



**GRAND HYATT TAMPA BAY  
Tampa, Florida**

**Saturday, February 1, 2020  
9:45 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  
Grand Hyatt Tampa Bay  
Tampa, Florida  
Saturday, February 1, 2020**

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**Agenda**

**Note: Agenda Items May Be Considered on a Random Basis**

- I. **Presiding** — *Robert S. Freedman, Chair*
- II. **Attendance** — *Steven H. Mezer, Secretary*
  1. Attendance roster for Bar year to date. **p. 9**
- III. **Minutes of Previous Meeting** — *Steven H. Mezer, Secretary*
  1. Motion to approve the minutes of the November 9, 2019, meeting of the Executive Council held at the JW Marriott Marquis, Miami, Florida. **p. 24**
- IV. **Chair's Report** — *Robert S. Freedman, Chair*
  1. Recognition of Guests.
  2. Introduction and comments from sponsors of Executive Council meeting. **p. 38**
  3. Milestones.
  4. Report of Interim Actions by the Executive Committee. **p. 41**
    - a. December 31, 2019: Approval of candidates for Florida Bar Leadership Academy
    - b. January 6, 2020: Approval of a letter to Daniel E. Norby, Chair of the Florida Supreme Court Judicial Nominating Commission, regarding Supreme Court nominations, emphasizing the importance of a Judge having knowledge of both real property law and probate, trust and estate law issues. **p. 42**
    - c. January 9, 2020: Approval of a legislative position regarding revisions to Section 736.08145, Florida Statutes, to grant a trustee discretionary authority to reimburse the deemed owner of a grantor trust for income taxes attributable to the deemed owner. **p. 44**

5. 2019-2020 Executive Council meetings. **p. 54**
  6. Tampa and Amsterdam updates.
  7. Convention update.
- V. [Liaison with Board of Governors Report](#) — *Michael G. Tanner***
- VI. [Chair-Elect's Report](#) — *William T. Hennessey, III, Chair-Elect***
1. 2020-2021 Executive Council meetings. **p. 55**
- VII. [Treasurer's Report](#) — *Wm. Cary Wright, Treasurer***
1. Statement of Current Financial Conditions. **p. 56**
- VIII. [Director of At-Large Members Report](#) — *Lawrence Jay Miller, Director***
- IX. [CLE Seminar Coordination Report](#) — *Wilhelmina F. Kightlinger (Real Property) and John C. Moran (Probate & Trust), Co-Chairs***
1. Report on pending CLE programs and opportunities. **p. 57**
- X. [Legislation Committee](#) – *S. Katherine Frazier and Jon Scuderi, Co-Chairs***
1. Update on legislative issues, including new Florida Bar Legislative Position Request Form. **p. 58**
  2. Discussion regarding procedures and requirements of the RPPTL Section Strategic Plan. **p. 61**
  2. Discussion on Senate Bill 1428. **p. 67**
- XI. [General Standing Division Report](#) — *William T. Hennessey, III, General Standing Division Director and Chair-Elect***

**Information Items:**

1. **Professionalism and Ethics** - *Gwynne A. Young, Chair*
  - a. Ethics Vignette - The Underlying Work Conflict? **p. 69**
2. **Fellows** - *Benjamin Frank Diamond and Christopher A. Sajdera, Co-Chairs*
  - a. Motion to adopt the proposed mission statement and scholarship selection criteria for the Fellows Program. **p. 71**
3. **Ad Hoc Remote Notarization** – *E. Burt Bruton, Chair*

- a. Report of items of interest pertaining to changes in notarization statutes. **p. 72**
- 4. **Ad Hoc Florida Bar Leadership Academy-** *Kristopher E. Fernandez and Allison Archbold, Co-Chairs*
  - a. Report on scholarship selection.
- 5. **Liaison with Clerks of the Court –** *Laird A. Lile*
  - a. Update on matters of interest.
- 6. **Law School Mentoring & Programing –** *Lynwood F. Arnold, Jr., Chair*
  - a. Report on committee activities.
- 7. **Information and Technology –** *Neil Barry Shoter, Chair*
  - a. Report on committee activities.
- 8. **Membership and Inclusion -** *Annabella Barboza and Brenda Ezell, Co-Chairs*
  - a. Report on committee activities.
- 9. **Liaison With Business Law Section-** *Manuel Farach and Gwynne Young*
  - a. Report on items of potential interest.

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

**Information Items:**

- 1. **Probate and Trust Litigation Committee -** *John Richard Caskey, Chair*
  - a. Consideration of proposed changes to Florida Statutes § 736.1008 so that the same statute of limitations for breach of trust against a trustee applies to directors, officers, and employees acting for the trustee. **p. 80**
- 2. **Ad Hoc Guardianship Law Revision Committee -** *Nicklaus J. Curley and Sancha Brennan Whynot, Co-Chairs*
  - a. Update on current version of potential changes to the Guardianship Code. **p. 89**

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

**Action Items:**

1. **Real Property Finance and Lending Committee** – *Richard S. McIver, Chair*
  - a. Motion to approve First Supplement to the Report on Third Party Legal Opinion Customary Practice in Florida. **pp. 132**
2. **Residential Real Estate and Industry Liaison** – *Nicole M. Villarroel and Salome J. Zikakis, Co-Chairs*
  - b. Motion to approve rider to FR/Bar contract that includes the statutorily required notice that must be included in a contract for the sale of real property that has a PACE assessment. **pp. 186**

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

1. **Ad Hoc Guardianship Law Revision Committee** — Nicklaus J. Curley, and Sancha Brennan Whynot, Co-Chairs; David C. Brennan and Stacey B. Rubel, Co-Vice Chairs
2. **Ad Hoc Committee on Electronic Wills** — Angela McClendon Adams, Chair; Frederick “Ricky” Hearn and Jenna G. Rubin, Co-Vice Chairs
3. **Ad Hoc Study Committee on Professional Fiduciary Licensing** — Angela McClendon Adams, Chair; Yoshimi Smith, Vice Chair
4. **Ad Hoc Study Committee on Estate Planning Conflict of Interest** — William T. Hennessey, III, Chair; Paul Edward Roman, Vice-Chair
5. **Ad Hoc Study Committee on Due Process, Jurisdiction & Service of Process** — Barry F. Spivey, Chair; Sean W. Kelley and Christopher Q. Wintter, Co-Vice Chairs
6. **Asset Protection** — Brian M. Malec, Chair; Richard R. Gans and Michael A. Sneeringer, Co-Vice-Chairs
7. **Attorney/Trust Officer Liaison Conference** — Tattiana Patricia Brenes-Stahl and Cady Huss, Co-Chairs; Tae Kelley Bronner, Stacey L. Cole (Corporate Fiduciary), Patrick C. Emans, Gail G. Fagan and Mitchell A. Hipsman, Co-Vice Chairs
8. **Charitable Planning and Exempt Organizations Committee** — Seth Kaplan, Chair and Jason Havens, Vice-Chair
9. **Elective Share Review Committee** — Lauren Young Detzel, Chair; Cristina Papanikos and Jenna G. Rubin, Co-Vice-Chairs
10. **Estate and Trust Tax Planning** — Robert L. Lancaster, Chair; Richard Sherrill and Yoshimi O. Smith, Co-Vice Chairs

11. **Guardianship, Power of Attorney and Advanced Directives** — Nicklaus Joseph Curley, Chair; Brandon D. Bellew, Stacey Beth Rubel, and Jamie Schwinghammer, Co-Vice Chairs
12. **IRA, Insurance and Employee Benefits** — L. Howard Payne and Alfred J. Stashis, Co-Chairs; Charles W. Callahan, III, Vice Chair
13. **Liaisons with ACTEC** — Elaine M. Bucher, Shane Kelley, Charles I. Nash, Tasha K. Pepper-Dickinson, and Diana S.C. Zeydel
14. **Liaisons with Elder Law Section** — Travis Finchum and Marjorie Ellen Wolasky
15. **Liaisons with Tax Section** — Lauren Young Detzel, William R. Lane, Jr., and Brian C. Sparks
16. **Principal and Income** — Edward F. Koren and Pamela O. Price, Co-Chairs, Joloyon D. Acosta and Keith Braun, Co-Vice Chairs
17. **Probate and Trust Litigation** — John Richard Caskey, Chair; Angela McClendon Adams, James R. George and R. Lee McElroy, IV, Co-Vice Chairs
18. **Probate Law and Procedure** — M. Travis Hayes, Chair; Amy B. Beller, Jeffrey S. Goethe, Christina Papanikos and Theodore S. Kypreos, Co-Vice Chairs
19. **Trust Law** — Matthew H. Triggs, Chair; Tami Foley Conetta, Jack A. Falk, Jenna G. Rubin, and Mary E. Karr, Co-Vice Chairs
20. **Wills, Trusts and Estates Certification Review Course** — Jeffrey S. Goethe, Chair; J. Allison Archbold, Rachel A. Lunsford, and Jerome L. Wolf, Co-Vice Chairs

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

1. **Attorney-Loan Officer Conference** – Robert G. Stern, Chair; Kristopher E. Fernandez, Wilhelmina F. Kightlinger, and Ashley McRae, Co-Vice Chairs
2. **Commercial Real Estate** – Jennifer J. Bloodworth, Chair; E. Burt Bruton, E. Ashley McRae, R. James Robbins, Jr. and Martin A. Schwartz, Co-Vice Chairs
3. **Condominium and Planned Development** – William P. Sklar and Joseph E. Adams, Co-Chairs; Alexander B. Dobrev, Vice Chair
4. **Condominium and Planned Development Law Certification Review Course** – Sandra Krumbain, Chair; Jane L. Cornett and Christene M. Ertl, Co-Vice Chairs
5. **Construction Law** – Reese J. Henderson, Jr., Chair; Sanjay Kurian, Vice Chair
6. **Construction Law Certification Review Course** – Melinda S. Gentile and Elizabeth B. Ferguson Co-Chairs; Gregg E. Hutt and Scott P. Pence, Co-Vice Chairs
7. **Construction Law Institute** – Jason J. Quintero, Chair; Deborah B. Mastin and Brad R. Weiss, Co-Vice Chairs

