√	√	√		
Mize, Patrick		√					
Moule, Jr., Rex Everet		√					
Muir, Hon. Celeste H.			√		√		
Murphy, Melissa J. Past Chair	√		√	√	√		
Nash, Charles I.		√					
Neukamm, John B. Past Chair	√		√		√		
Nguyen, Hung V.		√	√				
Papanikos, Cristina		√	√		√		
Parady, William A.	√		√		√		
Payne, L. Howard		√	√				
Pence, Scott P.	√		√		√		
Pepper-Dickinson, Tasha K.		√	√		√		
Perera, Diane	√				√		
Pilotte, Frank		√	√		√		
Pleus, Jr., Hon. Robert							
Pollack, Anne Q.	√		√		√		
Price, Pamela O.		√					

Executive Council Members	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
Pyle, Michael A.		√					
Quintero, Jason	√		√		√		
Redding, John N.	√		√		√		
Renzio, Bryan	√				√		
Reynolds, Stephen H.		√					
Riddell, Cynthia	√				√		
Rieman, Alexandra V.		√	√		√		
Robbins, Jr., R.J.	√		√		√		
Roberts, III, Hardy L.	√						
Robinson, Charles F.		√			√		
Rodstein, David William	√						
Rojas, Silvia B.	√		√	√	√		
Rolando, Margaret A. Past Chair	√		√	√	√		
Roman, Paul E.		√	√		√		
Rosenberg, Joshua		√	√				
Rubel, Stacy		√	√		√		
Rubin, Jenna		√	√		√		
Russell, Deborah L.		√					
Russick, James C.	√		√		√		
Rydberg, Marsha G.	√		√				
Sachs, Colleen C.	√		√		√		
Santos, Angela		√	√				
Sajdera, Christopher	√		√		√		
Sasso, Andrew	√		√		√		

Executive Council Members	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
Scaletta, Melissa Sloan	√		√		√		
Schwartz, Martin	√		√		√		
Schwartz, Robert M.	√		√		√		
Schwinghamer, Jamie		√	√		√		
Seaford, Susan	√				√		
Seigel, Daniel A.	√		√				
Sheets, Sandra G.		√	√		√		
Sherrill, Richard		√	√		√		
Shoter, Neil B.	√		√		√		
Silberman, Hon. Morris							
Silberstein, David M.		√					
Sivyer, Neal Allen	√		√				
Sklar, William P.	√		√		√		
Smart, Christopher W.	√		√		√		
Smith, Kymberlee C.	√		√		√		
Smith, G. Thomas Past Chair/Honorary Member	√						
Smith, Yoshimi O.		√	√		√		
Sneeringer, Michael		√	√		√		
Solomon, Marty	√				√		
Sparks, Brian C.		√	√	√	√		
Speiser, Hon. Mark A.							
Spivey, Barry F.		√	√		√		
Spurgeon, Susan K.	√		√		√		
Stafford, Michael P.		√	√		√		

Executive Council Members	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
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.	√		√		√		
Ticktin, Hon. Jessica J.							
Tobin, Jennifer S.	√		√		√		
Triggs, Matthew H.		√	√		√		
Tschida, Joseph John	√		√		√		
Tucker, Kristine L.		√			√		
Udick, Arlene C.	√		√	√			
Van Dien, Lisa Barnett	√		√		√		
Van Lenten, Jason Paul		√	√		√		
Van Pelt, Kit E.		√	√	√	√		
VanSickle, Melissa	√		√				
Villarroel, Nicole Marie	√		√		√		
Villavicencio, Stephanie		√					
Virgil, Eric		√	√		√		

Executive Council Members	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
Waller, Roland D. Past Chair	√		√	√	√		
Weintraub, Lee A.	√		√		√		
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.		√	√		√		
Young, Gwynne A.		√	√	√	√		
Zeydel, Diana S.C.		√	√		√		
Zikakis, Salome J.		√	√	√	√		
Zschau, Julius J. Past Chair	√		√				

RPPTL Fellows	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
Abukodeir, Samah		√	√				
Barr, James C.	√				√		
Cazobon, Denise		√	√				
Coleman, Jami		√					
de la Riva, Lian		√	√				
Jackson, Gabrielle	√		√		√		

RPPTL Fellows	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
McDermott, Daniel L.		√	√	√	√		
Peregrin, Jacqueline J.	√		√		√		

Legislative Consultants	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	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
Alaimo, Marve Ann – Breakers, Orlando		√
Amaro, M. Barbara – Italy		√
Behar, Jacobeli J. – Breakers, Orlando		√
Broadwater, Carolyn – Breakers	√	
Calers, Perla – Italy	√	
Cervo, Lourdes – Breakers, Italy	√	
Davis, Steven BOG Liaison – Breakers	√	
Finchum, Travis – Breakers, Orlando		√
Finker, Erin Farrington – Italy		√
Foster-Morales, Dori BOG - Breakers	n/a	n/a
Groover, Lea Anne – Breakers		√
Hall, Thomas – Breakers		√
Kleinknecht, Robert – Italy		√
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Michael D. Minton

February 12, 2019

Ms. Deborah S. Ryan
CC:PA:LPD:PR (REG-106706-18), Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

*Submitted Electronically to Federal eRulemaking portal at:
<http://www.regulations.gov> (IRS REG-106706-18)*

RE: Proposed Rules on Estate and Gift Taxes; Difference in the Basic Exclusion Amount (“Proposed Section 2010 Regulations”) / Comments by The Florida Bar Tax Section and The Florida Bar Real Property, Probate and Trust Law Section

Dear Ms. Ryan:

Enclosed herewith are comments with respect to the Proposed Section 2010 Regulations submitted jointly by The Florida Bar Tax Section (the “Tax Section”) and The Florida Bar Real Property, Probate and Trust Law Section (the “RPPTL Section”). These comments represent the efforts of a number of members of both referenced Florida Bar Sections under the auspices of the Estate and Trust Tax Planning Committee of the RPPTL Section, and the Federal Tax Division and the Legislation and Regulations Committee of the Tax Section. The principal contributors to the comments were David J. Akins, Eric Gurgold and Robert J. Lancaster on behalf of the RPPTL Section; Donna L. Longhouse, Mark Scott, and Abraham W. Smith on behalf of the Tax Section; and Jolyon D. Acosta on behalf of both Sections.

Although members of the Tax Section and RPPTL Section who participated in preparing these comments may have clients who would be affected by the regulations as ultimately adopted, no member so involved has been engaged by a client to make a submission with respect to, or to influence the development or outcome of, the subject matter of these comments. We request that questions regarding the comments be delivered to:

Contact Person:

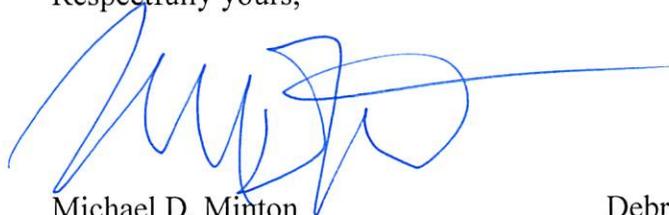
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The RPPTL Section is comprised of more than 10,000 members of The Florida Bar, a significant portion of which practice estate planning; federal estate, gift and generation-skipping transfer taxation; federal fiduciary income taxation; and federal tax controversies. The Tax Section is comprised of more than 2,000 members of The Florida Bar who practice in all areas of tax law, including federal individual, corporate, and partnership income taxation; federal estate, gift and generation-skipping transfer taxation; international taxation; state and local taxation; employee benefits tax law; and state and federal tax controversies.

The views expressed herein represent only those of the Tax Section and RPPTL Section of The Florida Bar, and are not to be ascribed to The Florida Bar or its Board of Governors.

We would be pleased to provide additional comments upon request. Please do not hesitate to contact us.

Respectfully yours,



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THE FLORIDA BAR
TAX SECTION
AND
REAL PROPERTY, PROBATE AND TRUST LAW SECTION
COMMENTS TO PROPOSED REGULATIONS UNDER SECTION 2010
(Estate and Gift Taxes; Differences in the Basic Exclusion Amount)

1. Introduction.

Under the Internal Revenue Code of 1986, as amended (the “Code”), an estate tax is imposed on the transfer of property at death, and a gift tax is imposed on transfers during lifetime, of every U.S. citizen or resident. Further, a generation-skipping transfer (“GST”) tax is imposed on direct skips, taxable distributions and taxable terminations.¹ Every U.S. citizen or resident has an estate, gift and GST exclusion that can be applied to reduce the tax imposed on such transfers. The Basic Exclusion Amount (the “BEA”) is a component of the Applicable Exclusion Amount (the “AEA”); the AEA being used to determine the applicable credit amount applied against the estate and gift tax.² Although applicable to both estate and gift taxes, such terms are defined in Chapter 11 governing the estate tax.³ GST tax calculations refer specifically to the BEA in determining the credit imposed against such tax.⁴ The estate, gift and GST tax rules present an integrated (or “unified”) system of taxing gratuitous transfers.

The Tax Cuts and Jobs Act (“TCJA”) temporarily increased the BEA.⁵ Specifically, the TCJA increased the BEA from \$5,000,000 to \$10,000,000 (subject to inflation adjustments) in the case of decedents dying and gifts made after December 31, 2017 but before January 1, 2026 (the “Increased BEA Period”).⁶ Commentators occasionally refer to a post-2026 tax imposed (or loss of tax benefit) resulting from a decrease in the BEA after the Increased BEA Period as a “Clawback” or “Clawback Tax.”⁷

¹ The term “transfer taxes” used herein collectively refers to the federal estate tax imposed under Chapter 11, the federal gift tax imposed under Chapter 12, and the federal GST tax imposed under Chapter 13.

² IRC § 2010(c); IRC § 2505(a).

³ IRC §§ 2010(c), 2505(a) (reference to the “applicable credit amount” under section 2010(c)).

⁴ IRC § 2631(c) (reference to BEA).

⁵ See, section 11061 of the Tax Cuts and Jobs Act, Public Law 115-97, 131 Stat. 2504 (2017).

⁶ IRC 2010(c)(3)(C).

⁷ *Aucutt, Ronald, D.*, Capital Letter No. 47 (Jan. 2, 2019), available at <https://www.actec.org/resources/capital-letter-no-47/> (last accessed Jan. 25, 2019) [*Aucutt Capital Letter No. 47*]; *Aucutt, Ronald, D.*, Capital Letter No. 46 (Nov. 29, 2018), available at <https://www.actec.org/resources/capital-letter-no-46/> (last accessed Jan. 12, 2019); *Bonner, Paul*, Estate and gift exclusion clawback addressed in proposed regs., *Journal of Accountancy* (Nov. 21, 2018), available at <https://www.journalofaccountancy.com/news/2018/nov/estate-gift-tax-exclusion-before-after-tcja-201820153.html> (last accessed Jan. 15, 2019).

The Internal Revenue Service (“IRS”) recently issued proposed regulations addressing differences in the BEA during the Increased BEA Period (the “Proposed Regulations”).⁸ The Proposed Regulations apply to estate and gift taxes. There is no explicit reference to GST tax (although by extension alteration of the BEA impacts GST tax calculations).

The preamble to the proposed regulations lists in detail the steps necessary to calculate estate and gift taxes; with specific references to the BEA, AEA, deceased spousal unused exclusion amount (“DSUE”),⁹ and the restored exclusion amount (“REA”).¹⁰ The preamble suggests that the Proposed Regulations are intended to address the cumulative nature of estate and gifts taxes where (i) a taxpayer exhausted his or her BEA in a pre-2018 tax year and makes an additional gift or dies during the Increased BEA Period (“Increased BEA Period Clarification”); or (ii) a taxpayer made a fully sheltered gift during the Increased BEA Period and makes an additional gift or dies after the Increased BEA Period (“Post-Period Clarification”). The preamble sets forth four situations impacted by the increased BEA. However, only in the fourth situation, considering whether estate tax liability is increased for the estate of a taxpayer who died after the Increased BEA Period by a gift made during the Increased BEA Period, did the drafters find Proposed Regulations necessary to clarify that estate tax should not be increased by the prior gifts made during the Increased BEA Period.

2. **Proposed Regulations.**

The Proposed Regulations specifically address the situation where a donor makes a “large” gift during the Increased BEA Period and later dies at a time when the BEA has decreased. The Proposed Regulations clarify that estate tax will not apply to the extent that the BEA (at the time of the gift) was sufficient to absorb any gift tax applicable at the time of the gift.¹¹ This is done by adjusting the credit allowable against the decedent’s estate to match the BEA at the time of the gift. The Proposed Regulations include a simple example where an individual utilizes his or her increased BEA and later dies after the Increased BEA Period (the “Example”).¹²

3. **Estate Tax.**

The Proposed Regulations modify the calculation of estate tax after the Increased BEA Period by increasing the Unified Credit set forth in IRC § 2010 in certain limited circumstances. Under the Proposed Regulations, the BEA is increased as necessary to eliminate or reduce estate tax caused by use of the BEA in a gift transaction during the Increased BEA Period. The Proposed Regulations adequately address the estate tax goal set forth in the preamble. However, this is accomplished in a very narrow manner, perhaps with applicability limited to the Post-Period Clarification regarding the sheltering of an Increased BEA Period gift from increasing estate tax upon the death of the donor / decedent after the Increased BEA Period.

⁸ Estate and Gift Taxes; Differences in the Basic Exclusion Amount, REG-106706-18, 83 Fed. Reg. 59343.

⁹ IRC §§ 2010(c)(2)(B), 2010(c)(4).

¹⁰ See, Notice 2017-15, 2017-6 I.R.B. 783.

¹¹ Prop. Reg. § 20.2010-1(c)(1).

¹² Prop. Reg. § 20.2010-1(c)(2).

Even if the Proposed Regulations should be limited in scope to address the Post-Period Clarification, additional explanation and examples would be beneficial to taxpayers and their advisors to address the following matters:

- Use and calculation of DSUE as a component of the AEA, in particular where the first spouse dies during the Increased BEA Period and the surviving spouse dies after the Increased BEA Period. For example, in the event that the first spouse dies in 2019 when the BEA is \$11,400,000 (resulting in DSUE of the same amount), and the surviving spouse dies after the Increased BEA Period, when the BEA is \$6,000,000,¹³ is the surviving spouse's available DSUE \$11,400,000, such that the surviving spouse's AEA under IRC § 2010(c)(2) is \$17,400,000?¹⁴

The Proposed Regulations appear limited in scope to address the BEA as used in IRC § 2010(c)(3), and not the BEA used to determine the DSUE in IRC § 2010(c)(4)(A) (the "DSUE BEA").¹⁵ Under IRC § 2010(c)(4), DSUE is the lesser of the (i) BEA or (ii) the excess of the predeceased spouse's AEA over the amount with respect to which the tentative tax of the predeceased spouse is determined under IRC § 2001(b)(1).¹⁶ Is the DSUE BEA based on the death year of the predeceased spouse or the surviving spouse? While the statute does not clearly address this issue; the Treasury Regulations suggest that the DSUE BEA is based on the BEA during the death year of the predeceased spouse.¹⁷ Do the Proposed Regulations, by implications if not directly, extend to the DSUE BEA; supporting the above interpretation of the Treasury Regulations?

Consider the predeceased spouse dying during the Increased BEA Period and funding a credit shelter trust, applying all or a portion of his or her (increased) BEA to shelter the trust from estate tax. Such funding would clearly benefit from the increased BEA in calculating estate tax due. Therefore, it would seem logical that spouses relying on portability (as opposed to the funding of a credit shelter trust) should be entitled to the benefit from the increased BEA in a similar manner.

¹³ In this example, the inflation adjusted \$5,000,000 set forth at IRC § 2010(c)(3) is set at \$6,000,000, the \$1,000,000 difference being the inflation adjustment set forth at IRC § 2010(c)(3)(B).

¹⁴ \$17,400,000 AEA calculated as follows: \$6,000,000 BEA under IRC § 2010(c)(2)(A) plus \$11,400,000 DSUE under IRC § 2010(c)(2)(B).

¹⁵ *Aucutt Capital Letter No. 47* at Number Four, Comment.

¹⁶ Generally, the second part of the IRC § 2010(c)(4) determination addresses a portion of BEA used on the death of the first spouse to die; therefore reducing the available DSUE. *See*, Treas. Reg. 20.2010-2(c)(5), *Example 1*.

¹⁷ Treas. Reg. § 20.20102(c)(1)(i) ("decendent" presumably referring to the predeceased spouse, as opposed to a "decendent with a surviving spouse;" as noted in the first sentence of Treas. Reg. § 20.2010-2(c)(1)); *Aucutt Capital Letter No. 47* at Number Four, Comment.

Nonetheless, the limited scope of the Proposed Regulations leaves a level of uncertainty in determining the DSUE BEA.¹⁸ Therefore, the calculation of the surviving spouse's available DSUE should be clarified.

- Inflation adjustments as set forth in IRC § 2010(c)(3)(B).
- A taxable estate in which the BEA applicable during the Increased BEA Period reduces, but does not fully eliminate, the estate tax.

4. **Gift Tax.**

The Proposed Regulations indirectly address the implications of the Increased BEA Period on federal gift tax in limited situations. While the preamble discusses gift tax in some detail, including the seven step approach in calculating gift tax and setting forth certain gift tax scenarios that do not require a regulatory fix, the Proposed Regulations focus on the estate tax result for a gift made during the Increased BEA Period. The Example does not specifically address gift tax.

The preamble language, read together with Chapter 12, may sufficiently address the Increased BEA Period Clarification. A gift made during the Increased BEA Period will be evaluated in the context of IRC § 2505(a)(1), which incorporates the AEA, which considers the *increased* BEA during the Increased BEA Period.

Even if the Increased BEA Period Clarification is accomplished under existing provisions, additional explanation and examples would be beneficial to taxpayers and their advisors to address, specifically, the following matters:

- An example of the calculation of gift tax due for a gift made during the Increased BEA Period.
- An example of gift tax due in a period following the Increased BEA Period; where no gift tax would have been due for a similar gift made during the Increased BEA Period.
- Examples regarding gift splitting,¹⁹ including the situation where a gift-splitting election is made during the Increased BEA Period, followed by the death of the first spouse during the Increased BEA Period and the death of the surviving spouse after the Increased BEA Period.

5. **GST Tax.**

The Proposed Regulations include no reference federal GST tax. Transfer taxes, being a unified concept of estate, gift and GST taxes, are often closely interrelated and there is a lack of

¹⁸ Prop. Reg. 20.2020-1(c)(1) (“ . . . to the extent such credits are based solely on the [BEA] as defined and adjusted in Section 2010(c)(3)”); *Aucutt Capital Letter No. 47* at Number Four, Comment.

¹⁹ IRC § 2513.

symmetry in regulations that address the gift and estate but not the GST tax. Furthermore, planning initiatives of wealthier taxpayers to whom the Proposed Regulations are most relevant often implicate the GST tax, as GST exclusion frequently is allocated to significant gratuitous transfers. Therefore, the Proposed Regulations should include reference to the GST tax, as well as examples implicating the GST tax.

The GST exemption amount set forth at IRC § 2631(c) includes a direct reference to the BEA impacted by the changes to the BEA and the Proposed Regulations. Presumably, the effects of the changes to the BEA on GST tax are similar to the Increased BEA Period Clarification during the Increased BEA Period. However, unlike in the case of gift taxes, there is no stated goal in the preamble related to GST taxes (e.g., the Increased BEA Period Clarification). A technical reading of IRC § 2631(c), in conjunction with the Proposed Regulations, apparently shields a GST sensitive transaction occurring during the Increased BEA Period, up to the larger BEA. However, taxpayers would benefit from clarification of this result.

Further, additional explanation and examples would be beneficial to taxpayers and their advisors to address the following matters:

- Allocation of GST exemption during the Increased BEA Period with respect to lifetime transfers and upon death; following a taxpayer's full use of available GST exemption prior to the Increased BEA Period.
- Allocation of a decedent's GST exemption where the transferor allocated GST exemption to transfers during the Increased BEA Period, and makes additional GST sensitive transfers or dies after the Increased BEA Period.
- Taxpayer makes a significant gift during the Increased BEA Period; shielded from gift tax as a result of the increased BEA. The taxpayer does not allocate GST exemption to the gift. Taxpayer later dies with GST sensitive dispositive provisions, but insufficient GST exclusion due to the decrease in BEA after the Increased BEA Period.
- An example of a late allocation of GST exemption with respect to a transfer occurring during the Increased BEA Period, followed by a "late" allocation of GST exemption after the Increased BEA Period.

6. Temporary Benefit.

The increased BEA provides only a temporary benefit to Taxpayers. Taxpayers are faced with a "use it or lose it" situation during the Increased BEA Period. This may motivate some Taxpayers to accelerate gifts during the Increased BEA Period, when it may be more appropriate to make such gifts after the expiration of the period.

7. **Other Approaches (DSUE Framework).**

Other approaches may be worthy of consideration. For example, the approach of the Proposed Regulations is different than the layer of additional exclusion under the DSUE rules.²⁰ Gifts made during the Increased BEA Period could be deemed to first utilize the increased BEA set forth in IRC § 2010(c)(3)(C), followed by the Taxpayer's baseline BEA under IRC § 2010(c)(3)(A) and (B). The DSUE Regulations include a similar concept, where gifts by the surviving spouses are deemed to first use DSUE, followed by the surviving spouse's BEA.²¹ An approach similar to the existing DSUE rules might aid Taxpayers in planning their affairs and the IRS in administering the rules.

8. **Overall Impressions.**

The Proposed Regulations add clarity to the tax implications of transfers at death subsequent to the Increased BEA Period (the Post-Period Clarification). The preamble also notes a goal of the Increased BEA Period Clarification; however, this goal is addressed in a limited manner.²² A more expansive framework addressing implications to all transfer taxes would be helpful to taxpayers and their advisors. In particular, additional clarification in the text of the regulations or via examples as set forth above will aid taxpayers in planning their affairs and properly reporting the tax consequences of their gratuitous transfers.

²⁰ Unlike the approach taken in the Proposed Regulations, DSUE is a separate component in determining the applicable exclusion amount under IRC § 2010(c)(2)(B).

²¹ Treas. Reg. § 25.2505-2(b).

²² Prop. Reg. § 20.2010-1(c)(1) (last sentence).

1
2 A bill to be entitled An act relating to
3 guardianship; creating the Florida Guardianship and Protective
4 Proceedings Jurisdiction Act; defining terms; providing that,
5 for the purpose of applying the act, a court of this state may
6 treat a foreign country as if it were a state; providing that a
7 court of this state may communicate with a court of another
8 state concerning a guardianship arising under the act;
9 authorizing a court of this state to request a court of another
10 state to conduct certain specified activities; providing that a
11 court of this state has special jurisdiction to undertake
12 certain specified activities; providing that if a court of this
13 state has appointed a guardian or issued a protective order
14 consistent with the act, it has exclusive and continuing
15 jurisdiction over the proceeding until it is terminated by the
16 court or the appointment or order expires by its own terms;
17 providing that a court of this state having jurisdiction to
18 appoint a guardian may decline to exercise its jurisdiction if
19 it determines at any time that a court of another state is a
20 more appropriate forum; providing that a court may decline
21 jurisdiction due to the unjustifiable behavior of a party;
22 providing for notice to all parties; providing for the transfer
23 of a guardianship or conservatorship to another state; providing
24 procedures for accepting transfer of a guardianship or
25 conservatorship into this state; providing for the uniform
26 application and construction of the act; providing that the act
27 modifies, limits, and supersedes certain specified federal laws;
28 providing that the act applies to guardianships on or after July
29 1, 2019; providing an effective date.

30
31 Be It Enacted by the Legislature of the State of Florida:

32 Section 1.

33 (a) By enacting this Chapter, it is the Legislature's intent
34 to enact a modified version of the Uniform Adult Guardianship
35 and Protective Proceedings Jurisdiction Act. (b) Short title.—
36 This act may be cited as the "Florida Guardianship and
37 Protective Proceedings Jurisdiction Act."
38

39 Section 2. Definitions.—As used in this act, the term:

40 (1) "Adult" means an individual who has attained 18 years of
41 age.

42 (2) "Conservator" means a person who is appointed or
43 qualified by the court to act as general, limited, or temporary

44 guardian of an adult's property or a person who is legally
45 authorized to perform substantially the same functions.

46 (3) "Emergency" means a circumstance that will likely result
47 in substantial harm to a respondent's health, safety, or
48 welfare, and for which the appointment of a guardian is
49 necessary because no other person has authority and is willing
50 to act on the respondent's behalf.

51 (4) "Guardian" means a person who has been appointed by the
52 court to act on behalf of a ward's person or property, or both.

53 (5) "Guardianship order" means an order appointing a
54 guardian.

55 (6) "Guardianship proceeding" means a judicial proceeding in
56 which an order for the appointment of a guardian is sought or
57 has been issued.

58 (7) "Home state" means the state in which the respondent was
59 physically present, including any period of temporary absence,
60 for at least 6 consecutive months immediately before the filing
61 of a petition for a protective order or the appointment of a
62 guardian; or if none, the state in which the respondent was
63 physically present, including any period of temporary absence,
64 for at least 6 consecutive months ending within the 6 months
65 before the filing of the petition.

66 (8) "Incapacitated person" means an adult adjudicated as
67 incapacitated by a court of competent jurisdiction for whom a
68 guardian has been appointed.

69 (9) "Party" means the respondent, petitioner, guardian,
70 conservator, or any other person allowed by the court to
71 participate in a guardianship or protective proceeding.

72 (10) "Person," except for the term incapacitated person or
73 protected person, includes individuals, children, firms,
74 associations, joint adventures, partnerships, estates, trusts,
75 business trusts, syndicates, fiduciaries, corporations, and all
76 other groups or combinations as defined by s. 1.01, Florida
77 Statutes.

78 (11) "Protected person" means an adult for whom a protective
79 order has been issued.

80 (12) "Interested person" means any person who may reasonably
81 be expected to be affected by the outcome of the particular
82 proceeding involved as defined by s. 731.201(23), Florida
83 Statutes.

84 (13) "Protective order" means an order appointing a guardian
85 or other order related to protection or management of an adult's
86 property, including, but not limited to, an injunction for

87 protection against exploitation of a vulnerable adult issued
88 pursuant to 825.1035, Florida Statutes.

89 (14) "Protective proceeding" means a judicial proceeding in
90 which a protective order is sought or has been issued.

91 (15) "Record" means information that is inscribed on a
92 tangible medium or that is stored in an electronic or other
93 medium and is retrievable in perceivable form.

94 (16) "Respondent" means an adult for whom a protective order
95 or the appointment of a guardian is sought.

96 (17) "Significant-connection state" means a state, other than
97 the home state, with which a respondent has a significant
98 connection other than mere physical presence and in which
99 substantial evidence concerning the respondent is available.

100 (18) "State" means a state of the United States, the
101 District of Columbia, Puerto Rico, the United States Virgin
102 Islands, a federally recognized Indian tribe, or any territory
103 or insular possession subject to the jurisdiction of the United.

104 (19) "Ward" means a person for whom a guardian or conservator
105 has been appointed.

106
107 Section 3. International application of the act.—A court of
108 this state may treat a foreign country as if it were a state for
109 the purpose of applying this act.

110
111 Section 4. Communication between courts.—

112 (1) A court of this state may communicate with a court of
113 another state concerning a proceeding arising under this act.

114 (2) Courts may communicate concerning schedules, calendars,
115 court records, and other administrative matters without making a
116 record.

117
118 Section 5. Cooperation between courts.—

119 (1) In a guardianship proceeding in this state, a court of
120 this state may request the appropriate court of another state to
121 do any of the following:

122 (a) Hold a hearing;

123 (b) Order that an evaluation or assessment be made of
124 the respondent;

125 (c) Order any appropriate investigation of a person
126 involved in a proceeding;

127
128 (2) If a court of another state in which a guardianship is
129 pending requests assistance of the kind provided in subsection

130 (1), a court of this state has jurisdiction for the limited
131 purpose of granting the request or making reasonable efforts to
132 comply with the request.

133
134 Section 6. Taking testimony in another state.—

135 (1) In a guardianship or protective proceeding, a court of
136 this state may permit a witness located in another state to be
137 deposed or to testify by telephone or audiovisual or other
138 electronic means.

139 (2) Documentary evidence transmitted from another state to a
140 court of this state by technological means that do not produce
141 an original writing may be excluded from evidence on an
142 objection based on the best evidence rule.

143
144 Section 7. Significant connection factors.—When determining
145 whether a respondent has a significant connection with a
146 particular state, the court shall consider:

147 (1) The location of the respondent's family and other persons
148 required to be notified of the guardianship or protective
149 proceeding;

150 (2) The length of time that the respondent at any time was
151 physically present in the state and the duration of any absence;

152 (3) The location of the respondent's property; and

153 (4) The extent to which the respondent has ties to the state,
154 such as voting registration, state or local tax return filing,
155 vehicle registration, driver's license, social relationships,
156 and receipt of services.

157
158 Section 8. Special jurisdiction.—

159 (1) A court of this state has jurisdiction to do any of the
160 following:

161 (a) Appoint a temporary guardian of the person and/or
162 property in an emergency for the person who is physically
163 present in this state in accordance with the provisions in
164 chapter 744, Florida Statutes; or

165 (b) Appoint a guardian for an incapacitated
166 person for whom a provisional order to transfer the proceeding
167 from another state has been issued.

168 (2) If a petition for the appointment of an emergency
169 temporary guardian is brought in this state and this state was
170 not the respondent's home state on the date that the petition
171 was filed, the court shall dismiss the proceeding at the request
172 of the court of the home state, if any, whether dismissal is
173 requested before or after the emergency appointment.

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Section 9. Exclusive and continuing jurisdiction.—Except as otherwise provided in section 8, a court that has appointed a guardian or issued a protective order consistent with this act has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms.

Section 10. Appropriate forum.—

(1) A court of this state having jurisdiction to appoint a guardian may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

(2) If a court of this state declines to exercise its jurisdiction under subsection (1), it shall dismiss or stay the proceeding. The court may impose any condition that the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.

Section 11. Jurisdiction declined by reason of conduct.—

(1) If at any time a court of this state determines that it acquired jurisdiction to appoint a guardian because of unjustifiable conduct, the court may:

(a) Decline to exercise jurisdiction;

(b) Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or to prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian is filed in a court of another state having jurisdiction

(2) If a court of this state determines that it acquired jurisdiction to appoint a guardian because a person seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that person necessary and reasonable expenses, including attorney's fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of this state unless authorized by law other than this act.

217 Section 12. Notice of proceeding.—If a petition for the
218 appointment of a guardian is brought in this state and this
219 state was not the respondent's home state on the date that the
220 petition was filed, notice of the petition must be given to
221 those persons who would be entitled to notice of the petition in
222 this state.

223
224 Section 13. Proceedings in more than one state.—Except for a
225 petition for the appointment of a guardian in an emergency, if a
226 petition for the appointment of a guardian is filed in this
227 state and in another state and neither petition has been
228 dismissed or withdrawn, the following rules apply:

229 (1) If the court of this state has jurisdiction under c.744,
230 Florida Statutes, it may proceed with the case unless a court of
231 another state acquires jurisdiction before the appointment of
232 the guardian or issuance of the order.

233 (2) If the court of this state does not have jurisdiction
234 under c.744, whether at the time the petition is filed or at any
235 time before the appointment or issuance of the order, the court
236 shall stay the proceeding and communicate with the court of the
237 other state. If the court of the other state has jurisdiction,
238 the court of this state shall dismiss the petition unless the
239 court of the other state determines that the court of this state
240 is a more appropriate forum.

241
242 Section 14. Transfer of guardianship to another state.—

243 (1) A guardian appointed in this state or any other
244 interested person may petition the court to transfer the
245 guardianship to another state. The Petition shall include a plan
246 for care and services for the ward in the proposed state of
247 relocation.

248 (2) Notice of a petition under subsection (1) must be given
249 to all parties who would be entitled to notice on a petition in
250 this state for the appointment of a guardian and for change of
251 the residence of the ward.

252 (3) On the court's own motion or upon request of the
253 guardian, respondent, ward or protected person, or other person
254 required to be notified of the petition, the court shall hold a
255 hearing on a petition filed pursuant to subsection (1).

256 (4) The court may issue an order provisionally granting a
257 petition to transfer a guardianship and shall direct the
258 guardian to petition for acceptance of the guardianship in the
259 other state if the court is satisfied that the guardianship will

260 likely be accepted by the court of the other state and the court
261 finds that:

262 (a) The incapacitated person is physically present in or
263 is reasonably expected to move permanently to the other state;

264 (b) No objection to the transfer has been made or, if an
265 objection has been made, the objector has not established that
266 the transfer would be contrary to the best interests of the
267 respondent, ward, or protected person;

268 (c) The transfer of the guardianship is in the best
269 interest of the incapacitated person, Ward, or protected person,
270 and

271 (d) Plans for care and services for the incapacitated
272 person are made in the other state and are reasonable and
273 sufficient to address the rights which the ward is currently
274 incapable of exercising.

275 (5) The court shall issue a final order confirming the
276 transfer and terminating the guardianship upon its receipt of:

277 (a) A provisional order accepting the proceeding from
278 the court to which the proceeding is to be transferred; and

279 (b) The documents required to terminate a guardianship
280 in this state, including but not limited to any required
281 accountings.

282 (6) The guardian of the Ward in this state shall file a
283 Petition for Discharge within 60 days of the receipt of an Order
284 confirming the transfer of the guardianship to another
285 jurisdiction in compliance with Part VII of this code.

286
287 Section 15. Accepting guardianship or conservatorship
288 transferred from another state.-

289 (1) Within 60 days of the residence of an adult ward of a
290 foreign guardian being moved to this state, the foreign guardian
291 or conservator appointed in another state must file a petition
292 to determine incapacity together with a petition to appoint a
293 guardian with the court of this state with the clerk in the
294 county in which the ward resides. The petitions must include a
295 certified copy of the other state's provisional order of
296 transfer in addition to a certified copy of the guardian and/or
297 conservator's letters of guardianship or equivalent.

298 (2) Notice of the petitions under subsection (1) must be
299 given to those persons who would be entitled to notice in this
300 state in the same manner as notice is required to be given in
301 this state.

302 (3) The court shall hold a hearing on the petitions filed
303 pursuant to subsection (1) pursuant to the procedures set forth
304 in c744.

305 (4) The court shall issue orders on the petitions filed under
306 subsection (1) unless:

307 (a) An objection is made and the objector establishes
308 that transfer of the proceeding would be contrary to the best
309 interests of the ward, respondent, incapacitated person or
310 protected person; or

311 (b) The guardian or conservator is ineligible for
312 appointment in this state.

313 (5) Until such time as a guardian is appointed in this state
314 for the ward or the ward is determined to not require a guardian
315 in this state, the foreign guardian's authority shall be
316 recognized and given full faith and credit in the courts of this
317 state, provided that the guardian is qualified to serve as
318 guardian of a resident ward. A foreign guardian who fails to
319 comply with the requirements of this section shall have no
320 authority to act on behalf of the ward in this state.

321 (6) After appointment of a guardian in this state, the court
322 may issue such orders as are necessary to complete the transfer
323 of the foreign guardianship to Florida or the termination of the
324 foreign guardianship, as may be required.

325 (7) The authority of the guardian of a nonresident ward shall
326 be recognized and given full faith and credit in the courts of
327 this state. A guardian appointed in another state, territory,
328 or country may maintain or defend any action in this state as a
329 representative of the ward unless a guardian has been appointed
330 in this state.

331
332 Section 16. Uniformity of application and construction.—In
333 applying and construing this uniform act, consideration must be
334 given to the need to promote uniformity of the law with respect
335 to its subject matter among states that enact it.

336
337 Section 17. Relation to electronic signatures.—This act
338 modifies, limits, and supersedes the federal Electronic
339 Signatures in Global and National Commerce Act, 15 U.S.C. s.
340 7001, et seq., but does not modify, limit, or supersede s.
341 101(c) of that act, 15 U.S.C. s. 7001(c), or authorize
342 electronic delivery of any of the notices described in s. 103(b)
343 of that act, 15 U.S.C. s. 7003(b).

344

345

Section 18. Application.—This act applies to guardianship and protective proceedings that are filed on or after July 1, 2019.

347

348

Section 19. This act shall take effect July 1, 2019.

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Nicklaus Curley, Chairman, Guardianship, Power of Attorney, and Advanced Directives Committee of the Real Property Probate & Trust Law Section

Address Nicklaus Curley, Gunster, 777 South Flagler Drive, Suite 500 East, West Palm Beach, Florida 33401
Phone: (561) 650-0609

Position Type Real Property, Probate and Trust Law Section, The Florida Bar (Florida Bar, section, division, committee or both)

CONTACTS

Board & Legislation Committee Appearance

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Jon Scuderi, Goldman Felcoski & Stone, 850 Park Shore Drive, Suite 203, Naples, Florida 34103, Telephone: (239) 436-1988
Peter M. Dunbar, Dean Mead, 215 S. Monroe, St, Ste 815, Tallahassee FL 32301, Telephone (850) 999-4100
Martha J. Edenfield, Dean Mead, 215 S. Monroe, St, Ste 815, Tallahassee FL 32301, Telephone (850) 999-4100

Appearances

Before Legislators (SAME)

(List name and phone # of those having face to face contact with Legislators)

Meetings with Legislators/staff (SAME)

(List name and phone # of those having face to face contact with Legislators)

PROPOSED ADVOCACY

All types of partisan advocacy or nonpartisan technical assistance should be presented to the Board of Governors via this request form. All proposed legislation that has *not* been filed as a bill or a proposed committee bill (PCB) should be attached to this request in legislative format - Standing Board Policy 9.20(c). Contact the Governmental Affairs office with questions.

If Applicable, List The Following [NONE]

(Bill or PCB #) (Bill or PCB Sponsor)

Indicate Position Support ____ Oppose X Tech Asst. ____ Other ____

Proposed Wording of Position for Official Publication:

RPPTL Section's opposition to Florida's adoption of the Uniform Guardianship and Protective Proceedings Jurisdiction Act (including the Florida Guardianship and Protective Proceedings Jurisdiction Act) unless the act is substantially revised to provide for better due process protections for incapacitated individuals more consistent with Florida's laws and rewritten with vocabulary consistent with Florida's guardianship laws.

Reasons For Proposed Advocacy:

The Florida Guardianship and Protective Proceedings Jurisdiction Act (the Florida Act) as proposed by the Elder Law Section of the Florida Bar seeks to enact a modified version of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA). The

National Conference of Commissioners on Uniform State Laws adopted the UAGPPJA as an addition to the Uniform Guardianship Act (UGA). Florida did not adopt the UGA. The Florida Act does not recognize that Florida did not adopt the UGA as it does not reflect the differences between Chapter 415 (protective services) and Chapter 744 (guardianship) or the differences between the Florida's existing law and the Florida Act. The Florida Act should not pass because (a) it would result in additional unnecessary litigation, (b) it would require substantial adjustments to Chapters 415, 744, and 747 of the Florida Statutes, and Florida Enforcement of Foreign Judgments Act, (c) it does not conform to and is in conflict with the definitions and procedures already established under Florida law, (d) it is unnecessary because existing Florida law already addresses the stated concerns allegedly being addressed and does it better, and (e) it will have a substantial fiscal impact on state and local governments.

The RPPTL section has created a counter-proposal which better preserves the due process and procedural standards laid out in the Florida's guardianship laws, although the RPPTL section is not advocating for adoption of this proposal as it maintains that it is not needed as these issues are already appropriately addressed within Florida's current statutes. The RPPTL proposal sets out (a) creating sections 744.110 – 744.113, Florida Statutes; to provide for the transfer of a guardianship to another state and provide procedures for accepting transfer of a guardianship into this state, and (b) deleting s. 744.306, Florida Statutes and amending s. 744.307; to clarify existing law related to the management of a nonresident ward's property by a foreign guardian in certain situations. This counter proposal is superior to the Florida Act because it conforms to existing law in Chapter 744, it incorporates the beneficial provisions of the Uniform Act to address the concern of transferring guardianships, and it has not fiscal impact on state and local governments.

1 A bill to be entitled

2 An act relating to guardianship; creating the Florida Uniform Guardianship Jurisdiction
3 Act, sections 744.110 – 744.113, F.S.; to provide for the transfer of a guardianship to another
4 state and provide procedures for accepting transfer of a guardianship into this state; amending s.
5 744.306, F.S. and s. 744.307; to provide for the management of a nonresident ward’s property by
6 a foreign guardian in certain situations.

7 Be it enacted by the Legislature of the State of Florida:

8 Section 1. section 744.110, Florida Statutes, is created to read:

9 744.110 Short Title

10 Sections 744.110 – 744.113 may be cited as the “FLORIDA UNIFORM
11 GUARDIANSHIP JURISDICTION ACT.”

12 Section 2. section 744.111, Florida Statutes, is created to read:

13 744.111 International Application of the Act

14 A court of this state may treat a foreign country as if it were a state for the purpose of
15 applying this Act.

16 Section 3. section 744.112, Florida Statutes, is created to read:

17 744.112 Transfer of guardianship to another state.

18 A guardian appointed in this state may petition the court to transfer the guardianship to
19 another state. The petition shall comply with s. 745.204 and shall include a plan for care and
20 services for the ward in the proposed state of relocation.

21 (2) Notice of the petition to transfer must be given to the persons that would be entitled to
22 notice of a petition in this state for the appointment of a guardian and for change of the residence
23 of the ward.

1 (3) The court may issue an order provisionally granting a petition to transfer and directing
2 the guardian to petition for guardianship in the other state and the court finds that:

3 (a) the incapacitated person is physically present in or is reasonably expected to move
4 permanently to the other state;

5 (b) no objection to the transfer has been made or, if an objection has been made, the
6 objector has not established that the transfer would be contrary to the best interests of the ward;

7 (c) plans for care and services for the incapacitated person in the other state are
8 reasonable and sufficient to address the rights which the ward is currently incapable of
9 exercising; and

10 (d) the transfer serves the best interests of the ward.

11 (5) The court shall issue a final order confirming the transfer upon its receipt of a
12 provisional order accepting the guardianship from the court to which the proceeding is to be
13 transferred and shall revoke the letters of guardianship issued in this state as to all rights
14 transferred.

15 (6) The guardian shall file a petition for discharge within 60 days of an order confirming
16 the transfer of the guardianship in compliance with Part XI of this code.

17 Section 4. section 744.113, Florida Statutes, is created to read:

18 744.113 Accepting a guardianship from another state.

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

1 (2) Within 60 days of the residence of a minor ward of a foreign guardian being moved to
2 this state, the foreign guardian shall file a petition for appointment of guardian and a certified
3 copy of the guardian's letters of guardianship or equivalent with the clerk in the county in which
4 the ward resides.

5 (3) Until such time as a guardian is appointed in this state for the ward or the ward is
6 determined to not require a guardian in this state, the foreign guardian's authority shall be
7 recognized and given full faith and credit in the courts of this state, provided that the guardian is
8 qualified to serve as guardian of a resident ward. A foreign guardian who fails to comply with
9 the requirements of this sections shall have no authority to act on behalf of the ward in this state.

10 (4) After appointment of a guardian in this state, the court may issue such orders as are
11 necessary to complete the transfer of the foreign guardianship to Florida or the termination of the
12 foreign guardianship, as may be required.

13 (5) The authority of the guardian of a nonresident ward shall be recognized and given full
14 faith and credit in the courts of this state. A guardian appointed in another state, territory, or
15 country may maintain or defend any action in this state as a representative of the ward unless a
16 guardian has been appointed in this state.

17 Section 5: Section 744.306, Florida Statutes, is hereby repealed and deleted.

18 Section 6: Section 744.307, Florida Statutes, is amended by amending subsections (1)
19 and (3) and adding subsections (5), (6) and (7):

20 744.307 Foreign guardian may manage the property of nonresident ward.

21 (1) A guardian of the property of a nonresident ward, duly appointed by a court of
22 another state, territory, or country, who desires to manage any part or all of the property of the
23 nonresident ward located in this state, may file a petition showing his or her appointment,

1 describing the property, stating its estimated value, and showing the indebtedness, if any,
2 existing against the nonresident ward in this state, to the best of the guardian's knowledge and
3 belief.

4 (2) The guardian shall designate a resident agent as required by the Florida Probate
5 Rules.

6 (3) The guardian shall file authenticated copies of his or her letters of guardianship or
7 other authority and of his or her bond or other security. The court shall determine if the foreign
8 bond or other security is sufficient to guarantee the faithful management of the nonresident
9 ward's property in this state. The court may require a new guardian's bond in this state in the
10 amount it deems necessary and conditioned for the proper management and application of the
11 property of the nonresident ward coming into the custody of the guardian in this state.

12 (4) Thereafter, the guardianship shall be governed by the law concerning guardianships.

13 (5) A guardian appointed in any state, territory, or country may maintain or defend any
14 action in this state as a representative of her or his nonresident ward.