8. **Development & Land Use Planning** – Julia L. Jennison, Chair; Jin Liu and Colleen C. Sachs, Co-Vice Chairs
9. **Insurance & Surety** – Michael G. Meyer, Chair; Katherine L. Heckert and Mariela M. Malfeld, Co-Vice Chairs
10. **Liaisons with FLTA** – Alan K. McCall and Melissa Jay Murphy, Co-Chairs; Alan B. Fields and James C. Russick, Co-Vice Chairs
11. **Real Estate Certification Review Course** – Manuel Farach, Chair; Lynwood F. Arnold, Jr., Martin S. Awerbach, Lloyd Granet and Brian W. Hoffman, Co-Vice Chairs
12. **Real Estate Leasing** – Brenda B. Ezell, Chair; Richard D. Eckhard and Christopher A. Sajdera, Co-Vice Chairs
13. **Real Property Finance & Lending** – Richard S. McIver, Chair; Deborah Boyd and Jason M. Ellison, Co-Vice Chair
14. **Real Property Litigation** – Michael V. Hargett, Chair; Amber E. Ashton, Manuel Farach and Christopher W. Smart, Co-Vice Chairs
15. **Real Property Problems Study** – Lee A. Weintraub, Chair; Stacy O. Kalmanson, Susan K. Spurgeon and Adele Ilene Stone, Co-Vice Chairs
16. **Residential Real Estate and Industry Liaison** – Nicole M. Villarroel and Salome J. Zikakis, Co-Chairs; Raul Ballaga, Louis E. “Trey” Goldman, and James A. Marx, Co-Vice Chairs
17. **Title Insurance and Title Insurance Liaison** – Brian W. Hoffman, Chair; Mark A. Brown, Alan B. Fields, Leonard Prescott and Cynthia A. Riddell, Co-Vice Chairs
18. **Title Issues and Standards** – Christopher W. Smart, Chair; Robert M. Graham, Brian W. Hoffman, Karla J. Staker, and Rebecca Wood, Co-Vice Chairs

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

1. **Ad Hoc Florida Bar Leadership Academy** — Kristopher E. Fernandez and J. Allison Archbold, Co-Chairs; Bridget Friedman, Vice Chair
2. **Ad Hoc Remote Notarization** – E. Burt Bruton, Jr., Chair
3. **Amicus Coordination** — Kenneth B. Bell, Gerald B. Cope, Jr., Robert W. Goldman and John W. Little, III, Co-Chairs
4. **Budget** — Wm. Cary Wright, Chair; Tae Kelley Bronner. Linda S. Griffin, and Pamela O. Price, Co-Vice Chairs
5. **CLE Seminar Coordination** — Wilhelmina F. Kightlinger and John C. Moran, Co-Chairs; Alexander H. Hamrick, Hardy L. Roberts, III, Paul E. Roman (Ethics), Silvia B. Rojas, and Yoshimi O. Smith, Co-Vice Chairs
6. **Convention Coordination** — Sancha Brennan, Chair; Bridget Friedman, Nishad Khan and Alexander H. Hamrick, Co-Vice Chairs
7. **Disaster and Emergency Preparedness and Response** – Brian C. Sparks, Chair; Jerry E. Aron, Benjamin Frank Diamond and Colleen Coffield Sachs, Co-Vice Chairs
8. **Fellows** — Benjamin Frank Diamond and Christopher A. Sajdera, Co-Chairs; Joshua Rosenberg and Angel Santos, Co-Vice Chairs



9. **Florida Electronic Filing & Service** — Rohan Kelley, Chair
10. **Homestead Issues Study** — Jeffrey S. Goethe (Probate & Trust) and J. Michael Swaine (Real Property), Co-Chairs; Michael J. Gelfand, Melissa Murphy and Charles Nash, Co-Vice Chairs
11. **Information Technology & Communication** — Neil Barry Shoter, Chair; Erin H. Christy, Alexander B. Dobrev, Jesse B. Friedman, Keith S. Kromash, Patrick F. Mize, Hardy L. Roberts, III, and Michael A. Sneeringer, Co-Vice Chairs
12. **Law School Mentoring & Programing** — Lynwood F. Arnold, Jr., Chair; Phillip A. Baumann, Guy Storms Emerich, Elizabeth Hughes and Kymberlee Curry Smith, Co-Vice Chairs
13. **Legislation** — Jon Scuderi (Probate & Trust) and S. Katherine Frazier (Real Property), Co-Chairs; Theodore S. Kypreos and Robert Lee McElroy, IV (Probate & Trust), Manuel Farach and Arthur J. Menor (Real Property), Co-Vice Chairs
14. **Legislative Update (2019-2020)** — Stacy O. Kalmanson and Thomas M. Karr, Co-Chairs; Brenda Ezell, Theodore Stanley Kypreos, Jennifer S. Tobin and Salome J. Zikakis, Co-Vice Chairs
15. **Legislative Update (2020-2021)** — Thomas M. Karr, Chair; Brenda Ezell, Theodore Stanley Kypreos, Gutman Skrande, Jennifer S. Tobin, Kit van Pelt and Salome J. Zikakis, Co-Vice Chairs
16. **Liaison with:**
  - a. **American Bar Association (ABA)** — Robert S. Freedman, Edward F. Koren and Julius J. Zschau
  - b. **Clerks of Circuit Court** — Laird A. Lile
  - c. **FLEA / FLSSI** — David C. Brennan and Roland D. “Chip” Waller
  - d. **Florida Bankers Association** — Mark T. Middlebrook
  - e. **Judiciary** — Judge Catherine Catlan, Judge Jaimie Goodman, Judge Mary Hatcher, Judge Hugh D. Hayes, Judge Margaret Hudson, Judge Celeste Hardee Muir, Judge Bryan Rendzio, Judge Janet C. Thorpe and Judge Jessica Jacqueline Ticktin
  - f. **Out of State Members** — Nicole Kibert Basler, John E. Fitzgerald, Jr., and Michael P. Stafford
  - g. **TFB Board of Governors** — Michael G. Tanner
  - h. **TFB Business Law Section** — Gwynne A. Young and Manuel Farach
  - i. **TFB CLE Committee** — John C. Moran (alt: Wilhelmina F. Kightlinger)
  - j. **TFB Council of Sections** — Robert S. Freedman and William T. Hennessey, III
  - k. **TFB Diversity & Inclusion** – Erin H. Christy
  - l. **TFB Pro Bono Committee** — Melisa Van Sickle
17. **Long-Range Planning** — William T. Hennessey, III, Chair
18. **Meetings Planning** — George J. Meyer, Chair
19. **Membership and Inclusion** — Annabella Barboza and Brenda Ezell, Co-Chairs; S. Dresden Brunner, Vinette Dawn Godelia, and Roger A. Larson, Co-Vice Chairs



20. **Model and Uniform Acts** — Bruce M. Stone and Richard W. Taylor, Co-Chairs; Patrick J. Duffey and Adele Irene Stone, Co-Vice Chairs
21. **Professionalism and Ethics** — Gwynne A. Young, Chair; Alexander B. Dobrev, Andrew B. Sasso, Hon. Mark Alan Speiser and Laura Sundberg, Co-Vice Chairs
22. **Publications (ActionLine)** — Jeffrey Alan Baskies and Michael A. Bedke, Co-Chairs (Editors in Chief); Richard D. Eckhard, Jason M. Ellison, George D. Karibjanian, Sean M. Lebowitz, Daniel L. McDermott, Jeanette Moffa and Paul E. Roman, Co-Vice Chairs
23. **Publications (Florida Bar Journal)** — Jeffrey S. Goethe (Probate & Trust) and Douglas G. Christy (Real Property), Co-Chairs; J. Allison Archbold (Editorial Board – Probate & Trust), Homer Duvall, III (Editorial Board — Real Property), Marty J. Solomon (Editorial Board — Real Property), and Brian Sparks (Editorial Board — Probate & Trust), Co-Vice Chairs
24. **Sponsor Coordination** — J. Eric Virgil, Chair; Patrick C. Emans, Marsha G. Madorsky, Jason J. Quintero, J. Michael Swaine, and Arlene C. Udick, Co-Vice Chairs
25. **Strategic Planning** — Robert S. Freedman and William T. Hennessey, III, Co-Chairs
26. **Strategic Planning Implementation** - Michael J. Gelfand, Chair; Michael A. Dribin, Deborah Packer Goodall, Andrew M. O'Malley and Margaret A. "Peggy" Rolando, Co-Vice Chairs

**XVII. Adjourn:** Motion to Adjourn.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

RPPTL Fellows	Division		July 28 Breakers	Nov. 6 Miami	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		√	√				
Hinden, Michelle Gaven	√		√	√			
Jackson, Gabrielle	√		√	√			
Jaiven, Kristen King	√		√	√			
McDermott, Daniel L.		√	√				
Peregrin, Jacqueline J.	√						
Percopo, Joseph		√		√			

Legislative Consultants	Division		July 28 Breakers	Nov. 6 Miami	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
Jacobeli J. Behar		√
David Shanks	√	
Lee Anne Groover		√
Antonio Romano		√
Sharifa Jarrett		√
Robert Persante		√
Darren Shotts		√
Zack Zuroweste		√
Julia Horstkamp	√	
Paige Baker	√	
Eric Sulzberger		√
Erin Finlen		√
Eve A. Bouchard		√
Jeremy T. Cranford	√	
Marve Ann Alaimo		√
Bonnie Lee Polk		√
Ciselle Leonardo – Nov. 7 <sup>th</sup> & 8 <sup>th</sup>		
Sandy Boisrond		√
Steven Hitchcock	√	
Mike Tanner – Nov. 7 <sup>th</sup> – 9 <sup>th</sup>		
Brandon Masher (Law Student)		
Edwin Ed Walken		


ACTIVE: 12439472\_1

**Real Property, Probate and Trust Law Section  
Executive Council Meeting  
JW Marriott Marquis  
Miami, Florida  
Saturday, November 9, 2019**

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**Minutes**

**I. Presiding** — *Robert S. Freedman, Chair*

9:45 A.M. The Meeting was called to order by Robert S. Freedman.

**II. Attendance** — *Steven H. Mezer, Secretary*

The light blue attendance sheet was passed by Mr. Mezer.

Approval of resolution to honor Past Chair Lewis Kanner on his passing. The resolution was read by Mr. Mezer and unanimously approved by the Members. A plaque was presented to Mr. Kanner's daughter, Ellen Kanner. Ms. Kanner thanked The Section.

**III. Minutes of Previous Meeting** — *Steven H. Mezer, Secretary*

Mr. Mezer presented the Minutes of the July 27, 2019 meeting of Executive Council held at The Breakers, Palm Beach, Florida. A motion to waive the reading of the minutes and to approve the minutes was made, seconded and passed unanimously.

**IV. Chair's Report** — *Robert S. Freedman, Chair*

1. **Recognition of Guests:** Brandon Moser Relationship manager for The Fund and Chase Early of The Florida Bar and special recognition of Section Administrator, Mary Ann Obos

2. **Introduction and comments from sponsors of Executive Council meeting.**

Mr. Freedman recognized the Section Sponsors:

General Section Sponsor: The Fund

The Friends of the Section

Amtrust Title, Business Valuation Analysts, LLC, CATIC, Cumberland Trust, Fiduciary Trust International of the South, Heritage Investment Group, North American Title Insurance, Practice 42, Valuation Services, Inc. and Wilmington Trust.

The General Sponsors

Overall Sponsor/Legislative Update: Attorney's Title Fund Services, LLC  
Event App Sponsor: WFG National Title Insurance Company  
Thursday Grab N' Go Lunch: Management Planning Inc.  
Thursday night's reception: J.P. Morgan Private Bank and Old Republic National Title Insurance  
Friday reception: Wells Fargo Private Banking and Westcor Land Title Insurance Company  
Thursday and Friday Night Hospitality Suite: First American Title Insurance Company, and Phillips  
Spouse Breakfast: Attorney's Title Fund Services, LLC  
Real Property Roundtable: Fidelity National Title Group  
Probate Roundtable: Stout Risius Ross, Inc. and Guardian Trust  
Executive Council Meeting: The Florida Bar Foundation and Stewart Title

Mr. Freedman recognized David Shanks from Stewart Title who expressed appreciation to the Section as a general sponsor and he spoke briefly about the future of Stewart Title. Mr. Freedman also thanked Melissa Murphy who was unable to attend and Attorney's Title Insurance Fund, a Section General Sponsor as well as the sponsor of the Spouse Breakfast for their continued support of The Section. Len Prescott addressed the members on behalf of First American Title.

3. **Milestones:**

Mr. Freedman recognized the following milestones:

New ACTEC Fellows: Hung Nguyen, Robert Lancaster and Richard Caskey.  
Elizabeth Ferguson and husband Steve adopted a baby girl 9/26/2019.  
Ted Connor was appointed by Governor DeSantis to Port Tampa Bay.  
Frederick "Ricky" Hearn's mother passed away. The funeral is today.  
Burt Burton won Battle of the Bands in New York for the sixth year in a row. A CD "Carolina Sky Pie" is available for members of the Executive Council for free.

4. **Report of Interim Actions by the Executive Committee:**

Mr. Freedman reported on the additional interim action items:

- a. Authorization given to the Ad Hoc E-Wills Committee to appoint ambassadors to consult with the Florida Court Clerks and Comptrollers on matters pertaining to electronic wills.
- b. Appointment of Erin Christy to serve as the RPPTL Section's representative to the Diversity & Inclusion Committee of The Florida Bar.
- c. Approval of the contract with Dean Mead to serve as the Section's Legislative Consultant for the period September 1, 2019 - August 31, 2021. Mr. Freedman thanked Pete Dunbar for his twenty years of service as the Sections Legislative Consultant.

- d. Approval of the Section position to approve proposed changes to Rules 6-30.2, 6-30.3 and 6-30.4, Rules Regulating The Florida Bar, pertaining to composition of the membership of the Condominium and Planned Development Law Certification Committee and standards for peer review for certification and recertification of candidates.
- e. Approval of the Section position to oppose proposed amendments by the ADR Committee to Rules 5.181, 5.182, 5.183, 5.184 and 5.185, Florida Probate Rules, pertaining to mediation/arbitration provisions. Mr. Freedman asked Greer Preston to comment. Mr. Preston explained the reasons for the opposition, including issues relating to mediator training and the ability of the parties to select mediation.
- f. Approval of the Section position to oppose the Florida Commission on Access to Civil Justice's proposal to expand the Florida Registered Paralegal Program (Chapter 20, Rules Regulating The Florida Bar) through amendments. Mr. Freedman asked Mr. Mezer to comment further. Mr. Mezer thanked the members of the task force, Debra Boje, Kristopher Fernandez, Jason Ellison, Hung Nguyen, Alexandra Rieman and Lynwood Arnold and he explained the basis for the Section's opposition; UPL, conflict with prior decisions of The Florida Supreme Court harm to the public, the potential for fraud, the lack of standards for eligibility, inadequate training, and the lack of supervision.
- g. Authorization of the Section Chair to vote at the upcoming Council of Sections videoconference meeting to increase the Section's annual dues from \$300.00 to \$500.00.

Mr. Freedman asked for a vote to approve all interim actions. Motion was made, seconded and passed unanimously.

5. **2019-2020 Executive Council meetings.**

Mr. Freedman reported that the Schedule for the 2019-2020 Executive Council meetings appears at page 52 of the agenda.

6. **Tampa and Amsterdam updates**

Mr. Freedman reported:

**Tampa, Winter Meeting** - January 29 - February 2, 2020 will be held at the Grand Hyatt Tampa Bay Hotel, Tampa. Meetings will begin Thursday morning; Thursday night dinner will be at Oyster Catchers and Friday night dinner will be at Armani's, in time for sunset. Round table meetings will be Saturday morning. Saturday evening will include an "escape room" and dinner at Besitos. Registration should open in early December.

**Amsterdam** – April 1 – April 5, 2020 – Hotel Okura Amsterdam. There are currently 100 people registered, so it is likely that the event will not be open to non-Executive Council members. Mr. Freedman presented a video of

Amsterdam. Registration fee includes Thursday evening reception and dinner at Dutch West Indies House. Executive Council meeting at The Hague and museums – The flat fee includes: Thursday trip to Keukenhof – Tulip gardens and Saturday evening dinner and reception. Breakfast included with room registration. Optional Tours: April 1 Excursions – optional tour of windmills, but will be offered other days, if you miss it.

April 2: Executive Council meeting at The Hague with CLE in the afternoon, 3 different museums with lunch included.

April 3: Saturday optional excursions. Saturday Night will be a reception and dinner at the National Maritime Museum.

As for the Anne Frank House – they are now booking tours – individual tickets may be purchased 90 days in advance – there will be a refund of the cost of afternoon excursion, if you are able to purchase Anne Frank tickets.

Please do not forward e-mails regarding Amsterdam outside of Executive Council members as reservations of Non-Executive Council Members will be cancelled and may not later be available. Additional information will be in e-mails.

Prior to December 1, 2019 changes may be made without cost.

7. **Convention update**

Sancha Brennan will chair the Convention – Ms. Brenna reported that the Convention will be at Loews' Sapphire Falls Resort in Orlando May 28-31, 2020.

V. **Liaison with Board of Governors Report** — *Michael G. Tanner*

Mr. Freedman recognized Michael G. Tanner.

Mr. Tanner reported on five items from the BoG meeting in Destin:

- (1) Legislative positions from The Section Florida Uniform Trust Act, construction lien law, and Ad Valorem tax Amendment were approved at the last meeting of the Board of Governors.
- (2) The Section's contract with Dean Mead was approved at the last meeting of the Board of Governors.
- (3) The constitutionality of mandatory Bar associations continues to be a major concern in light of the JANUS v AFSCME ruling.
- (4) Florida Advanced Registered Paralegals will be considered at the Board of Governors meeting in January.
- (5) New Chapter 23 - Rules governing Florida Bar – voluntary registration of online legal service providers and minimum requirements for registrants ways of getting along with traditional providers of legal services will be considered at the December meeting.

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

Mr. Freedman recognized William T. Hennessey, III.

Mr. Hennessey reported:

1. **2020-2021 Executive Council meetings**

The schedule of the 2020-2021 Executive Council meetings appears at page 53 of the agenda.

**Executive Council and Legislative Update** – July 23-26, 2020, The Breakers, Palm Beach

**Out of state – Jackson Hole** – (September 29 – October 4, 2020): Mr. Hennessey presented a Power Point of Jackson Hole. The out of state meeting will take place at the Four Season in Teton Village/Jackson Hole. The meeting will include National Park tours, wild life safaris, scenic rafting trips, as well as much more. Friday night dinner will be at the Diamond Cross Ranch which overlooks Grand Teton National Park. There will be a demonstration of breaking horses, which can be applied to management practices. Mr. Hennessey noted there are two out of state meetings in 2020. Registration for Jackson Hole should open in the fall. Amsterdam in the spring.

**Disney's Yacht Club, Orlando (December 3-6, 2020)**: The meeting includes events on Disney properties, including a reception on the beach, as well as a safari in the Animal Kingdom theme park, Friday night.

**Hammock Beach Resort – Palm Coast (February 2-6, 2021)**. Daytona/St. Augustine with two golf courses, Family friendly. All rooms 1, 2, 3B/R suites with full kitchens overlooking the ocean.

**Convention JW Marriot – Marco Island May 28-31, 2021**. Daytona – St. Augustine on ocean and golf courses.

Mr. Hennessey reminded all Committee Chairs that Committee reports due on December 1– Chairs' and Vice Chairs' input on Rising Stars and succession plans are requested.

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

Mr. Freedman recognized Cary Wright.

Mr. Wright reported:

1. **Statement of Current Financial Conditions.**

Mr. Wright reported that the current fund balance is tentatively shown as \$2,715,383 and projected June, 2019 fund balance is \$2,052,489. Fiscal year began July 1. Through August 31, 2019 we are about \$578,000 posted but not all revenue charges are booked yet. We will have more accurate numbers at next meeting.



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

Mr. Freedman recognized Lawrence “Larry” Miller.

Mr. Miller reported that ALMS met Thursday afternoon - welcomed new At Large Members – formed a committee to address sunseting of funding for No Place Like Home project and the need to find state-wide funding and spread the program state wide. Mr. Miller thanked Christine Tucker and Lynwood Arnold for meet and greet new attendees. ALMs will reach out to local Section members for brain-storming on resources.