15 (6) Debtors who have received no written demand for payment from a guardian
16 appointed in this state within 60 days after the appointment of a guardian, curator, conservator,
17 or committee in any state, territory, or country other than this state, and whose property in this
18 state is subject to a mortgage or other lien securing the debt held by the foreign guardian, curator,
19 conservator, or committee, may pay the debt to the foreign guardian, curator, conservator, or
20 committee after the expiration of 60 days from the date of her or his appointment. A satisfaction
21 of the mortgage or lien, executed after the 60 days have expired by the foreign guardian, curator,
22 conservator, or committee, with an authenticated copy of the letters or other evidence of
23 authority of the foreign guardian, curator, conservator, or committee attached, may be recorded

1 in the public records of this state and shall constitute an effective discharge of the mortgage or
2 lien, irrespective of whether the debtor had received written demand before paying the debt.

3 (7) All persons indebted to a ward, or having possession of personal property belonging
4 to a ward, who have received no written demand for payment of the indebtedness or the delivery
5 of the property from a guardian appointed in this state are authorized to pay the indebtedness or
6 to deliver the personal property to the foreign guardian, curator, conservator, or committee after
7 the expiration of the 60 days from the date of her or his appointment.

8 Section 7. This act shall take effect _____.

WHITE PAPER

RPPTL SECTION'S OPPOSITION TO ADOPTION OF THE FLORIDA GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

A. SUMMARY

The proposed Florida Guardianship and Protective Proceedings Jurisdiction Act (the "Florida Act") seeks to enact a modified version of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA). The National Conference of Commissioners on Uniform State Laws (NCCUSL) adopted the UAGPPJA as an addition to the Uniform Guardianship Act (UGA). Florida intentionally and with significant study did not adopt the Uniform Guardianship Act because Florida is a national leader in guardianship matters regarding protecting the rights of individuals whom are declared incapacitated. The Legislature has taken a different approach resulting in Florida's guardianship laws significantly differing from the UGA and maintaining higher due process standards and protection of the rights of incapacitated individuals than those states operating under the UGA. The Florida Act fails to recognize that Florida did not adopt the UGA.

Florida's existing guardianship statutes are recognized nationally as providing significant protections. Integral to the balance between personal rights and oversight, the Florida Legislature created a stepped process, two separate and distinct statutory schemes to protect elderly and vulnerable adults. Chapter 415 of the Florida Statutes governs protective services while Chapter 744 governs guardianship. The Florida Act does not reflect the differences between these two chapters or the differences between Florida's existing law and the proposed Florida Act.

The Florida Act, as proposed, should not pass. It would result in additional unnecessary litigation that is detrimental to the elderly and vulnerable it seeks to protect. Additionally, it would require substantial adjustments to Chapters 415, 744, and 747 of the Florida Statutes, and Florida Enforcement of Foreign Judgments Act, or those statutory schemes would have to be completely rewritten because the Florida Act does not conform to the definitions and procedures already established in Florida. Apparently, the Florida Act is intended to work in conjunction with existing Florida law, but that is impossible. The provisions of the Florida Act are in direct conflict with existing Florida law and are unnecessary because existing Florida law already addresses the concerns that the Florida Act is aimed to address and does it better.

However, the RPPTL Section has prepared a counterproposal creating sections 744.110 – 744.113, Florida Statutes; to provide for the transfer of a guardianship to another state and provide procedures for accepting transfer of a guardianship into this state. These statutes would be called the Florida Uniform Guardianship Jurisdiction Act. Additionally, the RPPTL Section supports and recommends repealing and deleting s. 744.306, Florida Statutes and amending s. 744.307; to clarify existing law related to the management of a nonresident ward's property by a foreign guardian in certain situations. While the Section maintains that adoption of this proposal is not needed as current law adequately addresses the purposes of the UAGPPJA, the Section has prepared this proposal in order to ensure that wholesale adoption of the uniform act is avoided.

B. CURRENT FLORIDA LAW

The Florida Act is based largely on the following concerns: that cases involving simultaneous and conflicting jurisdiction over guardianships are increasing, transferring a guardianship to another state can require the parties to initiate a duplicative court proceeding in the second state to re-determine incapacity and reappoint a guardian or conservator even when no conflict exists, obtaining recognition of an out-of-state guardian's authority to sell property or to arrange for a residential placement can be costly, difficult, or impossible. However, Florida law already addresses these concerns.

Florida already recognizes the authority of guardians appointed in another state. If a ward is temporarily in Florida, the letters of guardianship from another state are recognized by Florida. As to transferred/long-distance care giving arrangements, many guardians appointed by a Florida judge are family members residing in another state and can make decisions for a ward and otherwise care for the ward. There are limited prohibitions under Florida law for a guardian to seek medical treatment in this state or any other state. The only limits to a guardian's authority relating to medical treatment, without prior court order are found at §§ 744.3215 (4), 744.3725, Fla. Stat. (sterilization; abortion; commit the ward to a facility, institution, or licensed service provider without formal placement proceeding, pursuant to chapter 393, chapter 394, or chapter 397; experimental biomedical or behavioral procedure). If an out-of-state ward comes to Florida or is kidnapped to Florida from another state, the letters of guardianship from the other state should be recognized pursuant to full faith and credit provisions of the United States Constitution. *See In re: Cameron 's Estate*, 28 So.2d 110 (Fla. 1946

C. EFFECTS OF PROPOSED FLORIDA GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

The Florida Act (proposed Florida Guardianship and Protective Proceedings Act) does not state whether it will be part of Chapter 415, Chapter 744, or another chapter of the Florida Statutes. If it is intended to be part of Chapter 415 or Chapter 744 it significantly changes the current statutory scheme. If it will be its own chapter, it will require substantial changes to Chapter 415 and Chapter 744.

A few examples of the inconsistencies and improprieties of the Florida Act are as follows:

- The Florida Act mistakenly presumes that all protective services proceedings are also guardianship proceedings. In fact, recognizing that both proceedings are not always necessary, existing Florida law authorizes protective services proceedings without guardianship proceedings and guardianship proceedings without protective services proceedings. These two separate proceedings should remain separate and distinct to reduce the costs to the elderly, vulnerable adult, and families regarding court actions.
- The definitions included in the Florida Act do not distinguish between Chapter 415 and Chapter 744 proceedings, are defined differently from Florida's existing statutory scheme, and conflict with definitions in existing law. The Florida Act

fails to consider the differences between the protection of people and property and incapacity and guardianship actions. With respect to granting authority to act in emergencies, the Florida Act appears to require a lower burden than currently required under existing Florida law. Florida Statutes §415.1051 (2) requires the Department of Children and Family Services to file an action if there is "reasonable cause to believe that a vulnerable adult is suffering from abuse or neglect that presents a risk of death or serious physical injury to the vulnerable adult." Florida Statutes § 744.3031 (1) authorizes the appointment of an emergency temporary guardian if "there appears to be imminent danger that the physical or mental health or safety of the person will be seriously impaired or that the person's property is in danger of being wasted, misappropriated, or lost unless immediate action is taken." The Florida Act threshold for appointment is lower, simply requiring a situation which "may result in substantial harm to a respondent's health, safety, or welfare and for which the appointment of a guardian is necessary because no other person has authority or is willing to act on the respondent's behalf."

- Section 4 grants courts of this state the ability to communicate with courts of another state regarding a proceeding under the Florida Act, but does not describe the method of communication, the logistics related to the communications and does not protect the due process rights of the parties by requiring that all communications occur in the presence of the interested parties. Additionally, it places the burden on the Florida Court and the Foreign Court, not the interested parties, to coordinate and figure out the needed information. This sets up ex-parte communications between the different courthouses, something which is directly contrary to Florida's policy of open government and open guardianship system.
- Section 5 requires cooperation between courts in Florida and other states but does not specify which state will bear the costs associated with these proceedings.
- Section 6 infringes upon The Florida Supreme Court's rule making authority regarding judicial proceedings.
- Section 7 includes a "significant connection factors" test, but no section of the Act implements this test. Section 8 grants a court of this state "special jurisdiction" to appoint a guardian for a person, but pursuant to Article V of the Florida Constitution and §26.012, Fla. Stat., circuit courts have jurisdiction to hear Chapter 415 and Chapter 744 proceedings, §744.3031, Fla. Stat., and §744.1097, Fla. Stat., already authorize a Florida court to appoint an emergency temporary guardian if an alleged incapacitated person is in Florida. The new category of "special jurisdiction" specifies that, if an incapacitated person (but not a minor) is present in this state and in need of protection, but Florida is not the person's "home state", then our court is required to dismiss the guardianship proceeding "at the request of the court of the home state". This would create a dangerous situation for the incapacitated person by putting them at risk for abuse and neglect. The provision is contrary to existing law and much less protective.

Current Florida law would allow the court here to address the issue of incapacity and appoint a guardian in order to make sure there is someone responsible to help the incapacitated person. If proceedings are instituted in the home state the matter may be then transferred from the State of Florida by court order, but the person will be protected in the meantime.

- Sections 10 and 11 allow a court of this state having jurisdiction to decline to exercise jurisdiction in certain circumstances. This seems to allow a Florida court to refuse to exercise jurisdiction mandated by Florida's constitution and statutes, which is not a workable situation.
- Section 14 creates a procedure for transferring a Florida guardianship to another state that conflicts with our existing procedure contained in §744.524, Fla. Stat. and includes standards that are less protective than our law provides. The proposal contemplates that the incapacitated person may already have been taken away to another state. Under existing law, the person cannot simply be taken away to another state without prior court order. Next, the proposed law would create an awkward "provisional transfer" process followed by a final order of transfer after the court has received yet another "provisional order" from the transferee state. That procedure is awkward, time consuming and unnecessarily expensive for the incapacitated person who is supposedly being protected. Our current law provides a much better process, because a guardianship in Florida would not be closed until a new guardianship is established in the transferee state in order to make sure that there is continuity of protection for the incapacitated person.
- Section 15 creates a procedure for accepting a guardianship or conservatorship transferred from another state. However, present statutory framework authorizes a foreign guardian to manage property without the necessity of a Florida guardianship (§744.307, Fla. Stat.) or to transfer a guardianship to Florida (§744.306, Fla. Stat.). The full faith and credit provisions of the United States Constitution require recognition of another state's guardianship order if a ward is temporarily in Florida. See, *In re: Cameron's Estate*, 28 So.2d 110 (Fla. 1946).

D. FISCAL IMPACT OF PROPOSED FLORIDA GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT ON STATE AND LOCAL GOVERNMENTS

The Florida will have a fiscal impact on local governments if it is adopted. Local government will pay increased communications expenses as judges of this state communicate with judges of other states. The state court system will be required to provide a court reporter or other electronic recording device at all proceedings. Additional staff will be required to coordinate the schedules of the judges, attorneys, and interested persons. Additional staff will be required to conduct investigations. The Offices of Criminal Conflict and Civil Regional Counsel will need additional attorney and support staff. Private court appointed counsel from the Registries of each Circuit will seek extraordinary fees for the attendance at additional hearings. The state court system will need funding to pay the cost of court proceedings in other states,

evaluations, investigations, certified transcripts, court reporters, certified evidence, and transmittal of same.

E. DIRECT ECONOMIC IMPACT OF PROPOSED FLORIDA GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT ON PRIVATE SECTOR

None

F. CONSTITUTIONAL ISSUES CAUSED BY PROPOSED FLORIDA GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

The act required Florida Courts to accept the evidentiary findings and determinations of a foreign court with regard to the incapacity and guardianship of an individual. These standards in the majority of states are significantly below the standards required in Florida for the protection of Florida’s residents. This constitutes an infringement of the due process rights guaranteed to Florida citizens by Florida’s Constitution. It is also contrary to the legislative intent for Florida’s guardianship system, “By recognizing that every individual has unique needs and differing abilities, it is the purpose of this act to promote the public welfare by establishing a system that permits incapacitated persons to participate as fully as possible And that accomplishes these objectives through providing, in each case, the form of assistance that least interferes with the legal capacity of a person to act in her or his own behalf.” Fla. Stat. § 744.1012(3).

G. EFFECT OF RPPTL’S COUNTERPROPOSAL

The RPPTL Section has comprehensively studied the issue of transferring guardianships from Florida to another jurisdiction and accepting guardianship from another jurisdiction and believes these issues adequately addressed under current law and that no changes are currently required.

That being said, in order to avoid the wholesale adoption of the UAGPPJA, the RPPTL Section has created a procedural statute creating Florida statute sections 744.110 – 744.113, to be called the Florida uniform guardianship jurisdiction act. These statutes clarify the process of transferring a Florida guardianship to another jurisdiction and Florida accepting guardianships from another jurisdiction. These proposed statutes adopt the provisions of the proposed Florida Act that conform with existing Florida law and that provide a benefit to incapacitated persons and guardianship practitioners but clarify and conform with existing Florida guardianship law. These proposed revisions to existing Florida guardianship law would not require any revisions to any existing Florida law because they conform to the existing Florida law contained in Chapter 744.

H. FISCAL IMPACT OF RPPTL’S COUNTERPROPOSAL ON STATE AND LOCAL GOVERNMENTS

None

I. DIRECT ECONOMIC IMPACT OF RPPTL’S COUNTERPROPOSAL ON PRIVATE SECTOR

None

J. CONSTITUTIONAL ISSUES CAUSED BY RPPTL'S COUNTERPROPOSAL

None.

H. OTHER INTERESTED PARTIES

Elder Law Section of the Florida Bar

Jason A. Waddell, Chair

Waddell & Waddell, P.A.

1108 N 12th Ave # A

Pensacola, FL 32501-3308

jason@ourfamilyattorney.com

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Robert L. Lancaster, Chair, Estate and Trust Tax Planning Committee of the Real Property Probate and Trust Section

Address 3001 Tamiami Trail North, Suite 400, Naples, FL 34103
Telephone: (239) 262-8311

Position Type The Estate and Trust Tax Planning Committee of the Real Property, Probate and Trust Law Section of The Florida Bar

CONTACTS

Board & Legislation

Committee Appearance

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Martha J. Edenfield, Dean Mead, 215 S. Monroe Street, Suite 815, Tallahassee, FL 32301 Telephone 850-999-4100; medenfield@deanmead.com

Appearances

before Legislators

(List name and phone # of those appearing before House/Senate Committees)

Meetings with

Legislators/staff

(List name and phone # of those having face to face contact with Legislators)

PROPOSED ADVOCACY

All types of partisan advocacy or nonpartisan technical assistance should be presented to the Board of Governors via this request form. All proposed legislation that has *not* been filed as a bill or a proposed committee bill (PCB) should be attached to this request in legislative format - Standing Board Policy 9.20(c). Contact the Governmental Affairs office with questions.

If Applicable,

List The Following

N/A

(Bill or PCB #)

(Bill or PCB Sponsor)

Indicate Position

Support

Oppose

Technical Assistance

Other

Proposed Wording of Position for Official Publication:

Support proposed legislation creating Florida Statutes 662.149 to establish an exemption for the publication of applications of a family trust company(1) seeking to operate as a licensed family trust

Reasons For Proposed Advocacy:

Currently, §120.80(3) requires the Florida Office of Financial Regulation to publish in the Florida Administrative Register a notice of application for a family trust company. Given the importance of protecting the privacy and personal safety of private families seeking to form and maintain a family trust company, §662.149 is needed to maintain the confidentiality of family trust company applications. The application for a family trust company should be exempt from the publication of a notice of such application in the Florida Administrative Register.

PRIOR POSITIONS TAKEN ON THIS ISSUE

Please indicate any prior Bar or section 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

(Indicate Bar or Name Section) (Support or Oppose) (Date)

Others

(May attach list if more than one)

(Indicate Bar or Name Section) (Support or Oppose) (Date)

REFERRALS TO OTHER SECTIONS, COMMITTEES OR LEGAL ORGANIZATIONS

The Legislation Committee and Board of Governors do not typically consider requests for action on a legislative position in the absence of responses from all potentially affected Bar groups or legal organizations - Standing Board Policy 9.50(c). Please include all responses with this request form.

Referrals

(Name of Group or Organization) (Support, Oppose or No Position)

(Name of Group or Organization) (Support, Oppose or No Position)

(Name of Group or Organization) (Support, Oppose or No Position)

Please submit completed Legislative Position Request Form, along with attachments, to the Governmental Affairs Office of The Florida Bar. Upon receipt, staff will further coordinate the scheduling for final Bar action of your request which usually involves separate appearances before the Legislation Committee and the Board of Governors unless otherwise advised. For information or assistance, please telephone (850) 561-5662 or 800-342-8060, extension 5662.

7-06
4295641.00012

1 A bill to be entitled

2 An act relating to creating an exemption for the publication of applications
3 related to a family trust company that is applying to become a licensed family
4 trust company under s. 662.121 or is instead applying to become trust company
5 under s. 662.122.

6 Be It Enacted by the Legislature of the State of Florida:

7 Section 1. Section 662.149, Florida Statutes, is created to read:

8 662.149. Publication exemption for applications.—Applications filed
9 pursuant to this chapter need not be published in the Florida Administrative
10 Register, but shall otherwise be subject to chapter 120.

11 Section 2. This act shall take effect upon becoming law.

The Florida Bar
Real Property, Probate and Trust Law Section
Probate Law and Procedure Committee
Family Trust Company Subcommittee

WHITE PAPER

Proposed § 662.149, Florida Statutes

I. SUMMARY

The proposed bill would add a new section § 662.149, Fla. Stat. The purpose of this proposed legislation is to maintain the confidentiality necessary for family trust company applications which is needed to protect the privacy and personal safety of private families seeking to form and maintain a family trust company. Currently, § 120.80(3), Fla. Stat., requires the Florida Office of Financial Regulation to publish in the Florida Administrative Register notice of application for a family trust company. Section 662.149 adds an exemption to the publication required by § 120.80(3).

This proposed legislation is separate and apart from § 662.148 that provides an exemption for personal identifying information related to family trust companies.

II. CURRENT SITUATION

A. Background on Florida Family Trust Companies

On June 13, 2014, Governor Rick Scott signed into law the Florida Family Trust Company Act (the “Act”) establishing a statutory framework authorizing the organization, operation, and regulation of family trust companies (“FTCs”) in Florida.

FTCs are governed by Chapter 662, *Florida Statutes* and are regulated by the Florida Office of Financial Regulation (the “OFR”).

A Family Trust Company (an "FTC") is an entity which is owned and controlled by family members (as defined in the Act) and which provides a variety of fiduciary services exclusively to family members and up to 35 employees of the FTC or entities owned or controlled by family members.

Importantly, FTCs are prohibited by law from providing fiduciary services to the general public. They are generally created by families seeking to preserve their privacy and closely manage their family financial and estate planning affairs independent of large national and international companies where they may become "just another number." Only public trust companies are authorized to provide fiduciary services to the general public and the operations of those public trust companies are subject to greater public access.

There are three types of FTCs: Licensed FTCs; Registered FTCs; and Foreign Licensed FTCs. Licensed FTCs are subject to full-scope mandatory audits by OFR similar to those performed by OFR on public trust companies. Registered FTCs are subject to limited scope audits by OFR, primarily to assure that they are not providing services to the general public and that they continue to adhere to minimum capitalization requirements. A Foreign Licensed FTC that has a principal place of business in a state other than Florida is subject to supervision both in Florida and by the regulatory body of that other state.

Since enactment, at least 13 families have established FTCs under Chapter 662. Before Florida's enactment of the Act, families interested in establishing FTCs would establish their FTCs in states like Nevada, New Hampshire, South Dakota or Wyoming.

B. Substantial Purposes of Enacting Florida Family Trust Company

Legislation: Bringing Jobs and Investment Capital to Florida

Oftentimes, in conjunction with establishing FTCs, families establish or relocate their family offices to Florida. In fact, Licensed and Registered FTCs are required to maintain a principal office in Florida and Foreign Licensed FTCs also must maintain an office in our State. § 662.1225(1)(a) & (2)(a).

FTCs and family offices provide high-paying jobs by directly employing accountants, attorneys and investment advisors. FTCs and family offices also hire outside investment advisors, attorneys, accountants, insurance agents, real estate agents and other advisors. As noted below, FTCs are more likely to serve as trustees of trusts which retain “the family business” and because those trusts can remain Florida trusts, Florida accountants, attorneys, insurance agents and other advisors are more likely to remain the advisors to those trusts. If the trust is converted (also referred to as “decanted”) into a trust governed by a different state’s laws, professionals in that other state will generally assume a more significant role in advising the trustees and beneficiaries of the trust. If the Act becomes less attractive than legislation in competing jurisdictions families will move family office operations and form FTCs outside of Florida taking direct and indirect jobs with them.

In addition, families creating FTCs generally seek out investment opportunities in the states in which they do business. If the “C suite” officers and investment advisors for the FTCs and family offices are located in Florida, then it is significantly more likely that they will become aware of investment opportunities in Florida, as well as seek out more “local” investment opportunities, which will result in more jobs in our state.

Further, families who establish FTCs and family offices are generally very philanthropic. Thus, effective FTC legislation in Florida will likely benefit Florida charities.

Finally, because many of the families who form an FTC or family office work closely with the staff in the FTC or family office, they often acquire one or more residences near the FTC or family office's principal office. Encouraging new FTCs to form and operate in Florida further strengthens the ties between the family and the State of Florida, increasing their real estate investments and further increasing the likelihood that their invested capital will remain in and grow in Florida.

C. Why Families Form Family Trust Companies

Families form FTCs for a variety of reasons, including the following:

- To retain management and control over family assets, such as family business interests, which might be inappropriate or unattractive for a public trust company to handle. Oftentimes (1) families do not desire to have public trust companies involved with their family business and (2) public trust companies do not want to accept the risk associated with becoming involved with the family business.
- To form or retain Florida trusts. As indicated in the point above, oftentimes public trust companies require trusts be “decanted” to Delaware directed trusts if the trust has an operating business within it that the family wishes to retain authority over or the public trust company does not want to oversee. A Florida FTC can, and does, serve as trustee of such a trust while permitting the trust to remain a Florida trust.
- FTCs provide a platform which allows family members across multiple generations to participate in the management of family companies, investments and trusts.
- FTCs provide a platform to allow the “next generation” to become involved in the management of family assets gradually and gain a working relationship with a family's dedicated team of trusted advisors.
- Families frequently wish to appoint long-tenured family advisors to fiduciary roles in a FTC framework that protects them from frivolous lawsuits by disgruntled family members.
- Individual trustees die, become incapacitated and retire. Banks and public trust companies can fail or be acquired by institutions never contemplated as suitable to a particular family. FTCs provide families with the ability to implement fiduciary succession plans for multiple generations and ensure that such plans will not be

derailed by market conditions and outside forces in other sectors that can gravely impact public institutions.

D. Public Interest is Limited to OFR Assuring that FTC is Not Providing

Services to the General Public

Since FTCs cannot provide services to the general public, the only public interest served by the Act is to provide OFR with the authority to ensure that FTCs are limiting their fiduciary services to the family members and the limited class of FTC employees that are authorized to be served by an FTC under the Act. § 662.102. Chapter 662 expressly states that an FTC is not a financial institution within the meaning of the financial institutions codes (i.e., a public trust company). § 662.102(1). Nevada’s family trust company legislation similarly finds that because family trust companies do not engage in any business with the general public, “there is no public interest to be protected or furthered” by the regulation of family trust companies. Congress and the SEC determined that family offices should not be subject to regulation by the SEC for the same reasons that the Florida legislature determined that there was no “public interest” served by regulating FTCs. Because family offices (and FTCs) are owned and controlled by family members and only provide services to those same family members, key employees or trusts for their benefit, the SEC viewed the typical single family office as not the sort of arrangement that Congress intended the SEC to regulate. The SEC was also concerned that the application of the Investment Advisors Act of 1940 to family offices “*would intrude on the privacy of family members*”.

E. General Information on the Formation and Operation of a FTC

To become a Florida FTC (both Licensed and Registered), an application must be filed with and approved by the OFR. That application must include, among other information: The name of the FTC and designated relative(s); personal identifying information of family members,

executives and owners of the FTC; identifying information for entities owned, settled, or controlled by family members; diagrams depicting familial relationships and entity holdings; financial information (including banks with deposit accounts); operating policies (including the accounting and bookkeeping practices, where and how records are retained, etc.); and corporate governance documents. In addition, an application for registration of even an unlicensed FTC requires the disclosure of a financial statement for the FTC, the names and addresses of all family members to be served by the FTC, the names of family trusts to be served by the FTC and the identity of beneficiaries of these trusts, and in some cases detailed financial information for the owners of the FTC.

FTCs are required to file renewal applications each year. § 662.128(1). A Licensed FTC must describe in its renewal application any material changes to the business, directors, officers, managers, members acting in managerial capacity and the designated relatives since the proceeding calendar year. § 662.128(2). It also must disclose capital account information and insurance policies procured and maintained (including policy amounts). A Registered FTC must provide similar identifying information, such as the name of family members, owners and the designated relative, and information related to capital accounts. § 662.128(3).

The OFR has the authority to investigate a Licensed FTC at any time and must investigate the operations, books, and records of a Licensed FTC at least once every 36 months. § 662.141. The investigation shall confirm that the Licensed FTC is operating in accordance with the rules and regulations imposed by and pursuant to the Act.

F. Reasons Supporting the Addition of §662.149

Since FTCs are statutorily required to limit their services to family members, and may not provide any services to the public, there is no public interest in disclosing FTC information

to the public. By comparison, an identical exemption exists under § 586.26(2)(c) for state banks or trust companies that wish to establish or relocate offices within or outside the State of Florida, which provide services to the public. Given the importance of protecting the privacy and personal safety of private families seeking to form and maintain a family trust company, § 662.149 is necessary to maintain the confidentiality needed for family trust company applications.

Additionally, since 2014, crimes involving identify theft, physical assault or threats, financial crimes, and other crimes of opportunity related to high net worth individuals and families are exponentially more rampant. See, for instance, *How a New Kind of Fraud Puts South Florida Real Estate Owners, Lenders at Risk*, 4/5/2017 Daily Business Review (available at: https://www.haber.law/files/daily_bus_review_how_new_kind_of_fraud.pdf). This article describes criminal corporate identify fraud, using online records found on Sunbiz, to obtain fraudulent mortgage loans.

If the exemption to the publication of the notice of application is not granted, it would effectively repeal the Act because families forming FTCs in Florida would move the FTCs to jurisdictions that fully protect the families' confidentiality. Several commentators cite the statutory protection of confidential information as a material factor in how families should choose a jurisdiction within which to organize their FTC. See, for example, *The Private Family Trust Company*, John P.C. Duncan, *Trust and Estates*, March 2017; and *The Private Trust Company; A DIY for the Uber Wealthy*, Christopher C. Weeg, 52 *Real Property, Trust and Estate Law Journal* 121.

If OFR is required to publish in the Florida Administrative Register notice of application for a family trust company, families who have formed or are considering forming a Florida FTC

will not maintain or establish their FTCs in Florida. Instead, they will flee to other FTC jurisdictions which value the privacy of FTC families. This will result in high paying jobs, investments in local businesses and charitable gifts that would otherwise inure to our citizens and charities instead benefitting the citizens and charities in other states.

III. EFFECT OF THE PROPOSED CHANGE

The proposed new § 662.149 adds an exemption to the publication in the Florida Administrative Register notice of the application for a family trust company as required by § 120.80(3).

Given the importance of protecting the privacy and personal safety of private families seeking to form and maintain a family trust company, § 662.149 is necessary to maintain the confidentiality needed for family trust company applications. The application for a family trust company should be exempt from the publication of a notice of such application in the Florida Administrative Register. If such applications are published in the Florida Administrative Register, families seeking to form and maintain a family trust company will do so outside the State of Florida where their privacy and personal safety will be respected. Family trust companies are important to Florida, its citizens, and its economy.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT - None.

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR - None.

VI. CONSTITUTIONAL ISSUES – None.

VII. OTHER INTERESTED PARTIES - None.

VIII. EFFECTIVE DATE

The proposed §662.149, Fla. Stat. shall take effect upon becoming law.

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By M. Travis Hayes, Chair, Probate Law and Procedure Committee of the Real Property Probate & Trust Law Section, 5551 Ridgewood Drive, #501, Naples, FL 34108, Telephone: (239) 514-1000

Angela M. Adams, Chair, Trust Law Committee of the Real Property, Probate, & Trust Law Section, Law Office of Wm. Fletcher Belcher, 540 Fourth St. N., St. Petersburg, FL 33701, Telephone: (727) 821-1249

Position Type RPPTL Section, The Florida Bar

CONTACTS

Board & Legislation Committee Appearance

Angela M. Adams, Law Office of Wm. Fletcher Belcher, 540 Fourth St. N., St. Petersburg, FL 33701, Telephone: (727) 821-1249
Email: amemadams@gmail.com

M. Travis Hayes, Grant, Fridkin, Pearson, 5551 Ridgewood Drive, #501, Naples, FL 3408 (239) 514-1000

Jon Scuderi, Goldman Felcoski & Stone, P.A., 850 Park Shore Drive, Suite 203, Naples, FL 34103 (239) 436-1988

Peter M. Dunbar, Dean Mead, 215 S. Monroe Street, #815, Tallahassee, FL 32301 (850) 999-4100

Martha J. Edenfield, Dean Mead, 215 S. Monroe Street, #815, Tallahassee, FL 32301, Telephone (850) 999-4100
(List name, address and phone number)

Appearances Before Legislators (SAME)
(List name and phone # of those having face to face contact with Legislators)

Meetings with Legislators/staff (SAME)
(List name and phone # of those having face to face contact with Legislators)

PROPOSED ADVOCACY

All types of partisan advocacy or nonpartisan technical assistance should be presented to the Board of Governors via this request form. All proposed legislation that has *not* been filed as a bill or a proposed committee bill (PCB) should be attached to this request in legislative format - Standing Board Policy 9.20(c). Contact the Governmental Affairs office with questions.

If Applicable, List The Following N/A
(Bill or PCB #) (Bill or PCB Sponsor)

Indicate Position Support **Oppose** Technical Assistance **Other**

Proposed Wording of Position for Official Publication:

Oppose amendments to the personal representative and trustee attorney fee compensation statutes contained in the Florida Probate Code and the Florida Trust Code.

Reasons For Proposed Advocacy:

The Florida Probate Code and Florida Trust Code each contain statutory provisions that provide for the determination of reasonable compensation for the attorney for the personal representative and the attorney for the trustee. The proposal deletes those provisions from §§733.6171 and 736.1007 and requires the attorney for the estate to obtain a fee disclosure statement signed by the personal representative. The proposed amendments would also prevent a court from allocating the personal representative and trustee

By Senator Bean

4-00664C-19

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1 A bill to be entitled
 2 An act relating to attorney compensation; amending s.
 3 733.6171, F.S.; requiring an attorney who accepts
 4 certain engagements to obtain a fee disclosure
 5 statement signed by the person responsible for
 6 administering an estate; requiring such disclosure
 7 statement to contain certain statements; deleting
 8 provisions relating to the determination of reasonable
 9 compensation for attorneys of personal
 10 representatives; deleting provisions relating to
 11 petitions to increase or decrease compensation for
 12 such attorneys; amending s. 736.1007, F.S.; deleting
 13 provisions relating to the determination of reasonable
 14 compensation for attorneys of trustees; deleting
 15 provisions relating to petitions to increase or
 16 decrease compensation for such attorneys; amending ss.
 17 733.106 and 736.1005, F.S.; conforming provisions to
 18 changes made by the act; providing an effective date.

19
 20 Be It Enacted by the Legislature of the State of Florida:

21
 22 Section 1. Section 733.6171, Florida Statutes, is amended
 23 to read:

24 733.6171 Compensation of attorney for the personal
 25 representative.—

26 (1) Attorneys for personal representatives are ~~shall be~~
 27 entitled to reasonable compensation payable from the estate
 28 assets without court order. An attorney accepting an engagement
 29 to represent an estate in probate or other administration must

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30 obtain a fee disclosure statement signed by the person
31 responsible for administering the estate. Such statement must
32 specify all of the following:

33 (a) The attorney fee for representing the estate in probate
34 matters is not set by law and is not required to be based on the
35 size of the estate.

36 (b) The fee is subject to negotiation between the personal
37 representative and the attorney.

38 (c) The selection of the attorney to represent the estate
39 is at the discretion of the personal representative and the
40 personal representative is not required to select the attorney
41 who drafted the will.

42 ~~(2) The attorney, the personal representative, and persons~~
43 ~~bearing the impact of the compensation may agree to compensation~~
44 ~~determined in a different manner than provided in this section.~~
45 ~~Compensation may also be determined in a different manner than~~
46 ~~provided in this section if the manner is disclosed to the~~
47 ~~parties bearing the impact of the compensation and if no~~
48 ~~objection is made as provided for in the Florida Probate Rules.~~

49 ~~(3) Compensation for ordinary services of attorneys in~~
50 ~~formal estate administration is presumed to be reasonable if~~
51 ~~based on the compensable value of the estate, which is the~~
52 ~~inventory value of the probate estate assets and the income~~
53 ~~earned by the estate during the administration as provided in~~
54 ~~the following schedule:~~

55 ~~(a) One thousand five hundred dollars for estates having a~~
56 ~~value of \$40,000 or less.~~

57 ~~(b) An additional \$750 for estates having a value of more~~
58 ~~than \$40,000 and not exceeding \$70,000.~~

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59 ~~(c) An additional \$750 for estates having a value of more~~
60 ~~than \$70,000 and not exceeding \$100,000.~~

61 ~~(d) For estates having a value in excess of \$100,000, at~~
62 ~~the rate of 3 percent on the next \$900,000.~~

63 ~~(e) At the rate of 2.5 percent for all above \$1 million and~~
64 ~~not exceeding \$3 million.~~

65 ~~(f) At the rate of 2 percent for all above \$3 million and~~
66 ~~not exceeding \$5 million.~~

67 ~~(g) At the rate of 1.5 percent for all above \$5 million and~~
68 ~~not exceeding \$10 million.~~

69 ~~(h) At the rate of 1 percent for all above \$10 million.~~

70 ~~(4) In addition to fees for ordinary services, the attorney~~
71 ~~for the personal representative shall be allowed further~~
72 ~~reasonable compensation for any extraordinary service. What is~~
73 ~~an extraordinary service may vary depending on many factors,~~
74 ~~including the size of the estate. Extraordinary services may~~
75 ~~include, but are not limited to:~~

76 ~~(a) Involvement in a will contest, will construction, a~~
77 ~~proceeding for determination of beneficiaries, a contested~~
78 ~~claim, elective share proceeding, apportionment of estate taxes,~~
79 ~~or any adversarial proceeding or litigation by or against the~~
80 ~~estate.~~

81 ~~(b) Representation of the personal representative in audit~~
82 ~~or any proceeding for adjustment, determination, or collection~~
83 ~~of any taxes.~~

84 ~~(c) Tax advice on postmortem tax planning, including, but~~
85 ~~not limited to, disclaimer, renunciation of fiduciary~~
86 ~~commission, alternate valuation date, allocation of~~
87 ~~administrative expenses between tax returns, the QTIP or reverse~~

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~~QTIP election, allocation of GST exemption, qualification for Internal Revenue Code ss. 6166 and 303 privileges, deduction of last illness expenses, fiscal year planning, distribution planning, asset basis considerations, handling income or deductions in respect of a decedent, valuation discounts, special use and other valuation, handling employee benefit or retirement proceeds, prompt assessment request, or request for release of personal liability for payment of tax.~~

~~(d) Review of estate tax return and preparation or review of other tax returns required to be filed by the personal representative.~~

~~(e) Preparation of the estate's federal estate tax return. If this return is prepared by the attorney, a fee of one-half of 1 percent up to a value of \$10 million and one-fourth of 1 percent on the value in excess of \$10 million of the gross estate as finally determined for federal estate tax purposes, is presumed to be reasonable compensation for the attorney for this service. These fees shall include services for routine audit of the return, not beyond the examining agent level, if required.~~

~~(f) Purchase, sale, lease, or encumbrance of real property by the personal representative or involvement in zoning, land use, environmental, or other similar matters.~~

~~(g) Legal advice regarding carrying on of the decedent's business or conducting other commercial activity by the personal representative.~~

~~(h) Legal advice regarding claims for damage to the environment or related procedures.~~

~~(i) Legal advice regarding homestead status of real property or proceedings involving that status and services~~

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117 ~~related to protected homestead.~~

118 ~~(j) Involvement in fiduciary, employee, or attorney~~
119 ~~compensation disputes.~~

120 ~~(k) Proceedings involving ancillary administration of~~
121 ~~assets not subject to administration in this state.~~

122 ~~(5) Upon petition of any interested person, the court may~~
123 ~~increase or decrease the compensation for ordinary services of~~
124 ~~the attorney or award compensation for extraordinary services if~~
125 ~~the facts and circumstances of the particular administration~~
126 ~~warrant. In determining reasonable compensation, the court shall~~
127 ~~consider all of the following factors, giving weight to each as~~
128 ~~it determines to be appropriate:~~

129 ~~(a) The promptness, efficiency, and skill with which the~~
130 ~~administration was handled by the attorney.~~

131 ~~(b) The responsibilities assumed by and the potential~~
132 ~~liabilities of the attorney.~~

133 ~~(c) The nature and value of the assets that are affected by~~
134 ~~the decedent's death.~~

135 ~~(d) The benefits or detriments resulting to the estate or~~
136 ~~interested persons from the attorney's services.~~

137 ~~(e) The complexity or simplicity of the administration and~~
138 ~~the novelty of issues presented.~~

139 ~~(f) The attorney's participation in tax planning for the~~
140 ~~estate and the estate's beneficiaries and tax return~~
141 ~~preparation, review, or approval.~~

142 ~~(g) The nature of the probate, nonprobate, and exempt~~
143 ~~assets, the expenses of administration, the liabilities of the~~
144 ~~decedent, and the compensation paid to other professionals and~~
145 ~~fiduciaries.~~

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146 ~~(h) Any delay in payment of the compensation after the~~
 147 ~~services were furnished.~~

148 ~~(i) Any other relevant factors.~~

149 (2)~~(6)~~ If a separate written agreement regarding
 150 compensation exists between the attorney and the decedent, the
 151 attorney must ~~shall~~ furnish a copy to the personal
 152 representative prior to commencement of employment, and, if
 153 employed, must ~~shall~~ promptly file and serve a copy on all
 154 interested persons. ~~Neither~~ A separate agreement or ~~nor~~ a
 155 provision in the will suggesting or directing that the personal
 156 representative retain a specific attorney does not ~~will~~ obligate
 157 the personal representative to employ the attorney or obligate
 158 the attorney to accept the representation, but if the attorney
 159 who is a party to the agreement or who drafted the will is
 160 employed, the compensation paid may ~~shall~~ not exceed the
 161 compensation provided in the agreement or in the will.

162 Section 2. Section 736.1007, Florida Statutes, is amended
 163 to read:

164 736.1007 Trustee's attorney fees.—

165 (1) If the trustee of a revocable trust retains an attorney
 166 to render legal services in connection with the initial
 167 administration of the trust, the attorney is entitled to
 168 reasonable compensation for those legal services, payable from
 169 the assets of the trust, subject to s. 736.0802(10), without
 170 court order. ~~The trustee and the attorney may agree to~~
 171 ~~compensation that is determined in a manner or amount other than~~
 172 ~~the manner or amount provided in this section. The agreement is~~
 173 ~~not binding on a person who bears the impact of the compensation~~
 174 ~~unless that person is a party to or otherwise consents to be~~

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175 ~~bound by the agreement. The agreement may provide that the~~
176 ~~trustee is not individually liable for the attorney fees and~~
177 ~~costs.~~

178 ~~(2) Unless otherwise agreed, compensation based on the~~
179 ~~value of the trust assets immediately following the settlor's~~
180 ~~death and the income earned by the trust during initial~~
181 ~~administration at the rate of 75 percent of the schedule~~
182 ~~provided in s. 733.6171(3) (a) - (h) is presumed to be reasonable~~
183 ~~total compensation for ordinary services of all attorneys~~
184 ~~employed generally to advise a trustee concerning the trustee's~~
185 ~~duties in initial trust administration.~~

186 ~~(3) An attorney who is retained to render only limited and~~
187 ~~specifically defined legal services shall be compensated as~~
188 ~~provided in the retaining agreement. If the amount or method of~~
189 ~~determining compensation is not provided in the agreement, the~~
190 ~~attorney is entitled to a reasonable fee, taking into account~~
191 ~~the factors set forth in subsection (6).~~

192 ~~(4) Ordinary services of the attorney in an initial trust~~
193 ~~administration include legal advice and representation~~
194 ~~concerning the trustee's duties relating to:~~

195 ~~(a) Review of the trust instrument and each amendment for~~
196 ~~legal sufficiency and interpretation.~~

197 ~~(b) Implementation of substitution of the successor~~
198 ~~trustee.~~

199 ~~(c) Persons who must or should be served with required~~
200 ~~notices and the method and timing of such service.~~

201 ~~(d) The obligation of a successor to require a former~~
202 ~~trustee to provide an accounting.~~

203 ~~(e) The trustee's duty to protect, insure, and manage trust~~

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204 ~~assets and the trustee's liability relating to these duties.~~

205 ~~(f) The trustee's duty regarding investments imposed by the~~
206 ~~prudent investor rule.~~

207 ~~(g) The trustee's obligation to inform and account to~~
208 ~~beneficiaries and the method of satisfaction of such~~
209 ~~obligations, the liability of the trust and trustee to the~~
210 ~~settlor's creditors, and the advisability or necessity for~~
211 ~~probate proceedings to bar creditors.~~

212 ~~(h) Contributions due to the personal representative of the~~
213 ~~settlor's estate for payment of expenses of administration and~~
214 ~~obligations of the settlor's estate.~~

215 ~~(i) Identifying tax returns required to be filed by the~~
216 ~~trustee, the trustee's liability for payment of taxes, and the~~
217 ~~due date of returns.~~

218 ~~(j) Filing a nontaxable affidavit, if not filed by a~~
219 ~~personal representative.~~

220 ~~(k) Order of payment of expenses of administration of the~~
221 ~~trust and order and priority of abatement of trust~~
222 ~~distributions.~~

223 ~~(l) Distribution of income or principal to beneficiaries or~~
224 ~~funding of further trusts provided in the governing instrument.~~

225 ~~(m) Preparation of any legal documents required to effect~~
226 ~~distribution.~~

227 ~~(n) Fiduciary duties, avoidance of self-dealing, conflicts~~
228 ~~of interest, duty of impartiality, and obligations to~~
229 ~~beneficiaries.~~

230 ~~(o) If there is a conflict of interest between a trustee~~
231 ~~who is a beneficiary and other beneficiaries of the trust,~~
232 ~~advice to the trustee on limitations of certain authority of the~~

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233 trustee regarding discretionary distributions or exercise of
234 certain powers and alternatives for appointment of an
235 independent trustee and appropriate procedures.