Mobilized ALMs for local outreaches – Kudos to the ALMs for picking up increased programming.

Subcommittee was formed to fund alternative funding for No Place Like Home. Anyone with ideas on alternate funding is asked to please contact Mr. Miller or Erin Christy. Committee Reports are due and ALMs applications are due. 2 sets: 1 for existing ALMs and 1 for new ALMs. If you have questions, please contact Mr. Miller.

Mr. Freedman restated that existing ALMs must apply again. He reinforced a reminder to use the correct form.

**IX. CLE Seminar Coordination Report** — *Wilhelmina F. Kightlinger (Real Property) and John C. Moran (Probate & Trust), Co-Chairs*

Mr. Freedman recognized Wilhelmina F. Kightlinger.

1. **Report on pending CLE programs and opportunities**

Ms. Kightlinger thanked Chairs and Speakers for the work on CLEs. She reported that the Electronic Promissory Notes Webinar held October 16, 2019 had 100 attendees – Congratulations to the Real Estate and Finance Lending Committee.

Ms. Kightlinger reported on up-coming CLEs:

11/15 – Probate Law Seminar – Live and webcast

11/20 – Sharing Physical Space in a Digital World – Includes a Technology CLE Credit.

12/17 – Correct Notarization

Ms. Knightlinger reported that the RPPTL Section recognized \$190,000 revenue for CLEs in 2019-2019.

The tentative CLE Schedule is on page 55 of the Agenda.

X. **Legislation Committee** – *S. Katherine Frazier and Jon Scuderi, Co-Chairs*

Mr. Freedman indicated that Ms. Frazier and Mr. Scuderi had each reported at Roundtable. No other report.

Mr. Freedman reminded those in attendance that if you are going to attend the Roundtable meetings, please tell us, so the count can be had as to amount of food. Please do not attend events without letting us know.

**Items:**

1. **General Standing Action Item: 2020-2021 Budget** — *Wm. Cary Wright, Treasurer and Chair, Budget Committee*

Mr. Freedman recognized Mr. Wright.

Mr. Wright introduced the budget which appears at pages 56-63 of the agenda and stated that he had budgeted conservatively. He also noted that Debra Boje's year produced a \$300,000+ profit to the Section.

Mr. Wright suggested two amendments to the budget:

1. \$300/year Council of Sections – new amount is \$500/year, a \$200 increase.
2. Legislative update – move webcast to CLE to provide 24/7 demand availability as opposite to only CD sales.

Mr. Freedman asked for a motion to waive the rules to allow consideration of the two amendments. That motion was made, seconded and approved unanimously. The two amendments to the budget were approved unanimously.

Committee motion to approve the proposed Real Property, Probate and Trust Law Section Budget for the fiscal year 2020–2021 as amended was made, seconded and was unanimously approved.

2. **General Standing Action Item: Strategic Planning Committee** - *Debra L. Boje and Robert S. Freedman, Co-Chairs*

Finalization of 2019 Strategic Plan (update after Breakers). The strategic plan appears at page 64-105. The plan was tabled to allow for minor changes.

Mr. Freedman recognized Michael Gelfand.

Mr. Gelfand reported that as a result of comments received, issues regarding size of Executive Council were revised. Typographical errors were corrected.

Committee Motion made to approve the strategic plan was offered, seconded and unanimously approved.

Mr. Gelfand commented that all should remember that this date is the anniversary of fall of Berlin wall.

Mr. Freedman thanked Veterans and family members in activity duty for their service.

3. **Ethics Vignette Presented:** When Does a Current Client Become a Former Client?

4. **General Standing Information Item: Liaison with Clerks of the Court** – Laird A. Lile

Mr. Freedman recognized Laird A. Lile.

Mr. Lile reported:

Update on matters of interest: Clerks have invited us to participate in discussion as to fees for depository of electronic wills. E-filing began about a month ago, however, a problem has arisen regarding the handling of Orders inconsistently

Florida Supreme Court – requires judges have knowledge of appropriate technology.

Florida Supreme Court is considering rules regarding remote appearances.

5. **General Standing Information Item: Law School Mentoring & Programing** – Lynwood F. Arnold, Jr., Chair

Update on committee activities and RPPTL Law School Liaisons.

Phillip Baumann reported that there have been events at 8 of the 12 law schools in the last year. The Committee has continued with mock interviews at the law school. There is grid about law school engagement at page 162 of the agenda. The Committee is looking for additional contacts as turnover at schools requires constant communication and updating.

6. **RP Action Item: Construction Law Committee** – Reese J. Henderson, Jr., Chair

Mr. Freedman recognized Mr. Swaine. Mr. Swaine called upon Reese Henderson.

Mr. Henderson introduced the Committee motion to:

(A) adopt as a Section legislative position support for amendments to Ch. 255 and 713, Florida Statutes to (1) expand the definition of contractor under Section 713.01, F.S. to include construction managers; (2) correct ambiguity in improper payments made by an owner prior to abandonment of a project by contractor; (3) requiring a tenant's information on a notice of commencement where a tenant is contracting for leasehold improvements; (4) statutorily bringing attorney fees under Chapter 713 back to the net judgment rule as opposed to the prevailing party standard set forth in *Trytek v. Gale Industries*; (5) clearing up ambiguity in Section 337.18, F.S. as it relates to waiver and release of payment bond claims in public transportation projects; (6) repealing Section 255.05(7), F.S., which allows for cash to serve as an alternative

form of security on public projects as opposed to payment bonds; and (7) repealing Section 713.245, F.S., which created conditional payment bonds; (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.

Motion amended by the Committee to strike lines 259-271 – no discussion. Motion was approved unanimously.

The Committee's motion, as amended, was approved unanimously.

7. **General Standing Information Item: Liaison With Business Law Section-**  
*Manuel Farach and Gwynne Young*

- a. Report on items of potential interest, **p. 184-186** attached to the agenda. Business Law Section has created a task force that has met with Real Property Litigation and Finance and Lending Committees.

8. **General Standing Information Item: Ad Hoc Florida Bar Leadership Academy-**  
*Kristopher E. Fernandez and J. Allison Archbold, Co-Chairs*

Mr. Fernandez spoke as Co-Chair of the Committee.

Mr. Fernandez indicated that The Florida Bar Leadership Academy was a one-year program designed to identify a diverse group of lawyers to better their leadership skills and in becoming leaders within our profession, both at the Bar level and in RPPTL. He announced that applications will be available on The Florida Bar website beginning December 2, 2019. He further said that applicants could apply to the Committee by December 16, 2019, requesting the \$3,500.00 RPPTL scholarship. Jenna Rubin, a committee member and a Leadership Academy graduate, then spoke for a few minutes about her experience and the benefits of the program.

9. **General Standing Information Item: Information and Technology** – *Neil Barry Shoter, Chair*

Mr. Freedman recognized Neil Barry Shoter.

Mr. Shoter presented an update on committee activities:

He hoped that all were engaged by the luncheon presentation on cyber security. Mr. Shoter gave a reminder to change passwords and thanked JP Morgan for the presentation. Mr. Shoter indicated that FBI and DOJ may make cyber security presentations in the future.

Mr. Shoter reminded all Committees to be working on web pages and e-mail addresses. Committee web pages should include Committee's mission statement and meeting schedules.

The Information and Technology Committee is working on adding the ability to recognize events and photos to drive members to the Section.

10. **PT Action Item: Trust Law Committee** - *Matthew Triggs, Chair*

Mr. Freedman recognized Sarah Butters. Ms. Butters thanked the Probate Division sponsors – BNY Mellon Wealth Management, Business Valuation Analysts, LLC, Coral Gables Trust, Grove Bank and Trust, Kravitz Estate Appraisal, Management Planning, Inc., Northern Trust, and Pluris Valuation Advisors.

Ms. Butters recognized Matthew Triggs.

Mr. Triggs initiated a discussion on a potential Section legislative position to support adoption of the “Florida Uniform Directed Trust Act”, which is a modified version of the Uniform Directed Trust Act. The proposed Act would clarify and change various aspects of the Florida Statutes relating to directed trusts.

The motion currently reads:

(A) adopt as a Section legislative position support 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. (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.

The Committee received a number of comments since its last publication as an Information Item, so they are taking the time to incorporate those changes. The Committee expects the current draft to be available as an Action Item at the next meeting.

11. **General Standing Information Item: Model and Uniform Acts** - *Bruce M. Stone and Richard W. Taylor, Co-Chairs*

Mr. Hennessey recognized Adele Stone.

a. **Discussion concerning study of the Uniform Partition of Heirs Property Act and Proposed HB349.**

Mr. Stone indicated that this bill was discussed extensively at their meeting Friday morning. It was the consensus that the bill will pass. Preference in federal funding of certain agricultural loans will be given to states that adopt it per the Federal Agricultural Improvement Act of 2018. Pete and Martha were present at the meeting and will endeavor to provide input to the House bill to the extent that modifications to the Act can still qualify as the Model Act by the National Conference of Commissioners on Uniform State Laws. No vote was taken at the Executive Council meeting and the Executive Committee will work with our lobbyists Pete and Martha, during the legislative session.

12. **General Standing Information Item: Membership and Inclusion** - *Annabella Barboza and Brenda Ezell, Co-Chairs*

Mr. Freedman recognized Brenda Ezell.

a. **Report on committee activities** -

Ms. Ezell reported that in the coming year will work more closely with Fellows and outreach to applicants to the Fellows program who were not selected. Annabella Barboza introduced Dresden Brunner who reported that most of the discussion/comments focused three events in need of ambassadors – Tampa, Miami and Tampa. Seek out under-represented constituencies – minority bar, young lawyers, sponsor, and attendees increasing membership. Last year, the Membership and Inclusion Committee spent \$4,000 supporting its objectives and updated mission statement on committee page.

13. **General Standing Information Item: Ad Hoc Guardianship Law Revision Committee** - *Nicklaus J. Curley, and Sancha Brennan, Co-Chairs*

Mr. Freedman recognized Sancha Brennan.

Ms. Brennan reported that the committee had completed its review and consideration of all comments that had been submitted, including the technical edits from the Legislative Committee, and thanked all of those individuals and organizations who commented and contributed to the effort. She reported that a revised final draft would be available for EC consideration as an information item in coming agendas and reported that the committee addressed the recent concerns regarding a guardian's ability to consent to a DNR without a court order in the current draft of c.745.

Stacy Rubel, Brandon Bellew, Jamie Schwinghammer and Nick Curley are currently drafting the White Paper for the Guardianship Code Rewrite Bill.

Nick Curley presented on recent work relating to the "Passidomo Proposal" which is Florida SB 994 relating to guardian usage of DNRs, disclosure of third-party compensation paid to a guardian, and the ability of professional guardians to petition for appointment of themselves. Much of this was being done in the wake of the Rebecca Fierle fallout in Orlando. Judge Speiser and Nick Curley participated in a workgroup called for by Senator Passidomo, including multiple meetings in Tallahassee. Where they were called upon to consider potential changes to the Guardianship Code that would (1) require court approval of a guardian's consent to a DNR unless a pre-existing DNR was signed prior to incapacity; (2) broaden a guardian's duty to disclose conflicts of interest; and (3) prohibit a professional guardian from petitioning for his/her own appointment absent extraordinary circumstance.

Mr. Freedman recognized Mr. Swaine.

Mr. Swaine thanked the Real Property Division Committee Sponsors: AmTrust Financial Services, Attorney's Title Fund Services, LLC, Attorney's Real Estate Councils of Florida, Inc., BNY Mellon Wealth Management, First American Title, and Hopping Green & Sams.

14. **RP Action Item: Condominium and Planned Development Committee** – *William P. Sklar and Joseph E. Adams, Co-Chairs*

Mr. Swaine recognized Mr. Sklar.

Mr. Sklar presented the Committee motion to:

- a. (A) adopt as a Section legislative position support for amendment to §718.111, Florida Statutes, to clarify that a condominium association has the right to represent its unit owner members in a group; (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.

Mr. Sklar reported that this was Information Item at the Clearwater meeting. For 42 years associations have presented member class actions brought by and through the Association The 3<sup>rd</sup> District Court of Appeal in the case of *Central Carrillon Beach Condominium Association, Inc. v. Garcia* 245 So.3d 869 (Fla 3 DCA 2018) eroded that concept. The Committee is proposing amending the – FR Civil Procedure (1.221) and Florida Statute section (718.111.(3)) recognize right to sue and be sued. The holding of the Carrillon case is that the Association can represent members, but not appeal.

Miami-Dade strategy is to divide and conquer and an erosion of right of Association to represent owners in matters of common interest. This could be an issue with 558 claims.

The discussion narrowed 718.111(3) to not apply tax appeals. The Committee's bill clarifies existing law and provides that Condominium Associations represent its members including defending appeals.

Mr. Swaine called for a vote on the Committee's motion and it passed unanimously.

15. **General Standing Action Item: Professionalism and Ethics Committee-** *Gwynne A. Young, Chair*

Mr. Freedman recognized Mr. Andrew Sasso.

Mr. Sasso introduced the Committee motion to (A) adopt as a Section position support for proposed changes to Rule 4-1.14 (sc. Client Under a Disability) of the Rules Regulating The Florida Bar; (B) find that such position is within the purview of the RPPTL Section; and (c) expend Section funds in support of the proposed position.

Mr. Sasso indicated that the purpose of the Committee motion is to adopt ABA model rule. Substantial changes are discussed in detail in comments. The current Florida Rule was adopted -1980. In early 2000's ABA Model Rule was created, but not entirely adopted in Florida. The Florida Rule 4-1.14 uses the term "disability" while the ABA Model Rule uses the term "diminished capacity."



Mr. Sasso discussed the elements under current provision, lawyer must act as a de facto guardian. The proposal removes that obligation. The ABA Model Rule provides superior guidance to the lawyer than the existing rule.

Power of Attorney Committee approved the proposal and Elder Law Section approved it at last meeting and sent it back to Guardianship Committee.

Committee motion passed unanimously.

16. **General Standing Information Item: Professionalism and Ethics**- *Gwynne A. Young, Chair* – No report.

17. **General Standing Information Item: Council of Sections** – *Robert S. Freedman and William T. Hennessey, III*

Mr. Freedman recognized Michael Dribin.

Mr. Dribin reported that the Board of Governors' approval of streamlined process for amending Section Bylaws. Copy of a power point is attached at page 111 of the agenda.

18. **General Standing Information Item: Homestead Issues Study Committee**, *Jeffrey S. Goethe and J. Michael Swaine, Co-Chairs*

Mr. Freedman recognized Jeffery S. Goethe.

Mr. Goethe provided a report on status of current RPPTL Section Position on legislation concerning homestead held subject to revocable trust and a proposed compromise which will be submitted in the current legislative session. The proposal was originally passed by the Executive Council in 2015, but the section has not been able to secure a sponsor for the legislation. The objection to the proposal seems to be a sentence that provides that when homestead is devised through a trust to persons who would qualify as heirs under the Snyder v. Davis decision, title to the homestead vests in those beneficiaries. This sentence has been removed, and, as a result, much of the language in the proposal that was dependent upon that sentence has also been removed. The committee also voted to remove the provision that would confirm protection for heirs inheriting an interest in protected homestead through a continuing trust. The Homestead Issues Committee approved the revised statutory provisions during the July meeting at The Breakers. The proposed bill and white paper, as revised, appear at page 135 of the agenda. Since this was a position approved by the Executive Council, the item was presented as an information item.

19. **General Standing Information Item: Amicus Committee** - *Kenneth B. Bell, Gerald B. Cope, Jr., Robert W. Goldman and John W. Little, III, Co-Chairs*

Mr. Swaine recognized Robert Goldman. Mr. Goldman reported on *Johnson v. Townsend* surviving spouse of community property rights.



Mr. Goldman indicated that there were discussions on whether the Section should take an amicus position on *Hayslip v. U.S. Home Corporation* at each of the Round Table meetings. Condition in warranty deed runs with land – healthy discussion in real property – dramatic range – issue is too broad. Needs to be narrowed. – Real/personal covenants.

Mr. Swaine summarized the case as developer claimed arbitration requirement in original deed from developer bond– second owner only one entity. Decision conflict with Chapter 558 procedures. The question was posed: “If these covenants are allowed what additional comments would be added to deeds in the future.” What’s next?

Title insurance policy WFG – if can put in covenants.

Mr. Swaine asserted that a restriction should ‘touch and concern’ land or it is a personal covenant should not apply only to a covenant running with the land. Mr. Goldman reminded us that the role of an amicus is to educate the Court, not to be for or against a litigant.

Motion approved to file amicus brief, if invited by the Court. One dissent, Mr. Belcher.

Mr. Freedman asked for a motion to adjourn. Several motions to adjourn were offered with numerous seconds. The motion to adjourn was unanimously approved at 12:40 P.M.

Respectfully submitted,

Steven H. Mezer  
Secretary



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Friday Night Dinner	First American Title Insurance Company	Alan McCall	<a href="mailto:Amccall@firstam.com">Amccall@firstam.com</a>
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## Executive Committee Interim Action

December 31, 2019 – via E-Mail – Attendees: Robert S. Freedman, Wm. Cary Wright, Jon Scuderi, Debra L. Boje, Steven H. Mezer, S. Katherine Frazier, Robert S. Swaine, William T. Hennessey, John C. Moran, Wilhelmina F. Kightlinger and Sara S. Butters. Consideration and approval of candidates for Florida Bar Leadership Academy: The Executive Committee received the report from the Leadership Academy Committee, recommending Ashley Zohar and Jacobeli Behar for RPPTL Scholarships. Resolution that Ashley Zohar and Jacobeli Behar to receive the RPPTL Scholarships for the Leadership Academy was approved unanimously.

January 6, 2020- via E-Mail – Attendees: Robert S. Freedman, Wm. Cary Wright, Jon Scuderi, Debra L. Boje, Steven H. Mezer, S. Katherine Frazier, Robert S. Swaine, William T. Hennessey, John C. Moran, Wilhelmina F. Kightlinger and Sara S. Butters. The Executive Committee considered and unanimously approved a letter from Mr. Freedman as Chair of the RPPTL Section to Daniel E. Norby, Chair Florida Supreme Court Judicial Nominating Commission regarding Supreme Court nominations, emphasizing the importance of a Judge having knowledge of both real property law and probate, trust and estate law issues.

January 9, 2020 – In Person – Attendees: Robert S. Freedman, Jon Scuderi, Debra L. Boje, Steven H. Mezer, S. Katherine Frazier, Robert S. Swaine, William T. Hennessey, John C. Moran, Wilhelmina F. Kightlinger and Sara S. Butters. the Executive Committee considered the request of Rob Lancaster, Chair, Estate and Trust Tax Planning Committee, of the RPPTL Section to approve a legislative position regarding revisions to Section 736.08145, Florida Statutes, to grant a trustee discretionary authority to reimburse the deemed owner of a grantor trust for income taxes attributable to the deemed owner. The Committee considered the draft bill, the RPPTL white paper and legislative position form. The motion was approved by the ten (10) Executive Committee members present, Mr. Wright was absent.

By: Steven H. Mezer  
Steven H. Mezer, Secretary

**REAL PROPERTY,  
PROBATE &  
TRUST LAW  
SECTION**



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January 6, 2020

Sent via U.S. Mail and email to [dnordby@shutts.com](mailto:dnordby@shutts.com)

Daniel E. Nordby, Chair  
Florida Supreme Court Judicial Nominating Commission  
215 South Monroe Street, Suite 804  
Tallahassee, FL 32301

**Re: Supreme Court Nominations**

Dear Chair Nordby:

Thank you for accepting this correspondence from the Real Property, Probate and Trust Law Section ("RPPTL Section") of The Florida Bar. This correspondence is being sent to encourage the Supreme Court Judicial Nominating Commission ("JNC") to recommend to Governor DeSantis nominees for the two vacant Supreme Court positions who are skilled and knowledgeable in the areas of real property, probate, trusts and estates law. The RPPTL Section strongly believes that it is important to have diversity of experience and practice on the Florida Supreme Court.