236 ~~(p) Procedures for the trustee's discharge from liability~~
237 ~~for administration of the trust on termination or resignation.~~

238 ~~(5) In addition to the attorney's fees for ordinary~~
239 ~~services, the attorney for the trustee shall be allowed further~~
240 ~~reasonable compensation for any extraordinary service. What~~
241 ~~constitutes an extraordinary service may vary depending on many~~
242 ~~factors, including the size of the trust. Extraordinary services~~
243 ~~may include, but are not limited to:~~

244 ~~(a) Involvement in a trust contest, trust construction, a~~
245 ~~proceeding for determination of beneficiaries, a contested~~
246 ~~claim, elective share proceedings, apportionment of estate~~
247 ~~taxes, or other adversary proceedings or litigation by or~~
248 ~~against the trust.~~

249 ~~(b) Representation of the trustee in an audit or any~~
250 ~~proceeding for adjustment, determination, or collection of any~~
251 ~~taxes.~~

252 ~~(c) Tax advice on postmortem tax planning, including, but~~
253 ~~not limited to, disclaimer, renunciation of fiduciary~~
254 ~~commission, alternate valuation date, allocation of~~
255 ~~administrative expenses between tax returns, the QTIP or reverse~~
256 ~~QTIP election, allocation of GST exemption, qualification for~~
257 ~~Internal Revenue Code ss. 303 and 6166 privileges, deduction of~~
258 ~~last illness expenses, distribution planning, asset basis~~
259 ~~considerations, throwback rules, handling income or deductions~~
260 ~~in respect of a decedent, valuation discounts, special use and~~
261 ~~other valuation, handling employee benefit or retirement~~

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262 ~~proceeds, prompt assessment request, or request for release from~~
263 ~~personal liability for payment of tax.~~

264 ~~(d) Review of an estate tax return and preparation or~~
265 ~~review of other tax returns required to be filed by the trustee.~~

266 ~~(e) Preparation of decedent's federal estate tax return. If~~
267 ~~this return is prepared by the attorney, a fee of one-half of 1~~
268 ~~percent up to a value of \$10 million and one-fourth of 1 percent~~
269 ~~on the value in excess of \$10 million, of the gross estate as~~
270 ~~finally determined for federal estate tax purposes, is presumed~~
271 ~~to be reasonable compensation for the attorney for this service.~~
272 ~~These fees shall include services for routine audit of the~~
273 ~~return, not beyond the examining agent level, if required.~~

274 ~~(f) Purchase, sale, lease, or encumbrance of real property~~
275 ~~by the trustee or involvement in zoning, land use,~~
276 ~~environmental, or other similar matters.~~

277 ~~(g) Legal advice regarding carrying on of decedent's~~
278 ~~business or conducting other commercial activity by the trustee.~~

279 ~~(h) Legal advice regarding claims for damage to the~~
280 ~~environment or related procedures.~~

281 ~~(i) Legal advice regarding homestead status of trust real~~
282 ~~property or proceedings involving the status.~~

283 ~~(j) Involvement in fiduciary, employee, or attorney~~
284 ~~compensation disputes.~~

285 ~~(k) Considerations of special valuation of trust assets,~~
286 ~~including discounts for blockage, minority interests, lack of~~
287 ~~marketability, and environmental liability.~~

288 ~~(6) Upon petition of any interested person in a proceeding~~
289 ~~to review the compensation paid or to be paid to the attorney~~
290 ~~for the trustee, the court may increase or decrease the~~

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291 ~~compensation for ordinary services of the attorney for the~~
292 ~~trustee or award compensation for extraordinary services if the~~
293 ~~facts and circumstances of the particular administration~~
294 ~~warrant. In determining reasonable compensation, the court shall~~
295 ~~consider all of the following factors giving such weight to each~~
296 ~~as the court may determine to be appropriate:~~

297 ~~(a) The promptness, efficiency, and skill with which the~~
298 ~~initial administration was handled by the attorney.~~

299 ~~(b) The responsibilities assumed by, and potential~~
300 ~~liabilities of, the attorney.~~

301 ~~(c) The nature and value of the assets that are affected by~~
302 ~~the decedent's death.~~

303 ~~(d) The benefits or detriments resulting to the trust or~~
304 ~~the trust's beneficiaries from the attorney's services.~~

305 ~~(e) The complexity or simplicity of the administration and~~
306 ~~the novelty of issues presented.~~

307 ~~(f) The attorney's participation in tax planning for the~~
308 ~~estate, the trust, and the trust's beneficiaries and tax return~~
309 ~~preparation or review and approval.~~

310 ~~(g) The nature of the trust assets, the expenses of~~
311 ~~administration, and the claims payable by the trust and the~~
312 ~~compensation paid to other professionals and fiduciaries.~~

313 ~~(h) Any delay in payment of the compensation after the~~
314 ~~services were furnished.~~

315 ~~(i) Any other relevant factors.~~

316 ~~(2)(7)~~ If a separate written agreement regarding
317 compensation exists between the attorney and the settlor, the
318 attorney must ~~shall~~ furnish a copy to the trustee prior to
319 commencement of employment and, if employed, must ~~shall~~ promptly

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320 file and serve a copy on all interested persons. A separate
 321 agreement or a provision in the trust suggesting or directing
 322 the trustee to retain a specific attorney does not obligate the
 323 trustee to employ the attorney or obligate the attorney to
 324 accept the representation but, if the attorney who is a party to
 325 the agreement or who drafted the trust is employed, the
 326 compensation paid may ~~shall~~ not exceed the compensation provided
 327 in the agreement.

328 ~~(8) As used in this section, the term "initial trust~~
 329 ~~administration" means administration of a revocable trust during~~
 330 ~~the period that begins with the death of the settlor and ends on~~
 331 ~~the final distribution of trust assets outright or to continuing~~
 332 ~~trusts created under the trust agreement but, if an estate tax~~
 333 ~~return is required, not until after issuance of an estate tax~~
 334 ~~closing letter or other evidence of termination of the estate~~
 335 ~~tax proceeding. This initial period is not intended to include~~
 336 ~~continued regular administration of the trust.~~

337 Section 3. Subsection (4) of section 733.106, Florida
 338 Statutes, is amended to read:

339 733.106 Costs and attorney fees.—

340 (4) If costs and attorney fees are to be paid from the
 341 estate under this section, ~~s. 733.6171(4)~~, s. 736.1005, or s.
 342 736.1006, the court, in its discretion, may direct from what
 343 part of the estate they shall be paid.

344 (a) If the court directs an assessment against a person's
 345 part of the estate and such part is insufficient to fully pay
 346 the assessment, the court may direct payment from the person's
 347 part of a trust, if any, if a pour-over will is involved and the
 348 matter is interrelated with the trust.

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349 (b) All or any part of the costs and attorney fees to be
350 paid from the estate may be assessed against one or more
351 persons' part of the estate in such proportions as the court
352 finds to be just and proper.

353 (c) In the exercise of its discretion, the court may
354 consider the following factors:

355 1. The relative impact of an assessment on the estimated
356 value of each person's part of the estate.

357 2. The amount of costs and attorney fees to be assessed
358 against a person's part of the estate.

359 3. The extent to which a person whose part of the estate is
360 to be assessed, individually or through counsel, actively
361 participated in the proceeding.

362 4. The potential benefit or detriment to a person's part of
363 the estate expected from the outcome of the proceeding.

364 5. The relative strength or weakness of the merits of the
365 claims, defenses, or objections, if any, asserted by a person
366 whose part of the estate is to be assessed.

367 6. Whether a person whose part of the estate is to be
368 assessed was a prevailing party with respect to one or more
369 claims, defenses, or objections.

370 7. Whether a person whose part of the estate is to be
371 assessed unjustly caused an increase in the amount of costs and
372 attorney fees incurred by the personal representative or another
373 interested person in connection with the proceeding.

374 8. Any other relevant fact, circumstance, or equity.

375 (d) The court may assess a person's part of the estate
376 without finding that the person engaged in bad faith,
377 wrongdoing, or frivolousness.

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378 Section 4. Subsection (2) of section 736.1005, Florida
379 Statutes, is amended to read:

380 736.1005 Attorney fees for services to the trust.—

381 (2) If attorney fees are to be paid from the trust under
382 subsection (1), ~~s. 736.1007(5)(a)~~, or s. 733.106(4)(a), the
383 court, in its discretion, may direct from what part of the trust
384 the fees shall be paid.

385 (a) All or any part of the attorney fees to be paid from
386 the trust may be assessed against one or more persons' part of
387 the trust in such proportions as the court finds to be just and
388 proper.

389 (b) In the exercise of its discretion, the court may
390 consider the following factors:

391 1. The relative impact of an assessment on the estimated
392 value of each person's part of the trust.

393 2. The amount of attorney fees to be assessed against a
394 person's part of the trust.

395 3. The extent to which a person whose part of the trust is
396 to be assessed, individually or through counsel, actively
397 participated in the proceeding.

398 4. The potential benefit or detriment to a person's part of
399 the trust expected from the outcome of the proceeding.

400 5. The relative strength or weakness of the merits of the
401 claims, defenses, or objections, if any, asserted by a person
402 whose part of the trust is to be assessed.

403 6. Whether a person whose part of the trust is to be
404 assessed was a prevailing party with respect to one or more
405 claims, defenses, or objections.

406 7. Whether a person whose part of the trust is to be

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407 assessed unjustly caused an increase in the amount of attorney
408 fees incurred by the trustee or another person in connection
409 with the proceeding.

410 8. Any other relevant fact, circumstance, or equity.

411 (c) The court may assess a person's part of the trust
412 without finding that the person engaged in bad faith,
413 wrongdoing, or frivolousness.

414 Section 5. This act shall take effect July 1, 2019.



ASHLEY ZOHAR

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LEGAL EXPERIENCE

THE LAW OFFICE OF ASHLEY ZOHAR, PLLC

Managing Attorney, August 2016-Present, Tampa, FL

- Draft contracts, operating agreement, buy-sell agreements, consulting agreements, construction contracts, partnership agreements, gun trusts, franchise agreements, last will and testaments, and trusts.
- Consult with clients regarding estate planning, real estate, and business law matters.
- Maintain diligent ledger of trust accounts, record time, conduct general business administration, interview and schedule clients, develop book of business and referral network.

OFFICE OF FRAUD DETECTION AND MARKET INTELLIGENCE AT FINRA

Regulatory Analyst, July 2014-December 2015, Rockville, MD

- Analyzed public companies filings, financials, and confidential data obtained from brokerage firms to detect financial fraud, market manipulation, matched trading, washed trading, and pump-and-dump schemes.
- Interviewed CEOs of public companies to uncover fraud and highlight inconsistencies in filings.
- Wrote reports to the U.S. Securities Exchange Commission, which resulted in trade suspension of companies.

ROSETTI GROUP

Research Analyst, Apr. 2014-July 2014, Rockville, MD

- Wrote detailed profiles on professional, educational, and high level executives for use by investors.

JANET R. SPRAGENS FEDERAL TAX CLINIC

Student Attorney, Jan. 2013-May 2013, Washington, DC

- Interviewed and counseled clients, explained to them their tax issues, maintained electronic and paper files, and managed cases involving the denial of tax credits and identity theft.
- Researched, analyzed, and wrote legal memoranda, including stipulations of fact, pretrial memoranda to the U.S. Tax Court, and a written consultation to an IRS appeals officer.

THE WORLD BANK

Legal Intern, June 2012-Aug. 2012, Washington, DC

- Drafted comparative summary on inheritance and family laws for report published and used by Millennium Challenge Corporation in grant decision process.
- Analyzed gender disparities within foreign statutes for presentation to foreign legislatures.

AMIT, POLLAK, MATALON & CO.

Legal Intern, July 2011-Aug. 2011, Tel-Aviv, Israel

- Drafted legal memoranda for principals in multi-million dollar merger between U.S. and Swiss incorporated medical device companies and conducted due diligence on U.S. real estate and investment agreements.

UCF GLOBAL PERSPECTIVES OFFICE

Research Assistant, Jan. 2010-May 2010, Orlando, FL

- Published weekly briefs on European affairs for staff circulation and director's publications.

BURKE L. RANDA, ATTORNEY AT LAW

Legal Assistant, Aug. 2007-Dec. 2008, Orlando, FL

- Revised contracts and wills, and administered real estate closings.

EDUCATION

AMERICAN UNIVERSITY WASHINGTON COLLEGE OF LAW

J.D., May 2013; G.P.A. 3.53

Merits:

Moot Court, Foreign Direct Investment Arbitration Competition

Specialized Coursework:

Secured Transactions, International Business Transactions, Federal Income Tax, Corporate Tax, E-Commerce & Drafting, International Arbitration

UNIVERSITY OF CENTRAL FLORIDA

B.A., *Legal Studies*, May 2010; G.P.A. 3.66

Specialization:

International & Comparative Law

Honors:

Burnett Honors College

UCF Who's Who Among Students Award for Excellence

COMMUNITY SERVICE & EXTRACURRICULAR ACTIVITIES

IRS VOLUNTEER INCOME TAX ASSISTANCE: IRS-Certified Tax Preparer, March 2013 & 2014

CONSTITUTIONAL LITERACY PROGRAM: High School Teacher, Aug. 2012-May 2013

ASSOCIATION OF TRANSFER STUDENTS: President & Founder, Jan. 2012 – May 2013

ADDITIONAL SKILLS

FOREIGN LANGUAGES: Hungarian & French

PUBLICATION: Methodology for the 50 Years of Women's Legal Rights, published on worldbank.org, Nov. 29, 2012.

BAR LICENSE: State of Florida and State of New York

2018-2019 MEETING SCHEDULE

Executive Council Meeting & Convention

May 29- June 2, 2019

Opal Sands Resort - Clearwater Beach, Florida

Room Rate: \$239 Deluxe Gulf Front (single/double occupancy)

Registrations and Hotel Reservations available soon!!!



RPPTL 2019-2020
Executive Council Meeting Schedule
Rob Freedman's Year

Limit 1 reservation per registrant, additional rooms will be approved upon special request. Each hotel has a 30-day cancellation policy on all individual room reservations.

<u>Date</u>	<u>Location</u>
July 24 – July 28, 2019	Executive Council Meeting & Legislative Update The Breakers Palm Beach, Florida Room Rate (Deluxe Room – King): \$225 Premium Room Rate: \$280
November 6 – November 10, 2019	Executive Council & Committee Meetings JW Marriott Marquis Miami Miami, FL Standard Guest Room Rate: \$269 (single/double)
January 29 – February 2, 2020	Executive Council & Committee Meetings Grand Hyatt Tampa Bay Tampa, FL Standard Guest Room Rate: \$225 (single/double)
April 1 – April 5, 2020	Out of State Executive Council Meeting Hotel Okura Amsterdam Amsterdam, The Netherlands <u>Room Rates:</u> Superior Guest Room (2 twins/1 king): €295 single, €320 double (inclusive of breakfast) Executive Junior Suite: €385 single, €420 double (inclusive of breakfast)
May 28 – May 31, 2020	Executive Council Meeting & Convention Loews Sapphire Falls Orlando, FL Standard Guest Room Rate (two queens): \$209 (single/double), \$234 (triple), \$259 (quad)

*Subject to availability



RPPTL Financial Summary from Separate Budgets
2018-2019 [July 1 - January 31] YEAR
TO DATE REPORT

General Budget

YTD

Revenue	\$ 1,234,826
Expenses	\$ 727,046
Net:	\$ 507,780

Attorney Loan Officer

YTD

Revenue	\$ 15,250
Expenses	\$ 46,459
Net:	\$ (31,209)

CLI

YTD

Revenue	\$ 160,421
Expenses	\$ 10,613
Net:	\$ 149,808

Trust Officer Conference

Revenue	\$ 283,104
Expenses	\$ 174,850
Net:	\$ 108,254

Legislative Update

Revenue	\$ 46,894
Expenses	\$ 79,003
Net:	\$ (32,109)

Convention

Revenue	\$ 6,585
Expenses	\$ 103
Net:	\$ 6,482

Roll-up Summary (Total)

Revenue:	\$ 1,747,080
Expenses	\$ 1,038,074
Net Operations	\$ 709,006

Beginning Fund Balance:	\$ 1,823,975
Current Fund Balance (YTD):	\$ 2,532,981
Projected June 2018 Fund Balance	\$ 1,678,493

Upcoming CLE Schedule

Course #	Course Title	Course Date	Location/Venue	Program Chair
2988	<i>RPPTL Section Audio Webcast #7 The Marketable Record Title Act (MRTA)</i>	3/20/2019	Audio Webcast	Steve Mezer / Doug Christy
2977	<i>Trust and Estate Symposium</i>	3/29/2019	Fort Lauderdale	Rich Caskey/Angela Adams/Lee McElroy
2976	<i>Wills Trusts and Estates Certification Review</i>	4/5/2019	Orlando (HYATT AIRPORT)	Jeff Goethe
2978	<i>RP Cert Review - NEW DATE</i>	4/12/2019	JW Marriott, Orlando	Manny Farach
2987	<i>RPPTL Section Audio Webcast #8 Insurance</i>	4/17/2019	Audio Webcast	Steve Mezer / Doug Christy
2981	<i>Annual Guardianship CLE 2019</i>	4/26/2019	Tampa	Darby Jones/Nick Curley
2980	<i>RPPTL Audio Webcast: Legal Writing</i>	4/29/2019	Audio Webcast	Steve Mezer/Marty Schwartz, Marty Solomon
3249	<i>RPPTL Audio Webcast: Restaurant Leasing</i>	5/1/2019	Audio Webcast	Brenda Ezell
2982	<i>Estate and Trust Planning and Wealth Preservation</i>	5/3/2019	Renaissance Fort Lauderdale Cruise Port Hotel	Rob Lancaster / Brian Malec
3196	<i>RPPTL Audio Webcast: Practice Series TBD</i>	5/14/2019	Audio Webcast	John Moran
2986	<i>RPPTL Section Audio Webcast #9 Community Association's Budget / Assessment / Reserve Issues</i>	5/15/2019	Audio Webcast	Steve Mezer
3246	<i>RPPTL Audio Webcast: Ethics in Foreclosure Litigation</i>	5/21/2019	Audio Webcast	Steve Mezer / Jason Ellison
2983	<i>2019 RPPTL Convention CLE</i>	6/1/2019	Clearwater	Debra Boje
3197	<i>RPPTL Audio Webcast: Practice Series TBD</i>	6/3/2019	Audio Webcast	John Moran
3193	<i>RPPTL Section Audio Webcast #10 Developer Exercise of Reserved Rights - How far can they go?</i>	6/19/2019	Audio Webcast	Steve Mezer

Report of the **Model and Uniform Acts** General Standing Committee-
Bruce M. Stone and Richard W. Taylor, Co-Chairs:
Prepared for the Executive Council Meeting, March 14-16, 2019.

1. The Uniform Law Commission (ULC) is also known as the National Conference of Commissioners on Uniform State Laws. The website is <http://www.uniformlaws.org>. Information on each of its Model Acts is found on the website and for many of the Acts there is an enactment kit which can be downloaded to provide additional information. Apple users may be interested in an Estate and Trust App through the App Store as shown at <http://www.uniformlaws.org>.

2. On January 28, 2019, five new uniform acts drafted and approved by the Uniform Law Commission (ULC) in 2018 were also approved by the American Bar Association's House of Delegates as "appropriate Acts for those states desiring to adopt the specific substantive law suggested therein."

A. Of great interest to the Chairperson of the RPPTL is the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act which addresses an increasingly common form of abuse that causes immediate, and in many cases, irreversible harm. The Act creates a cause of action for unauthorized disclosure of private, intimate images. The Act also outlines procedures enabling victims to protect their identity in court proceedings. In addition, the Act provides various remedies for victims, including actual damages, statutory damages, punitive damages, and attorney's fees.

B. The Uniform Criminal Records Accuracy Act.

C. The Uniform Fiduciary Income and Principal Act is an updated version of the Uniform Principal and Income Act, which has been adopted in 47 jurisdictions. The Act provides rules for allocating receipts and disbursements between income and principal accounts of a trust in accordance with the fiduciary duty to treat all beneficiaries loyally and impartially, unless the terms of the trust specify otherwise. This revision includes provisions allowing conversion of a traditional trust with income and principal beneficiaries into a total-return unitrust when all beneficiaries consent.

D. The Uniform Nonparent Custody and Visitation Act addresses the rights of third parties other than parents to custody of or visitation with a child. Those rights are also affected by the decision of the United States Supreme Court in Troxel v. Granville, 530 U.S. 57 (2000), which held that courts must give deference to decisions of fit parents concerning the raising of children, including concerning grandparents'

visitation rights. The Act recognizes a right to seek custody or visitation for two categories of individuals: (1) nonparents who have served as consistent caretakers of a child without expectation of compensation, and (2) other nonparents who have a substantial relationship with a child and who demonstrate that denial of custody or visitation would result in harm to the child.

E. The Uniform Supplemental Commercial Law for the Uniform Regulation of Virtual-Currency Businesses Act (the "Supplemental Act") is a follow-up to the Uniform Regulation of Virtual-Currency Businesses Act ("URVCBA"). The URVCBA establishes a regulatory framework for virtual-currency businesses to operate either by license or registration in a state and creates safeguards to protect consumers. As a regulatory act, the URVCBA provides numerous robust user protections based on commercial law principles but does not directly address the commercial law rules for transactions and relationships between virtual-currency businesses and consumers. This Supplemental Act provides the commercial law rules using the time-tested duties and rights of customers of securities intermediaries under the Uniform Commercial Code. The Supplemental Act does this by incorporating Article 8 of the Uniform Commercial Code into the agreement made between a virtual-currency licensee or registrant and users.

3. In the upcoming Florida session the following uniform acts have been filed or submitted: Interstate Depositions and Discovery Act, HB 475, by Williamson and the Certificate of Title for Vessels Act, SPB 7006.

4. A publication from the ULC began in January 2019 entitled *Uniform Real Property Laws Today*.

5. The ULC drafting committee on electronic wills met in Washington DC on February 1 and 2, and approved the final concept for the final version to be submitted to the ULC at its annual meeting in July 2019. The uniform law will provides rules for electronic wills executed with all persons in the actual physical presence of each other, an optional part for electronic wills executed with one or more persons present remotely through audio-visual communications, and choice of law rules. A subcommittee will meet to finalize style matters in March, and the full committee will have its final meeting on April 27 and 28.

6. The Joint Editorial Board for Uniform Trust and Estate Acts has made technical corrections to the Uniform Directed Trust Act which have been approved by the ULC. The JEB is in the process of making conforming changes to the Uniform Probate Code

to reflect changes made necessary because of approval of the Uniform Parentage Act.

7. The ULC has approved the creation of drafting committees to propose uniform laws on crowdfunding efforts, on rights of unmarried cohabitants, and to make updates to the Uniform Disposition of Community Property Rights at Death Act. Florida adopted the original version of the UDCPRD Act which are embodied in chapter 732 of the Florida Probate Code.

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THE FLORIDA BAR

COUNCIL OF SECTIONS

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**GREG RILEY MORTON,
CHAIR-ELECT**

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**CRISTIN KEANE,
IMMEDIATE PAST CHAIR**

Carlton Fields
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Tampa, FL 33601-3239
(813) 229-4133
ckeane@carltonfields.com

[DRAFT]

To: Renee Thompson, Board of Governors Liaison to the Council of Sections

From: Bob Hoyle, Chair, Council of Sections

Re: Council of Sections Proposal to Modify Process for Amending Section Bylaws

Thank you for attending the Council of Sections ("COS") meeting on January 19, 2019. As you know, at that meeting the COS discussed and voted to approve a proposal to forward to The Florida Bar Board of Governors ("BOG"). The proposal and background on the reasons for the proposal are provided below. Please feel free to share with any stakeholders in the process for consideration. We look forward to working with the BOG to implement the proposal and would welcome any thoughts or ideas you might have to aid in that effort.

Introduction:

Bylaws and amendments to bylaws (collectively, "Bylaws") of the various Sections ("Sections") of The Florida Bar ("TFB") are required to be approved by The Florida Bar Board of Governors ("BOG"). As a starting point, Section Bylaws are currently one of the documents that is subject to the requirements of Standing Board Policy 1.60 ("SBP 1.60"). SBP 1.60 covers a wide range of policies that require approval by the BOG, including Rules Regulating TFB, the Code of Judicial Conduct, and Regulations of the Client's Security Fund, among others. Many of the policies that are subject to SBP 1.60 not only require approval by the BOG, but also require approval by the Florida Supreme Court. It is noted in that regard that Section Bylaws are not required to be approved by the Florida Supreme Court.

Proposal:

The following sets forth a proposal for the process to be followed going forward by the BOG in approving Section Bylaws. This proposal is intended to achieve the appropriate oversight

role of the BOG while, at the same time, giving discretion to Sections of TFB to determine what should be in their bylaws, determine the format in which they will prepare their bylaws, and allowing them to timely implement their Bylaws amendments.

1. Removal of Section Bylaws from SBP 1.60. This proposal recommends that Section Bylaws be removed from the coverage of SBP 1.60, which is believed to be intended to cover a much more substantive group of BOG policies than Section Bylaws.
2. Proposal for procedures to be followed for the approval of Section Bylaws.

This proposal contemplates the development of a new rule that will be required to be followed in the BOG's consideration of proposed Section Bylaws. This proposal includes both substantive and procedural requirements to be followed by Sections, and by the BOG, (in considering Section Bylaws for approval), and is believed to have sufficient checks and balances for all parties involved.

- A. Substance of Section Bylaws. No two Sections of the TFB are entirely alike, and the governance structure of each Section substantially differs from Section to Section. Sections know what best fits with their governance and strategic goals and, subject to the oversight contemplated by this proposal, Sections should be given great discretion to decide what should be in their respective Bylaws. That is not to say that Sections should not look closely at how other Sections manage themselves and, where they believe appropriate, consider adopting similar management structures. However, it should ultimately be the role of each Section to decide how it should be governed and to craft Section Bylaws that meet the needs of that Section.
- B. Notice of Proposed Bylaws. It is important that members of a Section whose Bylaws are to be amended to any degree should be advised regarding the changes to be made to that Section's Bylaws. The notice should be given more than once (so that comments can be received and considered before a vote is taken) and should be well in advance on any vote on the proposal.

In the modern age when each Section has a website and Sections transmit notices to their members via email, it should be sufficient to notify Section members of proposed Bylaws changes in the same manner. In that regard, it is believed to be anachronistic to require publishing of the changes in the Bar News, particularly now that the Bar News is only published once a month. Further, since Sections of TFB are voluntary organizations, it is not believed necessary to require notice to all members of TFB, whether by publication or otherwise. This proposal contemplates that notice of proposed changes to Section Bylaws should be posted on the Section's website and transmitted to Section members by email at least twice:

- First, the proposed Bylaws should be sent to all Section members with a statement advising Section members (i) that the Section's bylaws are proposed to be amended, (ii) that the Section is seeking comments on the proposed Bylaws from its members, (iii) to whom comments on the proposed Bylaws should be sent to for consideration, and (iv) the date by which comments on the proposed Bylaws should be submitted, which date shall be no less than 30 days from the date that this first notice is disseminated. This first notice is intended to give Section members an opportunity to comment on the proposal before it is to be considered for final approval the Section's executive council.

- Second, the proposed Bylaws should be sent out at least 30 days before the meeting of the Section's Executive Council at which the Bylaws are to be considered for final approval, so that Section members who wish to speak about the proposal at the meeting at which the Bylaws are considered may do so.

In both cases, Section members should be advised of the terms of the proposed amendment (and a copy of the proposed amendment should accompany the notice or be available for download), when the proposed amendments will be considered and who they should contact to provide input to Section leadership about the proposed amendment. In that regard, amendments to Section Bylaws should only be considered at regular in-state meetings of that particular Section's executive council, preferably meetings in which all members of the Section are expected to be available to participate if they so choose.

Moreover, the proposal is consistent with parliamentary procedure as described in Robert's Rules of Order, which provides that adequate notice is the appropriate prerequisite to organizational consideration, with the notice requiring that it “fairly inform the membership of the changes contemplated.”

Further, this proposal sets forth minimum notice requirements, and Sections are encouraged to consider additional notice to Section members than is required in this proposal (for example, by publication to Section members of an exposure draft of the proposed Bylaws for consideration before the proposed Bylaws are subject to final review).

C. Board of Governor Approval Process

- (1) Once a Section's executive council has adopted amendments to the Section's bylaws, such amendments should be formally presented to the BOG. Such presentation should include (i) a summary of the changes made, in such format as is believed by the Section to reasonably provide notice to the BOG of the nature of the changes, and (ii) a copy of the amendment as adopted. The manner in which such amendments should be delivered to the BOG shall be reasonably crafted to provide the BOG with sufficient information for it to consider approval of the Bylaws (but because one size does not fit all, the format for describing the changes made in the amendments should be left to the discretion of the Section, as long as it is reasonable under the circumstances).
- (2) The Section should designate the members of the Section's leadership authorized to communicate with members of the BOG and TFB Staff with respect to the BOG approval process, and to the extent that TFB Staff are involved in the BOG approval process, TFB Staff should communicate with such designated Section representatives, rather than through the Section's administrator. This will help make this process as efficient as possible (since members of the BOG and TFB Staff reviewing Bylaws will be speaking to the Section representatives who know what was intended in the Bylaws changes).
- (3) Once the Executive Council of a Section has approved proposed amendments to that Section's Bylaws, the Section's leadership should be authorized to approve any non-substantive and/or clarifying changes to the Section's Bylaws that may arise during the BOG review process. Further, if substantive changes are required by the BOG in order to approve a particular Section Bylaw, such approval can be made

subject to final approval of the revised Bylaw by the Section's Executive Council following BOG approval and, if approved with those required changes, shall not require further approval by the BOG.

- (4) The amendment should be subject to a substantive review by a designated committee of the BOG, which shall consider whether the proposed amendment (a) is inconsistent with policies of TFB or the BOG, (b) allows the Section to act in a manner that goes beyond the permissible scope of the Section's ability to act under the applicable rules of TFB, (iii) carries the possibility for potential deep philosophical or emotional division among a substantial segment of the membership of the Bar, or (iv) has a potential significant budget impact as a result of the implementation of the recommendation, to the extent not contemplated in the particular Section's budget. Such substantive review should not include consideration of issues such as consistency of Bylaws among Sections or whether the Bylaws as adopted are written in the manner that they would be written if written by members of the BOG or TFB Staff. Such review may include raising comments or requests for clarification as to what was intended by the amendments.
 - (5) Since Section Bylaws are not subject to review by the Florida Supreme Court, they should not be required to comply with the Florida Supreme Court's Guidelines for Rules Submissions.
 - (6) The BOG review process should be designed so that amendments to Section Bylaws can be considered and approved within no more than six months after submission. This will allow Sections to quickly implement changes in their Bylaws once they are adopted.
3. Implementation. While this new policy for the approval of Section Bylaws is formally approved by the BOG and, if required, the Florida Supreme Court, the Subcommittee recommends that the BOG, its committees, and TFB staff follow the substance of this proposal in reviewing proposed amendments to Section Bylaws.

Background:

Policies subject to SBP 1.60, if read literally, require an extensive review by several BOG committees before they are considered for approval by the BOG, including (i) a substantive review by the BOG committee that has oversight responsibility in the area involved (and perhaps other BOG committees, to the extent determined by the committee with oversight responsibility), (ii) a strategic plan review by the BOG's program evaluation committee, (iii) a procedural review by the BOG's rules committee to determine grammatical correctness, appropriate placement of the amendments and compliance with the Supreme Court's Guidelines for Rules Submissions, and consistency of the amendment with all other rules, policies, procedures or bylaws, and (iv) a fiscal review by TFB's CFO to determine whether the proposed amendment has a potential budget impact as a result of the implementation of the recommendation. SBP 1.60 also requires (i) publication in the Bar News or on TFB's website at least two weeks before final action is taken by the BOG and (ii) two readings of the proposal by the BOG before it can be considered for approval, unless the second reading is waived.

There is certainly an appropriate oversight role for the BOG, and for the staff of TFB in assisting the BOG in satisfying its oversight responsibility, in the consideration of Section Bylaws, and this proposal does not change that basic requirement. However, it is the view of the Council of Sections Bylaws Subcommittee that the requirements of SBP 1.60 when applied to Section Bylaws are overbroad, causing substantial difficulty for Sections to grapple with these rules in the

context of the ordinary course of their operations, and infringing on a Section's sovereignty to decide what should be in its bylaws. Further, and in a perverse way, because of the overbearing nature of the current process to obtain BOG approval of Section Bylaws, it is believed that some Sections are currently electing not to make appropriate and necessary changes to their Bylaws in order to avoid having to go through this process. Since the Sections are voluntary organizations under the umbrella of TFB, but separate from the TFB, they should have broad discretion to decide how best to govern their activities, without undue regulation and oversight by TFB.

Further, as stated by the National Association of Parliamentarians in their guidelines on bylaws, it is important to recognize that the bylaws of an organization should be considered "a process rather than a finished work of art," and that organizations "need to work at maintaining order while still adapting to change." To allow for the flexibility required, these guidelines instruct that "even between periodic [bylaws] revisions, which ought to occur every few years, your society will probably need to amend a provision or two for any number of reasons." Accordingly, the changes suggested here are not only appropriate, but fundamentally necessary to allow for Sections to not be stifled in a morass of antiquated policy, but to grow and adapt consistent with proper organizational procedure.

Bob Hoyle

A handwritten signature in cursive script that reads "Bob Hoyle". The signature is written in black ink and is positioned below the printed name.

Chair, Council of Sections

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REPORT OF THE
MEMBERSHIP/COMMUNICATION/INCLUSION/TECHNOLOGY
SUBCOMMITTEE OF THE
RPPTL STRATEGIC PLANNING COMMITTEE

General Recommendations:

- **Improve communication of and compliance with the Strategic Plan.**
- **Increase membership of Section with a focus on targeting underrepresented constituencies.**
- **Improve Section communications with members and enhance the use of technology.**

DRAFT

Discussion:

- I. Improve communication of and compliance with the Strategic Plan:
 - A. Appoint Strategic Plan Coordinators to monitor the compliance with and adherence to the Strategic Plan once it is adopted. We believe this will increase membership. Though it may require a further financial investment in technology, this is anticipated to enhance member communications.
 - B. The Strategic Plan should be summarized in a one page bullet outline for easy reference by chairs, officers, and other Section leaders.
 - C. Leadership Orientation – the Plan should be discussed at new leader orientations.
 - D. Align resources - The officers should follow the Plan to prioritize and align resources for Plan implementation.
 - E. Committee chairs' annual committee reports should specifically address implementation and compliance with the Plan.
- II. Increase membership of Section with a focus on targeting underrepresented constituencies.
 - A. Continue the letter campaign to recruit, welcome, remind, and say we want you back to dropped members.
 - B. Membership Chair should create a calendar and following the calendar send the reminders to the appropriate persons (Section Chair/ALMs Director) to remind of dates that letters are sent. Letters must be sent automatically by a specified date.
 - C. A survey should be sent to dropped members inquiring as to why the dropped, and requesting their reconsideration.
 - D. At Large Members (ALMs) should send letters to welcome new members recognizing that personalized grass roots campaigns best communicate this message.
 - E. Locations of meetings should be studied, including historical attendance records, to determine whether location impedes membership generally, Executive Council membership, and increasing diverse membership.
 - F. Executive Council (EC) members should be made aware of Section membership numbers across the state. Membership and Inclusion Committee (MIC) chair and ALMs Director should work together to create this report.
 - G. Branding of EC meetings should be reinforced, including changing the title to Section Committee Meetings and EC Meeting to inform members that they are welcome to attend, avoiding current labeling which may be perceived as exclusionary, and doing so in a manner which avoids a

significantly adverse impact the committee processes, administration and finances.

- H. Engage in a listening tour with respect to underrepresented areas and improve outreach to voluntary bar associations and young lawyers. We need to engage with attorneys in underrepresented areas and voluntary bar associations and young lawyers on a face to face level.
 - I. Videos on the website should be updated for use by ALMs and other members to introduce young lawyers and law students to the Section's activities.
- III. Improve Section communications with members and enhance the use of technology.
- A. Creating a downloadable form bank for members to use will add value to membership and further competent and professional practices. Existing forms posted on committee pages may be copied or moved to the forms bank page or linked. Committees should discuss how to expand the forms, including from the Probate and Trust Division, while enhancing and ensuring competency and professionalism.
 - B. Encourage committee chairs to ensure use of fair and equitable meeting voting processes, balancing the need to have representative decisions, avoid encouraging members attending just to vote on one issue, and allowing newer members to participate.
 - C. Further developing new members and incorporating their energy and perspectives, generally, and specifically promoting inclusion. Committees should encourage member participation, including considering voting and non-voting classes of members.
 - D. Committees that have not done so should develop substantive discussion forum listserves easily accessible to members, allowing any Section member to subscribe. The purging of the listserves should be discouraged, except for those who have dropped Section membership. The annual Committee Chair's report should have the question regarding purging deleted.
 - E. We should personalize and customize communications to members.

REPORT OF THE
LEGISLATIVE SUB-COMMITTEE OF THE
RPPTL STRATEGIC PLANNING COMMITTEE

General Recommendations:

- **Institute Standards for Legislative Proposals, including as a threshold is the proposal worthy based upon compelling public policy?**
- **Reduce the need for Glitch bills.**
- **React to third-party legislative proposals, but do not redraft.**
- **Always respect the Section brand.**
- **Empower the Executive Committee and Legislative Co-Chairs to consult and advise Committee Chairs before legislation is drafted.**
- **Annual mandatory Committee Chair training as to process and standards.**
- **Update, archive and make accessible legislative positions and white papers.**
- **Encourage continuity from year to year on Legislative Committee to assure historical knowledge base.**

Discussion:

- I. Legislative Role of the Section – Proactive vs. Reactive –
 - A. Institute quality controls vs. quantity of legislative proposals. Resist the impulse to address every issue with a legislative proposal.
 - B. Improve drafting to reduce the number of “Glitch” bills that are proposed to conserve Section resources and overstraining legislative resources.
 - C. The Section should be involved more in big picture policy work than case-specific/isolated problem solving, unless the case involves a significant long term broad public policy warranting a Section-sponsored legislative proposal.
 - D. Dispel the notion that Section substantive committees are pressured to produce legislation to justify their existence, including the focus on long term broad policy goals, not a short term fix to an isolated situation. The existence of committee-mandated legislative liaisons or legislative vice-chairs does not compel, or imply the need to produce legislative proposals before discussing and debating policy.
 - E. Legislative committee and staff proposals driven by non-Section constituencies require the time and attention of the Legislation Committee, but Section responses should be contained within the scope of long term public policy necessities consistent with the Section’s legislative positions and referred to appropriate substantive Section committees for rapid review and recommendations. Substantive committees in coordination with their Division Directors should prospectively team with outside trade groups or other stakeholders to preempt legislative proposals inconsistent with good public policy. If the Section fundamentally disagrees with another group’s statement of public policy to advance a proposal, the Section should communicate our position and its rationale, but not redraft the proposal. The Section shall work with other stakeholders to achieve favorable public policy.
- II. Identifying Criteria or Determinants of What is “Worthy” of Legislative Response and the Expenditure of Section Time and Funds –
 - A. Is there a “Compelling Public Policy Reasons” to justify the expenditure of Section resources concerning another’s proposal?
 - B. Determining before proposing a position whether the position is worthy of risking the Section’s reputation, the RPPTL brand.
 - C. Should the Section have legislative proposals advocated and adopted as a “tag along” to other Section(s) and trade group policies?

- D. Reminded that the Section's reputation and importance comes from the fact that we are active participants in the legislative process, any scale-back of participation must not diminish the Section's importance and reputation which could invite challenges to our positions and reputation, and thus we should seek more collaborative effort with stakeholders to reduce the Section's role as the front-runner. As the Probate and Trust Division continues to pursue policy partnering with bankers, the Elder Law Section, and the Family Law Section, among others, to both preempt opposition and be a co-leader in joint proposals, policy partnering should be developed in the Real Property Division with the bankers, among others.

The Section must be more flexible. Following The Florida Bar BOG's requirement to affirmatively disclose in our legislative position requests who we have consulted, including other stakeholders and Sections of the Bar and their positions, and noting we are one of the few Sections that does actively consults others on a continuing regular basis, the Section and its representatives on the BOG should remind other Sections of their obligation and encourage collaboration and consultation.

More vigorous early consultation with stakeholders should reduce the number of glitch bills and help prioritize proposals. Also, we must continue to be cognizant of the legislative process of "horse trading" bills to assure that our important initiatives are advanced.

- E. Adopt a Legislative Committee Policy Statement and Procedures to Ensure Continuity.

To provide guidance and appropriate expectations to those seeking support for legislative positions, the Section should adopt a policy statement concerning adopting legislative positions, the Section's Amicus Committee's policy is may serve as a template.

"The Section's appearance as a friend of the court is the rare exception, not the rule. Indeed, the strength of the Section's appearance as an *amicus* stems in large part from the Section's unwillingness to yield to the siren songs of our members every time they sense an injustice is upon us. Our ability to befriend a court is a privilege. To the extent we abuse it, our words, now carefully considered, will lose their significance. When we draw near, we will *not* be heard. We purposefully address every amicus request with skepticism, as we must in order to protect the Section's credibility with the courts. But, know that every request is carefully considered."

- F. The Legislative Committee should have the authority to make a substantive recommendation to the Executive Committee as well as

advise Committee Chairs as to whether a proposal is needed and consistent with the Section's current policies.

- G. The Section's Executive Committee should evaluate whether legislative proposals are consistent with current Section policies, and recommend to Committee Chairs as to whether a legislative proposal is worthy of Section adoption.
- H. Standardize and make available prior legislative tracking charts, including hyperlinks to the referenced documents to assure continuity of information. The Fellows should complete this project, and update on a regular and timely basis.
- I. Legislative Committee terms should continue with two-year staggered terms to ensure continuity and transfer of historical knowledge. Legislative Committee vice chairs should be selected with greater protocol to reduce the handicap resulting from transitions when significant substantive knowledge is lost with each transition. Actively and continually recruit new legislative committee members from the substantive committee legislative liaisons and legislative vice-chairs because they have some degree of experience, although perhaps limited to their particular committee's area. Selection should be cognizant of the Section's legislative consultants' expression of desire that the Legislation Committee be staffed with individuals having legislative experience and historical knowledge, analogous to the Amicus Committee, noting the Legislation Committee has a much heavier lift on a continuing basis than the sporadic amicus proposal of the Section undertaking an amicus position from time-to-time. Outgoing Legislative Committee chairs should continue for some time as ex-officio members as a resource to their successors.

III. Educating Committees and Their Leadership as to both the Process and Role of the Section –

An annual educational program for all designated legislative liaisons and legislative vice-chairs with mandatory attendance should be provided at a designated EC meeting to address the inconsistency of the level of activities of the legislative liaisons, many not having current experience on how to move an action item/proposal through the process. The program should be led by the Legislation Committee and our legislative consultants. All substantive committee chairs should also be required to attend.

IV. The Role of and Relationship with Legislative Consultants –

- A. Tracking Charts. Tracking charts should be expanded to include the succeeding week's committee meetings, if the agenda has been posted by

the time of publication of the Tracking Charts, noting that Committee agenda notices become abbreviated late in the session. More emphasis on the review of weekly listed bills following the Tracking Charts should be communicated to committee chairs, legislative liaisons and vice-chairs, with prompt communication if there are bills of interest to be moved to the Tracking Chart.

- B. Positions. No Section legislative position should be stated on any matter unless consistent with the established positions enumerated by the Section. If the Section is neutral on an issue, such neutrality should be expressed by our legislative consultant. The Section's legislative positions should be continually tagged and updated

The Legislative Co-Chairs and the legislative consultants should discuss in advance of any legislative Committee meeting where a bill containing a Section initiative will be on the agenda the plan for the meeting to avoid any misunderstandings as to the Section's position and plan. The discussion should include a decision as to whether the Section will be waiving in support/opposition or making a statement at the meeting.

Legislative white papers and positions should be categorized and archived to make them easily accessible to the Section.

- C. Succession and Conflict Planning –

The Executive Committee, in conjunction with the Legislative Committee, should consult with our current legislative consultant to obtain a realistic timeline relative to succession planning. It is understood that such timeline may be extended or otherwise modified. As to conflicts, the Legislative Subcommittee of the Strategic Planning Committee recommends the Executive Committee consider whether it would be worthwhile to engage a second legislative consulting firm for conflict purposes who is known to and respected by our current legislative consultants, but available to step in as determined by the Executive Committee when perceived conflicts exist.

- D. Management of Legislative Consultant –

1. The Legislative Subcommittee recommends a discussion among the Executive Committee as to the broader issue of whether, and to what extent, if any, the Section's legislative consultants should be managed vs. trusting the judgment and discretion of the legislative consultants.

If a more managed approach is adopted, procedures for dealing with the legislative consultants should be adopted.

2. Legislative Bill Sponsors – The legislative consultant and the Legislative Co-Chairs should discuss specific bill sponsors with the Real Property and Probate Division Directors before a potential sponsor is approached so that all Section efforts can be coordinated and the Section can make an informed decision on its options. Similarly, the sponsor’s understanding and support of the substantive positions of the bill for which they are being solicited to sponsor should be confirmed prior to their sponsorship to avoid confusion or lackluster promotion of a Section position because of lack of understanding or support for such position by the sponsor.
3. Communications - Clear communication of expectations of our legislative consultants from Legislative Co-Chairs and Committee Chairs is necessary to assure timely and effective participation in the legislative process. When legislation bill drafting is requested from our legislative consultant, a clear statement of scope and deadlines must occur. All communications should be conducted with respect and dignity, recognizing the Section’s members are volunteering their time and expertise.