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

With regard to real property law, Florida remains a hotbed for development, as evidenced by the residential and commercial real estate growth that has been in force since the end of the Great Depression. Real estate law has many nuances and varied aspects and areas, and having one or more Justices on the Court with significant real estate experience will ensure that case law in

# THE FLORIDA BAR

the real property arena continues to evolve in an appropriate and fair manner.

Similarly, it is very important that there be experience in probate, trusts and estates law issues. Florida has a large and steadily growing population of seniors and retirees. By 2020, people over 60 years of age will make up close to 30% of Florida's population. With the aging of baby boomers, this population surge will only continue. The tax-friendly environment in Florida makes it a haven for retirement. Our Florida court system plays a key role in the orderly and timely administration of decedent's estates and trusts. It is imperative that Florida has Supreme Court Justices with knowledge and experience in trust and estates law matters, as this area of practice continues to be central to Florida's future and economy.

Again, we appreciate the opportunity to express the RPPTL Section's thoughts on these very important nominations. The RPPTL Section greatly appreciates the amount of time and work that the JNC performs in service to the legal profession and the citizens of the state of Florida.

Respectfully submitted,



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



1                                   A bill to be entitled  
2           An act relating to trusts; creating s. 736.08145,  
3           F.S.; authorizing trustees of certain trusts to  
4           reimburse persons being treated as the owner of the  
5           trust for specified amounts and in a specified manner;  
6           prohibiting certain policies, values, and proceeds  
7           from being used for such reimbursement; providing  
8           applicability; prohibiting certain trustees from  
9           taking specified actions relating to trusts; requiring  
10          that specified powers be granted to certain persons if  
11          the terms of the trust require a trustee to act at the  
12          direction or with the consent of such persons;  
13          providing construction; providing an effective date.

14  
15   Be It Enacted by the Legislature of the State of Florida:

16  
17           Section 1. Section 736.08145, Florida Statutes, is created  
18   to read:

19           736.08145 Grantor trust reimbursement.—

20           (1)(a) Except as otherwise provided under the terms of a  
21 trust, if all or any portion of the trust is treated as being  
22 owned by a person under s. 671 of the Internal Revenue Code or  
23 any similar federal, state, or other tax law, the trustee may,  
24 in the trustee's sole discretion, reimburse the person being  
25 treated as the owner for any amount of the person's personal  
26 federal, state, or other income tax liability which is  
27 attributable to the inclusion of the trust's income, capital  
28 gains, deductions, or credits in the calculation of the person's  
29 taxable income. In the trustee's sole discretion, the trustee



30 may pay such tax reimbursement amount, determined without regard  
31 to any other distribution or payment made from trust assets, to  
32 the person directly or to the appropriate taxing authority.

33 (b) A life insurance policy held in the trust, the cash  
34 value of any such policy, or the proceeds of any loan secured by  
35 an interest in the policy may not be used for such reimbursement  
36 or such payment if the person is an insured.

37 (2) This section applies to all trusts, whether created on,  
38 before, or after July 1, 2020, unless:

39 (a) The trustee provides written notification that the  
40 trustee intends to irrevocably elect out of the application of  
41 this section, at least 60 days before the effective date of such  
42 election, to the person treated as the owner of all or a portion  
43 of the trust under s. 671 of the Internal Revenue Code or any  
44 similar federal, state, or other tax law and to all persons who  
45 have the ability to remove and replace the trustee.

46 (b) Applying this section would prevent a contribution to  
47 the trust from qualifying for, or would reduce, a federal tax  
48 benefit, including a federal tax exclusion or deduction, which  
49 was originally claimed or could have been claimed for the  
50 contribution, including:

51 1. An exclusion under s. 2503(b) or s. 2503(c) of the  
52 Internal Revenue Code;

53 2. A marital deduction under s. 2056, s. 2056A, or s. 2523  
54 of the Internal Revenue Code;

55 3. A charitable deduction under s. 170(a), s. 642(c), s.  
56 2055(a), or s. 2522(a) of the Internal Revenue Code; or

57 4. Direct skip treatment under s. 2642(c) of the Internal  
58 Revenue Code.

59           (3) A trustee may not exercise, or participate in the  
60 exercise of, the powers granted by this section with respect to  
61 any trust if any of the following applies:

62           (a) The trustee is treated as the owner of all or part of  
63 such trust under s. 671 of the Internal Revenue Code or any  
64 similar federal, state, or other tax law.

65           (b) The trustee is a qualified beneficiary of such trust.

66           (c) The trustee is a related or subordinate party, as  
67 defined in s. 672(c) of the Internal Revenue Code, with respect  
68 to a person treated as the owner of all or part of such trust  
69 under s. 671 of the Internal Revenue Code or any similar  
70 federal, state, or other tax law or with respect to a qualified  
71 beneficiary of such trust.

72           (4) If the terms of a trust require the trustee to act at  
73 the direction or with the consent of a trust advisor, a  
74 protector, or any other person, the powers granted by this  
75 section to the trustee must instead or also be granted, as  
76 applicable under the terms of the trust, to the advisor,  
77 protector, or other person subject to the limitations set forth  
78 in subsection (3), which must be applied as if the advisor,  
79 protector, or other person were a trustee.

80           (5) A person may not be considered a qualified beneficiary  
81 of a trust solely by reason of the application of this section.

82           Section 2. This act shall take effect July 1, 2020.

**Real Property, Probate and Trust Law Section of The Florida Bar**  
**White Paper**  
**Proposed Enactment of**  
**Section 736.08145, Florida Statutes**

I. SUMMARY

The proposed legislation would enact Section 736.08145, Florida Statutes, to grant a trustee discretionary authority to reimburse the deemed owner of a grantor trust for income taxes attributable to the deemed owner.

II. CURRENT SITUATION

Sections 671-678 of the Internal Revenue Code (“IRC”), known as the grantor trust rules, provide that, if certain conditions are met, property held in a trust will be treated as owned by the settlor of the trust for federal income tax purposes. When the grantor trust rules apply, the deemed owner or “grantor” – and not the trust or its beneficiaries – is required to report all items of income, loss, deduction and credit realized by the grantor trust on his or her individual income tax return, and to pay any resulting income tax.

This is true even if the grantor has no beneficial interest in the trust and cannot access its income. Such an arrangement can significantly benefit the trust and its beneficiaries because the growth of the trust corpus is not diminished by the obligation to pay income taxes.

A well-drafted grantor trust will always include the ability to turn off grantor trust status if the grantor desires to stop paying the trust’s taxes (or is financially unable to do so). In some cases, however, such a conversion to non-grantor trust may be undesirable. For example, the conversion may cause the grantor to realize “phantom” income not attributable to an economic gain, or it may cause the trust to cease being eligible to own S-corporation stock or to fail to qualify for a \$250,000 capital gains exclusion from sale of the grantor’s primary residence. In those cases, it would be preferable for the trust to contain a power granting the trustee discretion to reimburse the grantor for income taxes paid in lieu of turning off grantor trust status.

Until 2004, the federal gift and estate tax consequences of granting such a power were uncertain. Practitioners were concerned that granting a power to a trustee to make such a tax reimbursement could cause the trust property to be includable in the grantor’s estate for federal estate tax purposes. Practitioners were also concerned that such a reimbursement made by the trustee could constitute a gift from the trust beneficiaries to the grantor. In the absence of definitive guidance from the IRS, few practitioners drafted trust documents authorizing trustees to reimburse grantors for income taxes paid. In fact, due to this concern many practitioners drafted trust documents explicitly forbidding such reimbursements.

The Internal Revenue Service resolved these uncertainties with Revenue Ruling 2004-64. That ruling holds that when an independent trustee holds a discretionary power under a trust to reimburse the grantor for taxes paid attributable to trust income, (a) the exercise of such power does not result in a taxable gift from the trust beneficiaries to the grantor, and (b) the existence of

such power does not by itself cause the value of the trust assets to be includable in the grantor's gross estate for federal estate tax purposes. The Ruling suggests that its holding might differ in cases where (a) there is a pre-arranged understanding between the grantor and trustee regarding how the trustee would exercise the trustee's discretion to reimburse the grantor for income taxes, (b) the grantor could remove the trustee and name himself or herself as trustee, or (c) local law would cause the trust assets to be subject to claims of the grantor's creditors.

Following Revenue Ruling 2004-64, several states, including Florida, amended their laws to provide that the existence of a power in a trust document authorizing the trustee to reimburse the grantor for income taxes attributable to trust income does not subject the assets of the trust to claims of the grantor's creditors.<sup>1</sup> The applicable Florida Statute is Section 736.0505(1)(c), which became effective July 1, 2007 and provides as follows:

“...the assets of an irrevocable trust may not be subject to the claims of an existing or subsequent creditor or assignee of the settlor, in whole or in part, solely because of the existence of a discretionary power granted to the trustee by the terms of the trust, or any other provision of law, to pay directly to the taxing authorities or to reimburse the settlor for any tax on trust income or principal which is payable by the settlor under the law imposing such tax.”

In enacting that statute, the Legislature recognized the significant benefits associated with affording trustees flexibility to reimburse grantors for income taxes paid on trust income attributable to them.

### III. EFFECT OF PROPOSED CHANGES GENERALLY

The proposal would grant a trustee discretion to reimburse a deemed grantor for income taxes on trust income attributable to the grantor.

### IV. ANALYSIS

Under current Florida law, the flexibility to reimburse a grantor for taxes is available only to those trusts which include provisions specifically authorizing such reimbursements. Such provisions are unlikely to appear in any Florida trusts executed prior to July 1, 2007 (the effective date of Section 736.0505(1)(c)), given the uncertain state of the law prior to Revenue Ruling 2004-64. Trusts created in jurisdictions other than Florida which have not enacted statutes like Section 736.0505(1)(c), even those created after 2007, would likewise be unlikely to include such tax reimbursement provisions.