**REPORT OF THE FINANCIAL/BUDGETING SUBCOMMITTEE OF THE
RPPTL STRATEGIC PLANNING COMMITTEE**

General Recommendations:

- **The Minimum General Fund Balance should be a minimum of 50% of the next budgeted year's operating expenses with consideration of long-term contracts.**
- **Establish an Excess Fund Spending Policy for special projects once the June 30th General Fund Balance exceeds 90% of the next budgeted year's operating expenses.**
- **Track ActionLine revenue and expenses.**
- **Treasurer should receive copies of the hotel and meeting event contracts at the time the invoices are submitted for payment.**
- **The Section Administrator should provide the Treasurer a report listing the Section Sponsors, the sponsorship amounts committed and track when the amounts are collected and recorded by the Section.**

Discussion:

- I. Minimum General Fund. A target range should be set for Section's General Fund, a minimum of 50% of the next budgeted year's operating expenses, taking into consideration the Section's long-term contracts. This requires the Section's long-term liabilities to be tracked by TFB, especially because these contract totals will likely increase over time.
- II. Excess Fund Spending Policy. The Section should create an Excess Fund Spending Policy to address the utilization of year end General Fund balances that exceed the upper limit of the target range, the excess funds being utilized for the benefit the Section members but recognizing that those needs may vary over time. The policy might use as a model the ABA Forum on Construction's "Reserve Spending Policy" which funds special projects ideas submitted by its members that its Finance Committee approves.
- III. ActionLine. ActionLine should be budgeted and reported as if ActionLine was a separate operating unit to allow accurate profit & loss calculations which are difficult with commingled line items.
- IV. Hotel and Meeting Event Contracts. The Treasurer should be provided copies of the Executive Council meeting contracts with hotels and event providers to compare the budget for meetings and events before the fact, rather than the current after the fact.
- V. Treasurer Tracks Sponsorship Commitments and Collections. The Section Administrator should regularly provide the Treasurer a list of each sponsor's commitment, tracking when revenues are collected and recorded by the Section.
- VI. Carry over items from the 2013 Strategic Planning Meeting.
 - A. The Section Administrator should provide the Section Treasurer monthly copies of the Florida Bar financial statements showing the comparison of year-to-date versus budget within five (5) days of receipt by the Section Administrator from the Florida Bar Finance and Accounting Division. A balance sheet should be provided with the Bar financial statements.
 - B. The Section Administrator should provide to the Section Treasurer in advance of each Executive Council meeting a Section financial summary, including an attachment with the most current roll up budget only with a comparison of year to date versus budget, in the form approved by the Treasurer, for review and approval by the Treasurer as well as certain other designated officers. Once approved,

this financial summary will be incorporated in the agenda as Treasurer's Report for most meetings.

- C. The Section Administrator should provide year-end figures and a draft preliminary budget for the upcoming Bar year by mid-August so that the Budget committee can begin working on the upcoming budget.
- D. Within forty-five (45) days after each Executive Council meeting, the Section Administrator shall deliver to the Section Treasurer a hotel costs summary sheet with defined categories (i.e., room, food, equipment and committees).
- E. The Section Administrator have updated after each meeting a spreadsheet of historical annual meeting expenses and meal/event charges for the past six (6) years, and work with the Florida Bar to prepare an annual estimated meeting budget based upon estimated budgets with defined categories (i.e., room, food and equipment) with suggested estimated totals for a typical in state meeting and reflecting typical attendance at certain events and suggested rates for event charges. This allows the Chair to know costs before charging for event. This could be accomplished if the Section Administrator and Treasurer complete the meeting expense/facility chart designed by Michael Gelfand.
- F. Quarterly, starting July 1, the Section Administrator should deliver to the RPPTL Section CLE Chair/Co-Chairs and the Section Treasurer an accounting of income and expenses for each CLE for all active CLEs.

REPORT OF THE
STRUCTURE / ADMINISTRATION / ORGANIZATION / LEADERSHIP /
SUCCESSION AND BYLAWS SUBCOMMITTEE
OF THE RPPTL STRATEGIC PLANNING COMMITTEE

General Recommendations:

- **Ensure the section is a resource for other sections of the Bar.**
- **Renewed focus on training of Executive Council members.**
- **Improve training procedures for substantive committee chairs and vice-chairs.**
- **Succession planning and preservation and transmission of institutional knowledge for Committee Chairs and Executive Committee Members.**
- **Encourage a new generation of membership while maintaining the high standards for leadership and participation.**
- **Continued focus on implementation of the Strategic Plan.**
- **Decrease council size without sacrificing functionality and brain power.**

Discussion:

I. Ensure the section is a resource for other sections of the Bar

It is in the best interests of the Section, including furthering Section's goals to facilitate communication with other sections of the Bar. Furthermore, the Section should hold itself out as a resource so that when issues within, or on the periphery of, the Section's purview are addressed, the Section is in the best possible position to ensure its goals are met and to provide technical input. The Section should be available legislatively as well as in other venues such as legal education for members of the Bar and the community at large. To further this general goal, the subcommittee has the following recommendations:

Instruct our Section lobbyists to remain vigilant in reviewing legislation for matters relevant to the Section's purview. In addition, lobbyists and leadership need to make themselves available to other sections for questions and to assist when appropriate and consistent with Section goals.

The Section should identify other Bar sections and committees for more active participation by Section members. As to each of these sections, the Section should ensure an appropriate liaison to actively participate during meetings of such other identified section(s) to ensure the Section's presence and availability is noted. These liaisons should also be active in reporting back to the Section so that appropriate Section personnel can assist when appropriate.

The Section should increase recruitment of Section members to serve on Bar committees which most impact the Section's goals. Some examples of potential Bar committees for Section participation include Probate Rules, Rules Governing the Florida Bar, Judicial Nominating Commissions, Continuing Legal Education, Professional Ethics, and Civil Rules.

The Section's website should be updated to give a more pronounced presence for chairs of substantive committees and Executive Council members so that non-members can find contact information when needed. Ease of leader identification on the website will help facilitate communication when a non-member is seeking Section input.

II. Renewed focus on training of executive council members

The Section should better define the responsibility of Executive Council members and ensure that Council members understand these responsibilities, allowing informed Council members to be better able to fully participate in Section

business both during and away from meetings. To that end, the following recommendations are being made:

The Executive Council Meeting Agenda should be distributed to EC members at least ten days prior to all meetings.

It should be made clear at each meeting and round table that the expectation is for all EC members to have reviewed and digested the materials in advance of meeting so that EC members can make informed inquiries and decisions on all matters.

It should be made clear with the distribution of agendas and at each meeting and round table that EC members are encouraged to reach out to the proponent of an issue to provide direct feedback prior to the meeting. Discussion during the meeting should NOT be the first option, rather discussions (particularly inquiries and technical or grammatical suggestions) should occur prior to the meeting so that everyone can be better prepared, can make more informed decisions and alterations, and time is put to good use.

III. Improve training procedures for substantive committee chairs and vice-chairs

One of the most important goals for the Section is to maintain its high level of excellence. To that end, the Section cannot lose focus on training the next generation of Section leaders, and ensure smooth leadership transitions among Executive Committee positions and of committee chairs and vice-chairs. Overall, it is imperative to the continue sustainability of the Section that those in leadership positions understand their roles, the general structure of the Section, and the resources available to leadership as well as members at large. The subcommittee recommends the following steps to facilitate these goals:

Annual Training - The Section should hold an annual training meeting for chairs and vice-chairs. During this meeting, points of emphasis will include: (i) the duties and responsibilities of committee leadership, (ii) reporting requirements to the Executive Council, (iii) expectations of responsiveness to Executive Council members such a legislative chair, (iv) an overview of recommended committee structure including attendance, initiatives, conflicts, and size, and (v) CLE requirements for the committees. In addition, the meeting will double as initial training for incoming chairs and vice-chairs. This meeting should be mandatory and should be led by Executive Committee Members.

The Section should prepare a booklet to annually be distributed to the chairs and vice chairs laying out duties and requirements of their position, contact information for inquiries, reporting deadlines (annual and otherwise), and any other general information the Executive Committee believes the chairs and vice-chairs should know. This booklet should also be made available on the Section's website.

IV. Succession planning and preservation and transmission of institutional knowledge for Committee Chairs and Executive Committee Members

Overarching goals of the Section are grooming leadership for the future and ensuring smooth leadership transitions. The Section excellently identifies leadership potential and encourages active involvement, but has the following recommendations for leadership transition:

Members entering into a chair position should be identified and informed at least three months in advance of their advancing to the position. Over the three month period, the incoming chair should maintain close contact with the outgoing chair to allow the incoming member to better understand the role, the current projects, the active members of the committee, the best methods to facilitate committee meetings, and the position as a whole.

Outgoing chairs should be required to prepare an exit memorandum detailing all pertinent information, including projects, subcommittees, contacts, recommended agenda for the upcoming year, and any other information which the Executive Committee feels should be included in these memoranda. The division directors should prepare a form memorandum for use by outgoing chairs with questions to facilitate the needed information.

All Executive Committee positions should have a notebook of materials which lay out the duties and responsibilities of the position. Each officeholder is tasked with maintaining and updating the notebook in a fashion that allows immediate transition in case of emergency, as well as the ability to deliver this notebook to a successor. Information should include, among other things, all critical dates and deadlines. Any incoming successor should specifically request this notebook of the outgoing member. These notebooks should be prepared and maintained with an eye towards preserving the Section's institutional knowledge.

The Treasurer Executive Committee position's term should be reviewed by the Long Range Planning Committee to determine if the position's term should be multiple years in order to allow for better understanding of the position. The

subcommittee believes annual turnover of the treasurer would have a negative impact on the Section as a whole. Another option may be to create an “assistant treasurer” position and to give specific duties to the assistant treasurer that allows for them to assist the treasurer and advise the Executive Committee.

V. Encourage a new generation of membership while maintaining the high standards for leadership and participation

The Section, as do all Bar sections, needs to strive to be as inclusive as possible in order to encourage attendance and active participation. On the other hand, the Section needs to maintain the high quality standards and expectations for those that seek to rise into a leadership position with the Section. It is important that the Section be diligent in evaluating the talent pool to identify those that demonstrate leadership potential. In order to facilitate Section growth and high-quality leadership, the subcommittee makes the following recommendations:

The Section should have open, public methods for those looking to become more involved with the Section’s committees. This should include a uniform method for joining committees, designated individuals in each committee to meet and assist new members, and committees should have designated jobs/positions for new members which will ingrain them with the committee and members (i.e. secretary or mandatory subcommittee participation).

The Section should have a more open process for selecting leadership candidates. This needs to include a more conspicuous experience requirement for joining leadership (i.e. subcommittee participation, ALMs, subcommittee chairmanship, legislative involvement, tenure, etc.).

In order to encourage attendance but also to maintain utility within the committees, each committee should be made up of members and voting members. Voting members should be chosen based on participation and merit. Only voting members should be given the ability to vote on committee matters.

Leadership should be chosen based on merit and should not be influenced by political pressure or because of membership in specific firms. The subcommittee believes that the Section has done an excellent job of choosing leadership based on merit, however the Section should continue to be aware of perception.

Each meeting should include a new member social get together which is either free or very inexpensive. Attendance at this meeting should be mandatory for all committee chairs and Executive Committee members and other EC members

should be encouraged to attend as well to give new members a forum for questions and socializing. Alternatively, new members could be given access to the Thursday reception free of charge or at a significantly reduced fee.

EC Members' Meeting expense should be maintained. The Section should ensure that EC members can attend without significant cost acting as a barrier to entry. That being said, the Section should also strive to maintain the overall class of the meetings and locations. While this may seem inapposite, the Section should do its best to meet both goals. As an example, the subcommittee recommends alternative lodging near the meeting hub recommended to members and the inclusion of at least one free or inexpensive social event at each meeting. Additionally, the subcommittee recommends establishing a price point for the Thursday night social event in order to encourage attendance among members of all levels, including EC, new, and ongoing members. Finally, the subcommittee recommends investigating potential Friday night dinners that allow for multiple venues or multiple options that give way to multiple price points (i.e. "dine around town" dinners, separate cocktails and dinner, or a la carte pricing).

VI. Continued Focus on Implementation of the Strategic Plan

The Section must do a better job of implementing its Strategic Plan and maintain focus on the Plan during the intervening years. In years past, Strategic Planning meetings have been held, a Plan created, and then it is effectively put on a shelf. The Strategic Plan needs to more often be consulted and the initiatives should become more of a focus for the Section. In order to push for more focused implementation, the subcommittee recommends:

Executive Committee members should be encouraged to rely upon and even cite to the Strategic Plan regularly as authority for specific actions. This gives the Strategic Plan more of an ongoing presence and will ensure that the Council does not lose sight of its goals.

The Strategic Plan should be presented to the Council in a presentation which highlights the Plan's important aspects, the reasoning behind the recommendations, the immediate actions being taken, and the importance of this Plan to the Section. The subcommittee is of the belief that many Council members have little or no understanding of the Plan and thus it should be presented as an education item to the EC members.

The Strategic Plan should be posted on the Section website in a conspicuous place so that members are reminded of its existence and are encouraged to consider it when appropriate.

The Section should create a new general standing committee with a focus on monitoring implementation of the Strategic Plan and making recommendations to the Executive Committee on how to facilitate implementation on an ongoing basis. All past chairs serving in the previous five years should be asked to participate on the committee as members. The chair-elect, current section chair, and directors of the divisions should be required to participate as members on the committee, with the chair-elect acting as chairman with primary responsibility for ensuring implementation of the Plan. In addition, a past chair should be appointed as the “champion of the Strategic Plan” with a responsibility for reminding and cajoling leadership to implement the Plan.

Annually the newly formed Strategic Planning Committee should present a report card in which it examines each of the Strategic Plan recommendations and goals and rates the implementation of that goal.

The newly formed Strategic Planning Committee’s responsibilities should include implementation of the Strategic Plan as well as training of Council members and committee leadership as laid out above. Utilizing former chairs to lead these training exercises will allow for better transfer of institutional knowledge.

The annual chairs’ report should be modified to include additional questions directly relating to the Strategic Plan in order to ensure compliance as well as to provide an additional reminder to chairs of the need to comply with the Strategic Plan.

VII. Decrease council size without sacrificing functionality and brain power

The subcommittee is in general agreement with the other subcommittees that the Executive Council’s size needs to continue to be monitored. At this time, the subcommittee does believe that the Council is inflated and may need reduction (currently 286 members). The Council’s size should be maintained at a level that ensures on one hand that all of the Section’s best minds are given a forum to participate while on the other hand not growing to a level that the Council’s work cannot be performed due to an oversized membership. Furthermore, if the Council continues to grow, the Section may find that venues will be increasingly difficult to locate and costs will be unsustainable. In order to maintain a workable size, the subcommittee recommends the following:

The Council's size should be decreased. This is an aspirational goal that, if not met, the subcommittee believes will have adverse consequences for the Council and Section as a whole. The subcommittee believes that this reduction should take place in order to reduce overall subsidies, to maintain options in venue, to maintain healthy discussion, and to ensure the goals of the Section can efficiently be met.

Members should be reminded that not being on Executive Council is not a bar to active membership or getting significant benefits from attending meetings, including substantive knowledge as well as social interaction with peers outside of the Saturday meeting.

To effect the recommended reduction, the Executive Committee should review the committees annually, consult with the current committee chair, and determine the appropriate number of chairs and vice-chairs for each committee. The subcommittee recommends that Section committees have a limitation of 2 vice-chairs as a default, fluctuating up or down when appropriate. A fluctuation may be appropriate, for instance in cases of large committees. A fluctuation down may be appropriate in cases of committees primarily responsible for a significant event (i.e. ATO or Legislative Update), with emphasis that participating on those committees do not require vice-chair label, rather regular members have duties. The goal is to ensure that the vice-chair position is a pipeline for eventual leadership of the committee and slots should be maintained for that purpose, rather than to allow for continued Executive Council attendance.

Further, the number of ALMS members should be decreased. The subcommittee recommends a maximum number of sixty ALMS members. The membership should have a general goal of diversity in location throughout the state and in background; however, members should primarily be selected based on merit. The subcommittee recommends that the reduction take place over a three year period, with decreases of approximately 1/3 of the needed spots each year. The Strategic Planning Committee should review this reduction on or before December 31st each year to determine if further reduction is necessary or if the reduction should be suspended.

Additionally, the review of liaisons called for above should result in a reduction of members. The Executive Committee should review liaison positions annually, confirm their ongoing viability, review the number of members acting in that liaison role, and confirm the member acting in that role should continue to act.

The Fellows program should be maintained but the goals and description of the program should be reviewed to highlight participation and involvement.

The Executive Committee should review the membership of the Executive Council on an ongoing basis with an eye on eliminating positions which no longer have usefulness. The position should be reviewed, not the person in the position, as we should seek to eliminate “parking spots”. The Executive Committee is urged to address underperforming and nonperforming EC members.

The Executive Committee should annually review the number of Section committees to ensure that committees that have served their purpose are eliminated or merged rather than continuing past their usefulness.

The Council may create a select number of “honorary member”¹ positions which carry the same responsibilities and powers as a voting member of the Executive Council to be awarded to members demonstrating over a significant period of time their dedication to the section, but whom may no longer wish to serve in a committee leadership position. This would have an added benefit of likely opening up additional positions for up and coming members as well as eliminating “parking spot” committee positions. The creation of honorary members slots should not slow the progress of the main goal of decreasing the size of the Council as a whole. Rather these slots should be used sparingly.

¹ The Subcommittee on Committees references this position as an Emeritus member.

REPORT OF THE
MEETING PLANNING/ FACILITIES/ LOGISTICS SUBCOMMITTEE OF THE
RPPTL STRATEGIC PLANNING COMMITTEE

General Recommendations:

- Meeting space must accommodate committee meetings and attendees.
- Meeting space needs to have sufficient power strips and free Wi-Fi for members as base standard for meeting rooms.
- Overlap = number of attendees and number of committees.
- Updating of suitable venue list and limiting chairs to select venues primarily from suitable venue list.
- Continue practice of moving venues around state with strong focus on conveniently accessible locations with affordable back up hotels nearby.
- Re-educating committee chairs on procedures for scheduling meetings, realistically estimating meeting time and size requirements, accepting new members, utilizing alternative meeting arrangements and better follow up by division directors to assure compliance by committee chairs. (This re-education of committee chairs should occur at the convention or the Breakers.)
- Implement new booking procedure which requires registration for events to obtain link to hotel reservations and implement a 35-day cancellation policy to permit re-allocation of room block. Provide link to committee chairs before providing to other EC members.
- Continue tradition of holding section convention but require CLE component to distinguish from other meetings.
- Seminar venues should be determined by the CLE committee based upon the type and audience of the CLE. Consider profitability in decisions.
- For Social events at meetings, preserve Thursday night reception, explore alternatives for Friday event, guarantee one affordable social event to encourage inclusion of younger members and re-establish a spousal event at each meeting, particularly Breakers and Convention.

Discussion:

- I. Issue: How is our planner doing? We feel that the company (located in Orlando) we are using is going a fairly good job! We are fairly happy with our new contact but need to work with her to attune her to Sections goals and priorities for its meeting arrangements, and re-evaluate after this year.
 - A. Should planning target be 24 months in advance? Yes, but this should not be a steadfast rule, rather a best practice goal. Because we are booking so far in advance sometimes the person selecting locations has not been elected as chair-elect. We believe a best practice may be for the Division Director who is selecting locations for their meetings 24 or more months in advance to seek Executive Committee feedback before a contact is finalized, allowing the “would be chair” to select their own meeting locations but allowing input from the pool of individuals who are in the leadership track.
 - B. Booking by end of quarter and end of year? Booking should tie into meeting registration allowing registration for a meeting which provides a link to the hotel to book your room. Without an overall meeting registration fee members may not sign up for anything, but they still attend the meeting as an EC member and should have priority to book a room. Registration should open at least 10 weeks in advance, which means committee schedules and all events should aim to be finalized 12 weeks in advance. Currently we release the link to book rooms in stages based upon priority, but people are sharing the link and therefore thwarting the priority levels. This is an improvement over booking all rooms for the year at the beginning of the bar calendar year, but still not working perfectly.
 - C. Contract template evaluation, updating. George Meyer has created an extensive meeting protocol list to consider when signing contracts, particularly for the Breakers contracts. George also reviews the contracts as the senior member of the Meetings Planning committee. We have come a long way since the previous strategic planning meeting and the big Bar does allow us to be more involved in contract negotiation, so we think this is working well.
 - D. Cancellation period. 30 Days? Less? We are in favor of a 35-day cancellation policy where the member is required to lose a one day deposit if they cancel, provided the deposit is credited to the Section’s tab, not to the hotel to prevent the hotel to profit off of a cancellation and resell the room while still holding us to our attrition terms. A member should not

have to forfeit the cost of the entire stay for a cancellation outside the normal hotel policy.

- E. Attrition? We are still having problems with attrition. The cancellation policy will help this, but we also need to include not only cancellations but also changes to reservations in this category – such as when someone drops Saturday night or Wednesday night. They have taken a room someone else would have booked because they didn't bother to confirm their plans before booking the room and then we drop below the required numbers or increase our block unnecessarily.
- F. Out of State Meeting: As a best practice the chair should consider the deadline for legislation when scheduling this meeting. This meeting should be, for the most part, self-supporting minimizing cost subsidies given that it is often out of the country, events priced so that registration fees will mostly, if not completely, cover the events and the cancellation policy should be sufficient to avoid a large attrition problem that we have seen in the past. Perhaps consider a 60 to 90-day cancellation policy for this meeting. The Section can absorb meeting costs of the EC meeting that occurs at the OOS meeting but within reason.
- G. Alternative/Overflow Hotel Suggestions: We should provide a list of alternative/overflow hotels suggestions on the registration sheet, particularly the committee registration forms. There will be no block at the overflow hotel, but we will investigate shuttles or other services to tie to main hotel.

II. Issue: Annual Convention:

- A. What is its purpose, other than an election? We are not required to have a convention pursuant to our Bylaws. The Bylaws just say that the chair designates the "annual meeting" each year, which is the election meeting and must be held prior to July 1st (Article VII, Meetings). We should have a convention because it is the one time we really reach out to the over 10,000 members and invite them in to join us. Not everyone does, of course, but we do see some local attorneys who do not come any other time. It is better that the convention has been moved off the Memorial Day weekend so that prices for the rooms are less expensive and most school age children are out of school for the summer. The convention should be a family friendly event so it should be at a time that encourages our members to bring their families.

- B. Do we need a convention, and if so, then is location an issue? We think the convention is good for the Section. For location, we are limited somewhat by the size of our membership, but as indicated above, we feel the convention should be more family friendly and the location should lend itself to that. But, still want to give the chair the ability to choose the location.
- C. We believe the Convention should include a CLE component because that is the only thing that makes it a convention vs just a meeting with an election. CLE should be coordinated by CLE committee, not convention committee.

III. Seminar Venues:

- A. Live Seminars: We defer to the CLE committee. Decisions are typically made on a case by case basis given the history of the seminar and the target audience.
- B. Still Necessary/Purpose? We should limit it to those seminars that have a consistent in person audience and the same people attend every year. The seminar is profitable and therefore justifies the in person component. Also there are special seminars, such as ATO or CLI, for which marketing and networking is a major component of the seminar.
- C. What Venues are Necessary? Again, we would defer to the CLE committee because we think this is something that has to be addressed on a case by case basis.

IV. Committees (physical meeting space)

- A. Consider room arrangements, alternative set ups to reduce space: We think Mary Ann does a great job of maximizing the space dependent on the committees and we are open to the alternative arrangements to reduce space. The large committees keep getting larger and we will end up significantly limiting where meetings can be held if we can't use alternative set ups.
- B. Shifting expenses from room revenue to Section expenses. This issue can be explored during contract negotiations, but in the experience of the members of the subcommittee, the actual benefit to the Section member is insignificant. We would recommend using the Breakers as a test case to try and see if we were willing to pay a fee for meeting room rentals if they would reduce the room rates. In past, the hotel has only been willing to

reduce room rates by \$5 or \$10 a night which did not justify the meeting room rental fee.

- C. **Do Committees Need To Meet?** Whether committees need to meet in person at each in-state Executive Council Meeting should be considered because the large number of committees makes it is difficult to schedule all of them. Smaller committees should consider meeting outside of the formal setting by phone or using a “go to meeting” type internet program. We also would like to see the number of committees reduced.
- D. **AV Needs:** Mary Ann is doing a great job in negotiating outside vendors to come in and provide services and to purchase items for our personal use. She has then been able to sell used equipment to smaller sections when we upgrade. We think power strips should be added to the list of equipment needed as a priority!
1. **Projectors.**
 2. **Speakerphones.** The never-ending debate, but when needed we should have them! Always the issues of how many Committee members attend by phone and even if they do, what percentage of the meeting discussion do they actually hear.
 3. **Microphones.** Important for large committees – some people’s voices do not carry in large rooms and we have older members who can’t hear well. At events it is important to let the sponsor make their announcements to be heard over the crowd, and we need to provide the microphones.
- V. **Communicating to Members.** Work with the media consultants to refine how we communicate with members. Emails work but they can be annoying, though they are the only way that has consistently obtained responses from our members. We should prioritize who can send out emails so that they are not unnecessarily duplicated, and consider bundling our e-mail messages where possible (e.g., a weekly e-blast with all messages in it for that week?). Communication should be made through the ALMS to the larger membership to convey the good work we do on a regular basis and have more consistent communication.

VI. Social Events:

- A. **What is necessary?** There should be a Thursday Reception and a Friday Event but with a consistent policy for pricing. One event should always be an affordable event. We recommend the Thursday night reception remain constant, but for Friday event, we recommend chair consider alternative events at some meetings such as dine around dinners which have

worked. Moving from sponsorships of specific events and towards sponsorship levels will provide more flexibility in pricing and planning events. The formal Friday night cocktail party and sit-down dinner is expensive which some members very much enjoy so we should keep it for some meetings, but employ the dine-around at others. Perhaps keep the formal reception and dinner at the Breakers, but have the dine-around at the December meeting.

- B. Younger member's involvement? We need to encourage young member involvement. See comments above about Thursday night to do that. Also, by making the convention family friendly, this will be more attractive to younger members. The committee wanted to clarify that there should not be an objection to members, younger or otherwise, making alternative arrangements for dinner or receptions among themselves for Friday or Saturday nights.
- C. Role of Saturday Dinner? We think that the Saturday night dinner provides the chair the ability to plan a smaller, more intimate "fun" event. It also provides members a chance to relax and get to know each other in a smaller setting. The chair should have flexibility to eliminate the Saturday night event where appropriate.
- D. Role of Sunday Dinner? We assume this should refer to Sunday Brunch. But the committee felt Sunday brunch is unnecessary and not well attended. We typically do not offer and don't think it needs to return.
- E. Spousal Events. At least one spousal event should be added on a consistent and regular basis, particularly at the Breakers and the Convention. The spousal event is important to help maintain our members and build relationships among the member's families. The event should serve as a "kick off" for the weekend and should be held consistently at the same time each meeting.

Proposal	Completed – Yes or No	Comments
<p>I. Goal: Meeting Logistics A. Issue: Meeting Locations and time. Proposals: 1. Legislative Update remains at the Breakers as is and Convention at another family friendly resort sometime in May. Other meetings at a business type hotel and related facilities which should reduce the costs.</p>	<p>Completed (for the most part!)</p>	<p>Our members love the Breakers and want to continue to keep Legislative Update here. See our comments in our report about the convention remaining family friendly.</p> <p>We are to some extent limited in places were meetings can be held due to our size, so a “business type” hotel is not really feasible for a group our size. But the best practice is to choose two less expensive, more business focused locations for two meetings.</p>
<p>2. Consideration should be given to time between the meetings and legislative session when scheduling the meeting.</p>	<p>Completed (somewhat) but needs to remaining continuing policy.</p>	<p>This is particularly applicable to the timing of the out of state meeting.</p>
<p>3. Section Leadership should be involved in negotiations from beginning as to ensure and maximize getting the best bargains with the Bar negotiations.</p>	<p>Completed</p>	<p>See comments in report.</p>
<p>4. Meetings should be located in Central Florida in a city or area with easy access by air or rail to maximize attendance. Due consideration should be given to occasional geographic diversification but should not be an annual requirement.</p>	<p>Not completed.</p>	<p>We believe this should be a consideration for the chair in scheduling meetings, but we are to some extent limited due to the size of the EC and the hotels that can hold our group.</p> <p>We think this item was really meant to focus more on transportation costs and travel time to the site location, which we believe are being considered on a consistent basis.</p>

Proposal	Completed – Yes or No	Comments
<p>B. Issue: Roundtables Timing. Discussion:</p> <p>Survey responses indicated that they liked having the roundtables on Friday afternoon instead of Saturday morning. Note that this cannot be done at Legislative Update and Convention. In most cases, this means that we have to move the committee meetings up to Thursday morning which means coming in Wednesday night or Thursday morning. More travel time and possible more expense to Section (i.e.: providing a lunch on Thursday.) This may open up more opportunities for sponsorship such as getting sponsors for a more formal Thursday lunch (which is currently only a boxed lunch).</p> <p>Proposal:</p> <p>Consider and "test" roundtables on Friday afternoon when possible.</p>	<p>Completed</p>	<p>This concept has been tested with success on those in-state meetings where no full day seminar program is presented on Thursday or Friday. However, we believe this choice should be left to the discretion of the chair based upon the meeting, the number of committees that must meet during that time period and other factors.</p>
<p>C. <u>Issue:</u> Committee meetings. Need committee meetings scheduled more in advance so members can make travel arrangements, etc.</p> <p>Proposals:</p> <p>1. Rooms -Section Administrator provides to Chair a binder with the</p>	<p>Completed</p>	<p>We are still working towards a best practice of having the</p>

Proposal	Completed – Yes or No	Comments
<p>information from the hotel regarding rooms and space available for meetings and a historical record of committee meetings that are held so that we know the space needed and size. The Chair should consider the number and availability of meeting rooms when selecting the venue for the meeting? A template should be prepared for standard committee meetings and sizes. Committees should rotate slots.</p>		<p>schedule finalized and provided to members adequate notice in advance of when registration opens for the meeting.</p>
<p>2. Equipment – Chair should be provided information regarding cost of the equipment required at committee meetings. Section purchased equipment should be used for the Section and kept apart and secure for Section use so that it is available for the Section meetings and kept in a trunk and sent to each meeting location.</p>	<p>Completed</p>	<p>Per conversations with Mary Ann Obos the section has acquired equipment for use at meetings and there is greater coordination with Chair on cost of equipment at conference venues.</p>
<p>3. Speaker phones at committee meetings - Availability at the discretion of the Division Director if requested by committee chair. Division Director should determine equipment to be provided at each committee meeting.</p>	<p>Completed</p>	<p>See comments in report.</p>
<p>D. Issue- Executive Council Meetings. "Bleed off" at the EC meetings - Probate does not stay for real estate and real estate does not stay for probate.</p> <p>Discussion:</p> <p>Are people burned out? At the EC meeting we have now heard the arguments and debates at the committee meetings and the roundtable.</p> <p>Proposal:</p> <p>Committee chairs report to the Division Directors important matters or issues that the other side of the aisle should know</p>	<p>Completed</p>	<p>Current practice appears to be an improvement, with less "bleed off". Most of the current "bleed off" appears to be related to the time people need to be out of their room. Getting more late checkout times may help this problem. Otherwise, always willing to consider new ideas.</p>

Proposal	Completed – Yes or No	Comments
<p>about and consider and these can be presented to the whole group at the Executive Council meeting.</p>		
<p>E. Issue: Out of State meetings. Do we keep the meetings in the country and how do we handle costs?</p> <p>Discussion:</p> <p>1. Location - Survey did not indicate that members preferred out of country over staying within the USA.</p> <p>2. Costs - Suggestion that the out of state meeting should support itself so that the Section is not subsidizing the out of state meeting. Discussed the separate sponsorship for the out of state meeting. Selling additional sponsorships to our existing sponsors and potential sponsors at the location of the out of state meeting.</p> <p>Proposal:</p> <p>Suggest that the out of state meeting should support itself and not be subsidized by general revenue of the Section. Additional sponsors should be obtained to cover the expense of the out of state meeting.</p>	<p>Somewhat</p>	<p>We believe this is a best practice for the out of state meeting to be self-supporting for the events. But the Section does need to cover the costs of the EC meeting which is conducted. The chairs have done a good job in keeping these expenses in check. See additional comments in report.</p>
<p>F. Issue: Bar Service and Hospitality Suite. Survey response wanted to keep the suite.</p> <p>Discussion: At receptions and the Suite-full bar vs beer, wine, and soda. What is the cost of having a full bar? Liquor does not seem to be an overriding concern for most people. Consider a wine sponsor for hospitality suite? Provide the wine; Pay a corkage fee.</p>		

Proposal	Completed – Yes or No	Comments
<p>Reception - beer, wine, and soda - full bar for Thursday night? Drink tickets vs. open bar?</p> <p>Proposal:</p> <p>Full Bar for Thursday night. Wine, Beer, and soda at other dinners/receptions and the hospitality suite. Try to find a wine sponsor for the hospitality suite.</p>	<p>Completed (except Wine sponsor)</p>	
<p>G. Issue: Offsite functions. Do we hit our minimums at the hotels? It is usually more economical to go off site - survey results indicate that members want more events off site. Survey respondents were willing to pay more for the room and have more events off-site.</p> <p>Discussion:</p> <p>Offsite functions put a greater burden on the chair and the Section administrator. Will you draw more people for Friday night if you move the dinner off site? Will you draw more people for Friday night if you move the dinner off site? Saturday night dinner- smaller, more intimate group-unique event off site. Is this a cost to the Section? If we move Friday night off site, make Saturday a casual reception followed by a "dine around."</p> <p>Proposal:</p> <p>Suggest that the Chair consider that if not needed to meet minimum, take the Friday night dinner off site and for Saturday night have the dinner at a smaller interesting location or a reception with a "dine around." For Breakers and legislative Update, may be more appropriate to have a Saturday dinner at an interesting location and at the other meetings at business locations make Saturday a reception with a dine around.</p>	<p>Completed</p>	<p>See report. Consider dine arounds for Friday night.</p>

Proposal	Completed – Yes or No	Comments
<p>H. Issue: Sunday morning breakfast-Do we need it?</p> <p>Discussion:</p> <p>Brunch at the hotel on your own may be cheaper. Have the hotel set aside tables for their Sunday brunch?</p> <p>Proposal:</p> <p>Consider eliminating the Sunday breakfast or having the hotel set aside tables for its Sunday brunch.</p>	<p>Completed</p>	<p>See comments in report.</p>
<p>I. Issue: Meeting Costs. Costs associated with Section members who are not EC members who attend committee meetings and then take boxed lunches, etc. The Survey results indicated that the Section should provide lunches for all attendees.</p> <p>Discussion:</p> <p>How do we charge non-EC members who attend committee meetings?</p> <p>Proposal:</p> <p>Separate registration and signup sheet for non-EC members who attend committee meetings. They can sign up for lunch and pay for it and obtain a lunch ticket at registration. Lunch will then need to be set up in a way to monitor.</p>	<p>Completed</p>	<p>We do need to be more effective in getting sign-up sheets out to committee members who are non-EC members and direct them to the online registration system.</p>

REPORT OF THE
SUBCOMMITTEE ON
COMMITTEES OF THE
RPPTL STRATEGIC PLANNING COMMITTEE

General Recommendations:

- Every 2-3 years, Section leadership should review all committees and liaison positions to determine whether any need to be added, dissolved, subdivided, merged, etc.
- Committee meeting times should be rotated.
- Identify four to six core committees which cannot be scheduled opposite each other under any circumstances.
- Within 30 days of the last meeting, committee chairs should deliver preliminary agendas for their next meeting and inform the Division Director how much time is anticipated to be required for their next committee meeting.
- The Section should standardize nomenclature and usage of committee titles (committee, subcommittee, task forces, ad hoc committees, etc.) amongst the different committees and between the two Divisions.
- Division Directors should periodically meet or confer with committee chairs to reinforce and educate the chairs about their respective roles and also to get feedback.
- Support the Legislative Subcommittee proposals as follows:
 - Encourage committees to de-emphasize legislative action in favor of professional enrichment.
 - Proposed legislation must first be vetted by the Legislative Committee, the Division Director and the Executive Committee.
 - Require a compelling need and a reasonable likelihood of successful passage of the proposed legislation.
 - Each committee should have a legislative subcommittee.
- To control the size of the Executive Council, to create a path to leadership for Section members, and to allow opportunities for active contributing members, the Section should (recognizing that one size does not fit all):
 - Limit the number of vice-chairs for each committee to a maximum number of two unless otherwise warranted, e.g., the Amicus Committee.

- **One person per liaison position except sitting judges.**
- **Guidelines shall be created for the creation of an Emeritus position on the Executive Council.**
- **The Executive Committee should proactively remove inactive Executive Council members.**
- **For substantive committees, an application for voting membership and determination of number of voting members on a committee by committee basis. The maximum number of voting members for each committee should be determined by the Executive Committee in consultation with the Division Directors and committee chairs.**
- **Grandfathering of committee membership shall be based on the committee chair's discretion subject to the additional discretion of the Executive Committee.**
- **Each committee chair should have the discretion to create at least two listserves: a listserve of voting members and a listserve of non-voting members.**

Discussion:

I. GOAL: Establish a procedure to review the efficacy of Section Committees, establishment of new Committees, and dissolution of existing Committees.

A. Topic or Issue: Are there too many Committees, are new Committees too easily formed, and what should be the test to dissolve a Committee?

B. Discussion: The Section's Bylaws, Article VI, Section 1, gives the Section Chair broad discretion to establish and dissolve Committees; however, in at least one instance, we would have preferred that a Committee not be dissolved but rather made a General Standing Committee, specifically, the Integrity Awareness and Coordination Committee should not have been dissolved. The mission of this Committee was "to preserve the Section's reputation for integrity by promoting awareness and understanding of applicable conflict of interest principles and bylaw provisions among components of the Section, coordinating the uniform and consistent application of these principles and provisions within components of the Section, and by other appropriate means." This Committee, composed primarily of past Section Chairs, could have remained a General Standing Committee available to the Executive Committee, and possibly Committee chairs, to address conflict of interest questions within the Section and to monitor for possible conflicts.

C. Conclusion or Proposal: While the Bylaws provide broad discretion to the Section Chair to establish new Committees and dissolve existing ones (the wording also infers that the Executive Council could vote to reinstate a dissolved Committee), we believe that approximately every 2-3 years, Section leadership should review all Committees and Liaisons to determine whether any need to be added, dissolved, subdivided, merged, or otherwise addressed. A recommendation would then be made to the Section Chair who could ratify or veto the recommendation and a 2/3's vote of the Executive Council would override the Section Chair's decision.

II. GOAL: Minimize Duplication of Discussions with Same Speaker and Audiences

A. Topic or Issue: How can we avoid or minimize duplicating discussions with the same speaker(s) and audiences?

B. Discussion: Most of the chairs interviewed did not consider this a problem and recognized that some duplication is inevitable because many topics overlap the different committees. With respect to proposed legislation, most chairs thought that the vetting process for proposed legislation is important to producing the best product and to being more inclusive. Some chairs also recognized that although the majority of the audiences may be the same, there are some people who only attend one committee meeting.

There was some discussion of using the multiple committees vetting process less and using the Division Roundtables for that purpose. However, Roundtables are typically only attended by Executive Council members and solely using the Roundtable process risks eliminating input from non-Executive Council committee members.

Committee CLE presentations rarely overlap, but proposed legislation is intentionally circulated among various interested committees. This vetting process, used by both Divisions, helps to identify and address issues before the proposed legislation becomes an action item and allows for a large number of individuals to consider and comment on the proposed legislation.

C. Conclusion or Proposal:

1. There does not appear to be an issue with respect to “committee CLE”/recent case law presentations.
2. On the Probate and Trust side; probate rules updates should be limited to two committees and the Roundtable: Probate Law & Procedure and either Trust Law or Probate and Trust Litigation. Additionally, any new or proposed rules affecting guardianship should be discussed in the Guardianship committee.
3. For “committee CLE” of interest to multiple committees or proposed legislation which needs to be vetted among multiple committees, the Section should create a 30 minute time-block (perhaps at the beginning or end of one of the interested committee’s meetings) and have all members of all of the interested committees attend the one presentation, ask questions, and provide comments. After the presentation, the committees can separate to allow the host committee to continue its business.

III. **GOAL: Avoiding Conflicting Meeting Schedules**

A. Topic or Issue: How do we schedule committee meetings so they do not conflict with or cannibalize each other's attendance?

B. Discussion: Interviews revealed that conflicting meeting schedules is a bigger problem in the Real Property division than the Probate and Trust division.

C. Conclusion or Proposal: Committee times should be rotated from EC meeting to meeting so a committee with a bad timeslot in one meeting would be guaranteed a better timeslot on the next meeting. The Division Directors should circulate a proposed committee schedule among committee chairs so the chairs can provide input. Consideration should be given to encouraging joint meetings between committees to reduce conflicts and increase interaction. Some committees also do not need to meet in person at every Executive Council meeting and should be encouraged to meet telephonically, or virtually, at least once a year so as to reduce the number of in-person meeting conflicts. Where conflicts are unavoidable, conflicts should be scheduled between substantive and general standing committees rather than between substantive committees only.

The Section should consider identifying four to six core committees which cannot be scheduled opposite each other under any circumstances. The Section should also avoid simultaneous scheduling opposite each other of meetings that have scheduled speakers, so attendees can attend as many speaker presentations as possible.

IV. GOAL: Define the Purpose and/or Use of Subcommittees, Ad Hoc Committees, and Task Forces

A. Topic or Issue: What is the difference between subcommittees, ad hoc committees, and task forces? Are these groups currently distinguished in their use, and what is the appropriate use for each?

B. Discussion: Subcommittees are smaller working groups assigned to a particular issue or project being addressed by a particular Section committee. They are created by the committee chair, given their assignment by the committee chair, and are dissolved by the committee chair. Some Real Property Division committees have “standing subcommittees” for CLE, legislation, and continuing issues (e.g., the super priority lien subcommittee of the Condo and Planned Development Committee). With respect to General Standing Committees, the chairs interviewed only use subcommittees rather than ad hoc committees or task forces. Interestingly, the two divisions interpret and use ad hoc committees and task forces differently.

At least some of the Real Property substantive committees use sub-groups as follows: Task forces are created for short-term, focused projects dealing with one particular issue. When the issue has been addressed, the task force is dissolved. Ad Hoc subcommittees are created to study, report, and address longer-term projects. When the project is completed, the ad hoc subcommittee is dissolved. Subcommittees are created as “standing” subcommittees to handle recurring events such as an annual CLE seminar/webinar or to follow ongoing issues such as bulk buyer and super priority liens. In other words, within a single substantive Real Property Division committee, all three groups may exist. Other Real Property committees use only subcommittees, and some of those chairs did not know what, if anything, distinguishes ad hoc committees from task forces.

Probate and Trust substantive committees use and appoint only subcommittees. The duration of the subcommittee depends on the complexity of the issue assigned to it. For complex issues that touch multiple substantive committees in the Probate Division or which require immediate attention (such as a quick legislative fix), the Section Chair and/or Probate and Trust Division Director will create a separate substantive ad hoc committee. Those ad hoc committees are under the supervision of the P&T Division Director, typically address issues that would be of interest to or within the scope of multiple substantive committees, and typically are dissolved when the project is complete. Of the committee chairs interviewed, those in the Probate and Trust Division understand that task forces are created to review and respond to non-Section initiatives. This is an entirely different use and understanding of a task force than how it is used and understood in the Real Property Division.

NOTE: There are some Section committees that are labeled “ad hoc” that are actually continuing committees and should be renamed to delete the “ad hoc” title, e.g. Ad Hoc Leadership Academy, Ad Hoc Committee on Jurisdiction & Service of Process.

C. Conclusion or Proposal:

1. There are no misunderstandings or issues as to the use of subcommittees by Section committees.
2. Section ad hoc committees are created and should continue to be created to study and/or address topics that overlap multiple committees (e.g., Estate Planning Conflict of Interest and Discretionary Spendthrift Trusts); are large and complex in scope (i.e., Guardianship Revision and Elective Share); or are time-sensitive matters (e.g., POLST).
3. There is no clear understanding among Section chairs or members as to the distinction between an ad hoc committee and a task force, and there is no need to use two different terms. “Ad Hoc” is used most often and is generally understood; therefore, abandon the use of “task force.” However, if within a substantive committee, the committee chair seeks to use different labels for what are in essence subcommittees, that should be their prerogative, with the understanding that those labels and distinctions are not universally used by all Section committees. The nomenclature and usage amongst the different committees should be standardized.

V. GOAL: Identify the Purposes and Uses of Committees and Maximize their Ability to Fulfill these Purposes and Uses

A. Topic or Issue: What are the purposes of committee operations as part of Executive Council functions, how well have the committees achieved these, and how does the Section maximize the effectiveness of the committee structure?

B. Discussion: Committees are used to isolate and focus on issues warranting changes, provide continuing legal education programs (both internally in the Executive Council and externally among our membership), and bring people with different perspectives together to work on common problems (which also creates camaraderie and connections and reinforces professionalism). The Executive Council membership is too large to accomplish these goals without a focused committee structure. Since 1991, committee structure has become tighter and has included less social networking, morphing instead into a more program-oriented regimen. The accountability of committee chairs has also increased. This tighter framework has allowed for the creation of more committees because oversight is more structured and regimented. However, we must guard against creating too many committees or oversight will suffer.

C. Conclusion or Proposal: We are likely at the optimal number of committees. We must watch committee activities and not be afraid to sunset or retire committees when they become unnecessary or not as effective as leadership anticipated. If committees cannot draw sufficient attendance on a regular basis, it is a sign of limited interest or lack of a leadership plan for growing the committee. In the meantime, committees should continue its focus on educating members about developments in case law and statutes, pursuing legislative activities, and educating members on substantive issues. We should also identify opportunities to coordinate with other sections of The Florida Bar. The research suggests we have successfully fulfilled these goals so far.

To maximize relationships among the committees, it is recommended that the Division Directors meet twice per year with committee chairs to reinforce and educate the chairs about their respective roles and get feedback from the chairs.

The Legislative Subcommittee proposals are supported as follows:

1. Encourage committees to de-emphasize legislative action in favor of professional enrichment.
2. Before a committee drafts proposed legislation, the proposed legislation goal must first be vetted by the Legislative Committee, the Division Director and the Executive Committee.
3. Adoption of a standard by which the proponent of the legislative initiatives must demonstrate a compelling need for the legislation and a reasonable likelihood of successful passage.
4. Each substantive committee should have a legislative subcommittee.

VI. GOAL: Committee Chairs and Vice Chairs should have Limited Roles on Other Committees while Serving as Chair or Vice-Chair of a Committee

A. Topic or Issue: Are too many committee chairs serving multiple roles on other committees and if so, what is the solution?

B. Discussion: Overall, interviews indicated there was not a strong feeling that Committee Chairs and Vice Chairs have too many concurrent leadership roles. However, there was recognition that many of the same people are tapped to be Chairs and Vice Chairs of different Committees from year to year. As a Chair's "term" is up, that Chair is added to another Committee as a Chair or Vice-Chair and so on. As a result, there may be 3 Vice-Chairs on a Committee to accommodate active members who don't want to leave the Executive Council. There are a number of reasons for this process, one of which is that those appointed as Chairs or Vice-Chairs have exhibited leadership skills and a willingness to do the "heavy lifting" and the number of members who are willing to take on these positions are insufficient to cycle out existing Chairs/Vice Chairs. Not incidentally, the other reasons expressed are: (i) the Section should not lose the benefit of the institutional knowledge and expertise of Chairs and Vice-Chairs when their terms are up, and (ii) the Chairs and Vice Chairs, having given of their time and resources, should be rewarded with continuing membership in the Executive Council if they want to remain active. Fostering leadership has been a challenge as discussed above with respect to Committee membership, but once leaders are identified and take on Chair and Vice-Chair positions, these individuals typically want to remain on the Executive Council after their initial committee leadership terms are up. One Committee Chair who was interviewed appreciated the value of the "veteran" Executive Council members but thought that a system which fostered "cycling off" committee chairs after a period of time is healthy for an organized body, especially one like the Executive Council which maintains institutional knowledge and continuity through the involvement of former Section Chairs.

C. Conclusion or Proposal: As leaders among Committee members are identified, they will ultimately be offered Chair and Vice-Chair positions, which will result in having to cycle off existing Executive Council members in those positions. This is the "natural order" of any Committee system, but solving for the cycling off by continuing to add Vice-Chair positions is not ideal. However, there was an acknowledgement that there should be a place for these valued members of the Executive Council and one Committee Chair suggested that those Chairs whose term has expired on the last Committee he/she will serve on can serve for a period of time as a Chair Emeritus. In this manner, each Committee can continue to have a Chair and Vice-Chair (or two, if desired), but a Committee Chair member who has occupied a Chair position(s) and no longer wishes to do so or has reached term limits, will still have a place on the Executive Council as an Committee Chair Emeritus and be an emeritus member on a maximum number of Committees (to be determined), in appreciation of his/her service. We

believe that an Emeritus member position(s) should be created by the Executive Council, and it is not necessary to identify such a position as a Chair Emeritus.

VII. GOAL: Optimize the Size of Committees with Active Committee Members

A. Topic or Issue: How does the Section optimize the size of committees with active, involved Committee members?

B. Discussion: This topic was addressed in the 2014-2019 Strategic Planning Report under "Goal II." In its discussion, the prior Report identified certain concerns, including the size of a Committee impacting its productivity. The 2014-2019 Report recognized that Committees should be as large "as we have people who want to be involved", but rules need to be imposed to allow each Committee to accomplish its purpose. The prior Report recommended strict enforcement of an attendance policy, a limitation on voting members and creation of an application for Committee membership as a voting member, the latter of which would be a universal application for all Committees.

This subcommittee believes that the recommendations of the earlier Strategic Planning Report should be adopted, with some modification. Committee chairs stated that although many committees have large numbers of members, for some of these committees a relatively small percentage of members attend meetings on a regular basis (either personally or telephonically if permitted) or volunteer for lectures, articles or special task forces. One Committee Chair described the impressive numbers of Committee members as being "a mile wide and an inch deep." In most cases, the large Committee roster is nothing more than a listserve for many members, but each participant on the listserve is given the privilege of listing themselves as a Committee member.

Even if a Committee adopts voting and non-voting member status, the fact remains that a non-voting member will still be entitled to the benefits of being a member without having to contribute. Moreover, recognizing that the Chairs and Vice-Chairs of Committees are volunteers with demanding work schedules, it is increasingly difficult and time consuming for them to find Committee members who will volunteer for the core needs of the Committees. And so the Chairs call upon the same members time and time again. While recognizing that "one size does not fit all", there should be some qualifications for admitting members to Section Committees and correspondingly, there should be some "investment" by a Committee member to earn member status. An application in which a prospective member commits to attend a certain number of meetings either personally or telephonically (recognizing that some members' personal attendance is not financially supported) and commits to lecturing, writing an article, participating in a task force or the like will serve to facilitate the role of the Committees within the Section. Such a policy will create a more active and committed core Committee membership and may very well foster innovation to give even more value to membership in the Section. In this regard, each

Committee can still maintain a listserv which serves to stream out information, CLEs, articles and so forth to those Section members who have an interest in a topic but no time to volunteer as a Committee member. It is hoped that within that listserv group, a number of potential Committee members will surface as they see the benefits of being a Committee member, and that in turn will foster the next “generation” of leadership for the Section.

C. Conclusion or Proposal. Committees should be as large as the Executive Council determines is appropriate given the nature of each Committee, with input from the Committee Chair(s). This number can be reviewed periodically and can vary from Committee to Committee. But the common goal of each Committee can be better served by engaged Committee members and so this Subcommittee recommends the implementation of an application for membership used for each Committee and existing Committee members should also complete the application. The application need only be completed one time, but once a member signs on for membership, the Committee must review the members’ actual commitment (i.e. attendance, lectures or other volunteer activities) on a periodic basis (we would recommend every two years). Each Committee should decide if telephonic attendance “counts” as attendance. The Executive Council should decide if non-paid CLEs to a Committee’s listserv members are appropriate, since presently CLEs are provided at no cost to all members of a Committee offering same at its meeting, so a member who does nothing more than sign up for a Committee can call in for a free CLE. In recommending this application process, this Subcommittee recognizes that if those who currently are allowed to be Committee members with no commitment, have to now commit to active involvement, what will motivate them to do so? The desire to be a part of a Committee whose members are active and produce articles, CLEs, lectures, develop best practices and/or participate in the direction of legislation is in the nature of lawyers and we believe that even with an application process there will still be a number of lawyers who will agree to the terms of Committee membership.

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By M. Travis Hayes, Chair, Probate Law and Procedure Committee of the Real Property Probate & Trust Law Section

Address 5551 Ridgewood Drive, #501, Naples, FL 34108
Telephone: (239) 514-1000

Position Type Probate Law and Procedure Committee, RPPTL Section, The Florida Bar

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Appearances

Before Legislators (SAME)

(List name and phone # of those having face to face contact with Legislators)

Meetings with

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PROPOSED ADVOCACY

All types of partisan advocacy or nonpartisan technical assistance should be presented to the Board of Governors via this request form. All proposed legislation that has *not* been filed as a bill or a proposed committee bill (PCB) should be attached to this request in legislative format - Standing Board Policy 9.20(c). Contact the Governmental Affairs office with questions.

If Applicable,

List The Following N/A

(Bill or PCB #)

(Bill or PCB Sponsor)

Indicate Position

Support

Oppose _____

Tech Asst. _____

Other _____

Proposed Wording of Position for Official Publication:

Support for proposed legislation to improve the notice of administration to the surviving spouse to include notice that an extension of the deadline for taking an elective share may be requested prior to the expiration of the deadline for making the election, including changes to F.S. §733.212(2)(e).

Reasons For Proposed Advocacy:

The Notice of Administration provided to a surviving spouse says that an election to take an elective share must be filed within a specific time period, but fails to mention that the deadline for filing the election may be extended upon request. Because the current notice fails to mention that an extension may be requested prior to the deadline for making the election, the notice is incomplete, if not inaccurate and misleading. By requiring the Notice of Administration that is served on the surviving spouse to include an express reference to F.S. §732.2135(2) and the availability of an extension of the deadline, the proposed legislation will provide clarity and properly notify the surviving spouse of the procedures for pursuing his or her elective share rights. Please see the attached White Paper.

WHITE PAPER

PROPOSED REVISIONS TO §733.212(2)(e)

I. SUMMARY

The purpose of the proposed change is to improve the notice provided to a surviving spouse, or an attorney in fact or guardian of the property of a surviving spouse, regarding the potential availability of an extension of time for making an election to take an elective share. The proposed change would amend §733.212(2)(e) to require that the Notice of Administration served on a surviving spouse (or his or her agent) include a reference to the extension relief available under §732.2135(2) for timely making the elective share election. The bill does not have a fiscal impact on state funds.

II. CURRENT SITUATION

Currently, §733.212(2), Florida Statutes, includes a requirement that the Notice of Administration state:

(e) That an election to take an elective share must be filed on or before the earlier of the date that is 6 months after the date of service of a copy of the notice of administration on the surviving spouse, or an attorney in fact or a guardian of the property of the surviving spouse, or the date that is 2 years after the date of the decedent's death.

When an election is made by the surviving spouse's guardian or attorney in fact, court approval for making the election is required.

732.2125. Right of election; by whom exercisable.

The right of election may be exercised:

- (1) By the surviving spouse.
- (2) With approval of the court having jurisdiction of the probate proceeding by an attorney in fact or a guardian of the property of the surviving spouse. Before approving the election, the court shall determine that the election is in the best interests of the surviving spouse during the spouse's probable lifetime.

§732.2135 recognizes the possibility of a petition for extension of time to make the election. 732.2135 also provides for a tolling of time upon the filing of a petition for extension or a petition for approval to make the election.

732.2135. Time of election; extensions; withdrawal.--

(4) A petition for an extension of the time for making the election or for approval to make the election shall toll the time for making the election.

2017 Legislative Changes

During the 2017 legislative session, § 732.2135 was amended to recognize that a will contest or other proceeding relating to the construction or reformation of the will could affect the amount passing to a surviving spouse in a probate proceeding, which in turn could affect the amount of the elective share due a surviving spouse.

732.2135 Time of election; extensions; withdrawal.

(1) Except as provided in subsection (2), the election must be filed on or before the earlier of the date that is 6 months after the date of service of a copy of the notice of administration on the surviving spouse, or an attorney in fact or guardian of the property of the surviving spouse, or the date that is 2 years after the date of the decedent's death.

(2) Within the period provided in subsection (1). or 40 days after the date of termination of any proceeding which affects the amount the spouse is entitled to receive under s. 732.2075(1), whichever is later, but no more than 2 years after the decedent's death, the surviving spouse or an attorney in fact or guardian of the property of the surviving spouse **may petition the court for an extension of time for making an election.** For good cause shown, the court may extend the time for election. If the court grants the petition for an extension, the election must be filed within the time allowed by the extension.

[Emphasis added]

The Problem

The importance of following the substantive content of the Notice of Administration relates to the validity of the notice. It is arguable that a Notice of Administration which does not satisfy the requirements of the statute is not effective notice and the time for asserting rights does not begin to run until a valid notice is served, including the surviving spouse's assertion of elective share rights.

Does the current substantive content of the Notice of Administration properly advise a surviving spouse of the right to *request an extension of time* to make an elective share election

after the conclusion of a proceeding that affects the amount of the surviving spouse's elective share entitlement, such as a will contest or proceedings to reform or construe a will?

§ 733.212(2)(e) is currently incomplete, if not inaccurate and misleading, in its failure to refer to the possibility or process for extending the time to file an election under §732.2135(2). Under 732.2135(2), eligibility for extension is for "good cause", which is quite broad, and is not necessarily limited to a case where the extension is necessary due to a will contest or other "proceeding which affects the amount the spouse is entitled to receive under 732.2075(1)." The concern is amplified by the fact that 733.212(2)(c) includes a reference to an extension for challenging the validity of the will, venue, or jurisdiction; and 733.212(2)(d) includes a reference to the "automatic" extension for filing for exempt property. But 733.212(2)(e) is silent on the possibility of an extension when it comes to making the election to take an elective share.

III. EFFECT OF PROPOSED CHANGE

The proposed amendment to §733.212(2)(e) would provide more clarity and improve the quality of notice to the surviving spouse regarding the timeliness of making the elective share election. This is accomplished by requiring the Notice of Administration to include an express reference to §732.2135(2) and its procedures for petitioning the court for an extension of time to make the elective share election.

The Florida Bar Probate Rules Committee and the Florida Supreme Court adhere to the policy that Florida Statutes contain the substantive law and the Probate Rules contain procedure. As a result, the Probate Rules describe deadlines affecting substantive rights as occurring "within the time required by law." This not only separates substantive matters from procedural matters, but also avoids the potential for inconsistency when a statute is changed and the corresponding rule is not immediately updated. The corresponding Probate Rule relating to 733.212 and the Notice of Administration is Rule 5.240. Because 5.240(b)(5) states that "an election to take an elective share must be filed within the time provided by law," the proposed change to 733.212(2)(e) will not disrupt or require revisions to the Probate Rules.

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 the proposal.

VII. OTHER INTERESTED PARTIES

N/A

1 A bill to be entitled

2 An act relating to the Notice of Administration served in
3 a probate proceeding and the contents of the notice
4 relating to a surviving spouse's elective share, amending
5 section 733.212(2)(e).

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

7 Section 1. Section 733.212(2)(e), Florida
8 Statutes, is amended to read:

9 733.212. Notice of Administration; filing of
10 objections.-

11 (2) The notice shall state:

12 (e) That, unless an extension is granted under s.
13 732.2135(2), an election to take an elective share must be
14 filed on or before the earlier of the date that is 6 months
15 after the date of service of a copy of the notice of
16 administration on the surviving spouse, or an attorney in
17 fact or a guardian of the property of the surviving spouse,
18 or the date that is 2 years after the date of the
19 decedent's death.

20 Section 2. This bill shall take effect on July 1, 2019
21 and shall apply to all notices served after its effective
22 date.

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Angela M. Adams, Chair, Trust Law Committee of the Real Property, Probate, & Trust Law Section (RPPTL Approval Date _____, 20__)

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Position Type Trust Law Committee, Real Property, Probate, & Trust Law Section, The Florida Bar
(Florida Bar, section, division, committee or both)

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If Applicable,

List The Following N/A

(Bill or PCB #)

(Bill or PCB Sponsor)

Indicate Position

Support

Oppose

Tech Asst.

Other

Proposed Wording of Position for Official Publication:

Support proposed legislation creating the "Florida Uniform Directed Trust Act" (a modified version of the Uniform Directed Trust Act), which clarifies and changes various aspects of the Florida Statutes relating to directed trusts.

Reasons For Proposed Advocacy:

Numerous legal issues arise regarding directed trusts (trusts whose terms grant a person other than a trustee a power over some aspect of the trust's administration). Principal among them are (a) applicable fiduciary

WHITE PAPER

Florida Uniform Directed Trust Act

I. SUMMARY

This legislation adopts the Uniform Directed Trust Act (“UDTA”) into Chapter 736, with modifications. The Act provides statutory provisions relating to directed trusts (trusts whose terms grant a person other than a trustee a power over some aspect of the trust’s administration). The UDTA has extensive comments regarding its provisions, which provide further information on the background and operation of its provisions beyond the provisions of this White Paper.

II. CURRENT SITUATION & GENERAL NEED FOR ACT

Numerous legal issues arise regarding directed trusts. Principal among them are (a) applicable fiduciary duties that apply to the non-trustee holding power (the “trust director”) and the trustee that is being directed (the “directed trustee”), (b) what trust director powers should be exercised without duty (that is, should not be covered by the Act), (c) the liability of a trust director, including limitations and defenses, (d) how the location of a trust director impacts the principal place of administration of the trust, (e) what powers a trust director has that are not expressed in the trust agreement, (f) required duties of a trust director and a directed trustee to provide information to each other, and to provide information to beneficiaries, (g) duties of the trust director and a directed trustee to monitor, inform or advise the other, (h) how to apply these issues to circumstances when one trustee is directing another trustee (since “directed trusts” are limited to trusts where the directing person is not a trustee, (i) personal jurisdiction over a trust director, and (j) a determination of what other provisions of the Trust Code should apply to trust directors.

Numerous trusts are established under Florida law that include one or more powers granted to non-trustees. Fla.Stats. §736.0808 presently addresses some of the above-described issues, but its coverage is narrow and limited. There is little in the way of case law in Florida on most of these issues, leaving trust directors, trustees, and beneficiaries without direction on these issues and requiring litigation to establish law on a case-by-case basis. Recognizing the importance of having statutory law on these subjects, many other states and common law countries have enacted legislation of varying scope dealing with many of these subjects. The UDTA was promulgated to provide a comprehensive statutory arrangement to address all of these issues and would be of welcome benefit to all parties involved with directed trusts.

III. MISC. ASPECTS

The statutory provisions are in two segments. The first is changes to existing Florida Trust Code provisions. These are changes needed to coordinate with the separate Act Part, and to include provisions of the Act that are better placed elsewhere in the Trust Code than in a separate Act

part, such as definitions relating to Act provisions. The second segment is a new Part XIV of the Trust Code entitled "Directed Trusts."

It was determined that a separate Part was superior to scattered inclusion of the UDTA provisions throughout the Trust Code. This preserves the UDTA structure to obtain the benefits of close coordination with a uniform act, and the Directed Trust Act provisions are discrete enough to warrant a separate part. This also assists in avoiding undue complexity by excluding provisions throughout the Trust Code that may not be of relevance to trusts without directed trust features.

Like most Trust Code provisions, the provisions of the Act are a set of default rules that can be overridden in the trust instrument (except as otherwise noted).

IV. SECTION-BY-SECTION ANALYSIS

A. *Section 736.0103 – Definitions (Modification to Existing Statute)*

Current Situation: This provision provides definitions applicable throughout the Trust Code.

Effect of Proposed Changes: Adds new definitions applicable to the directed trusts, principally including:

1. "Directed trust" – a trust which includes a power of direction;
2. "Directed trustee" – a trustee subject to direction by a trust director;
3. "Power of direction" – a power over a trust granted to a person by the trust terms that is exercisable by the person when not serving as a trustee;
4. "Terms of a trust" – expands the current definition to include trust terms established by or amended by a trustee, a trust director, a court order, or a nonjudicial settlement agreement; and
5. "Trust director" – a person who has a power of direction under the trust terms to the extent exercisable while that person is not a trustee.

B. *Section 736.0105(2)(b) – Default and Mandatory Rules (Modification to Existing Statute)*

Current Situation: This provision provides that the terms of a trust may not modify the duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

Effect of Proposed Changes: This provision would now be subject to the authority regarding such issues as they related to directed trusts otherwise provided in new Sections 736.1409, 736.1411, and 736.1412.

C. Section 736.0603(3)- Settlor Powers (Modification to Existing Statute)

Current Situation: While a trust is revocable, the duties of the trustee are owed exclusively to the settlor.

Effect of Proposed Changes: A new provision is added to provide that a trustee may follow a direction of the settlor that is contrary to the trust provisions while a trust is revocable.

D. Section 736.0703(9) – Cotrustees (Modification to Existing Statute)

Current Situation: This provision relates to the duties and obligations of trustees when the trust provisions provide a power to direct or prevent action by one trustee vis-à-vis another trustee.

Effect of Proposed Changes: This provision is removed since these provisions are now addressed in the new Part.

E. Section 736.0808 – Powers to Direct (Modification to Existing Statute)

Current Situation: This provision is currently the operative provision for duties, powers, and obligations relating to powers of direction granted to non-trustees.

Effect of Proposed Changes: This provision is removed since its subject matter is now entirely addressed in the new Part in numerous provisions thereof.

F. Section 736.1008 – Limitations on Proceedings Against Trustees (Modification to Existing Statute)

Current Situation: This provision relates to limitations on proceedings against trustees regarding items disclosed in a trust disclosure document.

Effect of Proposed Changes: Trust directors will now have the same protections as trustees for items disclosed in a trust disclosure document (whether issued by a trustee or a trust director). The definition of a “trust disclosure document” is expanded to include an accounting or other written report prepared by a trust director. A “limitation notice” may now be issued by a trust director, and the notice language regarding an action by a beneficiary for breach of trust is no longer limited to an action against the trustee (so as to have the effect of including an action against either/or a trustee or trust director).

G. Part XIV – Directed Trusts

Effect of Proposed Changes: Establishes a new Part under the Trust Code, which will encompass Sections 736.1401 through 736.1418. The last two digits of each section number are in accord with the corresponding or source sections of the UDTA.

H. Section 736.1403 – Application; Principal Place of Administration (new)

736.1403(1) - Effect of Proposed Changes: Provides that this Part will apply to a trust, wherever created, if it has its principal place of administration in Florida. It further provides the Part will apply only to decisions or actions occurring after the effective date of enactment of the Part. If

the principal place of administration is moved to Florida, the Part applies only decisions or actions occurring after such a move.

736.1403(2) - Effect of Proposed Changes: Expands the statutory rules on “principal place of administration” to include Florida if the trust terms so provide and a trust director’s principal place of business is located in or a trust director is a resident of Florida. Thus the location of a trust director in Florida is sufficient in itself to allow Florida to be the principal place of administration.

I. Section 736.1405 - Exclusions (New)

Effect of Proposed Changes: Under the Act, a non-trustee holding a power over a trust by its terms is subject to the Act. Nonetheless, certain powers are excluded from the Act. Principal among the effects of such exclusion is that the power holder is not subject to any fiduciary duty unless otherwise imposed by the trust terms. These excluded powers are:

A Power of Appointment. Under current law, a non-trustee holder of a power of appointment holds a mere personal power and does not have any fiduciary duties regarding the exercise of the power (absent contrary trust terms). This exclusion is continued by excepting powers of appointment from the Act provisions. The Act provides that a power to terminate a trust is a power of appointment for this purpose.

A trust may grant a power to create, modify or terminate a power of appointment. The provision does not characterize such a power as a power of appointment for these purposes and subjects such a power to the Act and its concomitant fiduciary duties. That is, a direct power of appointment over property is materially different than a power that does not directly impact property but instead is a power to create, modify, or terminate a power of appointment, and it was determined that the broad authority under the latter warranted the imposition of fiduciary duties on the power holder. Nonetheless, the last clause of 736.1405(3)(b) is intended to clarify that if a holder of a traditional power of appointment with power thereunder to create a new trust or other property interest has with the power the ability to create a new power of appointment (*e.g.*, under the new trust arrangement), such power in the original power holder to create a new power of appointment should nonetheless still be a power of appointment for these purposes. This is because in that instance the power to create, modify or terminate is only an adjunct to the power of appointment and cannot be exercised separate and apart from an appointment otherwise occurring under the power.

A Power to Appoint or Remove a Trustee or Trust Director.

A Power of a Settlor over a Trust While it is Revocable by that Settlor.

A Power of a Beneficiary to the Extent the Exercise or Nonexercise of the Power Affects the Beneficial Interest of the Beneficiary or Another Beneficiary Represented by That Power.

A Power If the Trust Provides it is a Nonfiduciary Power, and it Must be Held in a Nonfiduciary Capacity to Achieve the Settlor’s Tax Objectives. This provision is to allow for the availability of grantor trust treatment for federal income tax purposes to a settlor via certain

common planning techniques (which do not function if the power holder has a fiduciary duty regarding that power).

A Power If the Trust Provides it is a Nonfiduciary Power and Allows Reimbursement to Settlor of Income Tax Liabilities Attributable to the Income of the Trust. This allows a trust director to pay the income tax liabilities of a settlor attributable to the grantor trust status free of a conflicting duty to trust beneficiaries.

A Power to Add or Release a Power If Such Power Can Affect the Grantor Trust Status of the Trust. Again relating to grantor trusts, this permits the trust director to toggle such status on or off (to the extent allowed under federal income tax law) free of a duty to trust beneficiaries.

J. SECTION 736.1406 – Powers of Trust Director (New)

Effect of Proposed Changes: This provision limits the powers of a trust director to the powers granted in the trust instrument, except it will also establish further powers not expressly granted that are appropriate to the exercise or nonexercise of the power that is granted. It also provides that trust directors with joint powers must act by majority decision.

The draftspersons discussed at length whether the further power language under s. 736.1406(3)(a) included the power in the trust director to hire attorneys and others to assist the trust director in performing its powers of direction. The draftspersons concluded that such a power to hire and direct payment of fees and costs for those engaged was implicit in the statutory language, as noted in the Comments to the UDTA. Thus, explicit statutory language to this effect was not needed nor desirable. The draftspersons also concluded that such powers extended to the hiring of attorneys in defense of a breach of trust action. The draftspersons also noted that the statutory language does not require that such hiring and payment powers will exist in all situations and to the same extent in all situations, but arises and applies only to the extent such powers are “appropriate to the exercise or nonexercise of a granted power of direction” per the statutory language.

K. On a related matter, the draftspersons added to the UDTA in s. 736.1416(q) a provision that subjects the payment of attorney fees and costs of a trust director to the provisions, procedures, and limitations of. 736.0802(10), since the draftspersons could determine no significant policy reason why s. 736.0802(10) should apply to such payments when incurred by a trustee and not when incurred by a trust director. SECTION 736.1407 – Limitations on Trust Director (New)

Effect of Proposed Changes: A trust director with powers relating to Medicaid payback or a charitable interest is subject to the same rules as a trustee would be under regarding those items.

L. SECTION 736.1408 – Duty and Liability of Trust Director (New)

Effect of Proposed Changes: A trust director is subject to the same fiduciary duty and liability as a trustee would have it had such a power. However, such duty and liability can be reduced under the trust instrument in the same manner as a trust instrument can reduce the duty and liability of a trustee. Thus, for example, since the duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries cannot be eliminated by the trust instrument under Section 736.0105(2)(b) for a trustee, the same minimum duty applies to the duty of a trust protector. The terms of the trust may also impose a duty or liability on a trust protector that would not otherwise apply to a similarly acting trustee.

A trust director that is a health care provider that is licensed, certified, or otherwise authorized or permitted by law will not be under any duty or liability under the Act when acting in such capacity.

M. SECTION 736.1409 – Duty and Liability of Directed Trustee (New)

Current Law: Under Section 736.0808(2), a directed trustee is obligated to act to follow a trust director's power of direction. However, it shall not act if such action would be "manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust."

Effect of Proposed Changes: A directed trustee again is obligated to act on the direction received, with the modification that the direction to act is to take *reasonable* action to comply.

Under this provision, a directed trust is not permitted to act regarding a power of direction if by so doing the trustee would be engaging in "willful misconduct." The standard is a departure from the standard described above under current law.

Aside from the language of the UDTA itself, the "willful misconduct" limitation on acting is appropriate since it is the same standard applicable under current law when one trustee has power to direct a co-trustee to act. Since that standard is acceptable under current law when one fiduciary is directing another, and since a trust director is now imbued under the Act with the same fiduciary duties as a trustee under Section 736.1408, it is appropriate that the willful misconduct standard is similarly applied to a directed trustee under the Act. That is, no compelling policy reasons could be discerned why a trustee that is being directed should have a different limitation dependent on whether the directing person is a cotrustee with fiduciary duties or a trust director with fiduciary duties.

The Act does not have a definition of "willful misconduct." Nor does the Trust Code. Some states do provide for a definition in their statutory trust provisions, such as Delaware. The draftpersons determined that such a definition was outside of the scope and purpose of implementing this Act, and may have a collateral impact in other areas of Florida law even if the definition was statutorily limited to this the Trust Code or these provisions. Nonetheless, the draftpersons intend that the directed trustee's compliance with the exercise or nonexercise of a power of

direction that itself constitutes a breach of fiduciary duty (such as the duty to diversify) by the trust director does not, in and of itself, constitute willful misconduct by the directed trustee. Willful misconduct should require the directed trustee's own intent to harm the trust or its beneficiaries, not mere negligence, gross negligence, recklessness or indifference as to the consequences of its actions. A broader interpretation of willful misconduct that does not require intent to harm would be contrary to the operation of directed trusts as intended by settlors and contrary to the ability of directed trustees to accept direction without hesitation or obstruction due to liability concerns.

The Act provides limits on the exercise of a power of direction to release a trustee or trust director from liability for breach of trust.

The provision provides that a directed trustee that has reasonable doubt about its duty under this Section can apply to the court for instructions, with attorney fees and costs to be paid from the trust as provided in the Trust Code.

Beyond the foregoing duty imposed on the directed trustee, the Act permits trust terms to impose additional duties and liabilities on a directed trustee.

N. Section 736.1410 – Information Exchange and Reliance (New)

Effect of Proposed Changes. Each of a trustee and a trust director has a duty to provide information to the other to the extent the information relates to powers or duties of both of them. They may act in reliance on such information without committing a breach of trust unless their action constitutes willful misconduct. A trust director is also required to provide information to a qualified beneficiary upon a written request to the extent the information is reasonably related to the powers or duties of the trust director.

The draftspersons intend that a trust director has no other direct duty to account or provide information to a beneficiary (although a trust director may in its discretion issue a trust disclosure document to commence the statute of limitations for breach of trust per Section 736.1413(2)). They considered adding an express provision to that effect, but for purposes of not departing from the UDTA language when possible, no such language was included.

O. Section 736.1411 – No Duty to Monitor, Inform or Advise (New)

Effect of Proposed Changes. A trustee has no duty to monitor a trust director, nor to advise a settlor, beneficiary, trustee, or trust director as to how the trustee might have acted differently than the trust director. A trust director likewise has no duty to monitor a trustee or another trust director, nor to advise a settlor, beneficiary, trustee or another trust director as to how the trust director might have acted differently than a trustee or another trust director. The provision does not bar a trustee or trust director from doing any of the foregoing, and if done the actor does not assume a duty to continue to do so in the future.

P. SECTION 736.1412 – Application to Cotrustee (New)

Effect of Proposed Changes. When trust terms confer a power on one or more trustees to the exclusion of another trustee to direct or prevent actions of the other trustee, the trustee subject

to direction has the same duties and liabilities as imposed under the Act on a directed trustee under Sections 736.1409 through 736.1411. The policy is that the trustee in both circumstances is being directed by another fiduciary and thus there is no justification for imposing different rules or standards on the trustee subject to direction based on whether the person giving direction is a trustee or a trust director. Regarding the required standard of conduct for liability, the willful misconduct standard of current Section 736.0603(9) continues to apply, and thus this aspect of trustee liability remains the same as under current law.

Q. SECTION 736.1413 – Limitations on Actions Against a Trust Director (New)

Effect of Proposed Changes: The same limitations period under Section 736.1008 that applies to a breach of trust action against a trustee is applied to breach of trust actions against trust directors. Similarly, a trust director can benefit from the six months shortened limitations period under current law through the issuance of a qualified trust accounting or written report.

R. SECTION 736.1414 – Defenses in Action Against a Trust Director (New)

Effect of Proposed Changes: A trust director is provided with the same defenses in a breach of trust action as are available to a trustee.

S. SECTION 736.1415 – Court Jurisdiction Over a Trust Director (New)

Effect of Proposed Changes: A trust director is subject to the personal jurisdiction of Florida courts by accepting appointment. Other permissible methods of obtaining jurisdiction continue to apply.

T. SECTION 736.1416 – Misc. Application of Trust Code Provisions to Trust Directors (New)

Effect of Proposed Changes: The Trust Code contains numerous provisions that apply to trustees. Without further statutory modifications, these provisions would not apply to a trust director. The draftspersons determined that numerous of the provisions should apply to a trust director, while others should not. Thus, a blanket inclusion or exclusion of Trust Code trustee provisions to trust directors was deemed inappropriate. Instead, the draftspersons reviewed all applicable provisions and determined which should be extended to trust directors. Items in the Trust Code that apply to trustees and are not expressly made applicable to a trust director by this provision or elsewhere in the Act are intended not to apply to a trust director. The list is lengthy, so the reader is directed to Section 736.1414 of the proposed Act for those specific items.

This section applies the rules of Section 736.0701 for acceptance of trusteeship by a trustee to acceptance of the office of trust director by a named trust director. Because of the nature of many trust director powers, limiting acceptance to the means described in Section 736.0701 may leave interested persons (including the trust director) in doubt as to whether a trust director has accepted the office. This is because it is relatively demonstrable when a trustee undertakes its office by accepting trust property or exercising powers or performing duties, all of which constitute acceptance under Section 736.0701(2). So acceptance by a trustee can be

readily ascertained by determining whether a trustee undertook any such items. However, many trust director powers do not involve accepting trust property nor immediately exercising powers or performing duties. An example would be the power to amend a trust, which may not be acted upon for many months or years. Absent compliance with a method of acceptance provided in the trust agreement, it would be difficult to know if a trust director has accepted its office. This section of the Act permits a trustee, settlor, or a qualified beneficiary to make a written demand on a trust director to accept or confirm prior acceptance of the office, and the trust director must respond within 60 days. The draftspersons believed it would be problematic to automatically disqualify the trust director for failing to respond within that 60 day period, but intend that the mandatory obligation to respond can be enforced by an action of an interested person to obtain a determination by a court of competent jurisdiction as to acceptance or non-acceptance.

V. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

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

VI. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

The proposal should not have any material economic costs or benefits to members of the private sector.

VII. CONSTITUTIONAL ISSUES

The proposal should not raise any constitutional issues.

VIII. OTHER INTERESTED PARTIES

Tax Section

The Florida Bankers Association

1 **FLORIDA UNIFORM DIRECTED TRUST ACT**

2 **736.0103 Definitions.—Unless the context otherwise requires, in this code:**

3 [add following definitions and renumber all subsequent subparagraphs in the
4 section]

5 () “Directed trust” means a trust for which the terms of the trust grant a
6 power of direction.

7 () “Directed trustee” means a trustee that is subject to a trust director's
8 power of direction.

9 () “Power of direction” means a power over a trust granted to a person by
10 the terms of the trust to the extent the power is exercisable while the person is not
11 servicing as a trustee. The term includes a power over the investment, management,
12 or distribution of trust property, a power to amend a trust instrument or terminate a
13 trust, or a power over other matters of trust administration. The term excludes the
14 powers described in s. 736.1405(2).

15 (21) ~~“Terms of a trust” means the manifestation of the settlor’s intent~~
16 ~~regarding a trust’s provisions as expressed in the trust instrument or as may be~~
17 ~~established by other evidence that would be admissible in a judicial proceeding:~~

18 (A) except as otherwise provided in subparagraph (B), the
19 manifestation of the settlor's intent regarding a trust's provisions as:

20 (i) expressed in the trust instrument; or

21 (ii) established by other evidence that would be admissible in a
22 judicial proceeding; or

23 (B) the trust's provisions as established, determined, or amended by:

24 (i) a trustee or trust director in accordance with applicable law;

25 (ii) court order; or

26 (iii) a nonjudicial settlement agreement under s. 736.0111.

27 () “Trust director” means a person that is granted a power of direction by
28 the terms of a trust to the extent the power is exercisable while the person is not
29 serving as a trustee. The person is a trust director whether or not the terms of the
30 trust refer to the person as a trust director and whether or not the person is a
31 beneficiary or settlor of the trust.

32
33 **736.0105 Default and mandatory rules.—**

34 (1) Except as otherwise provided in the terms of the trust, this code governs
35 the duties and powers of a trustee, relations among trustees, and the rights and
36 interests of a beneficiary.

37 (2) The terms of a trust prevail over any provision of this code except:

38 (a) The requirements for creating a trust.

39 (b) Subject to ss. 736.1409, 736.1411 and 736.1412, tThe duty of the
40 trustee to act in good faith and in accordance with the terms and purposes of

41 the trust and the interests of the beneficiaries....

42

43 **736.0603 Settlor's powers; powers of withdrawal.—**

44 (1) While a trust is revocable, the duties of the trustee are owed exclusively
45 to the settlor.

46 (2) During the period the power may be exercised, the holder of a power of
47 withdrawal has the rights of a settlor of a revocable trust under this section to the
48 extent of the property subject to the power.

49 (3) Subject to ss. 736.0403(2) and 736.0602(3)(a), the trustee may follow a
50 direction of the settlor that is contrary to the terms of the trust while a trust is
51 revocable.

52

53 **736.0703 Cotrustees.—**

54 (1) Cotrustees who are unable to reach a unanimous decision may act by
55 majority decision.

56 (2) If a vacancy occurs in a cotrusteeship, the remaining cotrustees or a
57 majority of the remaining cotrustees may act for the trust.

58 (3) Subject to s. 736.1412, a cotrustee must participate in the performance
59 of a trustee's function unless the cotrustee is unavailable to perform the function
60 because of absence, illness, disqualification under other provision of law, or other

61 temporary incapacity or the cotrustee has properly delegated the performance of
62 the function to another cotrustee.

63 (4) If a cotrustee is unavailable to perform duties because of absence, illness,
64 disqualification under other law, or other temporary incapacity, and prompt action
65 is necessary to achieve the purposes of the trust or to avoid injury to the trust
66 property, the remaining cotrustee or a majority of the remaining cotrustees may act
67 for the trust.

68 (5) A cotrustee may not delegate to another cotrustee the performance of a
69 function the settlor reasonably expected the cotrustees to perform jointly, except
70 that a cotrustee may delegate investment functions to a cotrustee pursuant to and in
71 compliance with s. 518.112. A cotrustee may revoke a delegation previously made.

72 (6) Except as otherwise provided in subsection (7), a cotrustee who does not
73 join in an action of another cotrustee is not liable for the action.

74 (7) Except as otherwise provided in ~~subsection (9)~~ or s. 736.1412, each
75 cotrustee shall exercise reasonable care to:

76 (a) Prevent a cotrustee from committing a breach of trust.

77 (b) Compel a cotrustee to redress a breach of trust.

78 (8) A dissenting cotrustee who joins in an action at the direction of the
79 majority of the cotrustees and who notifies any cotrustee of the dissent at or before
80 the time of the action is not liable for the action.

81 ~~(9) If the terms of a trust provide for the appointment of more than one~~
82 ~~trustee but confer upon one or more of the trustees, to the exclusion of the others,~~
83 ~~the power to direct or prevent specified actions of the trustees, the excluded~~
84 ~~trustees shall act in accordance with the exercise of the power. Except in cases of~~
85 ~~willful misconduct on the part of the excluded trustee, an excluded trustee is not~~
86 ~~liable, individually or as a fiduciary, for any consequence that results from~~
87 ~~compliance with the exercise of the power. An excluded trustee does not have a~~
88 ~~duty or an obligation to review, inquire, investigate, or make recommendations or~~
89 ~~evaluations with respect to the exercise of the power. The trustee or trustees having~~
90 ~~the power to direct or prevent actions of the excluded trustees shall be liable to the~~
91 ~~beneficiaries with respect to the exercise of the power as if the excluded trustees~~
92 ~~were not in office and shall have the exclusive obligation to account to and to~~
93 ~~defend any action brought by the beneficiaries with respect to the exercise of the~~
94 ~~power. The provisions of s. 736.0808(2) do not apply if the person entrusted with~~
95 ~~the power to direct the actions of the excluded trustee is also a cotrustee.~~

96

97 **~~736.0808 Powers to direct.—~~**

98 ~~(1) Subject to ss. 736.0403(2) and 736.0602(3)(a), the trustee may follow a~~
99 ~~direction of the settlor that is contrary to the terms of the trust while a trust is~~
100 ~~revocable.~~

101 ~~(2) If the terms of a trust confer on a person other than the settlor of a~~
102 ~~revocable trust the power to direct certain actions of the trustee, the trustee shall act~~
103 ~~in accordance with an exercise of the power unless the attempted exercise is~~
104 ~~manifestly contrary to the terms of the trust or the trustee knows the attempted~~
105 ~~exercise would constitute a serious breach of a fiduciary duty that the person~~
106 ~~holding the power owes to the beneficiaries of the trust.~~

107 ~~(3) The terms of a trust may confer on a trustee or other person a power to~~
108 ~~direct the modification or termination of the trust.~~

109 ~~(4) A person, other than a beneficiary, who holds a power to direct is~~
110 ~~presumptively a fiduciary who, as such, is required to act in good faith with regard~~
111 ~~to the purposes of the trust and the interests of the beneficiaries. The holder of a~~
112 ~~power to direct is liable for any loss that results from breach of a fiduciary duty.~~

113

114 **736.1008 Limitations on proceedings against trustees.—**

115 (1) Except as provided in subsection (2), all claims by a beneficiary against a
116 trustee for breach of trust are barred as provided in chapter 95 as to:

117 (a) All matters adequately disclosed in a trust disclosure document
118 issued by the trustee or a trust director, with the limitations period beginning
119 on the date of receipt of adequate disclosure.

120 (b) All matters not adequately disclosed in a trust disclosure document

121 if the trustee has issued a final trust accounting and has given written notice
122 to the beneficiary of the availability of the trust records for examination and
123 that any claims with respect to matters not adequately disclosed may be
124 barred unless an action is commenced within the applicable limitations
125 period provided in chapter 95. The limitations period begins on the date of
126 receipt of the final trust accounting and notice.

127 (2) Unless sooner barred by adjudication, consent, or limitations, a
128 beneficiary is barred from bringing an action against a trustee for breach of trust
129 with respect to a matter that was adequately disclosed in a trust disclosure
130 document unless a proceeding to assert the claim is commenced within 6 months
131 after receipt from the trustee or a trust director of the trust disclosure document or a
132 limitation notice that applies to that disclosure document, whichever is received
133 later.

134 (3) When a trustee has not issued a final trust accounting or has not given
135 written notice to the beneficiary of the availability of the trust records for
136 examination and that claims with respect to matters not adequately disclosed may
137 be barred, a claim against the trustee for breach of trust based on a matter not
138 adequately disclosed in a trust disclosure document is barred as provided in chapter
139 95 and accrues when the beneficiary has actual knowledge of:

140 (a) The facts upon which the claim is based, if such actual knowledge

141 is established by clear and convincing evidence; or

142 (b) The trustee’s repudiation of the trust or adverse possession of trust
143 assets.

144 Paragraph (a) applies to claims based upon acts or omissions occurring on or after
145 July 1, 2008. A beneficiary’s actual knowledge that he or she has not received a
146 trust accounting does not cause a claim to accrue against the trustee for breach of
147 trust based upon the failure to provide a trust accounting required by s. 736.0813 or
148 former s. 737.303 and does not commence the running of any period of limitations
149 or laches for such a claim, and paragraph (a) and chapter 95 do not bar any such
150 claim.

151 (4) As used in this section, the term:

152 (a) “Trust disclosure document” means a trust accounting or any other
153 written report of the trustee or a trust director. A trust disclosure document
154 adequately discloses a matter if the document provides sufficient
155 information so that a beneficiary knows of a claim or reasonably should
156 have inquired into the existence of a claim with respect to that matter.

157 (b) “Trust accounting” means an accounting that adequately discloses
158 the information required by and that substantially complies with the
159 standards set forth in s. 736.08135.

160 (c) “Limitation notice” means a written statement of the trustee or a

161 trust director that an action by a beneficiary ~~against the trustee~~ for breach of
162 trust based on any matter adequately disclosed in a trust disclosure document
163 may be barred unless the action is commenced within 6 months after receipt
164 of the trust disclosure document or receipt of a limitation notice that applies
165 to that trust disclosure document, whichever is later. A limitation notice may
166 but is not required to be in the following form: “An action for breach of trust
167 based on matters disclosed in a trust accounting or other written report of the
168 trustee or a trust director may be subject to a 6-month statute of limitations
169 from the receipt of the trust accounting or other written report. If you have
170 questions, please consult your attorney.” . . .

172 **Part XIV: DIRECTED TRUSTS**

173 [736.1401 SHORT TITLE](#)

174 [736.1402 DEFINITIONS](#)

175 [736.1403 APPLICATION; PRINCIPAL PLACE OF ADMINISTRATION](#)

176 [736.1405 EXCLUSIONS](#)

177 [736.1406 POWERS OF TRUST DIRECTOR](#)

178 [736.1407 LIMITATIONS ON TRUST DIRECTOR](#)

179 [736.1408 DUTY AND LIABILITY OF TRUST DIRECTOR](#)

180 [736.1409 DUTY AND LIABILITY OF DIRECTED TRUSTEE](#)

181 [736.1410 DUTY TO PROVIDE INFORMATION](#)

182 [736.1411 NO DUTY TO MONITOR, INFORM, OR ADVISE](#)

183 736.1412 APPLICATION TO COTRUSTEE

184 736.1413 LIMITATION OF ACTION AGAINST TRUST DIRECTOR

185 736.1414 DEFENSES IN ACTION AGAINST TRUST DIRECTOR

186 736.1415 JURISDICTION OVER TRUST DIRECTOR

187 736.1416 OFFICE OF TRUST DIRECTOR

188 EFFECTIVE DATE

189
190 **736.1401 SHORT TITLE.** — This part may be cited as the Florida Uniform
191 Directed Trust Act.