In the absence of such a specific reimbursement power under the trust, a difficult dilemma can arise for many grantors and trustees: Whether the grantor should be forced to continue to bear an income tax burden he or she no longer wishes to bear (or is unable to bear), or whether the grantor

<sup>1</sup> See also Alaska Stat. 34.40.110(m)(2), Ariz. Rev. Stat. Ann. 14-10505-A(2)(a), Iowa Code Ann. 633A.2303(a), Nev. Rev. Stat. 163.5559(1), N.H. Rev. Stat. Ann. 564-B:5-505A(e)(6)(B), N.Y. Est. Powers & Trusts Law 7-3.1(d), Ohio Rev. Code Ann. 5805.06(B)(3)(c), Tenn. Code Ann. 35-15-505(c), Tex. Prop. Code Ann. 112.035(d)(1).

trust should be converted to non-grantor trust status such that the trust bears its own income tax burden going forward (notwithstanding any other negative consequences which may follow from that conversion).

Several states have determined it unnecessary to place trust parties in this dilemma. Four states have to date enacted statutes which grant trustees discretion to reimburse trust grantors for income taxes on trust income attributable to them.<sup>2</sup> These statutes create valuable flexibility for parties to existing grantor trusts as well as to practitioners and grantors of new trusts, who now are free either to opt out of the statute or to rely on the statute where having such reimbursement authority optimizes the trust benefits to all parties. Florida should join those jurisdictions.

The proposed legislation would permit (but not require) an independent trustee of a grantor trust to reimburse the grantor for all or part of the income taxes paid by the grantor as a result of the grantor trust income. The proposed legislation would also permit (but not require) an independent trustee to pay all or part of such taxes directly to the appropriate taxing authority on behalf of the grantor (rather than to reimburse the grantor after the fact). If enacted, the statute would confer this authority on trustees of grantor trusts created before or after the effective date, unless the trust provides to the contrary or the trustee opts out in writing.

The proposed legislation has been drafted to fit squarely within the principles of Revenue Ruling 2004-64. First, the reimbursement authority granted to trustees would be discretionary, not mandatory. Second, the “other facts” identified by the Revenue Ruling as having the potential to cause estate tax inclusion if combined with a discretionary reimbursement power are addressed either by existing Florida law or by the proposed statute itself. Section 736.0505(1)(c), Florida Statutes, already provides that a trustee’s power to reimburse the grantor for income taxes paid in respect of trust income will not cause the trust assets to be subject to claims of the grantor’s creditors. Further, the proposal vests tax reimbursement authority only in a disinterested trustee, which ensures that the tax reimbursement authority will not be held by or imputed to the grantor even if he or she otherwise has the power to remove the trustee and name himself or herself as a successor trustee.

The proposed legislation incorporates additional safeguards designed to prevent any adverse federal gift or estate tax consequences under current law. Specifically, insurance policies on the grantor’s life cannot be used to satisfy the grantor’s tax liability. Further, the reimbursement power cannot be exercised in a manner inconsistent with the marital or charitable deductions or the annual exclusion so as to cause inclusion of the trust’s assets in the grantor’s gross estate for federal estate tax purposes.

Finally, if the parties do not wish to avail of the proposed legislation, or are concerned about the financial or tax impact, the trust document may expressly prohibit reimbursement or the independent trustee may elect to opt out of the application of the proposed statute.

## V. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS - None.

<sup>2</sup> See Colo. Rev. Stat. 15-5-818, Del. Code. Ann. 12 s 3344; N.H. Rev. Stat. Ann. 564-B:8-816(c); N.Y. Est. Powers & Trusts Law 7-1.11(a).

VI. DIRECT IMPACT ON PRIVATE SECTOR - None.

VII. CONSTITUTIONAL ISSUES - None apparent.

VIII. OTHER INTERESTED PARTIES - The Tax and Business Law Sections of The Florida Bar, and the Florida Bankers Association.



# The Florida Bar

651 East Jefferson Street  
Tallahassee, FL 32399-2300

Joshua E. Doyle  
Executive Director

850/561-5600  
www.FLORIDABAR.org

## LEGISLATIVE OR POLITICAL POSITION REQUEST FORM

### GENERAL INFORMATION

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

Rob Lancaster, Chair, Estate and Trust Tax Planning Committee, RPPTL

**Address:** *(address and phone #)*

3001 Tamiami Trail North, Suite 400, Naples, FL 34103

239-649-3178

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

TFB RPPTL/Probate/Estate and Trust Tax Planning

### PROPOSED ADVOCACY

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

#### If Applicable, List the Following:

(Bill or PCB #)

(Sponsor)

SB 1366

Gruters

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

#### I. Proposed Wording of Legislative Position for Official Publication

Support revisions to section 736.08145, Florida Statutes, to grant a trustee discretionary authority to reimburse the deemed owner of a grantor trust for income taxes attributable to the deemed owner.

**II. Political Proposals:**

**III. Reasons For Proposed Advocacy:**

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

Yes

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

N/A

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

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

D. Additional Information:

**PRIOR POSITIONS TAKEN ON THIS ISSUE**

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

**Most Recent Position**

TFB Section/Division/Committee	Support/Oppose	Date
--------------------------------	----------------	------

**Others** (*attach list if more than one*)

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

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

**Referrals**

Name of Group or Organization	Support, Oppose or No-Position
Elder Law Section of the Florida Bar	
Florida Bankers Association	

**Reasons for Non-Referrals:**

**CONTACTS**

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

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

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

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

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

Same

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

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

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

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

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

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

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



**RPPTL Financial Summary from Separate Budgets**  
**2019-2020 [July 1 - December 31] YEAR**  
**TO DATE REPORT**

**General Budget**

**YTD**

Revenue	\$ 1,345,521
Expenses	\$ 725,222
<b>Net:</b>	<b>\$ 620,299</b>

**Attorney Loan Officer**

**YTD**

Revenue	\$ 9,250
Expenses	\$ 292
<b>Net:</b>	<b>\$ 8,958</b>

**CLI**

**YTD**

Revenue	\$ 130,395
Expenses	\$ 3,269
<b>Net:</b>	<b>\$ 127,126</b>

**Trust Officer Conference\***

Revenue	\$ 287,100
Expenses	\$ 194,408
<b>Net:</b>	<b>\$ 92,692</b>

**Legislative Update\***

Revenue	\$ 53,783
Expenses	\$ 86,611
<b>Net:</b>	<b>\$ (32,828)</b>

**Convention**

Revenue	\$ (125)
Expenses	\$ 1,000
<b>Net:</b>	<b>\$ (1,125)</b>

**Roll-up Summary (Total)**

Revenue:	\$ 1,825,924
Expenses	\$ 1,010,802
<b>Net Operations</b>	<b>\$ 815,122</b>

<b>Beginning Fund Balance:</b>	<b>\$ 2,136,908</b>
<b>Current Fund Balance (YTD):</b>	<b>\$ 2,952,030</b>
<b>Projected June 2020 Fund Balance</b>	<b>\$ 2,052,489</b>

*1 This report is based on the tentative unaudited detail statement of operations dated 12/31/19 (prepared 1/16/20)*

*\*expenses and revenue have not been finalized*

EC Agenda - Grand Hyatt Tampa Bay - 2.1.2020

Date of Presentation	Crs. #	Title	Location
2/21/2020	3500	<a href="#"><u>Condominium Law Certification Review</u></a>	Nova Law School, Ft. Lauderdale
2/28/2020	3274	<a href="#"><u>Attorney-Banker Conference</u></a>	Stetson Law School, Tampa
3/4-6/2020	3502	<a href="#"><u>14th Annual Construction Law Institute</u></a>	JW Marriott Grande Lakes
3/4-6/2020	3501	<i>Construction Law Certification Review</i>	JW Marriott Grande Lakes
3/11/2020	TBD	<a href="#"><u>RPPTL Audio Webcast: Condo Law Ins and Outs, Part 1</u></a>	<a href="#">Audio Webcast</a>
3/13/2020	3586	<i>Trust &amp; Estate Symposium</i>	Bahia Mar, Fort Lauderdale
3/18/2020	3403	<a href="#"><u>RPPTL Audio Webcast: Professionalism and Ethics Series - Conflicts Letters and Waivers</u></a>	<a href="#">Audio Webcast</a>
4/15/2020	3721	<a href="#"><u>RPPTL Audio Webcast: Homestead Series - 2</u></a>	<a href="#">Audio Webcast</a>
4/17-18/20	3588	<i>Wills Trusts and Estates Certification Review</i>	Orlando Airport Hyatt
4/17-18/20	3590	<i>Real Property Cert Review</i>	Orlando Airport Hyatt
4/23/2020	TBD	<a href="#"><u>RPPTL Audio Webcast: Condo Law Ins and Outs, Part 2</u></a>	<a href="#">Audio Webcast</a>
4/24/2020	3585	<i>Guardianship CLE</i>	CAMLS, Tampa
5/13/2020		<a href="#"><u>RPPTL Audio Webcast: Condo Law Ins and Outs, Part 3</u></a>	<a href="#">Audio Webcast</a>
5/20/2020	3722	<a href="#"><u>RPPTL Audio Webcast: Professionalism &amp; Ethics Series - Ethics Potpourri</u></a>	<a href="#">Audio Webcast</a>
5/30/2020	3587	<i>RPPTL Convention Seminar: Notarizations – The Definitive Guide</i>	Loews Sapphire Falls ,Orlando
6/10/2020	TBD	<a href="#"><u>RPPTL Audio Webcast: Condo Law Ins and Outs, Part 4</u></a>	<a href="#">Audio Webcast</a>
6/17/2020	3723	<a href="#"><u>RPPTL Audio Webcast: Homestead Series - 3: More Homestead Essentials</u></a>	<a href="#">Audio Webcast</a>
6/24/2020	3808	<a href="#"><u>RPPTL Audio Webcast: Homestead Series - 4</u></a>	<a href="#">Audio Webcast</a>



# The Florida Bar

651 East Jefferson Street  
Tallahassee, FL 32399-2300

Joshua E. Doyle  
Executive Director

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## LEGISLATIVE OR POLITICAL POSITION REQUEST FORM

### GENERAL INFORMATION

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

Rob Lancaster, Chair, Estate and Trust Tax Planning Committee, RPPTL

**Address:** *(address and phone #)*

3001 Tamiami Trail North, Suite 400, Naples, FL 34103

239-649-3178

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

TFB RPPTL/Probate/Estate and Trust Tax Planning

### PROPOSED ADVOCACY

- All requests for legislative and political positions must be presented to the Board of Governors by completing this form and attaching a copy of any existing or proposed legislation or a detailed presentation of the issue.
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#### If Applicable, List the Following:

(Bill or PCB #)

(Sponsor)

SB 1366

Gruters

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

#### I. Proposed Wording of Legislative Position for Official Publication

Support revisions to section 736.08145, Florida Statutes, to grant a trustee discretionary authority to reimburse the deemed owner of a grantor trust for income taxes attributable to the deemed owner.