192
193 **736.1403 APPLICATION; PRINCIPAL PLACE OF**
194 **ADMINISTRATION.**—

195 (1) This part applies to a trust, whenever created, that has its principal place
196 of administration in this state, subject to the following rules:

197 (a) If the trust was created before [the effective date of this part], this
198 part applies only to a decision or action occurring on or after the effective date of
199 this part.

200 (b) If the principal place of administration of the trust is changed to
201 this state on or after [the effective date of this part], this part applies only to a
202 decision or action occurring on or after the date of the change.

203 (2) In addition to the provisions of s. 736.0108, in a directed trust, terms of

204 the trust which designate the principal place of administration of the trust in
205 Florida are valid and controlling if a trust director’s principal place of business is
206 located in or a trust director is a resident of Florida.

207

208 **736.1405 EXCLUSIONS. —**

209 (1) In this section, “power of appointment” means a power that enables a
210 person acting in a nonfiduciary capacity to designate a recipient of an ownership
211 interest in or another power of appointment over trust property.

212 (2) Unless the terms of a trust expressly provide otherwise by specific
213 reference to this Part XIV or this s. 736.1405(2), this part does not apply to:

- 214 (a) a power of appointment;
- 215 (b) a power to appoint or remove a trustee or trust director;
- 216 (c) a power of a settlor over a trust while it is revocable by that settlor;
- 217 (d) a power of a beneficiary over a trust to the extent the exercise or
218 nonexercise of the power affects the beneficial interest of:

- 219 1. the beneficiary; or
- 220 2. another beneficiary represented by the beneficiary under s.
221 736.0301 through s. 736.0305 with respect to the exercise or nonexercise of the
222 power;

223 (e) a power over a trust if the terms of the trust provide that the power

224 is held in a nonfiduciary capacity, and

225 1. the power must be held in a nonfiduciary capacity to achieve
226 the settlor's tax objectives under the United States Internal Revenue Code of 1986,
227 as amended, and regulations issued thereunder, as amended; or

228 2. it is a power to reimburse the settlor for all or a part of the
229 settlor's income tax liabilities attributable to the income of the trust; or

230 (f) a power to add or to release a power under the trust instrument if
231 the power subject to addition or release causes the settlor to be treated as the owner
232 of all or any portion of the trust for federal income tax purposes.

233 (3) Unless the terms of a trust provide otherwise, a power granted to a
234 person other than a trustee:

235 (a) to designate a recipient of an ownership interest in trust property,
236 including a power to terminate a trust, is a power of appointment and not a power
237 of direction; and

238 (b) to create, modify or terminate a power of appointment, is a power
239 of direction and not a power of appointment, except a power to create a power of
240 appointment exercisable only as adjunct to and part of the exercise of a power of
241 appointment.

242

243 **736.1406 POWERS OF TRUST DIRECTOR. —**

244 (1) Subject to s. 736.1407, the terms of a trust may grant a power of
245 direction to a trust director.

246 (2) A power of direction includes only those powers granted by the terms of
247 the trust.

248 (3) Unless the terms of a trust provide otherwise:

249 (a) a trust director may exercise any further power appropriate to the
250 exercise or nonexercise of a power of direction granted to the trust director under
251 subsection (1); and

252 (b) trust directors with joint powers must act by majority decision.

253
254 **736.1407 LIMITATIONS ON TRUST DIRECTOR.**— A trust director is
255 subject to the same rules as a trustee in a like position and under similar
256 circumstances in the exercise or nonexercise of a power of direction or further
257 power under s. 736.1406(3)(a) regarding:

258 (1) a payback provision in the terms of a trust necessary to comply with the
259 reimbursement requirements of Medicaid law in Section 1917 of the Social
260 Security Act, 42 U.S.C. Section 1396p(d)(4)(A)[, as amended][, and regulations
261 issued thereunder, as amended]; and

262 (2) a charitable interest in the trust, including notice regarding the interest to
263 the Attorney General.

264

265 **736.1408 DUTY AND LIABILITY OF TRUST DIRECTOR.—**

266 (1) Subject to subsection (2), with respect to a power of direction or further
267 power under s. 736.1406(3)(a):

268 (a) a trust director has the same fiduciary duty and liability in the
269 exercise or nonexercise of the power:

270 1. if the power is held individually, as a sole trustee in a like
271 position and under similar circumstances; or

272 2. if the power is held jointly with a trustee or another trust
273 director, as a cotrustee in a like position and under similar circumstances; and

274 (b) the terms of the trust may vary the trust director's duty or liability
275 to the same extent the terms of the trust could vary the duty or liability of a trustee
276 in a like position and under similar circumstances.

277 (2) Unless the terms of a trust provide otherwise, if a trust director is
278 licensed, certified, or otherwise authorized or permitted by law other than this part
279 to provide health care in the ordinary course of the trust director's business or
280 practice of a profession, to the extent the trust director acts in that capacity the trust
281 director has no duty or liability under this part.

282 (3) The terms of a trust may impose a duty or liability on a trust director in
283 addition to the duties and liabilities under this section.

284

285 **736.1409 DUTY AND LIABILITY OF DIRECTED TRUSTEE. —**

286 (1) Subject to subsection (2), a directed trustee shall take reasonable action
287 to comply with a trust director's exercise or nonexercise of a power of direction or
288 further power under s. 736.1406(3)(a) and the trustee is not liable for such
289 reasonable action.

290 (2) A directed trustee must not comply with a trust director's exercise or
291 nonexercise of a power of direction or further power under s. 736.1406(3)(a) to the
292 extent that by complying the trustee would engage in willful misconduct.

293 (3) An exercise of a power of direction under which a trust director may
294 release a trustee or another trust director from liability for breach of trust is not
295 effective if:

296 (a) the breach involved the trustee's or other director's willful
297 misconduct;

298 (b) the release was induced by improper conduct of the trustee or
299 other director in procuring the release; or

300 (c) at the time of the release, the trust director did not know the
301 material facts relating to the breach.

302 (4) A directed trustee that has reasonable doubt about its duty under this
303 section may apply to the court for instructions, with attorney fees and costs to be

304 paid from assets of the trust in the manner provided in this code.

305 (5) The terms of a trust may impose a duty or liability on a directed trustee
306 in addition to the duties and liabilities under this part.

307

308 **736.1410 DUTY TO PROVIDE INFORMATION. —**

309 (1) Subject to s. 736.1411, a trustee shall provide information to a trust
310 director to the extent the information is reasonably related both to:

311 (a) the powers or duties of the trustee; and

312 (b) the powers or duties of the trust director.

313 (2) Subject to s. 736.1411, a trust director shall provide information to a
314 trustee or another trust director to the extent the information is reasonably related
315 both to:

316 (a) the powers or duties of the trust director; and

317 (b) the powers or duties of the trustee or other trust director.

318 (3) A trustee that acts in reliance on information provided by a trust director
319 is not liable for a breach of trust to the extent the breach resulted from the reliance,
320 unless by so acting the trustee engages in willful misconduct.

321 (4) A trust director that acts in reliance on information provided by a trustee
322 or another trust director is not liable for a breach of trust to the extent the breach
323 resulted from the reliance, unless by so acting the trust director engages in willful

324 misconduct.

325 (5) A trust director shall provide information within the trust director's
326 knowledge or control to a qualified beneficiary upon a written request of a
327 qualified beneficiary to the extent the information is reasonably related to the
328 powers or duties of the trust director.

329

330 **736.1411 NO DUTY TO MONITOR, INFORM, OR ADVISE. —**

331 (1) Notwithstanding s. 736.1409(1), unless the terms of a trust provide
332 otherwise:

333 (a) a trustee does not have a duty to:

334 1. monitor a trust director; or

335 2. inform or give advice to a settlor, beneficiary, trustee, or trust
336 director concerning an instance in which the trustee might have acted differently
337 than the trust director; and

338 (b) by taking an action described in paragraph (a), a trustee does not
339 assume the duty excluded by paragraph (a).

340 (2) Notwithstanding s. 736.1408(1), unless the terms of a trust provide
341 otherwise:

342 (a) a trust director does not have a duty to:

343 1. monitor a trustee or another trust director; or

344 2. inform or give advice to a settlor, beneficiary, trustee, or
345 another trust director concerning an instance in which the trust director might have
346 acted differently than a trustee or another trust director; and

347 (b) by taking an action described in paragraph (a), a trust director does
348 not assume the duty excluded by paragraph (a).

349

350 **736.1412 APPLICATION TO COTRUSTEE.—**

351 (1) The terms of a trust may provide for the appointment of more than one
352 trustee but confer upon one or more of the trustees, to the exclusion of the others,
353 the power to direct or prevent specified actions of the trustees.

354 (2) The excluded trustees shall act in accordance with the exercise of the
355 power in the manner, and with the same duty and liability, as a directed trustee
356 with respect to a trust director's power of direction under s. 736.1409 through s.
357 736.1411.

358 (3) The trustee or trustees having the power to direct or prevent actions of
359 the excluded trustees shall be liable to the beneficiaries with respect to the exercise
360 of the power as if the excluded trustees were not in office and shall have the
361 exclusive obligation to account to and to defend any action brought by the
362 beneficiaries with respect to the exercise of the power.

363

364 **736.1413 LIMITATION OF ACTION AGAINST TRUST DIRECTOR. —**

365 (1) An action against a trust director for breach of trust must be commenced
366 within the same limitation period as under s. 736.1008 an action for breach of trust
367 against a trustee in a like position and under similar circumstances.

368 (2) A trust accounting or any other written report of a trustee or a trust
369 director has the same effect on the limitation period for an action against a trust
370 director for breach of trust that such trust accounting or written report would have
371 under s. 736.1008 in an action for breach of trust against a trustee in a like position
372 and under similar circumstances.

373

374 **736.1414 DEFENSES IN ACTION AGAINST TRUST DIRECTOR. —** In an

375 action against a trust director for breach of trust, the trust director may assert the
376 same defenses a trustee in a like position and under similar circumstances could
377 assert in an action for breach of trust against the trustee.

378

379 **736.1415 JURISDICTION OVER TRUST DIRECTOR. —**

380 (1) By accepting appointment as a trust director of a trust subject to this part,
381 the trust director submits to the personal jurisdiction of the courts of this state
382 regarding any matter related to a power or duty of the trust director.

383 (2) This section does not preclude other methods of obtaining jurisdiction

384 over a trust director.

385

386 **736.1416 OFFICE OF TRUST DIRECTOR.—**

387 (1) Unless the terms of a trust provide otherwise, the rules applicable to a
388 trustee apply to a trust director regarding the following matters to the extent of the
389 powers, duties, and office of the trust director:

390 (a) role of court under s.736.0201;

391 (b) proceedings for review of employment of agents and review of
392 compensation of trustee and employees of a trust under s. 736.0206;

393 (c) representation by holder of power of appointment under s.
394 736.0302(4);

395 (d) designated representative under s. 736.0306(2);

396 (e) requirements for creation of a trust under s. 736.0402(3);

397 (f) as to allowing application by the trust director for judicial
398 modification, termination, combination or division under ss. 736.04113,
399 736.04114, 736.04115, or 736.0414(2) if the trust director is so authorized by the
400 terms of the trust;

401 (g) discretionary trusts and the effect of a standard under s. 736.0504;

402 (h) creditors' claims against settlor under s. 736.0505(1)(c);

403 (i) trustee's duty to pay expenses and obligations of settlor's estate

- 404 under s. 736.05053(4);
- 405 (j) acceptance under s. 736.0701;
- 406 (k) giving of bond to secure performance under s. 736.0702;
- 407 (l) vacancy and appointment of successor under s. 736.704;
- 408 (m) resignation under s. 736.0705;
- 409 (n) removal under s. 736.706;
- 410 (o) reasonable compensation under s. 736.0708;
- 411 (p) reimbursement of expenses under s. 736.0709;
- 412 (q) payment of costs or attorney fees under s. 736.0802(10), if the
413 trust director has a power of direction or a further power to direct the payment of
414 such costs or attorney fees pursuant to s. 736.1406(2) or (3)(a), except that
415 references in s. 736.0802(10) to payments made or authorized to be made by a
416 trustee shall instead refer to payments made or authorized to be made at the
417 direction of the trust director;
- 418 (r) discretionary power and tax savings provisions under s. 736.0814;
- 419 (s) administration pending outcome of contest or other proceeding
420 under s. 736.08165;
- 421 (t) applicability of chapter 518 under s. 736.0901;
- 422 (u) nonapplication of prudent investor rule under s. 736.0902;
- 423 (v) remedies for breach of trust under s. 736.1001;

424 (w) damages for breach of trust under s. 736.1002;
425 (x) damages in absence of breach under s. 736.1003;
426 (y) attorney's fees and costs under s. 736.1004;
427 (z) trustee's attorney fees under ss. 736.1007 (5) through 736.1007(7);
428 (aa) reliance on trust instrument under s. 736.1009;
429 (bb) exculpation under s. 736.1011;
430 (cc) events affecting administration under s. 736.1010;
431 (dd) beneficiary's consent, release, or ratification under s. 736.1012;
432 and
433 (ee) limitations on actions against certain trusts under s. 736.1014.

434 (2) If a person has not accepted a trust directorship under the terms of the
435 trust or under s. 736.0701 or a trustee, settlor, or a qualified beneficiary of the trust
436 is uncertain whether such acceptance has occurred, a trustee, settlor, or a qualified
437 beneficiary of the trust may make a written demand on a person designated to
438 serve as a trust director, with a written copy to the trustees, to accept or confirm
439 prior acceptance of the trust directorship in writing. A written acceptance, written
440 acknowledgment of prior acceptance, or written declination of the trust
441 directorship, shall be delivered by the designated trust director within 60 days of
442 receipt of such demand to all trustees, qualified beneficiaries, and the settlor if
443 living.

444

445 **EFFECTIVE DATE.** The provisions of this Act take effect July 1, 2020.

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By _____ J. Richard Caskey _____, Chair, ___ Probate and Trust Litigation Committee
of the Real Property Probate & Trust Law Section (RPPTL Approval
Date _____, 2018)

Address _____ 777 S. Harbour Island Blvd. Suite 215, Tampa, FL
33602
Telephone: (813) 443-5709 _____

Position Type Probate and Trust Litigation Committee, RPPTL Section, The Florida Bar

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Appearances

Before Legislators (SAME)
(List name and phone # of those having face to face contact with Legislators)

**Meetings with
Legislators/staff** (SAME)
(List name and phone # of those having face to face contact with Legislators)

PROPOSED ADVOCACY

All types of partisan advocacy or nonpartisan technical assistance should be presented to the Board of Governors via this request form. All proposed legislation that has *not* been filed as a bill or a proposed committee bill (PCB) should be attached to this request in legislative format - Standing Board Policy 9.20(c). Contact the Governmental Affairs office with questions.

If Applicable,

List The Following N/A
(Bill or PCB #) (Bill or PCB Sponsor)

Indicate Position Support _____ Oppose _____ Tech Asst. _____ Other _____

Proposed Wording of Position for Official Publication:

Support the proposed amendments clarifying the personal representative's exclusive authority to pursue causes of action on behalf of the estate, including but not limited to claims for the return of probate assets wrongfully transferred prior to the decedent's death, including changes to Fla. Stat. §§ 731.201(32), 733.607(1), and 733.612(20).

Reasons For Proposed Advocacy:

The proposed amendments add language and make changes to Florida Statutes §§ 731.201(32), 733.607(1), and 733.612(20), to clarify that causes of action owned by a decedent at the time of death are property of the estate and that the personal representative is the proper party to pursue such causes of action on behalf of the estate. Currently, there is tension in Florida law relating to when a personal

WHITE PAPER

PROPOSED AMENDMENTS OF F.S. SECTIONS 731.201(32), 733.607(1), and 733.612(20)

A. SUMMARY

The proposed amendments add language and make changes to Florida Statutes §§ 731.201(32), 733.607(1), and 733.612(20) to clarify that causes of action owned by a decedent at the time of death are property of the estate and that the personal representative is the proper party to pursue such causes of action on behalf of the estate. The proposed amendments clarify the personal representative's exclusive authority to pursue causes of action on behalf of the estate, including but not limited to claims for the return of probate assets wrongfully transferred prior to the decedent's death.

B. CURRENT SITUATION

Currently, there is tension in Florida law relating to when a personal representative is necessary in proceedings to recover the decedent's assets, particularly assets transferred during the life of the decedent ("inter-vivos transfers"). A divergence among Florida courts has created confusion as to the proper party to pursue these claims on behalf of the estate and has failed to establish a clear rule about when the estate would be indispensable to these causes of action.

Historically, several Florida Courts, including most recently the Fourth District Court of Appeal in *Parker v. Parker*, 185 So. 3d 616 (Fla. 4th DCA 2016), have permitted a decedent's heirs, individually, to pursue claims to set aside inter-vivos conveyances of the decedent, without requiring that the decedent's estate be joined as a party to the suit.

Conversely, a line of several other more recent Florida cases have held that the task of recovering property for the benefit of the Estate is the duty of the personal representative (or administrator ad litem when the personal representative has a conflict) and should not be entrusted to individual beneficiaries.

Although §733.607 clearly *authorizes* the personal representative to bring these claims, the Fourth District Court of Appeals in *Parker v. Parker* interprets §733.607 to hold that causes of action to set aside inter-vivos transfers of the decedent are not exclusively the personal representative's actions while also setting a precedent that the estate is not an indispensable party to the proceedings. While the law in this area appears to be particularly fact sensitive, the *Parker* decision is in conflict with other decisions which have held that, where an estate is open, the personal representative – as opposed to the individual beneficiaries - is the proper party to bring claims to recover the decedent's property.

It is further difficult to reconcile the holding in *Parker* with §733.609 which states, in part, "Any person taking, converting, or intermeddling with the property of a decedent shall be liable to the personal representative or curator, when appointed, for the value of the property so taken or converted and for all damages to the estate caused by the wrongful action." Florida law bestows numerous fiduciary duties on personal representatives and none on individual beneficiaries. *See* Fla. Stat. §733.604 (2017). The personal representative is charged with acting

in the best interest of the estate and is also required to consider the claims of creditors and other interested persons when settling and distributing estate assets. The personal representative is best suited to pursue a decedent's and the estate's causes of actions under the existing themes and intent of the Florida Probate Code. These proposed amendments serve to clarify that position.

1. SECTION-BY SECTION ANALYSIS

a. The existing language of §731.201(32) does not include or address “causes of action” as being an asset of the estate.

The relevant portion of Florida Statute § 731.201(32) currently reads as follows:

“(32) “Property” means both real and personal property or any interest in it and anything that may be the subject of ownership by the decedent or their estate.”

The lack of specificity in §731.201(32) has led to confusion and inconsistent interpretations among Florida courts as to the whether the decedent's “causes of action” are estate assets, subject to the personal representative's control. For example, in *Parker v. Parker*, the court cited to §733.607 and noted that “every personal representative has a right to, and shall take possession or control of, the decedent's property.” The *Parker* Court found that properties transferred prior to the decedent's death were not part of “the decedent's property” and, as a result, not subject to the personal representative's control under §733.607. The Court ultimately allowed individual beneficiaries to pursue claims for the recovery of estate assets, essentially circumventing the probate process by failing to recognize the rights of creditors, administrative or priority claims, and other non-party beneficiaries. The proposed amendment to §731.201(32) serves to clarify that the causes of action themselves (of either the estate or those the decedent had at time of death) are “property” of the estate and therefore subject to the personal representative's possession and control.

b. The existing statutory language in §733.607 does not explain that it is the estate's personal representative who has exclusive standing to pursue claims for the return of estate assets that were fraudulently transferred prior to the decedent's death – unless the claims have been otherwise properly distributed, abandoned, or adjudicated.

The relevant portion of Florida Statute §733.607 currently reads as follows:

(1) Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of, the decedent's property, except the protected homestead, but any real property or tangible personal property may be left with, or surrendered to, the person presumptively entitled to it unless possession of the property by the personal representative will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by a beneficiary is conclusive evidence that the possession of the property by the personal representative is necessary for the purposes of administration, in any action against the beneficiary for possession of it. The personal representative shall take all steps reasonably necessary for the management, protection, and preservation of

the estate until distribution and may maintain an action to recover possession of property or to determine the title to it.

Consequently, Florida courts have interpreted §733.607(1) to afford contradicting duties and rights to personal representatives versus individual estate beneficiaries. A few of the contradictory opinions are discussed below.

The Fourth District Court of Appeal in *Parker v. Parker*, authorized individual children of a decedent to pursue claims for the return of estate assets by citing to several Florida cases that have “repeatedly permitted a decedent’s children to pursue claims to set aside inter-vivos conveyances based upon allegations of undue influence, without requiring that the decedent’s estate be joined as a party to the suit.” The Court further noted that the defendants had provided no authority to support their position that, under §733.607, the estate is an indispensable party to an action to set aside inter-vivos conveyances due to alleged undue influence. Ultimately, the Fourth District concluded that the decedent’s estate was not so essential to the suit that a final decision could not be rendered without joining the estate as a party.

Prior to *Parker*, several Florida cases held conversely that the personal representative is the proper party to recover the decedent’s assets on behalf of the estate. The courts relied on §733.607 and the personal representative’s duty to take control of the decedent’s property and his or her right to pursue valuable claims of the estate.

In *All Children’s Hosp. Inc. v. Owens*, 754 So. 2d 802 (Fla. 2d DCA 2000), the Second District Court of Appeal reviewed the inter-vivos transfer of over \$1.7 million to the decedent’s caretaker and ultimately held that it is the general duty of the personal representative to settle and distribute the estate and, pursuant to §733.607, the personal representative has the specific statutory authority to recover estate assets and determine title to them.

The Second District was concerned with duplicating efforts of an administrator ad litem during pendency of the estate, citing to Fla. Stat. §731.303(2)(b)(3). The Second District took issue with allowing individual beneficiaries to obtain personal monetary judgments that were likely to compete with the personal representative’s efforts to settle and distribute the estate. Finally, the Second District reasoned that “the Charities’ right to eventually receive a share of any residue left in the estate does not give them the right to obtain a constructive trust for their own benefit over property they claim should be within the estate.”

Similarly, in *Traub v. Zlatkiss*, 559 So.2d 443 (Fla. 5th DCA 1990), a widow sued the business partner of the decedent to set aside inter-vivos transfers based on the decedent’s purported attempt to diminish her elective share. The widow sought a constructive trust over property and a return of assets to the decedent’s estate. The Fifth District Court of Appeal noted that the wife had a “procedural impediment” to her cause of action and explained that rescission and constructive trust actions are to be brought by the personal representative of the estate and cannot be directly asserted by the widow. Specifically, the Fifth District explained, “in cases where transfers by decedents are subject to rescission upon classic grounds such as fraud, undue influence, mistake, or lack of mental capacity, the cause of action for rescission, or to establish a constructive trust, is in the personal representative of the decedent’s estate and cannot be directly asserted by the widow.”

The existing statutory language in §733.607 has led to competing opinions among appellate courts as to the proper party to bring the decedent's and estate's causes of action. The proposed amendment to §733.607 clarifies that the personal representative has the exclusive right to maintain an action to recover possession of property or to determine the title to it. The cause of action would be treated as any other estate property, which is subject to abandonment, assignment, distribution, or adjudication by order of the court.

c. The existing language in §733.612(20) does not make clear that the personal representative may also prosecute or defend claims or proceedings in any jurisdiction for the protection of the *decedent's property* in addition to protection of the estate's property.

The relevant portion of Florida Statute § 733.612(20) currently reads as follows:

“733.612 Transactions authorized for the personal representative; exceptions.— Except as otherwise provided by the will or court order, and subject to the priorities stated in s. 733.805, without court order, a personal representative, acting reasonably for the benefit of the interested persons, may properly:...

(20) Prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative....”

The *Parker* decision appeared to turn on this distinction – i.e. the court distinguished between a personal representative's responsibilities for assets held in the decedent's name at death versus those that were no longer in the decedent's name upon passing. Other courts have noted that claims related to inter-vivos transfers impact the estate's involvement in the litigation such that the personal representative is necessary to pursue the claims. For example, in *Kestner v. Helm*, 425 F. Supp 771 (M.D. Fla. 1977), the Middle District explained, “Under Florida law, a prior confidential relationship between a donor and donee raises a prima facie question covering the voidness of an inter-vivos gift because of undue influence. If the plaintiff should prevail in having the inter-vivos transfer of money from the decedent to the defendant set aside as void, those funds would become assets of the estate, subject to the dispositive provisions of his will. Obviously, then, there is a compelling necessity that the interests of the decedent's estate be represented concerning the money at stake in the controversy.”

The proposed amendment to §733.612(20) disavows the distinction drawn by the *Parker* court and clarifies the personal representative's duty to prosecute or defend claims for the protection of the estate, the decedent's property, and of the personal representative. Read together with the amendments to §731.201, the personal representative will have the authority to prosecute or defend all claims involving the estate's property, including causes of action of the estate and causes of action the decedent had at death.

C. EFFECT OF PROPOSED CHANGES

The proposed amendment adds language to §731.201(32) and serves to clarify that the decedent's property includes “cause of action of the estate and causes of action the decedent had at the time of death”. The personal representative is charged with the recovery and possession of

the decedent's property and this may include property that was transferred during the life of the decedent. The proposed amendment to §731.201(32) will clarify the personal representative's authority over all of the decedent's property, including causes of action for the return of property.

The proposed amendment adds language to §733.612(20) and serves to establish that the personal representative has the duty to prosecute and defend claims or proceedings for the protection of the estate, the decedent's property, and of the personal representative. The addition establishes the personal representative's duty to prosecute claims and causes of action of the estate or that the decedent had at death which may include claims for fraudulent gifts or other improper inter-vivos transfers.

The proposed amendment adds language to §733.607(1) and serves to clarify that it is the personal representative who has exclusive standing to pursue causes of action on behalf of the estate. The personal representative maintains this exclusive right until the cause of action has been distributed, abandoned, or otherwise adjudicated by the court. This clarification recognizes the fiduciary duties of a personal representative and preserves the function and role of a probate administration in Florida. Allowing the personal representative the first opportunity to pursue these claims recognizes these causes of action as potentially valuable estate assets, subject to the personal representative's and the court's oversight and aligning the estate's causes of action with any other estate assets, that the personal representative has responsibilities not only to beneficiaries but to all interested persons including creditors and other claimants. The personal representative is the party best suited to bring the estate and decedent's causes of action and the amendments to §733.607(1) clarify this position and directly overturn *Parker v. Parker*.

D. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

None

E. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

None

F. CONSTITUTIONAL ISSUES

None

G. OTHER INTERESTED PARTIES

Florida Elder Law Section.

1 A bill to be entitled

2 An act relating to probate; amending s. 731.201(32), F.S. in part; adding to the definition
3 of property to include estate causes of action; amending s. 733.607, F.S. in part;
4 providing the personal representative with exclusive standing to pursue estate causes of
5 action; amending s. 733.612(20), F.S. in part; clarifying a personal representative's
6 authority over a decedent's property; and providing an effective date.

7
8 Be It Enacted by the Legislature of the State of Florida:

9
10 Section 1. Subsection (32) of Section 731.201, Florida Statutes is amended, to read:

11
12 731.201 General definitions.— Subject to additional definitions in subsequent chapters that are
13 applicable to specific chapters or parts, and unless the context otherwise requires, in this code, in
14 s. 409.9101, and in chapters 736, 738, 739, and 744, the term:

15 (32) "Property" means both real and personal property or any interest in it and anything that
16 may be the subject of ownership, including causes of action of the estate and causes of action the
17 decedent had at the time of death.

18
19 Section 2. Subsection (1) of Section 733.607, Florida Statutes, is amended to read:

20
21 733.607 Possession of estate.—

22 (1) Except as otherwise provided by a decedent's will, every personal representative has a right
23 to, and shall take possession or control of, the decedent's property, except the protected
24 homestead, but any real property or tangible personal property may be left with, or surrendered
25 to, the person presumptively entitled to it unless possession of the property by the personal
26 representative will be necessary for purposes of administration. The request by a personal
27 representative for delivery of any property possessed by a beneficiary is conclusive evidence that
28 the possession of the property by the personal representative is necessary for the purposes of
29 administration, in any action against the beneficiary for possession of it. The personal
30 representative shall take all steps reasonably necessary for the management, protection, and
31 preservation of the estate until distribution and ~~may~~ has the exclusive right to maintain an action
32 to recover possession of property or to determine the title to it. The personal representative has
33 no duty to maintain a cause of action that has been abandoned, assigned, distributed, or otherwise
34 adjudicated by court order.

35
36 Section 3. Subsection (20) of Section 733.612, Florida Statutes, is amended to read:

37
38 733.612. Transactions authorized for the personal representative; exceptions

39 Except as otherwise provided by the will or court order, and subject to the priorities stated in s.
40 733.805, without court order, a personal representative, acting reasonably for the benefit of the
41 interested persons, may properly:

42 (20) Prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate,
43 the decedent's property, and of the personal representative.

45
46

Section 4. This act shall take effect on October 1, 2019.

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By David Brennan, Chairman, Ad Hoc Guardianship Law Revisions Committee of the Real Property Probate & Trust Law Section

Address David Brennan, Esq., PO Box 2706, Orlando, FL 32802-2706
Phone: (407) 893-7888

Position Type Real Property, Probate and Trust Law Section, The Florida Bar (Florida Bar, section, division, committee or both)

CONTACTS

Board & Legislation Committee Appearance

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Appearances

Before Legislators (SAME) _____
(List name and phone # of those having face to face contact with Legislators)

Meetings with Legislators/staff (SAME) _____
(List name and phone # of those having face to face contact with Legislators)

PROPOSED ADVOCACY

All types of partisan advocacy or nonpartisan technical assistance should be presented to the Board of Governors via this request form. All proposed legislation that has *not* been filed as a bill or a proposed committee bill (PCB) should be attached to this request in legislative format - Standing Board Policy 9.20(c). Contact the Governmental Affairs office with questions.

If Applicable, List The Following [NONE] _____
(Bill or PCB #) (Bill or PCB Sponsor)

Indicate Position Support Oppose _____ Tech Asst. _____ Other _____

Proposed Wording of Position for Official Publication:

Support adoption of the new Florida Guardianship Code chapter 745, Florida Statutes which improves upon Florida's current guardianship code (Chapter 744).

Reasons For Proposed Advocacy:

Florida's Guardianship Code was last updated more than 20 years ago and the Ad Hoc committee was created to review Florida's guardianship laws and improve upon them with a focus on improving the system, confirming and improving the due process protections given to those within the guardianship system, reviewing the system to reduce economic hardship, and overall improvements on Florida's already heralded guardianship laws. The proposed Florida Chapter 745 is the culmination of the Ad Hoc committee's more than 7 years of work and will be a significant improvement on Florida Chapter 744.

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

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 vulnerable
42 adults and minors in the state of Florida; and also finds that:

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

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

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

61 as persons who are not incapacitated; and that accomplishes these
62 objectives by providing, in each case, the form of assistance that
63 least interferes with their capacity to act on their own behalf.
64 This code shall be liberally construed to accomplish this purpose.
65

66 745.103 Applicability.

67 This code shall take effect on _____. The substantive
68 rights of all persons that vested prior to the effective date of
69 this code shall be determined as provided in Chapter 744 as it
70 existed prior to the effective date of this code. The procedures
71 for enforcement of substantive rights shall be as provided in the
72 Florida Probate Rules.
73

74 745.104 Rules of evidence.

75 The Florida Evidence Code is applicable in incapacity and
76 guardianship proceedings unless otherwise provided by this code.
77

78 745.105 Construction against implied repeal.

79 This code is intended as unified coverage of its subject matter. No
80 part of it shall be impliedly repealed by subsequent legislation if
81 that construction can reasonably be avoided.
82

83 745.106 Definitions.

84 As used in this code, the term:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

227 745.107 Additional definitions.

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

233
234 745.108 Verification of documents.

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

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

242
243 745.109 Costs.

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

247
248 745.110 Notice and service.

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

256
257 745.111 Recording of hearings.

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

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

263
264 745.112 Confidentiality of guardianship records.

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

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

271 (a) The court;

272 (b) The clerk;

273 (c) The guardian;

274 (d) The guardian's attorney;

275 (e) The ward's attorney;

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

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

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

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

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

287

288 745.113 Guardian and professional's fees and expenses.

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

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

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

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

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

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

309 (a) The time and labor required;

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

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

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

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

319 (f) The results obtained;

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

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

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

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

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

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

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

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

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

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

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

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

375 PART II

376 VENUE

377 745.201 Venue.

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

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

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

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

391

392 745.202 Residence of ward.

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

397

398 745.203 Change of venue.

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

403

404 745.204 Change of ward's residence.

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

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

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

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

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

435 PART III
436 INCAPACITY

437 745.301 Petition to determine incapacity.

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

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

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

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

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

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

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

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

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

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

462

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

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

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

480

481 745.303 Rights of persons determined incapacitated.

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

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

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

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

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

490 (e) To have a qualified guardian;

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

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

496 (g) To be properly educated;

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

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

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

505 (k) To have access to the courts;

506 (l) To counsel;

507 (m) To receive visitors and communicate with others;
508 (n) To notice of all proceedings related to determination of
509 capacity and appointment of a guardian; and
510 (o) To privacy, including privacy of incapacity and guardianship
511 proceedings.
512 (2) Rights that may be removed from a person by an order
513 determining incapacity but not delegated to a guardian include the
514 right:
515 (a) To marry. If the right to enter into a contract has been
516 removed, the right to marry is subject to court approval;
517 (b) To vote;
518 (c) To have a driver's license and operate motor vehicles;
519 (d) To travel and make decisions concerning travel; and
520 (e) To seek or retain employment.
521 (3) Rights that may be removed from a person by an order
522 determining incapacity and which may be delegated to a guardian
523 include the right:
524 (a) To contract;
525 (b) To sue and defend lawsuits;
526 (c) To apply for government benefits and deal with all government
527 entities, including taxing authorities;
528 (d) To exercise all rights with regard to ownership and management
529 of property;
530 (e) To make any gift or disposition of property;
531 (f) To determine his or her residence;
532 (g) To consent to medical and mental health treatment and
533 rehabilitation services;
534 (h) To make decisions about his or her social environment or other
535 social aspects of his or her life; and
536 (i) To make decisions about travel and visitation.

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

542

543 745.304 Conduct of Hearing.

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

546 (1) Testify;

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

551 (3) Present evidence;

552 (4) Call witnesses;

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

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

558

559 745.305 Attorney for the alleged incapacitated person.

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

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

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

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

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

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

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

597

598 745.306 Appointment and qualification of examiners.

599 (1) Within 5 days after a petition for determination of incapacity
600 has been filed, the court shall appoint three (3) qualified persons
601 to examine the alleged incapacitated person. One must be a
602 psychiatrist or other physician. The remaining examiners must be
603 either a psychologist, another psychiatrist or other physician, a
604 registered nurse, nurse practitioner, licensed social worker,
605 attorney or a person with an advanced degree in gerontology from an
606 accredited institution of higher education. Examiners must have
607 knowledge, skill, experience, training, or education which, in the
608 court's discretion, qualifies them to render an opinion in an
609 incapacity proceeding. The court shall determine that at least one
610 of the examiners has knowledge of the type of incapacity alleged in
611 the petition to determine incapacity unless waived for good cause.
612 Unless good cause is shown, the alleged incapacitated person's
613 attending or primary care physician may not be appointed as an
614 examiner. Any physician for the alleged incapacitated person shall
615 provide records and information, verbal and written, to an examiner
616 upon the examiner's written request.

617 (2) Examiners may not be related to or associated with one another,
618 with the petitioner, with counsel for the petitioner or the
619 proposed guardian, or with the person alleged to be totally or
620 partially incapacitated. An examiner may not be employed by any
621 private or governmental agency that has custody of, or furnishes
622 services directly or indirectly, to the person or the family of the
623 person alleged to be incapacitated or for whom a guardianship is
624 sought. A petitioner may not serve as an examiner.

625 (3) Examiners must be able to communicate, either directly or
626 through an interpreter, in the language that the alleged

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

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

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

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

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

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

657

658 745.307 Examination of alleged incapacitated person.

659 (1) Each examiner shall interview the alleged incapacitated person
660 and must determine the alleged incapacitated person's ability to
661 exercise those rights specified in s. 745.303. In addition to the
662 examination, each examiner shall have access to, and may consider,
663 previous medical and mental health examinations of the person,
664 including, but not limited to, habilitation plans, school records,
665 psychological and psychosocial reports and other related
666 information voluntarily offered for use by the alleged
667 incapacitated person or the petitioner. The examiners may
668 communicate among themselves as well as with the attorney for the
669 alleged incapacitated person and the petitioner's counsel. In
670 addition, the examiners shall be provided a copy of the petition to
671 determine incapacity.

672 (2) Each examiner shall, within 15 days after appointment, prepare
673 and file with the clerk a report which describes the manner of
674 conducting the examination and the methodology employed by the
675 examiner. The examination must include:

676 (a) If deemed relevant to the examinations and allowed by the
677 alleged incapacitated person, a physical examination (which shall
678 only be conducted by an examiner who is a physician). An examiner
679 who is not a physician may conduct a visual examination of the
680 alleged incapacitated person's physical appearance to determine if
681 there are any visible signs of abuse, injury or illness;

682 (b) A mental health examination, which may consist of, but not be
683 limited to, questions related to orientation, current events and
684 personal identification; and

685 (c) A functional assessment to evaluate the alleged incapacitated
686 person's ability to perform activities of daily living which

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

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

692

693 745.308 Examination reports.

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

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

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

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

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

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

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

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

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

732
733 745.309 Consideration of examination reports.

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

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

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

759
760 745.310 Adjudicatory hearing.

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

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

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

775

776 745.311 Order determining incapacity.

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

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

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

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

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

797
798 745.312 Fees in incapacity proceedings.

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

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

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

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

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

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

831 PART IV

832 RESTORATION TO CAPACITY

833 745.401 Suggestion of capacity.

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

836 (2) Suggestion of Capacity.--

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

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

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

853

854 745.402 Examination of ward.

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

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

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

867

868 745.403 Objection and hearing.

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

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

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

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

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

883

884 745.404 Consideration of examination report.

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

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

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

900

901 745.405 Order restoring capacity.

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

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

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

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

924

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

928 PART V

929 QUALIFICATIONS OF GUARDIANS

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

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

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

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

936 1. Related by lineal consanguinity to the ward;

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

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

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

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

946
947 745.502 Disqualified persons.

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

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

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

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

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

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

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

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

988

989 745.503 Nonprofit corporate guardian.

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

994

995 745.504 Credit and criminal investigation.

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

1012 (3) For professional and public guardians, the court and Office of
1013 Public and Professional Guardians shall accept the satisfactory
1014 completion of a criminal history record check by any method

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

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

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

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

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

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

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

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

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

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

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

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

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

1114
1115 745.505 Guardian education requirements.

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

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

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

1124 (b) The rights of the ward;

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

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

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

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

1133 (b) The preparation of an initial inventory and guardianship
1134 accountings; and
1135 (c) Use of guardianship assets.
1136 (4) Each person appointed by the court to be a guardian must
1137 complete the required number of hours of instruction and education
1138 within 4 months after appointment. The instruction and education
1139 must be completed through a course approved by the chief judge of
1140 the circuit court and taught by a court-approved person or
1141 organization. Court-approved organizations may include, but are not
1142 limited to, community or junior colleges, guardianship
1143 organizations, and local bar associations or The Florida Bar.
1144 (5) Expenses incurred by the guardian to satisfy the education
1145 requirement may be paid from the ward's estate, unless the court
1146 directs that such expenses be paid by the guardian individually.
1147 (6) The court may waive some or all of the requirements of this
1148 section or impose additional requirements. The court shall make its
1149 decision on a case-by-case basis and, in making its decision, shall
1150 consider the experience and education of the guardian, the duties
1151 assigned to the guardian, and the needs of the ward.
1152 (7) The provisions of this section do not apply to professional
1153 guardians.
1154

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

1159 PART VI

1160 APPOINTMENT OF GUARDIANS

1161 745.601 Proposed guardian's information statement.

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

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

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

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

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

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

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

1185

1186 745.602 Considerations in appointment of guardian.

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

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

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

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

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

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

1201 (3) The court shall also:

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

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

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

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

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

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

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

1220

1221 745.603 Petition for appointment of guardian; contents.

1222 (1) A petition to appoint a guardian must be verified by an adult
1223 with personal knowledge of the information in the petition
1224 alleging:

1225 (a) the name, age, residence address, and mailing address of the
1226 alleged incapacitated person or minor and the nature of the
1227 incapacity, if any;

1228 (b) the extent of guardianship proposed, either plenary or limited;

1229 (c) the residence address and mailing address of the petitioner;

1230 (d) the names and mailing addresses of the next of kin of the
1231 incapacitated person or minor, if known to the petitioner;

1232 (e) the name of the proposed guardian and relationship of the
1233 proposed guardian to the ward;

1234 (f) the reasons why the proposed guardian should be appointed;

1235 (g) the nature and value of property subject to the guardianship,
1236 if any; and

1237 (h) the identity of any pre-need guardian designation, healthcare
1238 surrogate designation, and power of attorney, purportedly executed
1239 by the alleged incapacitated person, the identity and county of
1240 residence of any person designated to act under such documents, and
1241 the efforts to locate such documents or persons designated to act.

1242 (2) If a willing and qualified guardian cannot be located, the
1243 petition must so state.

1244 (3) The petition for appointment of a professional guardian must
1245 comply with the provisions of subsection (1), and must state that
1246 the nominated guardian is a professional guardian.

1247

1248 745.604 Notice of petition for appointment of guardian and hearing.

1249 (1) When a petition for appointment of guardian for an
1250 incapacitated person is heard at the conclusion of the hearing in

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

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

1267

1268 745.605 Order on petition for appointment of guardian.

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

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

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

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

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

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

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

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

1305

1306 745.606 Oath of guardian.

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

1310

1311 745.607 Bond of guardian.

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

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

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

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

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

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

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

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

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

1347

1348 745.608 Validity of bond.

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

1354

1355 745.609 Liability of surety.

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

1358

1359 745.610 Alternatives to guardianship.

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

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

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

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

1382

1383 745.611 Letters of guardianship.

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

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

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

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

1397

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

1401 745.713, and 745.714, is created to read:

1402 PART VII

1403 TYPES OF GUARDIANSHIP

1404 745.701 Emergency temporary guardianship.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1485

1486 745.702 Standby guardian of minor.

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

1495

1496 745.703 Standby guardian of adult.

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

1503

1504 745.704 Appointment and powers of standby guardian.

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

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

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

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

1524

1525 745.705 Preneed guardian for adult.

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

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

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

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

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

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

1553

1554 745.706 Preneed guardian for minor.

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

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

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

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

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

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

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

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

1594 |
1595 | 745.707 Voluntary guardianship of property.

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

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

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

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

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

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

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

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

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

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

1647
1648 745.708 Relocation of ward to Florida.

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

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

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

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

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

1670

1671 745.709 Foreign guardian of nonresident ward.

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

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

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

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

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

1700 745.710 Resident guardian of property of nonresident ward.

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

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

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

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

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

1722 hearing on the petition shall be served on the foreign guardian or
1723 other fiduciary appointed for the ward, if any, and on the ward.

1724 (6) In the appointment of the guardian, the court shall be governed
1725 by s. 745.602.

1726 (7) The duties, powers, and liabilities of the guardian shall be
1727 governed by this code.

1728

1729 745.711 Guardian advocates.

1730 The court may appoint a guardian advocate, without adjudication of
1731 incapacity, for a person with developmental disabilities if the
1732 person is only partially incapacitated. Unless otherwise specified,
1733 the proceeding shall be governed by the Florida Probate Rules. In
1734 accordance with the legislative intent of this code, courts are
1735 encouraged to consider appointing a guardian advocate, when
1736 appropriate, as a less restrictive alternative to guardianship.

1737

1738 745.712 Natural guardians.

1739 (1) Parents jointly are natural guardians of their minor children
1740 including their adopted children, unless the parents' parental
1741 rights have been terminated pursuant to chapter 39. If a child is
1742 the subject of any proceeding under chapter 39, the parents may act
1743 as natural guardians under this section unless the court division
1744 with jurisdiction over guardianship proceedings finds that it is
1745 not in the child's best interest. If one parent dies, the surviving
1746 parent remains the sole natural guardian even if the parent
1747 remarries. If the marriage between the parents is dissolved, both
1748 parents remain natural guardians unless the court awards sole
1749 custody to one parent, in which case the parent awarded custody
1750 shall be the sole natural guardian. If the marriage is dissolved
1751 and neither parent is given custody of the child, neither shall act

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

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

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

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

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

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

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

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

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

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

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

1794
1795 745.713 Guardians of minors.

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

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

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

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

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

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

1818

1819 745.714 Claims of minors.

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

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

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

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

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

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

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

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

1848 PART VIII

1849 DUTIES OF GUARDIAN

1850 745.801 Liability of guardian.

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

1854
1855 745.802 Duties of guardian of property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1903

1904 745.803 Verified inventory.

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

1907 (2) The verified inventory must specify and describe the following:

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

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

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

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

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

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

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

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

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

1935
1936 745.804 Audit fee for inventory.

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

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

1945
1946 745.805 Annual accounting.

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

1949 (2) An annual accounting must include:

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

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

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

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

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

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

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

1987 (7) The court may waive the filing of an accounting if it
1988 determines the ward receives income only from social security
1989 benefits and the guardian is the ward's representative payee for
1990 the benefits.

1991
1992 745.806 Simplified accounting.

1993 (1) In a guardianship of property, when all assets of the estate
1994 are in designated depositories under s. 69.031 and the only
1995 transactions that occur in that account are interest accrual,
1996 deposits from a settlement, financial institution service charges
1997 and court authorized expenditures, the guardian may elect to file
1998 an accounting consisting of:

1999 (a) Statements demonstrating all receipts and disbursements of the
2000 ward's account from the financial institution; and

2001 (b) A statement made by the guardian under penalty of perjury that
2002 the guardian has custody and control of the ward's property as
2003 shown in the year-end statement.

2004 (2) The accounting allowed by subsection (1) is in lieu of the
2005 accounting and auditing procedures under s. 745.805. However, any
2006 interested party may seek judicial review as provided in s.
2007 745.1002.

2008
2009 745.807 Audit fee for accounting.

2010 (1) A guardian shall pay, from the ward's property, to the clerk an
2011 audit fee based upon the following graduated fee schedule at the
2012 time of filing the annual accounting:

2013 (a) For property having a value of \$25,000 or less, there shall be
2014 no audit fee.

2015 (b) For property with total value of more than \$25,000 up to and
2016 including \$100,000 the clerk may charge a fee of up to \$100.

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

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

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

2024

2025 745.808 Safe-deposit box.

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

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

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

2043

2044 745.809 Duties of guardian of person.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2121

2122 745.810 Guardianship plan.

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

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

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

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

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

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

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

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

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

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

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

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

2162

2163 745.811 Annual guardianship report for minor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 2234 1. A summary of activities during the preceding year that were
2235 designed to improve the abilities of the ward.
- 2236 2. A statement of whether the ward can have any rights restored.
- 2237 3. A statement of whether restoration of any rights will be sought.
- 2238 4. The court, in its discretion, may require reexamination of the
2239 ward by an appointed examiner at any time.

2240

2241 745.813 Annual guardianship report - filing.

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

2250

2251 745.814 Records retention.

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

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

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

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

2268 PART IX

2269 GUARDIAN POWERS

2270 745.901 Powers and duties of guardian.

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

2275
2276 745.902 Power of guardian of property without court approval.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2373 | differences in valuation on exchange or partition by giving or
2374 | receiving consideration; or dedicate easements to public use
2375 | without consideration;
2376 | (5) Enter into a lease as lessor of the ward's property for any
2377 | purpose, with or without option to purchase or renew, for a term
2378 | within, or extending beyond, the period of guardianship;
2379 | (6) Enter into a lease or arrangement for exploration and removal
2380 | of minerals or other natural resources or enter into a pooling or
2381 | unitization agreement;
2382 | (7) Abandon property when it is valueless or is so encumbered or in
2383 | such condition that it is of no benefit to the ward;
2384 | (8) Borrow money, with or without security, and advance money for
2385 | the protection of the ward;
2386 | (9) Effect a fair and reasonable compromise or settlement with any
2387 | debtor or obligor or extend, renew, or in any manner modify the
2388 | terms of any obligation owing to the ward;
2389 | (10) Prosecute or defend claims or proceedings in any jurisdiction
2390 | for the protection of the ward and of a guardian in the performance
2391 | of guardianship duties, including the filing of a petition for
2392 | dissolution of marriage. Before authorizing a guardian to bring an
2393 | action described in s. 736.0207, the court shall first find that
2394 | the action appears to be in the ward's best interest during the
2395 | ward's probable lifetime. There shall be a rebuttable presumption
2396 | that an action challenging the ward's revocation of all or part of
2397 | a trust is not in the ward's best interests if the revocation
2398 | relates solely to a post-death distribution. This subsection does
2399 | not preclude a challenge after the ward's death. Any judicial
2400 | proceeding specified in 736.0201 must be brought as an independent
2401 | proceeding and is not a part of the guardianship action;

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

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

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

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

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

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

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

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

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

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

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

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

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

2446

2447 745.904 Petition for authority to act.

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

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

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

2463

2464 745.905 Order authorizing action.

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

2466 (a) Describe the property;

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

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

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

2475

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

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

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

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

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

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

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

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

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

2529

2530 745.907 Settlement of claims

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

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

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

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

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

2562

2563 745.908 Authority for extraordinary actions.

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

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

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

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

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

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

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

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

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

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

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

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

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

2609 read:

2610

PART X

2611

OVERSIGHT AND MONITORING

2612

745.1001 Duties of the clerk - General.

2613

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

2615

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

2622

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

2628

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

2631

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

2638

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

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

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

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

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

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

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

2677
2678 745.1002 Judicial review of guardianship inventories and
2679 accountings.

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

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

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

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

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

2714

2715 745.1003 Judicial review of guardianship plans and reports.

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

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

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

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

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

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

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

2761

2762 745.1005 Action on review of guardianship report.

2763 If it appears from the annual guardianship report that:

- 2764 (1) The condition of the ward requires further examination;
2765 (2) Any change in the proposed care, maintenance, or treatment of
2766 the ward is needed;
2767 (3) The ward is qualified for restoration of some or all rights;
2768 (4) The condition or maintenance of the ward requires the
2769 performance or doing of any other thing for the best interest of
2770 the ward which is not indicated in the plan; or
2771 (5) There is any other action necessary to protect the interests of
2772 the ward

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

2777

2778 745.1006 Petition for interim judicial review

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

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

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

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

2792

2793 745.1007 Production of property.

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

2800

2801 745.1008 Guardianship monitors.

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

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

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

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

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

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

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

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

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

2843

2844 745.1009 Emergency guardianship monitor.

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

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

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

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

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

2860 (a) the guardian,

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

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

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

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

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

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

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

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

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

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

2905

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

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

2910 PART XI

2911 RESIGNATION AND DISCHARGE

2912 745.1101 Resignation of guardian.

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

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

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

2919 (a) next of kin of the ward;

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

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

2923
2924 745.1102 Resignation and discharge of guardian of property.

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

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

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

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

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

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

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

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

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

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

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

2974

2975 745.1103 Termination of guardianship of property

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

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

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

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

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

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

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

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

3013

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

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

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

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

3031 (a) All objections have been resolved;

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

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

3037

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

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

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

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

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

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

3060

3061 745.1106 Disposition of unclaimed funds held by guardian.

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

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

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

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

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

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

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

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

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

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

3119

3120 745.1107 Resignation and discharge of guardian of person.

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

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

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

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

3149

3150 745.1108 Termination of guardianship of person.

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

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

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

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

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

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

3170

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

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

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

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

3186

3187 745.1110 Order of discharge.

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

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

3201

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

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

3205 PART XII

3206 REMOVAL OF GUARDIANS

3207 745.1201 Reasons for removal of guardian.

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

3211 (1) Fraud in obtaining appointment.

3212 (2) Failure to discharge guardianship duties.

3213 (3) Abuse of guardianship powers.

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

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

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

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

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

3226 (9) Conviction of a felony.

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

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

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

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

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

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

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

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

3244

3245 745.1202 Proceedings for removal of a guardian.

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

3250

3251 745.1203 Accounting upon removal.

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

3258

3259 745.1204 Appointment of successor guardian upon removal.

3260 (1) If there is still the need for a guardian of the ward, the
3261 court must appoint a successor guardian as permitted under s.
3262 745.501.

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

3269
3270 745.1205 Surrender of property upon removal.

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

3276
3277 745.1206 Proceedings for contempt.

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

3289
3290 Section 13. Part XIII of chapter 745, Florida Statutes,
3291 consisting of sections 745.1301, 745.1302, 745.1303, 745.1304,
3292 745.1305, 745.1306, 745.1307, 745.1308, 745.1309, 745.1310,

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

3295 PART XIII

3296 MISCELLANEOUS

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

3304
3305 745.1302 Appraisals.

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

3311
3312 745.1303 Determination regarding alternatives to guardianship.

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

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

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

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

3327

3328 745.1304 Support of ward's dependents.

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

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

3345

3346 745.1305 Petition for support of ward's dependents.

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

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

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

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

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

3373

3374 745.1306 Payments to guardian of person.

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

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

3386

3387 745.1307 Actions by and against guardian or ward.

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

3394

3395 745.1308 Guardian forbidden to borrow or purchase; exceptions.

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

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

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

3406

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

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

3413 conflicts with the proper discharge of the guardian's duties.

3414 (2) Unless prior court approval is obtained, or unless such
3415 relationship existed prior to appointment of the guardian, a
3416 guardian may not:

3417 (a) Have any interest, financial or otherwise, direct or indirect,
3418 in any business transaction or activity with the ward;

3419 (b) Acquire an ownership, possessory, security, or other pecuniary
3420 interest adverse to the ward;

3421 (c) Be designated as a beneficiary, co-owner or recipient of any
3422 property or benefit of the ward unless such designation or transfer
3423 was made by the ward prior to the ward's incapacity; or

3424 (d) Directly or indirectly purchase, rent, lease, or sell any
3425 property or services from or to any business entity of which the
3426 guardian or the guardian's spouse or any of the guardian's lineal
3427 heirs, or collateral kindred, is an officer, partner, director,
3428 shareholder, or proprietor, or has any financial interest.

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

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

3437

3438 745.1310 Purchasers and lenders protected.

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

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

3445

3446 745.1311 Temporary delegation of authority to surrogate.

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

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

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

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

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

3470

3471 745.1312 Multiple guardians.

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

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

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

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

3488

3489 745.1313 Effect of power of attorney and trust.

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

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

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

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

3506

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

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

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

3518 (b) The power of attorney is invalid;

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

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

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

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

3530 (2) The verified petition must:

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

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

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

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

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

3553

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

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

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

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

3558 (b) Abuses his or her powers; or

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

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

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

3566

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

3572

PART XIV

3573

PUBLIC AND PROFESSIONAL GUARDIANS

3574 745.1401 Office of Public and Professional Guardians.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3648 shall be deposited in the Department of Elderly Affairs
3649 Administrative Trust Fund.

3650
3651 745.1402 Professional guardian registration.

3652 (1) A professional guardian must register with the Office of Public
3653 and Professional Guardians established in part XIV of this chapter.

3654 (2) Annual registration shall be made on forms furnished by the
3655 Office of Public and Professional Guardians and accompanied by the
3656 applicable registration fee as determined by rule. The fee may not
3657 exceed \$100.

3658 (3) Registration must include the following:

3659 (a) Sufficient information to identify the professional guardian,
3660 as follows:

3661 1. If the professional guardian is a natural person, the name,
3662 address, date of birth, and employer identification or social
3663 security number of the person.

3664 2. If the professional guardian is a partnership or association,
3665 the name, address, and employer identification number of the
3666 entity.

3667 (b) Documentation that the bonding and educational requirements of
3668 s. 745.1403 have been met.

3669 (c) Sufficient information to distinguish a guardian providing
3670 guardianship services as a public guardian, individually, through
3671 partnership, corporation, or any other business organization.

3672 (4) Prior to registering a professional guardian, the Office of
3673 Public and Professional Guardians must receive and review copies of
3674 the credit and criminal investigations conducted under s. 745.504.
3675 The credit and criminal investigations must have been completed
3676 within the previous 2 years.

3677 (5) The executive director of the office may deny registration to a
3678 professional guardian if the executive director determines that the
3679 guardian's proposed registration, including the guardian's credit
3680 or criminal investigations, indicates that registering the
3681 professional guardian would violate any provision of this chapter.
3682 If a guardian's proposed registration is denied, the guardian has
3683 standing to seek judicial review of the denial pursuant to chapter
3684 120.

3685 (6) The Department of Elderly Affairs may adopt rules necessary to
3686 administer this section.

3687 (7) A trust company, a state banking corporation or state savings
3688 association authorized and qualified to exercise fiduciary powers
3689 in this state, or a national banking association or federal savings
3690 and loan association authorized and qualified to exercise fiduciary
3691 powers in this state, may, but is not required to, register as a
3692 professional guardian under this section. If a trust company, state
3693 banking corporation, state savings association, national banking
3694 association, or federal savings and loan association described in
3695 this subsection elects to register as a professional guardian under
3696 this subsection, the requirements of subsections (3) and (4) do not
3697 apply and the registration must include only the name, address, and
3698 employer identification number of the registrant, the name and
3699 address of its registered agent, if any, and the documentation
3700 described in paragraph (3)(b).

3701 (8) The Department of Elderly Affairs may contract with the Florida
3702 Guardianship Foundation or other not-for-profit entity to register
3703 professional guardians.

3704 (9) The department or its contractor shall ensure that the clerks
3705 of the court and the chief judge of each judicial circuit receive
3706 information about each registered professional guardian.

3707 (10) A state college or university or an independent college or
3708 university that is located and chartered in Florida, that is
3709 accredited by the Commission on Colleges of the Southern
3710 Association of Colleges and Schools or the Accrediting Council for
3711 Independent Colleges and Schools, and that confers degrees as
3712 defined in s. 1005.02(7) may, but is not required to, register as a
3713 professional guardian under this section. If a state college or
3714 university or independent college or university elects to register
3715 as a professional guardian under this subsection, the requirements
3716 of subsections (3) and (4) do not apply and the registration must
3717 include only the name, address, and employer identification number
3718 of the registrant.

3719
3720 745.1403 Regulation of professional guardians; application; bond
3721 required; educational requirements.

3722 (1) The provisions of this section are in addition to and
3723 supplemental to any other provision of this code, except s.
3724 745.505.

3725 (2) Each professional guardian who files a petition for appointment
3726 after October 1, 1997, shall post a blanket fiduciary bond with the
3727 clerk of the circuit court in the county in which the guardian's
3728 primary place of business is located. The guardian shall provide
3729 proof of the fiduciary bond to the clerks of each additional
3730 circuit court in which the guardian is serving as a professional
3731 guardian. The bond shall be maintained by the guardian in an amount
3732 not less than \$50,000. The bond must cover all wards for whom the
3733 guardian has been appointed at any given time. The liability of the
3734 provider of the bond is limited to the face amount of the bond,
3735 regardless of the number of wards for whom the professional
3736 guardian has been appointed. The act or omissions of each employee

3737 of a professional guardian who has direct contact with the ward or
3738 access to the ward's assets is covered by the terms of such bond.
3739 The bond must be payable to the Governor of the State of Florida
3740 and the Governor's successors in office and conditioned on the
3741 faithful performance of all duties by the guardian. In form the
3742 bond must be joint and several. The bond is in addition to any
3743 bonds required under s. 745.607. This subsection does not apply to
3744 any attorney who is licensed to practice law in this state and who
3745 is in good standing, to any financial institution as defined in s.
3746 745.106, or a public guardian. The expenses incurred to satisfy the
3747 bonding requirements prescribed in this section may not be paid
3748 with the assets of any ward.

3749 (3) Each professional guardian defined in s. 745.106(28) and public
3750 guardian must receive a minimum of 40 hours of instruction and
3751 training. Each professional guardian must receive a minimum of 16
3752 hours of continuing education every 2 calendar years after the year
3753 in which the initial 40-hour educational requirement is met. The
3754 instruction and education must be completed through a course
3755 approved or offered by the Office of Public and Professional
3756 Guardians. The expenses incurred to satisfy the educational
3757 requirements prescribed in this section may not be paid with the
3758 assets of any ward. This subsection does not apply to any attorney
3759 who is licensed to practice law in this state or an institution
3760 acting as guardian under s. 745.1402(7).

3761 (4) Each professional guardian must allow, at the guardian's
3762 expense, an investigation of the guardian's credit history, and the
3763 credit history of employees of the guardian, in a manner prescribed
3764 by the Department of Elderly Affairs.

3765 (5) As required in s. 745.504, each professional guardian shall
3766 allow a level 2 background screening of the guardian and employees
3767 of the guardian in accordance with the provisions of s. 435.04.

3768 (6) Each professional guardian is required to demonstrate
3769 competency to act as a professional guardian by taking an
3770 examination approved by the Department of Elderly Affairs.

3771 (a) The Department of Elderly Affairs shall determine the minimum
3772 examination score necessary for passage of guardianship
3773 examinations.

3774 (b) The Department of Elderly Affairs shall determine the procedure
3775 for administration of the examination.

3776 (c) The Department of Elderly Affairs or its contractor shall
3777 charge an examination fee for the actual costs of the development
3778 and the administration of the examination. The examination fee for
3779 a guardian may not exceed \$500.

3780 (d) The Department of Elderly Affairs may recognize passage of a
3781 national guardianship examination in lieu of all or part of the
3782 examination approved by the Department of Elderly Affairs, except
3783 that all professional guardians must take and pass an approved
3784 examination section related to Florida law and procedure.

3785 (7) The Department of Elderly Affairs shall set the minimum score
3786 necessary to demonstrate professional guardianship competency.

3787 (8) The Department of Elderly Affairs shall waive the examination
3788 requirement in subsection (6) if a professional guardian can
3789 provide:

3790 (a) Proof that the guardian has actively acted as a professional
3791 guardian for 5 years or more; and

3792 (b) A letter from a circuit judge before whom the professional
3793 guardian practiced at least 1 year which states that the

3794 professional guardian had demonstrated to the court competency as a
3795 professional guardian.

3796 (9) The court may not appoint any professional guardian who is not
3797 registered by the Office of Public and Professional Guardians.

3798 (10) This section does not apply to a professional guardian or the
3799 employees of that professional guardian when that guardian is a
3800 trust company, a state banking corporation, state savings
3801 association authorized and qualified to exercise fiduciary powers
3802 in this state, or a national banking association or federal savings
3803 and loan association authorized and qualified to exercise fiduciary
3804 powers in this state.

3805

3806 745.1404 Complaints; disciplinary proceedings; penalties;
3807 enforcement.

3808 (1) By October 1, 2016, the Office of Public and Professional
3809 Guardians shall establish procedures to:

3810 (a) Review and, if determined legally sufficient, investigate any
3811 complaint that a professional guardian has violated the standards
3812 of practice established by the Office of Public and Professional
3813 Guardians governing the conduct of professional guardians. A
3814 complaint is legally sufficient if it contains ultimate facts that
3815 show a violation of a standard of practice by a professional
3816 guardian has occurred.

3817 (b) Initiate an investigation no later than 10 business days after
3818 the Office of Public and Professional Guardians receives a
3819 complaint.

3820 (c) Complete and provide initial investigative findings and
3821 recommendations, if any, to the professional guardian and the
3822 person who filed the complaint within 60 days after receipt.

3823 (d) Obtain supporting information or documentation to determine the
3824 legal sufficiency of a complaint.

3825 (e) Interview a ward, family member, or interested party to
3826 determine the legal sufficiency of a complaint.

3827 (f) Dismiss any complaint if, at any time after legal sufficiency
3828 is determined, it is found there is insufficient evidence to
3829 support the allegations contained in the complaint.

3830 (g) Coordinate, to the greatest extent possible, with the clerks of
3831 court to avoid duplication of duties with regard to the financial
3832 audits prepared by the clerks pursuant to s. 745.1001.

3833 (2) The Office of Public and Professional Guardians shall establish
3834 disciplinary proceedings, conduct hearings, and take administrative
3835 action pursuant to chapter 120. Disciplinary actions may include,
3836 but are not limited to, requiring a professional guardian to
3837 participate in additional educational courses provided or approved
3838 by the Office of Public and Professional Guardians, imposing
3839 additional monitoring by the office of the guardianships to which
3840 the professional guardian is appointed, and suspension or
3841 revocation of a professional guardian's registration.

3842 (3) In any disciplinary proceeding that may result in the
3843 suspension or revocation of a professional guardian's registration,
3844 the Department of Elderly Affairs shall provide the professional
3845 guardian and the person who filed the complaint:

3846 (a) A written explanation of how an administrative complaint is
3847 resolved by the disciplinary process.

3848 (b) A written explanation of how and when the person may
3849 participate in the disciplinary process.

3850 (c) A written notice of any hearing before the Division of
3851 Administrative Hearings at which final agency action may be taken.

3852 (4) If the office makes a final determination to suspend or revoke
3853 the professional guardian's registration, it must provide such
3854 determination to the court of competent jurisdiction for any
3855 guardianship case to which the professional guardian is currently
3856 appointed.

3857 (5) If the office determines or has reasonable cause to suspect
3858 that a vulnerable adult has been or is being abused, neglected, or
3859 exploited as a result of a filed complaint or during the course of
3860 an investigation of a complaint, it shall immediately report such
3861 determination or suspicion to the central abuse hotline established
3862 and maintained by the Department of Children and Families pursuant
3863 to s. 415.103.

3864 (6) By October 1, 2016, the Department of Elderly Affairs shall
3865 adopt rules to implement the provisions of this section.

3866

3867 745.1405 Grounds for discipline; penalties; enforcement.

3868 (1) The following acts by a professional guardian shall constitute
3869 grounds for which the disciplinary actions specified in subsection
3870 (2) may be taken:

3871 (a) Making misleading, deceptive, or fraudulent representations in
3872 or related to the practice of guardianship.

3873 (b) Violating any rule governing guardians or guardianships adopted
3874 by the Office of Public and Professional Guardians.

3875 (c) Being convicted or found guilty of, or entering a plea of
3876 guilty or nolo contendere to, regardless of adjudication, a crime
3877 in any jurisdiction which relates to the practice of or the ability
3878 to practice as a professional guardian.

3879 (d) Failing to comply with the educational course requirements
3880 contained in s. 745.1403.

3881 (e) Having a registration, a license, or the authority to practice
3882 a regulated profession revoked, suspended, or otherwise acted
3883 against, including the denial of registration or licensure, by the
3884 registering or licensing authority of any jurisdiction, including
3885 its agencies or subdivisions, for a violation under Florida law or
3886 similar law under a foreign jurisdiction. The registering or
3887 licensing authority's acceptance of a relinquishment of
3888 registration or licensure, stipulation, consent order, or other
3889 settlement offered in response to or in anticipation of the filing
3890 of charges against the registration or license shall be construed
3891 as an action against the registration or license.

3892 (f) Knowingly filing a false report or complaint with the Office of
3893 Public and Professional Guardians against another guardian.

3894 (g) Attempting to obtain, obtaining, or renewing a registration or
3895 license to practice a profession by bribery, by fraudulent
3896 misrepresentation, or as a result of an error by the Office of
3897 Public and Professional Guardians which is known by the
3898 professional guardian and not disclosed to the Office of Public and
3899 Professional Guardians.

3900 (h) Failing to report to the Office of Public and Professional
3901 Guardians any person who the professional guardian knows is in
3902 violation of this chapter or the rules of the Office of Public and
3903 Professional Guardians.

3904 (i) Failing to perform any statutory or legal obligation placed
3905 upon a professional guardian.

3906 (j) Making or filing a report or record that the professional
3907 guardian knows to be false, intentionally or negligently failing to
3908 file a report or record required by state or federal law, or
3909 willfully impeding or obstructing another person's attempt to do

3910 so. Such reports or records shall include only those that are
3911 signed in the guardian's capacity as a professional guardian.
3912 (k) Using the position of guardian for the purpose of financial
3913 gain by a professional guardian or a third party, other than the
3914 funds awarded to the professional guardian by the court pursuant to
3915 s. 745.113.
3916 (l) Violating a lawful order of the Office of Public and
3917 Professional Guardians or failing to comply with a lawfully issued
3918 subpoena of the Office of Public and Professional Guardians.
3919 (m) Improperly interfering with an investigation or inspection
3920 authorized by statute or rule or with any disciplinary proceeding.
3921 (n) Using the guardian relationship to engage or attempt to engage
3922 the ward, or an immediate family member or a representative of the
3923 ward, in verbal, written, electronic, or physical sexual activity.
3924 (o) Failing to report to the Office of Public and Professional
3925 Guardians in writing within 30 days after being convicted or found
3926 guilty of, or entered a plea of nolo contendere to, regardless of
3927 adjudication, a crime in any jurisdiction.
3928 (p) Being unable to perform the functions of a professional
3929 guardian with reasonable skill by reason of illness or use of
3930 alcohol, drugs, narcotics, chemicals, or any other type of
3931 substance or as a result of any mental or physical condition.
3932 (q) Failing to post and maintain a blanket fiduciary bond pursuant
3933 to s. 745.1403.
3934 (r) Failing to maintain all records pertaining to a guardianship
3935 for a reasonable time after the court has closed the guardianship
3936 matter.
3937 (s) Violating any provision of this chapter or any rule adopted
3938 pursuant thereto.

3939 (2) When the Office of Public and Professional Guardians finds a
3940 professional guardian guilty of violating subsection (1), it may
3941 enter an order imposing one or more of the following penalties:
3942 (a) Refusal to register an applicant as a professional guardian.
3943 (b) Suspension or permanent revocation of a professional guardian's
3944 registration.
3945 (c) Issuance of a reprimand or letter of concern.
3946 (d) Requirement that the professional guardian undergoes treatment,
3947 attends continuing education courses, submits to reexamination, or
3948 satisfies any terms that are reasonably tailored to the violations
3949 found.
3950 (e) Requirement that the professional guardian pay restitution to a
3951 ward or the ward's estate, if applicable, of any funds obtained or
3952 disbursed through a violation of any statute, rule, or other legal
3953 authority.
3954 (f) Requirement that the professional guardian undergo remedial
3955 education.

3956 (3) In determining what action is appropriate, the Office of Public
3957 and Professional Guardians must first consider what sanctions are
3958 necessary to safeguard wards and to protect the public. Only after
3959 those sanctions have been imposed may the Office of Public and
3960 Professional Guardians consider and include in the order
3961 requirements designed to mitigate the circumstances and
3962 rehabilitate the professional guardian.

3963 (4) The Office of Public and Professional Guardians shall adopt by
3964 rule and periodically review the disciplinary guidelines applicable
3965 to each ground for disciplinary action that may be imposed by the
3966 Office of Public and Professional Guardians pursuant to this
3967 chapter.

3968 (5) It is the intent of the Legislature that the disciplinary
3969 guidelines specify a meaningful range of designated penalties based
3970 upon the severity and repetition of specific offenses and that
3971 minor violations be distinguished from those which endanger the
3972 health, safety, or welfare of a ward or the public; that such
3973 guidelines provide reasonable and meaningful notice to the public
3974 of likely penalties that may be imposed for proscribed conduct; and
3975 that such penalties be consistently applied by the Office of Public
3976 and Professional Guardians.

3977 (6) The Office of Public and Professional Guardians shall by rule
3978 designate possible mitigating and aggravating circumstances and the
3979 variation and range of penalties permitted for such circumstances.

3980 (a) An administrative law judge, in recommending penalties in any
3981 recommended order, must follow the disciplinary guidelines
3982 established by the Office of Public and Professional Guardians and
3983 must state in writing any mitigating or aggravating circumstance
3984 upon which a recommended penalty is based if such circumstance
3985 causes the administrative law judge to recommend a penalty other
3986 than that provided in the disciplinary guidelines.

3987 (b) The Office of Public and Professional Guardians may impose a
3988 penalty other than those provided for in the disciplinary
3989 guidelines upon a specific finding in the final order of mitigating
3990 or aggravating circumstances.

3991 (7) In addition to, or in lieu of, any other remedy or criminal
3992 prosecution, the Office of Public and Professional Guardians may
3993 file a proceeding in the name of the state seeking issuance of an
3994 injunction or a writ of mandamus against any person who violates
3995 any provision of this chapter or any provision of law with respect
3996 to professional guardians or the rules adopted pursuant thereto.

3997 (8) Notwithstanding chapter 120, if the Office of Public and
3998 Professional Guardians determines that revocation of a professional
3999 guardian's registration is the appropriate penalty, the revocation
4000 is permanent.

4001 (9) If the Office of Public and Professional Guardians makes a
4002 final determination to suspend or revoke the professional
4003 guardian's registration, the office must provide the determination
4004 to the court of competent jurisdiction for any guardianship case to
4005 which the professional guardian is currently appointed.

4006 (10) The purpose of this section is to facilitate uniform
4007 discipline for those actions made punishable under this section
4008 and, to this end, a reference to this section constitutes a general
4009 reference under the doctrine of incorporation by reference.

4010 (11) The Office of Public and Professional Guardians shall adopt
4011 rules to administer this section.

4012
4013 745.1406 Office of Public and Professional Guardians; appointment,
4014 notification.

4015 (1) The executive director of the Office of Public and Professional
4016 Guardians, after consultation with the chief judge and other
4017 circuit judges within the judicial circuit and with appropriate
4018 advocacy groups and individuals and organizations who are
4019 knowledgeable about the needs of incapacitated persons, may
4020 establish, within a county in the judicial circuit or within the
4021 judicial circuit, one or more offices of public guardian and, if so
4022 established, shall create a list of persons best qualified to serve
4023 as the public guardian, who have been investigated pursuant to s.
4024 745.504. The public guardian must have knowledge of the legal
4025 process and knowledge of social services available to meet the
4026 needs of incapacitated persons. The public guardian shall maintain

4027 a staff or contract with professionally qualified individuals to
4028 carry out the guardianship functions, including an attorney who has
4029 experience in probate areas and another person who has a master's
4030 degree in social work, or a gerontologist, psychologist, registered
4031 nurse, or nurse practitioner. A public guardian that is a nonprofit
4032 corporate guardian under s. 745.503 must receive tax-exempt status
4033 from the United States Internal Revenue Service.

4034 (2) The executive director shall appoint or contract with a public
4035 guardian from the list of candidates described in subsection (1). A
4036 public guardian must meet the qualifications for a guardian as
4037 prescribed in s. 745.501(1)(a). Upon appointment of the public
4038 guardian, the executive director shall notify the chief judge of
4039 the judicial circuit and the Chief Justice of the Supreme Court of
4040 Florida, in writing, of the appointment.

4041 (3) If the needs of the county or circuit do not require a full-
4042 time public guardian, a part-time public guardian may be appointed
4043 at reduced compensation.

4044 (4) A public guardian, whether full-time or part-time, may not hold
4045 any position that would create a conflict of interest.

4046 (5) The public guardian is to be appointed for a term of 4 years,
4047 after which the public guardian's appointment must be reviewed by
4048 the executive director, and may be reappointed for a term of up to
4049 4 years. The executive director may suspend a public guardian with
4050 or without the request of the chief judge. If a public guardian is
4051 suspended, the executive director shall appoint an acting public
4052 guardian as soon as possible to serve until such time as a
4053 permanent replacement is selected. A public guardian may be removed
4054 from office during the term of office only by the executive
4055 director who must consult with the chief judge prior to said

4056 removal. A recommendation of removal made by the chief judge must
4057 be considered by the executive director.

4058 (6) Public guardians who have been previously appointed by a chief
4059 judge prior to the effective date of this act pursuant to this
4060 section may continue in their positions until the expiration of
4061 their term pursuant to their agreement. However, oversight of all
4062 public guardians shall transfer to the Office of Public and
4063 Professional Guardians upon the effective date of this act. The
4064 executive director of the Office of Public and Professional
4065 Guardians shall be responsible for all future appointments of
4066 public guardians pursuant to this act.

4067

4068 745.1407 Powers and duties.

4069 (1) A public guardian may serve as a guardian of a person
4070 adjudicated incapacitated under this chapter if there is no family
4071 member or friend, other person, bank, or corporation willing and
4072 qualified to serve as guardian.

4073 (2) The public guardian shall be vested with all the powers and
4074 duties of a guardian under this chapter, except as otherwise
4075 provided by law.

4076 (3) The public guardian shall primarily serve incapacitated persons
4077 who are of limited financial means, as defined by contract or rule
4078 of the Department of Elderly Affairs. The public guardian may serve
4079 incapacitated persons of greater financial means to the extent the
4080 Department of Elderly Affairs determines to be appropriate.

4081 (4) The public guardian shall be authorized to employ sufficient
4082 staff to carry out the duties of the public guardian's office.

4083 (5) The public guardian may delegate to assistants and other
4084 members of the public guardian's staff the powers and duties of the
4085 office of public guardian, except as otherwise limited by law. The

4086 public guardian shall retain ultimate responsibility for the
4087 discharge of the public guardian's duties and responsibilities.

4088 (6) Upon appointment as guardian of an incapacitated person, a
4089 public guardian shall endeavor to locate a family member or friend,
4090 other person, bank, or corporation who is qualified and willing to
4091 serve as guardian. Upon determining that there is someone qualified
4092 and willing to serve as guardian, either the public guardian or the
4093 qualified person shall petition the court for appointment of a
4094 successor guardian.

4095 (7) A public guardian may not commit a ward to a treatment
4096 facility, as defined in s. 394.455(47), without an involuntary
4097 placement proceeding as provided by law.

4098 (8) When a person is appointed successor public guardian, the
4099 successor public guardian immediately succeeds to all rights,
4100 duties, responsibilities, and powers of the preceding public
4101 guardian.

4102 (9) When the position of public guardian is vacant, subordinate
4103 personnel employed under subsection (4) shall continue to act as if
4104 the position of public guardian were filled.

4105

4106 745.1408 Costs of public guardian.

4107 (1) All costs of administration, including filing fees, shall be
4108 paid from the budget of the office of public guardian. No costs of
4109 administration, including filing fees, shall be recovered from the
4110 assets or the income of the ward.

4111 (2) In any proceeding for appointment of a public guardian, or in
4112 any proceeding involving the estate of a ward for whom a public
4113 guardian has been appointed guardian, the court shall waive any
4114 court costs or filing fees.

4115

4116 745.1409 Preparation of budget.

4117 Each public guardian, whether funded in whole or in part by money
4118 raised through local efforts, grants, or any other source or
4119 whether funded in whole or in part by the state, shall prepare a
4120 budget for the operation of the office of public guardian to be
4121 submitted to the Office of Public and Professional Guardians. As
4122 appropriate, the Office of Public and Professional Guardians will
4123 include such budgetary information in the Department of Elderly
4124 Affairs' legislative budget request. The office of public guardian
4125 shall be operated within the limitations of the General
4126 Appropriations Act and any other funds appropriated by the
4127 Legislature to that particular judicial circuit, subject to the
4128 provisions of chapter 216. The Department of Elderly Affairs shall
4129 make a separate and distinct request for an appropriation for the
4130 Office of Public and Professional Guardians. However, this section
4131 may not be construed to preclude the financing of any operations of
4132 the office of public guardian by moneys raised through local effort
4133 or through the efforts of the Office of Public and Professional
4134 Guardians.

4135

4136 745.1410 Procedures and rules.

4137 The public guardian, subject to the oversight of the Office of
4138 Public and Professional Guardians, is authorized to:

4139 (1) Formulate and adopt necessary procedures to assure the
4140 efficient conduct of the affairs of the ward and general
4141 administration of the office and staff.

4142 (2) Contract for services necessary to discharge the duties of the
4143 office.

4144 (3) Accept the services of volunteer persons or organizations and
4145 provide reimbursement for proper and necessary expenses.

4146

4147 745.1411 Surety bond.

4148 Upon taking office, a public guardian shall file a bond with surety
4149 as prescribed in s. 45.011 to be approved by the clerk. The bond
4150 shall be payable to the Governor and the Governor's successors in
4151 office, in the penal sum of not less than \$5,000 nor more than
4152 \$25,000, conditioned on the faithful performance of all duties by
4153 the guardian. The amount of the bond shall be fixed by the majority
4154 of the judges within the judicial circuit. In form the bond shall
4155 be joint and several. The bond shall be purchased from the funds of
4156 the local office of public guardian.

4157

4158 745.1412 Reports and standards.

4159 (1) The public guardian shall keep and maintain proper financial,
4160 case control, and statistical records on all matters in which the
4161 public guardian serves as guardian.

4162 (2) No report or disclosure of the ward's personal and medical
4163 records shall be made, except as authorized by law.

4164 (3) A public guardian shall file an annual report on the operations
4165 of the office of public guardian, in writing, by September 1 for
4166 the preceding fiscal year with the Office of Public and
4167 Professional Guardians, which shall have responsibility for
4168 supervision of the operations of the office of public guardian.

4169 (4) Within 6 months of appointment as guardian of a ward, the
4170 public guardian shall submit to the clerk of the court for
4171 placement in the ward's guardianship file and to the executive
4172 director of the Office of Public and Professional Guardians a
4173 report on the public guardian's efforts to locate a family member or
4174 friend, other person, bank, or corporation to act as guardian of

4175 the ward and a report on the ward's potential to be restored to
4176 capacity.

4177 (5)(a) Each office of public guardian shall undergo an independent
4178 audit by a qualified certified public accountant at least once
4179 every 2 years. A copy of the audit report shall be submitted to the
4180 Office of Public and Professional Guardians.

4181 (b) In addition to regular monitoring activities, the Office of
4182 Public and Professional Guardians shall conduct an investigation
4183 into the practices of each office of public guardian related to the
4184 managing of each ward's personal affairs and property. If feasible,
4185 the investigation shall be conducted in conjunction with the
4186 financial audit of each office of public guardian under paragraph
4187 (a).

4188 (6) A public guardian shall ensure that each of the guardian's
4189 wards is personally visited by the public guardian or by one of the
4190 guardian's professional staff at least once each calendar quarter.
4191 During this personal visit, the public guardian or the professional
4192 staff person shall assess:

4193 (a) The ward's physical appearance and condition;

4194 (b) The appropriateness of the ward's current living situation; and

4195 (c) The need for any additional services and the necessity for
4196 continuation of existing services, taking into consideration all
4197 aspects of social, psychological, educational, direct service,
4198 health, and personal care needs.

4199 (7) The ratio for professional staff to wards shall be 1
4200 professional to 40 wards. The Office of Public and Professional
4201 Guardians may increase or decrease the ratio after consultation
4202 with the local public guardian and the chief judge of the circuit
4203 court. The basis for the decision to increase or decrease the

4204 prescribed ratio must be included in the annual report to the
4205 secretary.

4206

4207 745.1413 Public records exemption.

4208 The home addresses, telephone numbers, dates of birth, places of
4209 employment, and photographs of current or former public guardians
4210 and employees with fiduciary responsibility; the names, home
4211 addresses, telephone numbers, dates of birth, and places of
4212 employment of the spouses and children of such persons; and the
4213 names and locations of schools and day care facilities attended by
4214 the children of such persons are exempt from s. 119.07(1) and s.
4215 24(a), Art. I of the State Constitution. As used in this section,
4216 the term "employee with fiduciary responsibility" means an employee
4217 of a public guardian who has the ability to direct any transactions
4218 of a ward's funds, assets, or property; who under the supervision
4219 of the guardian, manages the care of the ward; or who makes any
4220 health care decision, as defined in s. 765.101, on behalf of the
4221 ward. This exemption applies to information held by an agency
4222 before, on, or after July 1, 2018. An agency that is the custodian
4223 of the information specified in this section shall maintain the
4224 exempt status of that information only if the current or former
4225 public guardians and employees with fiduciary responsibility submit
4226 to the custodial agency a written request for maintenance of the
4227 exemption. This section is subject to the Open Government Sunset
4228 Review Act in accordance with s. 119.15 and shall stand repealed on
4229 October 2, 2023, unless reviewed and saved from repeal through
4230 reenactment by the Legislature.

4231

4232 745.1414 Access to records by the Office of Public and Professional
4233 Guardians; confidentiality.

4234 (1) Notwithstanding any other provision of law to the contrary, any
4235 medical, financial, or mental health records held by an agency, or
4236 the court and its agencies, or financial audits prepared by the
4237 clerk of the court pursuant to s. 745.1001 and held by the court,
4238 which are necessary as part of an investigation of a guardian as a
4239 result of a complaint filed with the Office of Public and
4240 Professional Guardians to evaluate the public guardianship system,
4241 to assess the need for additional public guardianship, or to
4242 develop required reports, shall be provided to the Office of Public
4243 and Professional Guardians or its designee upon that office's
4244 request. Any confidential or exempt information provided to the
4245 Office of Public and Professional Guardians shall continue to be
4246 held confidential or exempt as otherwise provided by law.

4247 (2) All records held by the Office of Public and Professional
4248 Guardians relating to the medical, financial, or mental health of
4249 vulnerable adults as defined in chapter 415, persons with a
4250 developmental disability as defined in chapter 393, or persons with
4251 a mental illness as defined in chapter 394, shall be confidential
4252 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
4253 Constitution.

4254
4255 745.1415 Direct-support organization; definition; use of property;
4256 board of directors; audit; dissolution.

4257 (1) DEFINITION.— As used in this section, the term "direct-support
4258 organization" means an organization whose sole purpose is to
4259 support the Office of Public and Professional Guardians and is:

4260 (a) A not-for-profit corporation incorporated under chapter 617 and
4261 approved by the Department of State;

4262 (b) Organized and operated to conduct programs and activities; to
4263 raise funds; to request and receive grants, gifts, and bequests of

4264 moneys; to acquire, receive, hold, invest, and administer, in its
4265 own name, securities, funds, objects of value, or other property,
4266 real or personal; and to make expenditures to or for the direct or
4267 indirect benefit of the Office of Public and Professional
4268 Guardians; and

4269 (c) Determined by the Office of Public and Professional Guardians
4270 to be consistent with the goals of the office, in the best
4271 interests of the state, and in accordance with the adopted goals
4272 and mission of the Department of Elderly Affairs and the Office of
4273 Public and Professional Guardians.

4274 (2) CONTRACT.— The direct-support organization shall operate under
4275 a written contract with the Office of Public and Professional
4276 Guardians. The written contract must provide for:

4277 (a) Certification by the Office of Public and Professional
4278 Guardians that the direct-support organization is complying with
4279 the terms of the contract and is doing so consistent with the goals
4280 and purposes of the office and in the best interests of the state.
4281 This certification must be made annually and reported in the
4282 official minutes of a meeting of the direct-support organization.

4283 (b) The reversion of monies and property held in trust by the
4284 direct-support organization:

- 4285 1. To the Office of Public and Professional Guardians if the
4286 direct-support organization is no longer approved to operate for
4287 the office;
- 4288 2. To the Office of Public and Professional Guardians if the
4289 direct-support organization ceases to exist;
- 4290 3. To the Department of Elderly Affairs if the Office of Public and
4291 Professional Guardians ceases to exist; or
- 4292 4. To the state if the Department of Elderly Affairs ceases to
4293 exist.

4294 The fiscal year of the direct-support organization shall begin on
4295 July 1 of each year and end on June 30 of the following year.

4296 (c) The disclosure of the material provisions of the contract, and
4297 the distinction between the Office of Public and Professional
4298 Guardians and the direct-support organization, to donors of gifts,
4299 contributions, or bequests, including such disclosure on all
4300 promotional and fundraising publications.

4301 (3) BOARD OF DIRECTORS.—The Secretary of Elderly Affairs shall
4302 appoint a board of directors for the direct-support organization
4303 from a list of nominees submitted by the executive director of the
4304 Office of Public and Professional Guardians.

4305 (4) USE OF PROPERTY.—The Department of Elderly Affairs may permit,
4306 without charge, appropriate use of fixed property and facilities of
4307 the department or the Office of Public and Professional Guardians
4308 by the direct-support organization. The department may prescribe
4309 any condition with which the direct-support organization must
4310 comply in order to use fixed property or facilities of the
4311 department or the Office of Public and Professional Guardians.

4312 (5) MONIES.—Any monies may be held in a separate depository account
4313 in the name of the direct-support organization and subject to the
4314 provisions of the written contract with the Office of Public and
4315 Professional Guardians. Expenditures of the direct-support
4316 organization shall be expressly used to support the Office of
4317 Public and Professional Guardians. The expenditures of the direct-
4318 support organization may not be used for the purpose of lobbying as
4319 defined in s. 11.045.

4320 (6) PUBLIC RECORDS.—Personal identifying information of a donor or
4321 prospective donor to the direct-support organization who desires to
4322 remain anonymous is confidential and exempt from s. 119.07(1) and
4323 s. 24(a), Art. I of the State Constitution.

4324 (7) AUDIT.—The direct-support organization shall provide for an
4325 annual financial audit in accordance with s. 215.981.

4326 (8) DISSOLUTION.—A not-for-profit corporation incorporated under
4327 chapter 617 that is determined by a circuit court to be
4328 representing itself as a direct-support organization created under
4329 this section, but that does not have a written contract with the
4330 Office of Public and Professional Guardians in compliance with this
4331 section, is considered to meet the grounds for a judicial
4332 dissolution described in s. 617.1430(1)(a). The Office of Public
4333 and Professional Guardians shall be the recipient for all assets
4334 held by the dissolved corporation which accrued during the period
4335 that the dissolved corporation represented itself as a direct-
4336 support organization created under this section.

4337
4338 745.1416 Joining Forces for Public Guardianship grant program;
4339 purpose.

4340 The Legislature establishes the Joining Forces for Public
4341 Guardianship matching grant program for the purpose of assisting
4342 counties to establish and fund community-supported public
4343 guardianship programs. The Joining Forces for Public Guardianship
4344 matching grant program shall be established and administered by the
4345 Office of Public and Professional Guardians within the Department
4346 of Elderly Affairs. The purpose of the program is to provide
4347 startup funding to encourage communities to develop and administer
4348 locally funded and supported public guardianship programs to
4349 address the needs of indigent and incapacitated residents.

4350 (1) The Office of Public and Professional Guardians may distribute
4351 the grant funds as follows:

4352 (a) As initial startup funding to encourage counties that have no
4353 office of public guardian to establish an office, or as initial

4354 startup funding to open an additional office of public guardian
4355 within a county whose public guardianship needs require more than
4356 one office of public guardian.

4357 (b) As support funding to operational offices of public guardian
4358 that demonstrate a necessity for funds to meet the public
4359 guardianship needs of a particular geographic area in the state
4360 which the office serves.

4361 (c) To assist counties that have an operating public guardianship
4362 program but that propose to expand the geographic area or
4363 population of persons they serve, or to develop and administer
4364 innovative programs to increase access to public guardianship in
4365 this state.

4366 Notwithstanding this subsection, the executive director of the
4367 office may award emergency grants if the executive director
4368 determines that the award is in the best interests of public
4369 guardianship in this state. Before making an emergency grant, the
4370 executive director must obtain the written approval of the
4371 Secretary of Elderly Affairs. Subsections (2), (3), and (4) do not
4372 apply to the distribution of emergency grant funds.

4373 (2) One or more grants may be awarded within a county. However, a
4374 county may not receive an award that equals, or multiple awards
4375 that cumulatively equal, more than 20 percent of the total amount
4376 of grant funds appropriated during any fiscal year.

4377 (3) If an applicant is eligible and meets the requirements to
4378 receive grant funds more than once, the Office of Public and
4379 Professional Guardians shall award funds to prior awardees in the
4380 following manner:

4381 (a) In the second year that grant funds are awarded, the cumulative
4382 sum of the award provided to one or more applicants within the same

4383 county may not exceed 75 percent of the total amount of grant funds
4384 awarded within that county in year one.

4385 (b) In the third year that grant funds are awarded, the cumulative
4386 sum of the award provided to one or more applicants within the same
4387 county may not exceed 60 percent of the total amount of grant funds
4388 awarded within that county in year one.

4389 (c) In the fourth year that grant funds are awarded, the cumulative
4390 sum of the award provided to one or more applicants within the same
4391 county may not exceed 45 percent of the total amount of grant funds
4392 awarded within that county in year one.

4393 (d) In the fifth year that grant funds are awarded, the cumulative
4394 sum of the award provided to one or more applicants within the same
4395 county may not exceed 30 percent of the total amount of grant funds
4396 awarded within that county in year one.

4397 (e) In the sixth year that grant funds are awarded, the cumulative
4398 sum of the award provided to one or more applicants within the same
4399 county may not exceed 15 percent of the total amount of grant funds
4400 awarded within that county in year one.

4401 The Office of Public and Professional Guardians may not award grant
4402 funds to any applicant within a county that has received grant
4403 funds for more than 6 years.

4404 (4) Grant funds shall be used only to provide direct services to
4405 indigent wards, except that up to 10 percent of the grant funds may
4406 be retained by the awardee for administrative expenses.

4407 (5) Implementation of the program is subject to a specific
4408 appropriation by the Legislature in the General Appropriations Act.

4409
4410 745.1417 Program administration; duties of the Office of Public and
4411 Professional Guardians.

4412 The Office of Public and Professional Guardians shall administer
4413 the grant program. The office shall:

4414 (1) Publicize the availability of grant funds to entities that may
4415 be eligible for the funds.

4416 (2) Establish an application process for submitting a grant
4417 proposal.

4418 (3) Request, receive, and review proposals from applicants seeking
4419 grant funds.

4420 (4) Determine the amount of grant funds each awardee may receive
4421 and award grant funds to applicants.

4422 (5) Develop a monitoring process to evaluate grant awardees, which
4423 may include an annual monitoring visit to each awardee's local
4424 office.

4425 (6) Ensure that persons or organizations awarded grant funds meet
4426 and adhere to the requirements of this act.

4427

4428 745.1418 Eligibility.

4429 (1) Any person or organization that has not been awarded a grant
4430 must meet all of the following conditions to be eligible to receive
4431 a grant:

4432 (a) The applicant must meet or directly employ staff that meet the
4433 minimum qualifications for a public guardian under this chapter.

4434 (b) The applicant must have already been appointed by, or is
4435 pending appointment by, the Office of Public and Professional
4436 Guardians to become an office of public guardian in this state.

4437 (2) Any person or organization that has been awarded a grant must
4438 meet all of the following conditions to be eligible to receive
4439 another grant:

4440 (a) The applicant must meet or directly employ staff that meet the
4441 minimum qualifications for a public guardian under this chapter.

4442 (b) The applicant must have been appointed by, or is pending
4443 reappointment by, the Office of Public and Professional Guardians
4444 to be an office of public guardian in this state.

4445 (c) The applicant must have achieved a satisfactory monitoring
4446 score during the applicant's most recent evaluation.

4447

4448 745.1419 Grant application requirements; review criteria; awards
4449 process.

4450 Grant applications must be submitted to the Office of Public and
4451 Professional Guardians for review and approval.

4452 (1) A grant application must contain:

4453 (a) The specific amount of funds being requested.

4454 (b) The proposed annual budget for the office of public guardian
4455 for which the applicant is applying on behalf of, including all
4456 sources of funding, and a detailed report of proposed expenditures,
4457 including administrative costs.

4458 (c) The total number of wards the applicant intends to serve during
4459 the grant period.

4460 (d) Evidence that the applicant has:

4461 1. Attempted to procure funds and has exhausted all possible other
4462 sources of funding; or

4463 2. Procured funds from local sources, but the total amount of the
4464 funds collected or pledged is not sufficient to meet the need for
4465 public guardianship in the geographic area that the applicant
4466 intends to serve.

4467 (e) An agreement or confirmation from a local funding source, such
4468 as a county, municipality, or any other public or private
4469 organization, that the local funding source will contribute
4470 matching funds to the public guardianship program totaling not less
4471 than \$1 for every \$1 of grant funds awarded. For purposes of this

4472 section, an applicant may provide evidence of agreements or
4473 confirmations from multiple local funding sources showing that the
4474 local funding sources will pool their contributed matching funds to
4475 the public guardianship program for a combined total of not less
4476 than \$1 for every \$1 of grant funds awarded. In-kind contributions,
4477 such as materials, commodities, office space, or other types of
4478 facilities, personnel services, or other items as determined by
4479 rule shall be considered by the office and may be counted as part
4480 or all of the local matching funds.

4481 (f) A detailed plan describing how the office of public guardian
4482 for which the applicant is applying on behalf of will be funded in
4483 future years.

4484 (g) Any other information determined by rule as necessary to assist
4485 in evaluating grant applicants.

4486 (2) If the Office of Public and Professional Guardians determines
4487 that an applicant meets the requirements for an award of grant
4488 funds, the office may award the applicant any amount of grant funds
4489 the executive director deems appropriate, if the amount awarded
4490 meets the requirements of this act. The office may adopt a rule
4491 allocating the maximum allowable amount of grant funds which may be
4492 expended on any ward.

4493 (3) A grant awardee must submit a new grant application for each
4494 year of additional funding.

4495 (4)(a) In the first year of the Joining Forces for Public
4496 Guardianship program's existence, the Office of Public and
4497 Professional Guardians shall give priority in awarding grant funds
4498 to those entities that:

4499 1. Are operating as appointed offices of public guardians in this
4500 state;

4501 2. Meet all of the requirements for being awarded a grant under
4502 this act; and

4503 3. Demonstrate a need for grant funds during the current fiscal
4504 year due to a loss of local funding formerly raised through court
4505 filing fees.

4506 (b) In each fiscal year after the first year that grant funds are
4507 distributed, the Office of Public and Professional Guardians may
4508 give priority to awarding grant funds to those entities that:

4509 1. Meet all of the requirements of this section and ss. 745.1416,
4510 745.1417, and 745.1418 for being awarded grant funds; and

4511 2. Submit with their application an agreement or confirmation from
4512 a local funding source, such as a county, municipality, or any
4513 other public or private organization, that the local funding source
4514 will contribute matching funds totaling an amount equal to or
4515 exceeding \$2 for every \$1 of grant funds awarded by the office. An
4516 entity may submit with its application agreements or confirmations
4517 from multiple local funding sources showing that the local funding
4518 sources will pool their contributed matching funds to the public
4519 guardianship program for a combined total of not less than \$2 for
4520 every \$1 of grant funds awarded. In-kind contributions allowable
4521 under this section shall be evaluated by the Office of Public and
4522 Professional Guardians and may be counted as part or all of the
4523 local matching funds.

4524

4525 745.1420 Confidentiality.

4526 (1) The following are confidential and exempt from the provisions
4527 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
4528 when held by the Department of Elderly Affairs in connection with a
4529 complaint filed and any subsequent investigation conducted pursuant
4530 to this part, unless the disclosure is required by court order:

- 4531 (a) Personal identifying information of a complainant or ward.
4532 (b) All personal health and financial records of a ward.
4533 (c) All photographs and video recordings.
4534 (2) Except as otherwise provided in this section, information held
4535 by the department is confidential and exempt from s. 119.07(1) and
4536 s. 24(a), Art. I of the State Constitution until the investigation
4537 is completed or ceases to be active, unless the disclosure is
4538 required by court order.
4539 (3) This section does not prohibit the department from providing
4540 such information to any law enforcement agency, any other
4541 regulatory agency in the performance of its official duties and
4542 responsibilities, or the clerk of the circuit court pursuant to s.
4543 745.1001.
4544 (4) The exemption under this section applies to all documents
4545 received by the department in connection with a complaint before,
4546 on, or after July 1, 2017.
4547 (5) This section is subject to the Open Government Sunset Review
4548 Act in accordance with s. 119.15 and shall stand repealed on
4549 October 2, 2022, unless reviewed and saved from repeal through
4550 reenactment by the Legislature.

4551 Section 15. Part XV of chapter 745, Florida Statutes,
4552 consisting of sections 745.1501, 745.1502, 745.1503, 745.1504,
4553 745.1505, 745.1506, 745.1507, 745.1508, 745.1509, 745.1510,
4554 745.1511, 745.1512, 745.1513, 745.1514, 745.1515, 745.1516,
4555 745.1517, 745.1518, 745.1519, 745.1520, 745.1521, 745.1522,
4556 745.1523, 745.1524, 745.1525, and 745.1526, is created to read:

4557 PART XV

4558 VETERANS' GUARDIANSHIP

4559 745.1501 Short title; scope of part.

4560 (1) This part shall be known and may be cited as the "Veterans'
4561 Guardianship Law."

4562 (2) The application of this part is limited to veterans and other
4563 persons who are entitled to receive benefits from the United States
4564 Department of Veterans Affairs. This part is not intended to
4565 replace the general law relating to guardianship except insofar as
4566 this part is inconsistent with the general law relating to
4567 guardianship; in which event, this part and the general law
4568 relating to guardianship shall be read together, with any conflict
4569 between this part and the general law of guardianship to be
4570 resolved by giving effect to this part.

4571

4572 745.1502 Definitions.

4573 As used in this part, the term:

4574 (1) "Adjudication by a court of competent jurisdiction" means a
4575 judicial decision or finding that a person is or is not
4576 incapacitated as provided in chapter 745 Part III.

4577 (2) "Adjudication by the United States Department of Veterans
4578 Affairs" means a determination or finding that a person is
4579 competent or incompetent on examination in accordance with the laws
4580 and regulations governing the United States Department of Veterans
4581 Affairs.

4582 (3) "Secretary" means the Secretary of Veterans Affairs as head of
4583 the United States Department of Veterans Affairs or her or his
4584 successor.

4585 (4) "Benefits" means arrears of pay, bonus, pension, compensation,
4586 insurance, and all other moneys paid or payable by the United
4587 States through the United States Department of Veterans Affairs by
4588 reason of service in the Armed Forces of the United States.

4589 (5) "Estate" means income on hand and assets acquired in whole or
4590 in part with income.

4591 (6) "Guardian" means any person acting as a fiduciary for a ward's
4592 person or the ward's estate, or both.

4593 (7) "Income" means moneys received from the United States
4594 Department of Veterans Affairs as benefits, and revenue or profit
4595 from any property acquired in whole or in part with such moneys.

4596 (8) "Person" means an individual, a partnership, a corporation, or
4597 an association.

4598 (9) "United States Department of Veterans Affairs" means the United
4599 States Department of Veterans Affairs or its predecessors or
4600 successors.

4601 (10) "Ward" means a beneficiary of the United States Department of
4602 Veterans Affairs.

4603

4604 745.1503 Secretary of Veterans Affairs as party in interest.

4605 The Secretary of Veterans Affairs shall be a party in interest in
4606 any proceeding for the appointment or removal of a guardian or for
4607 the removal of the disability of minority or mental incapacity of a
4608 ward, and in any suit or other proceeding affecting in any manner
4609 the administration by the guardian of the estate of any present or
4610 former ward whose estate includes assets derived in whole or in
4611 part from benefits heretofore or hereafter paid by the United
4612 States Department of Veterans Affairs. Not less than 15 days prior
4613 to hearing in such matter, notice in writing of the time and place
4614 thereof shall be given by mail (unless waived in writing) to the
4615 office of the United States Department of Veterans Affairs having
4616 jurisdiction over the area in which any such suit or any such
4617 proceeding is pending.

4618

4619 745.1504 Procedure for commitment of veteran to United States
4620 Department of Veterans Affairs hospital.

4621 The procedure for the placement into a United States Department of
4622 Veterans Affairs hospital of a ward hereunder shall be the
4623 procedure prescribed in s. 394.4672.

4624

4625 745.1505 Appointment of guardian for ward authorized.

4626 (1) Whenever, pursuant to any law of the United States or
4627 regulation of the United States Department of Veterans Affairs, the
4628 secretary requires, prior to the payment of benefits, that a
4629 guardian be appointed for a ward, the appointment may be made in
4630 the manner hereinafter provided.

4631 (2) When a petition is filed for the appointment of a guardian of a
4632 minor ward, a certificate of the secretary or the secretary's
4633 authorized representative setting forth the age of such minor, as
4634 shown by the records of the United States Department of Veterans
4635 Affairs, and a statement that the appointment of a guardian is a
4636 condition precedent to the payment of any moneys due to the minor
4637 by the United States Department of Veterans Affairs are prima facie
4638 evidence of the necessity for such appointment.

4639 (3) When a petition is filed for the appointment of a guardian of a
4640 mentally incompetent ward, a certificate of the secretary or the
4641 secretary's authorized representative, setting forth the fact that
4642 the person has been found incompetent and has been rated
4643 incompetent by the United States Department of Veterans Affairs, on
4644 examination in accordance with the laws and regulations governing
4645 the United States Department of Veterans Affairs, and that the
4646 appointment of a guardian is a condition precedent to the payment
4647 of any moneys due to such person by the United States Department of

4648 Veterans Affairs, is prima facie evidence of the necessity for such
4649 appointment.

4650

4651 745.1506 Petition for appointment of guardian.

4652 (1) A petition for the appointment of a guardian may be filed in
4653 any court of competent jurisdiction by, or on behalf of, any person
4654 who under existing law is entitled to priority of appointment. If
4655 no person is so entitled, or if the person so entitled neglects or
4656 refuses to file such a petition within 30 days after the mailing of
4657 notice by the United States Department of Veterans Affairs to the
4658 last known address of such person, indicating the necessity for
4659 filing the petition, a petition for such appointment may be filed
4660 in any court of competent jurisdiction by, or on behalf of, any
4661 responsible person residing in this state.

4662 (2)(a) The petition for appointment shall set forth:

- 4663 1. The name, age, and place of residence of the ward;
- 4664 2. The names and places of residence of the nearest relative, if
4665 known;
- 4666 3. The fact that the ward is entitled to receive moneys payable by
4667 or through the United States Department of Veterans Affairs;
- 4668 4. The amount of moneys then due and the amount of probable future
4669 payments;
- 4670 5. The name and address of the person or institution, if any,
4671 having actual custody of the ward; and
- 4672 6. The name, age, relationship, if any, occupation, and address of
4673 the proposed guardian.

4674 (b) In the case of a mentally incompetent ward, the petition shall
4675 show that the ward has been found incompetent and has been rated
4676 incompetent on examination by the United States Department of

4677 Veterans Affairs, in accordance with the laws and regulations
4678 governing the United States Department of Veterans Affairs.

4679
4680 745.1507 Notice by court of petition filed for appointment of
4681 guardian.

4682 (1) When a petition for the appointment of a guardian has been
4683 filed pursuant to s. 745.1506, the court shall cause such notice to
4684 be given as provided by the general guardianship law. In addition,
4685 notice of the petition shall be given to the office of the United
4686 States Department of Veterans Affairs having jurisdiction over the
4687 area in which the court is located.

4688 (2) A copy of the petition provided for in s. 745.1506 shall be
4689 mailed by the clerk of the court to the person or persons for whom
4690 a guardian is to be appointed, the clerk of court mailing the copy
4691 of the petition to the last known address of such person or persons
4692 not less than 5 days prior to the date set for the hearing of the
4693 petition by the court.

4694
4695 745.1508 Persons who may be appointed guardian.

4696 (1) Notwithstanding any law with respect to priority of persons
4697 entitled to appointment, or nomination in the petition, the court
4698 may appoint some other individual or a bank or trust company as
4699 guardian if the court determines that the appointment of the other
4700 individual or bank or trust company would be in the best interest
4701 of the ward.

4702 (2) It is unlawful for a circuit judge to appoint either herself or
4703 himself, or a member of her or his family, as guardian for any
4704 person entitled to the benefits provided for in 38 U.S.C., as
4705 amended, except in a case when the person entitled to such benefits
4706 is a member of the family of the circuit judge involved.

4707

4708 745.1509 Bond of guardian.

4709 When the appointment of a guardian is made, the guardian shall
4710 execute and file a bond to be approved by the court in an amount
4711 not less than the sum of the amount of moneys then due to the ward
4712 and the amount of moneys estimated to become payable during the
4713 ensuing year. The bond shall be in the form, and shall be
4714 conditioned, as required of guardians appointed under the general
4715 guardianship laws of this state. The court has the power to
4716 require, from time to time, the guardian to file an additional
4717 bond.

4718

4719 745.1510 Inventory of ward's property; guardian's failure to file
4720 inventory; discharge; forfeiture of commissions.

4721 Every guardian shall, within 30 days after his or her qualification
4722 and whenever subsequently required by the circuit judge, file in
4723 the circuit court a complete inventory of all the ward's personal
4724 property in his or her hands and, also, a schedule of all real
4725 estate in the state belonging to his or her ward, describing it and
4726 its quality, whether it is improved or not, and, if it is improved,
4727 in what manner, and the appraised value of same. The failure on the
4728 part of the guardian to conform to the requirements of this section
4729 is a ground for the discharge of the guardian, in which case the
4730 guardian shall forfeit all commissions.

4731

4732 745.1511 Guardian empowered to receive moneys due ward from the
4733 United States Government.

4734 A guardian appointed under the provisions of s. 745.1506 may
4735 receive income and benefits payable by the United States through
4736 the United States Department of Veterans Affairs and also has the

4737 right to receive for the account of the ward any moneys due from
4738 the United States Government in the way of arrears of pay, bonus,
4739 compensation or insurance, or other sums due by reason of his or
4740 her service (or the service of the person through whom the ward
4741 claims) in the Armed Forces of the United States and any other
4742 moneys due from the United States Government, payable through its
4743 agencies or entities, together with the income derived from
4744 investments of these moneys.

4745
4746 745.1512 Guardian's application of estate funds for support and
4747 maintenance of person other than ward.

4748 A guardian shall not apply any portion of the estate of her or his
4749 ward to the support and maintenance of any person other than her or
4750 his ward, except upon order of the court after a hearing, notice of
4751 which has been given to the proper office of the United States
4752 Department of Veterans Affairs as provided in s. 745.1513.

4753
4754 745.1513 Petition for support, or support and education, of ward's
4755 dependents; payments of apportioned benefits prohibit contempt
4756 action against veteran.

4757 (1) Any person who is dependent on a ward for support may petition
4758 a court of competent jurisdiction for an order directing the
4759 guardian of the ward's estate to contribute from the estate of the
4760 ward to the support, or support and education, of the dependent
4761 person, when the estate of the ward is derived in whole or in part
4762 from payments of compensation, adjusted compensation, pension,
4763 insurance, or other benefits made directly to the guardian of the
4764 ward by the United States Department of Veterans Affairs. A notice
4765 of the application for support, or support and education, shall be
4766 given by the applicant to the office of the United States

4767 Department of Veterans Affairs having jurisdiction over the area in
4768 which the court is located at least 15 days before the hearing on
4769 the application.

4770 (2) The grant or denial of an order for support, or support and
4771 education, does not preclude a further petition for an increase,
4772 decrease, modification, or termination of the allowance for such
4773 support, or support and education, by either the petitioner or the
4774 guardian.

4775 (3) The order for the support, or support and education, of the
4776 petitioner is valid for any payment made pursuant to the order, but
4777 no valid payment can be made after the termination of the
4778 guardianship. The receipt of the petitioner shall be a sufficient
4779 release of the guardian for payments made pursuant to the order.

4780 (4) When a claim for apportionment of benefits filed with the
4781 United States Department of Veterans Affairs on behalf of a
4782 dependent or dependents of a disabled veteran is approved by the
4783 United States Department of Veterans Affairs, subsequent payments
4784 of such apportioned benefits by the United States Department of
4785 Veterans Affairs prohibit an action for contempt from being
4786 instituted against the veteran.

4787
4788 745.1514 Exemption of benefits from claims of creditors.
4789 Except as provided by federal law, payments of benefits from the
4790 United States Department of Veterans Affairs or the Social Security
4791 Administration to or for the benefit of a disabled veteran or the
4792 veteran's surviving spouse or dependents are exempt from the claims
4793 of creditors and shall not be liable to attachment, levy, or
4794 seizure by or under any legal or equitable process whatever, either
4795 before or after the receipt of the payments by the guardian or the
4796 beneficiary.

4797
4798 745.1515 Investment of funds of estate by guardian.
4799 Every guardian shall invest the funds of the estate in such manner
4800 or in such securities, in which the guardian has no interest, as
4801 allowed by chapter 518.

4802
4803 745.1516 Guardian's petition for authority to sell ward's real
4804 estate; notice by publication; penalties.

4805 (1) When a guardian of the estate of a minor or an incompetent
4806 ward, which guardian has the control or management of any real
4807 estate that is the property of such minor or incompetent, deems it
4808 necessary or expedient to sell all or part of the real estate, the
4809 guardian shall apply, either in term time or in vacation by
4810 petition to the judge of the circuit court for the county in which
4811 the real estate is situated, for authority to sell all or part of
4812 the real estate. If the prayer of the petition appears to the judge
4813 to be reasonable and just and financially beneficial to the estate
4814 of the ward, the judge may authorize the guardian to sell the real
4815 estate described in the petition under such conditions as the
4816 interest of the minor or incompetent may, in the opinion of the
4817 judge, seem to require.

4818 (2) The authority to sell the real estate described in the petition
4819 shall not be granted unless the guardian has given previous notice,
4820 published once a week for 4 successive weeks in a newspaper
4821 published in the county where the application is made, of his or
4822 her intention to make application to the judge for authority to
4823 sell such real estate, the guardian setting forth in the notice the
4824 time and place and to what judge the application will be made. If
4825 the lands lie in more than one county, the application for such
4826 authority shall be made in each county in which the lands lie.

4827 (3) The failure on the part of the guardian to comply with the
4828 provisions of this section makes the guardian and the guardian's
4829 bond agents individually responsible for any loss that may accrue
4830 to the estate of the ward involved, and is a ground for the
4831 immediate removal of such guardian as to his or her functions, but
4832 does not discharge the guardian as to his or her liability or
4833 discharge the liabilities of his or her sureties.

4834

4835 745.1517 Guardian's accounts, filing with court and certification
4836 to United States Department of Veterans Affairs; notice and hearing
4837 on accounts; failure to account.

4838 (1) Every guardian who receives on account of his or her ward any
4839 moneys from the United States Department of Veterans Affairs shall
4840 annually file with the court on the anniversary date of the
4841 appointment, in addition to such other accounts as may be required
4842 by the court, a full, true, and accurate account under oath, which
4843 account is an account of all moneys so received by him or her and
4844 of all disbursements from such moneys, and which account shows the
4845 balance of the moneys in his or her hands at the date of such
4846 filing and shows how the moneys are invested. A certified copy of
4847 each of such accounts filed with the court shall be sent by the
4848 guardian to the office of the United States Department of Veterans
4849 Affairs having jurisdiction over the area in which such court is
4850 located. If the requirement of certification is waived in writing
4851 by the United States Department of Veterans Affairs, an uncertified
4852 copy of each of such accounts shall be sent.

4853 (2) The court, at its discretion or upon the petition of an
4854 interested party, shall fix a time and place for the hearing on
4855 such account; and notice of the hearing shall be given by the court

4856 to the United States Department of Veterans Affairs not less than
4857 15 days prior to the date fixed for the hearing.

4858 (3) The court need not appoint a guardian ad litem to represent the
4859 ward at the hearing provided for in subsection (2). If the
4860 residence of the next kin of the ward is known, notice by
4861 registered mail shall be sent to such relative. Notice also shall
4862 be served on the ward; or, if the ward is mentally incapable of
4863 understanding the matter at issue, the notice may be served on the
4864 person in charge of the institution where the ward is detained, or
4865 on the person having charge or custody of the ward.

4866 (4) When a hearing on an account is required by the court or
4867 requested in the petition of an interested party as provided in
4868 subsection (2), the judge of the court on the day of the hearing as
4869 provided for in subsection (2) shall carefully examine the vouchers
4870 and audit and state the account between the guardian and ward.
4871 Proper evidence shall be required in support of any voucher or item
4872 of the account that may appear to the court not to be just and
4873 proper, such evidence to be taken by affidavit or by any other
4874 legal mode. If any voucher is rejected, the item or items covered
4875 by the disapproval of any voucher or vouchers shall be taxed
4876 against the guardian personally. After such examination, the court
4877 shall render a decree upon the account, which shall be entered on
4878 the record, and the account and vouchers shall be filed. Such
4879 partial settlement shall be taken and presumed as correct on final
4880 settlement of the guardianship.

4881 (5) If a guardian fails to file any account of the moneys received
4882 by him or her from the United States Department of Veterans Affairs
4883 on account of his or her ward within 30 days after such account is
4884 required by either the court or the United States Department of
4885 Veterans Affairs, or fails to furnish the United States Department

4886 of Veterans Affairs a copy of his or her accounts as required by
4887 subsection (1), such failure shall be a ground for the removal of
4888 the guardian.

4889

4890 745.1518 Certified copies of public records made available.

4891 When a copy of any public record is required by the United States
4892 Department of Veterans Affairs to be used in determining the
4893 eligibility of any person to participate in benefits made available
4894 by the United States Department of Veterans Affairs, the official
4895 charged with the custody of such public record shall, without
4896 charge, provide to the applicant for such benefits or any person
4897 acting on her or his behalf, or to the authorized representative of
4898 the United States Department of Veterans Affairs, a certified copy
4899 of such record. For each and every certified copy so furnished by
4900 the official, the official shall be paid by the board of county
4901 commissioners the fee provided by law for copies.

4902

4903 745.1519 Clerk of the circuit court; fees; duties.

4904 Upon the filing of the petition for guardianship, granting of same,
4905 and entering decree thereon, the clerk of the circuit court is
4906 entitled to the service charge as provided by law, which shall
4907 include the cost of recording the petition, bond, and decree and
4908 the issuing of letters of guardianship. The certificate of the
4909 secretary or the secretary's authorized representative provided for
4910 in s. 745.1505 need not be recorded but must be kept in the file.

4911 Upon issuing letters of guardianship or letters appointing a
4912 guardian for the estate of a minor or incompetent, the clerk of the
4913 circuit court shall send to the regional office of the United
4914 States Department of Veterans Affairs having jurisdiction in this
4915 state two certified copies of the letters and two certified copies

4916 of the bond approved by the court, without charge or expense to the
4917 estate involved. The clerk of the circuit court shall also send a
4918 certified copy of such letters to the property appraiser and to the
4919 tax collector in each county in which the ward owns real property.

4920

4921 745.1520 Attorney's fee.

4922 The fee for the attorney filing the petition and conducting the
4923 proceedings shall be fixed by the court in an amount as small as
4924 reasonably possible, not to exceed \$250. However, this section is
4925 not to be interpreted to exclude a petition for extraordinary
4926 attorney's fees, properly filed, and if approved by the United
4927 States Department of Veterans Affairs, does not necessitate a
4928 hearing before the court for approval, but the court shall enter
4929 its order for withdrawal of said attorney's fees from the ward's
4930 guardianship account accordingly.

4931

4932 745.1521 Guardian's compensation; bond premiums.

4933 The amount of compensation payable to a guardian shall not exceed 5
4934 percent of the income of the ward during any year and may be taken,
4935 by the guardian, on a monthly basis. In the event of extraordinary
4936 services rendered by such guardian, the court may, upon petition
4937 and after hearing on the petition, authorize additional
4938 compensation for the extraordinary services, payable from the
4939 estate of the ward. Provided that extraordinary services approved
4940 by the United States Department of Veteran's Affairs do not require
4941 a court hearing for approval of the fees, but shall require an
4942 order authorizing the guardian to withdraw the amount from the
4943 guardianship account. No compensation shall be allowed on the
4944 corpus of an estate received from a preceding guardian. The
4945 guardian may be allowed from the estate of her or his ward

4946 reasonable premiums paid by the guardian to any corporate surety
4947 upon the guardian's bond.

4948
4949 745.1522 Discharge of guardian of minor or incompetent ward.
4950 When a minor ward, for whom a guardian has been appointed under the
4951 provisions of this part or other laws of this state, attains his or
4952 her majority and, if such minor ward has been incompetent, is
4953 declared competent by the United States Department of Veterans
4954 Affairs and the court, or when an incompetent ward who is not a
4955 minor is declared competent by the United States Department of
4956 Veterans Affairs and the court, the guardian shall, upon making a
4957 satisfactory accounting, be discharged upon a petition filed for
4958 that purpose.

4959
4960 745.1523 Final settlement of guardianship; notice required;
4961 guardian ad litem fee; papers required by United States Department
4962 of Veterans Affairs.

4963 On the final settlement of the guardianship, the notice provided
4964 herein for partial settlement must be given and the other
4965 proceedings conducted as in the case of partial settlement, except
4966 that a guardian ad litem may be appointed to represent the ward,
4967 the fee of which guardian ad litem shall in no case exceed \$150.
4968 However, if the ward has been pronounced competent, is shown to be
4969 mentally sound, appears in court, and is 18 years of age, the
4970 settlement may be had between the guardian and the ward under the
4971 direction of the court without notice to the next of kin, or the
4972 appointment of a guardian ad litem. A certified copy of the final
4973 settlement so made in every case must be filed with the United
4974 States Department of Veterans Affairs by the clerk of the court.

4975

4976 745.1524 Notice of appointment of general guardian; closing of
4977 veteran's guardianship; transfer of responsibilities and penalties
4978 to general guardian.

4979 When the appointment of a general guardian has been made in the
4980 proper court and such guardian has qualified and taken charge of
4981 the other property of the ward, the general guardian shall file
4982 notice of such appointment in the court in which the veteran's
4983 guardianship is pending and have the veteran's guardianship settled
4984 up and closed so that the general guardian may take charge of the
4985 moneys referred to and described in ss. 745.1505(2) and (3) and
4986 745.1511. When the appointment of a general guardian, whether for
4987 an incompetent or minor child or another beneficiary entitled to
4988 the benefits provided in 38 U.S.C., as amended, has been confirmed
4989 by the court having jurisdiction, such general guardian is
4990 responsible and is subject to the provisions and penalties
4991 contained in 38 U.S.C., as amended, as well as the requirements
4992 pertaining to guardians as set forth in this part.

4993
4994 745.1525 Construction and application of part.

4995 This part shall be construed liberally to secure the beneficial
4996 intents and purposes of this part and applies only to beneficiaries
4997 of the United States Department of Veterans Affairs. It shall be so
4998 interpreted and construed as to effectuate its general purpose of
4999 making the welfare of such beneficiaries the primary concern of
5000 their guardians and of the court.

5001
5002 745.1526 Annual guardianship report.

5003 Guardians appointed under the Veterans' Guardianship Law shall not
5004 be required to comply with the provisions of s. 745.805 or s.
5005 745.813.

5006

5007 Section 16. Chapter 744 is repealed.

5008

5009 Section 17. This act shall take effect on July 1, 2020 and
5010 shall apply to all proceedings pending before such date and all
5011 proceedings commenced on or after the effective date.

5012

STANDARD 6.10

ENHANCED LIFE ESTATE DEED FOR NON-HOMESTEAD PROPERTY

STANDARD: **THE HOLDER OF A LIFE ESTATE IN NON-HOMESTEAD PROPERTY, COUPLED WITH THE POWER TO SELL, CONVEY, MORTGAGE AND OTHERWISE MANAGE THE FEE SIMPLE ESTATE, CAN CONVEY OR ENCUMBER THE FEE SIMPLE ESTATE DURING THE LIFETIME OF THE HOLDER WITHOUT THE REMAINDERMAN.**

Problem 1: A remainder in Blackacre was conveyed by John Doe to Jane Smith with John Doe reserving for himself without any liability for waste full power and authority in himself to sell, convey, mortgage or otherwise manage and dispose of the property in fee simple with or without consideration without joinder of the remainderman and full power and authority to retain any and all proceeds generated by such action. John Doe died. Is the conveyance to Jane Smith valid?

Answer: Yes.

Problem 2: Same facts as in Problem 1, except that John Doe, during his lifetime and for his own benefit, by a deed reciting the power of disposition, conveyed Blackacre in fee simple to Jeffrey Williams. Did Jeffrey Williams acquire title to Blackacre free of the claims of Jane Smith?

Answer: Yes.

Problem 3: Same facts as in Problem 1, except that John Doe, during his lifetime and for his own benefit, by a deed reciting the power of disposition, conveyed Blackacre in fee simple to Jeffrey Williams. At the time of the conveyance Creditor had a judgment lien against Jane Smith. Did Jeffrey Williams acquire title to Blackacre free of the claims of Jane Smith and Creditor?

Answer: Yes.

Problem 4: Same facts as in Problem 1, except that Creditor has a judgment lien against John Doe. However, Creditor does not levy and execute on his judgment. John Doe dies without conveying the property. Did Jane Smith acquire title to Blackacre free of the judgment lien of Creditor?

Answer: Yes.

Authorities: F.S. 733.706 (2018), F.S. 733.702(4)(a) (2018), *Oglesby v. Lee*, 73 Fla. 39, 73 So. 840 (1917); *Aetna Ins. Co, v. La Gasse*, 223 So.2d 727 (Fla. 1969); 19 Fla. Jur. 2d *Deeds*, § 170

Secondary Authority: Stephanie Emrick, *Transfer on Death Deeds: Is It Time to Establish the Rules of the Game*, 70 Fla. L. Re. 469 (2018)

Comment:

This type of enhanced life estate conveyance is commonly referred to as a “Lady Bird Deed”. It is used for various purposes among which is the avoidance of probate by the holder of the life estate. Attempts by the life tenant with enhanced powers during their lifetime to divest the remainderman of their remainder interest may create questions as to who holds fee simple title after the death of the life tenant. For the record to be clear, the prudent practitioner should have the life tenant retain the power to divest the remainderman in the vesting deed creating the enhanced life estate and any conveyance attempting to divest the remainderman should clearly state the life tenant’s intent to do so. The wording of a deed reserving the right to resell the property may create a fee simple determinable or estate upon condition subsequent. In *Oglesby* the conveyance from a father to a daughter reserving the right to sell and place the proceeds of the sale in lieu of the property resulted in no title interest in the daughter that could be clouded by a subsequent conveyance. A remainderman as to an enhanced life estate during the lifetime of the life tenant holds a vested remainder interest which is subject to divestment by the life tenant and, therefore, any judgment against the remainderman may be similarly divested. However, upon the death of the life tenant, the lien of judgment against the remainderman would attach to the property.

A judgment against a decedent is not enforceable against real property owned by the decedent at the time of death, but shall be filed in the same manner as other claims against estates of decedent. See F.S. 733.706. If a creditor does not levy and execute on its judgment lien, it is just a general lien on all of the property of the debtor. F.S. 733.702(4)(a) permits enforcement of the lien of mortgages, security instruments or other liens on specific property without the necessity of filing a claim.

This type of enhanced life estate conveyance is commonly referred to as a “Lady Bird Deed”. It is used prevalently in Florida for various purposes among which is the avoidance of probate by the holder of the life estate, but there is no Florida Statute governing such conveyances and scant judicial authority supporting the practice. The practitioner should thus be aware that this Standard and its guidance represents the consensus view of the Real Property, Probate, and Trust Law Section of the Florida Bar.

STANDARD 6.11

ENHANCED LIFE ESTATE: LIFE TENANT AND HOMESTEAD PROPERTY

STANDARD: A LIFE TENANT WITH AN INTEREST IN HOMESTEAD PROPERTY, COUPLED WITH THE POWER TO SELL, CONVEY, MORTGAGE AND OTHERWISE MANAGE THE FEE SIMPLE ESTATE, CAN CONVEY OR ENCUMBER THE FEE SIMPLE ESTATE DURING THE LIFETIME OF THE HOLDER WITHOUT THE REMAINDERMAN.

Problem 1: A remainder in Blackacre was conveyed by John Doe to Jane Smith with John Doe reserving for himself without any liability for waste full power and authority in himself to sell convey, mortgage or otherwise manage and dispose of the property in fee simple with or without consideration without joinder of the remainderman and full power and authority to retain any and all proceeds generated by such action. During his lifetime and for his own benefit, John Doe by a deed reciting the power of disposition, conveyed Blackacre in fee simple to Jeffrey Williams. John Doe was a single man at the time of the conveyance to Jeffrey Williams. Did Jeffrey Williams acquire title to Blackacre free of the claims of Jane Smith?

Answer: Yes.

Problem 2: Same facts as in Problem 1, except that John Doe was married at time of the conveyance to Jeffrey Williams and his spouse joined in that conveyance. Did Jeffrey Williams acquire title to Blackacre free of the claims of Jane Smith?

Answer: Yes.

Problem 3: Same facts as in Problem 1, except that at the time of the conveyance Creditor had a judgment lien against Jane Smith. Did Jeffrey Williams acquire title to Blackacre free of the claims of Jane Smith and Creditor?

Answer: Yes.

Authorities: Art. X, Sec. 4(c), Fla. Constitution; F.S. 732.401 (2018), and F.S. 732.4017 (2018); *Oglesby v. Lee*, 73 Fla. 39, 73 So. 840 (1917); 19 Fla. Jur. 2d *Deeds* § 170

Comment: This type of conveyance is commonly referred to as a “Lady Bird Deed”. It is used for various purposes among which is the avoidance of probate by the holder of the life estate. Attempts by the life tenant with enhanced powers during their lifetime to divest the remainderman of their remainder interest may create questions as to who holds fee simple title after the death of the life tenant. For the record to be clear, the life tenant must have retained the power to divest the remainderman in the vesting deed creating the enhanced life estate and any conveyance attempting to divest the remainderman should clearly state the life tenant’s intent to do so. A conveyance of a homestead residence by the life tenant is subject to the spousal joinder requirements of Art. X, Section 4(c). The restriction on the devise of homestead contained in Art. X, Sec. 4(c), of the Florida Constitution, must be considered after the death of the life tenant if they were survived by a spouse or minor

child. Conveyances from all of the heirs of the deceased life tenant, including the surviving spouse, may be required to convey fee simple title to the remainderman named in the vesting deed that created the enhanced life estate.

The wording of a deed reserving of the right to resell the property may create a fee simple determinable or an estate upon condition subsequent. In *Oglesby*, the conveyance from a father to daughter reserving the right to sell and place the proceeds of the sale in lieu of the property resulted in no title interest in the daughter that could be clouded by a subsequent conveyance. A remainderman as to an enhanced life estate during the lifetime of the life tenant holds a vested remainder interest which is subject to divestment by the life tenant, and, therefore, any judgment against the remainderman may be similarly divested. However, upon the death of the life tenant, the lien of the judgment against the remainderman would be attached to the property.

This type of enhanced life estate conveyance is commonly referred to as a “Lady Bird Deed”. It is used prevalently in Florida for various purposes among which is the avoidance of probate by the holder of the life estate, but there is no Florida Statute governing such conveyances and scant judicial authority supporting the practice. The practitioner should thus be aware that this Standard and its guidance represents the consensus view of the Real Property, Probate, and Trust Law Section of the Florida Bar.

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STANDARD 6.12

ENHANCED LIFE ESTATE: REMAINDERMAN AND HOMESTEAD PROPERTY

STANDARD: **THE REMAINDERMAN IN HOMESTEAD PROPERTY, WHEREIN THE LIFE TENANT RESERVED THE POWER TO SELL, CONVEY MORTGAGE AND OTHERWISE MANAGE THE FEE SIMPLE ESTATE, ACQUIRES FEE SIMPLE TITLE UPON THE DEATH OF THE LIFE TENANT ONLY WHEN NOT IN VIOLATION OF CONSTITUTIONAL RESTRICTION ON DEVISE OF HOMESTEAD.**

Problem 1: A remainder in Blackacre was conveyed by John Doe, a single man, to Jane Smith with John Doe reserving for himself without any liability for waste, full power and authority in himself to sell convey, mortgage or otherwise manage and dispose of the property in fee simple with or without consideration, without joinder of the remainderman, and full power and authority to retain any and all proceeds generated by such action. John Doe died without a spouse or a minor child. Upon the death of John Doe, is fee simple title vested in Jane Smith?

Answer: Yes.

Problem 2: Same facts as in Problem 1, except that John Doe died while married to Sally Brown. Upon the death of John Doe, is fee simple title vested in Jane Smith?

Answer: No.

Problem 3: Same facts as in Problem 2, except that the deed is executed on or after July 1, 2018 and John Doe's spouse, Sally Brown, joined in John Doe's deed to Jane Smith and the deed contained the following statement: "By executing or joining in this deed, I intend to waive homestead rights that would otherwise prevent my spouse from devising the homestead property described in this deed to someone other than me"? John Doe had no minor child at the time of his death. Upon the death of John Doe, is fee simple title vested in Jane Smith?

Answer: Yes.

Problem 4: Same facts as in Problem 1, except that at the time of the conveyance and when John Doe died Jane Smith was his spouse and Jane Smith joined in the deed. John Doe had no minor children at the time of his death. Is the conveyance to Jane Smith valid?

Answer: Yes.

Authorities: Art. X, Sec. 4(c), Fla. Constitution (2018); F.S. 732.401 (2018), F.S. 732.4017 (2018), F.S. 732.7025 (2018), F.S. 733.706 (2018); *Oglesby v. Lee*, 73 Fla. 39, 73 So. 840 (1917); 19 Fla. Jur. 2d *Deeds* § 170

Comment: A spouse on or after July 1, 2018 may waive his or her rights as spouse with respect to restrictions on the devise of homestead under Sec. 4(c), Art. X of the State Constitution when language providing for waiver of the right related to devise as set forth in F.S. 732.7025 (2018) is included in the deed. A judgment against a decedent is not enforceable against real property owned by the decedent at the time of death, but shall be filed in the same manner as other claims against estates of decedents. See F.S. 733.706 (2018).

This type of enhanced life estate conveyance is commonly referred to as a “Lady Bird Deed”. It is used prevalently in Florida for various purposes among which is the avoidance of probate by the holder of the life estate, but there is no Florida Statute governing such conveyances and scant judicial authority supporting the practice. The practitioner should thus be aware that this Standard and its guidance represents the consensus view of the Real Property, Probate, and Trust Law Section of the Florida Bar.