**II. Political Proposals:**

**III. Reasons For Proposed Advocacy:**

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

Yes

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

N/A

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

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

D. Additional Information:

**PRIOR POSITIONS TAKEN ON THIS ISSUE**

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

**Most Recent Position**

TFB Section/Division/Committee	Support/Oppose	Date
--------------------------------	----------------	------

**Others** (*attach list if more than one*)

TFB Section/Division/Committee	Support/Oppose	Date
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**Referrals**

Name of Group or Organization	Support, Oppose or No-Position
Elder Law Section of the Florida Bar	
Florida Bankers Association	

**Reasons for Non-Referrals:**

**CONTACTS**

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

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

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

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

Same

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

**General Recommendations:**

- **Institute Standards for Legislative Proposals, including the threshold standard of “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 avoid overstraining legislative resources.
  - C. Involve the Section 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. 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. The focus should be on long term broad policy goals, not on a short term fix to an isolated situation.
  - 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 its 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 Reason” to justify the expenditure of Section resources concerning another’s proposal?
  - B. Determine 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. Be 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 since that could invite challenges to our positions and reputation; 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 Board of Governors' requirement to affirmatively disclose in our legislative position requests with whom 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 Board of Governors 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 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 and Tracking Memos. Tracking Memos 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 Memo, noting that Committee agenda notices become abbreviated late in the session. More emphasis on the review of weekly listed bills following the Tracking Memos 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 Memo.

- 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 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 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 that the Executive Committee consider whether it would be worthwhile to engage a second legislative consulting firm for conflict purposes, whom 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.

1                   A bill to be entitled  
2           An act relating to attorney compensation; amending s.  
3           733.6171, F.S.; authorizing certain compensation for  
4           services of attorneys in formal estate administration  
5           to be based on the compensable value of the estate;  
6           deleting a presumption that such compensation is  
7           reasonable if it is based on the compensable value of  
8           the estate; providing an effective date.

9  
10   Be It Enacted by the Legislature of the State of Florida:

11  
12           Section 1. Subsection (3) of section 733.6171, Florida  
13           Statutes, is amended to read:

14           733.6171 Compensation of attorney for the personal  
15           representative.—

16           (3) Compensation for ordinary services of attorneys in  
17           formal estate administration may be ~~is presumed to be reasonable~~  
18           if based on the compensable value of the estate, which is the  
19           inventory value of the probate estate assets and the income  
20           earned by the estate during the administration as provided in  
21           the following schedule:

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

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

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

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

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

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

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

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

37           Section 2. This act shall take effect July 1, 2020.



**Ethics Vignette**  
**January 2020**

**How to Navigate Through a Prior Work Conflict**

By: Peter J. Winders and Jin Liu

Conflicts arising out of prior work of the same lawyer or the same law firm present an ethics issue that is often overlooked, but can be very costly to firms. Rule 1.7 of the Model Rules of Professional Conduct provides some guidance on how to navigate through a prior work conflict.

When does a prior work conflict arise? It arises when the same lawyer interprets or takes other action on his or her own prior work whereupon the lawyer's personal interest may be at odds with the client's best interest. For instance, a real estate lawyer drafts a lease, which is meant to disclaim all environmental claims. Two years later, after environmental issues are discovered on the property, the opposite party interprets the lease to mean that not all environmental issues are disclaimed in the lease. Client naturally approaches his lawyer. "What to do?" Lawyer does not find any ambiguity in the lease, or even if there is one, is sure that the rules of interpretation favor the client and so advises her client. Client instructs his lawyer to file suit, which the lawyer does.

In the example provided above, many a lawyer will not recognize that she has a conflict. Under that circumstance, the lawyer is motivated not solely by her client's best interest. She has her personal reputation to uphold; therefore, she may be inclined to interpret the document in a way that avoids blame on her contract drafting. Alternatively, she may be afraid that she did in fact make a mistake and will be tempted to encourage settlement "I know we are absolutely correct, but we ought to compromise to save you time and money," and incidentally to prevent any finding that she made a mistake in drafting the contract or not foreseeing this situation. Either way, there is a conflict between the lawyer's personal interest and the client's interest. An objective lawyer not influenced by any of that may advise against a premature settlement (and even suing the original lawyer for malpractice) or in favor of settlement, as the better part of valor given the time and expense, but that independent lawyer will not be influenced by either personal fear, or a desire for personal vindication.

How should lawyers navigate through prior work conflicts? Does it mean that the same lawyer and the same law firm can never interpret or take other action on its own prior work? Rule 1.7 of the Model Rules of Professional Conduct provides that “(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if ... (2) there is a significant risk that the representation of one or more clients will be materially limited by ... a personal interest of the lawyer. (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if: (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client; (2) the representation is not prohibited by law; (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and (4) each affected client gives informed consent, confirmed in writing.”

Based on Model Rule 1.7, a prior work conflict can be waived, if the lawyer first determines that she (or the firm) will not be influenced by considerations in the self interest of the lawyer or the law firm (maybe because the opposing case is very weak or maybe because other people will be handling it) and if the lawyer explains all of the considerations to the client and the client provides a knowing, written consent. Ultimately, it is the client’s decision whether such a conflict can be waived after the lawyer’s explanation.

Prior work conflicts potentially present a bigger problem in a small firm because it is less likely for a lawyer in a small firm to turn to his or her colleague for an independent evaluation of the prior work. Therefore, it is more likely for a lawyer in a small firm to interpret his or her own prior work. In a bigger firm, however, if the transactional lawyer who drafted the document turns the matter over to a trial lawyer, the trial lawyer is more likely to recognize the problem and provide an unbiased assessment.

How can a law firm proactively protect itself against the risk associated with prior work conflicts? Some large firms have a checklist item on their business intake form that asks “Does this matter arise out of prior work of the firm?” This question serves to remind the matter-originating attorney to think through the considerations and consequences of handling a matter that arises out of prior work of the firm. If the response to this checklist item is yes, a big firm typically requires a different practice group, usually the litigation practice group, to approve the matter originated from prior work of the transactional attorney. Lastly, the lawsuit should be treated as a separate client matter than the underlying transaction, so the intake safeguards will apply.

In addition to the above, one way to ameliorate the problem of prior work conflicts, and one some firms have frequently used, is to refuse to advise on settlement. In many of these scenarios, after the explanation and if the client wants the prior firm still to handle the litigation, the law firm can take on this work but only if the client relies on another lawyer (often in-house counsel) to evaluate settlement. Often the influences described above would really impact only settlement decisions, and if an independent lawyer is where the client is going for that advice, leaving the law firm out of it, it will provide a way for the law firm to comply with Rule 1.7 and remove any question whether the firm’s advice is infected with self-interest.

## **Proposed Mission Statement and Scholarship Selection Criteria for Fellows Program**

**The RPPTL Section of the Florida Bar encourages involvement of attorneys from diverse backgrounds, including geographic, racial and ethnic backgrounds, that are traditionally underrepresented in the law and the Section.**

**The mission of the RPPTL Fellows program is to recruit attorneys who have a demonstrated interest in practicing in the area of wills, trusts, estates, and/or real estate, and who are interested in greater involvement in the RPPTL Section and its committees, but who would not otherwise be able to participate due to financial constraints or needs. Our goal is to provide opportunities for deserving attorneys to achieve their career goals through leadership training and working closely with leading attorneys in their field, while at the same time fostering diversity within the Section.**

**The Fellowship Program is open to all lawyers who are members of the RPPTL Section and who have been admitted to the Bar for fewer than 12 years. Scholarships will be considered for applicants who best meet the following criteria:**

- Demonstrated interest in wills, trusts, estates, and/or real estate as a part of the applicant's practice;**
- Demonstrated interest in the activities of the RPPTL Section, and is likely to be dedicated and excel in such activities;**
- Diversity, including a geographic, racial or ethnic background that is traditionally underrepresented in the RPPTL Executive Council and Section;**
- Demonstrated need for financial assistance in order to attend Section meetings;**
- Service to the profession or community.**

ACTIVE 11616112.1

**117.05 Use of notary commission; unlawful use; notary fee; seal; duties; employer liability; name change; advertising; photocopies; penalties.—**

(1) A person may not obtain or use a notary public commission in other than his or her legal name, and it is unlawful for a notary public to notarize his or her own signature. Any person applying for a notary public commission must submit proof of identity to the Department of State. Any person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2)(a) The fee of a notary public may not exceed \$10 for any one notarial act, except as provided in s. 117.045 or s. 117.275.

(b) A notary public may not charge a fee for witnessing a vote-by-mail ballot in an election, and must witness such a ballot upon the request of an elector, provided the notarial act is in accordance with the provisions of this chapter.

(3)(a) A notary public seal shall be affixed to all notarized paper documents and shall be of the rubber stamp type and shall include the words "Notary Public-State of Florida." The seal shall also include the name of the notary public, the date of expiration of the commission of the notary public, and the commission number. The rubber stamp seal must be affixed to the notarized paper document in photographically reproducible black ink. Every notary public shall print, type, or stamp below his or her signature on a paper document his or her name exactly as commissioned. An impression-type seal may be used in addition to the rubber stamp seal, but the rubber stamp seal shall be the official seal for use on a paper document, and the impression-type seal may not be substituted therefor.

(b) The notary public official seal and the certificate of notary public commission are the exclusive property of the notary public and must be kept under the direct and exclusive control of the notary public. The seal and certificate of commission must not be surrendered to an employer upon termination of employment, regardless of whether the employer paid for the seal or for the commission.

(c) A notary public whose official seal is lost, stolen, or believed to be in the possession of another person shall immediately notify the Department of State or the Governor in writing.

(d) Any person who unlawfully possesses a notary public official seal or any papers or copies relating to notarial acts is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

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

(a) The venue stating the location of the notary public at the time of the notarization in the format, "State of Florida, County of ."

(b) The type of notarial act performed, an oath or an acknowledgment, evidenced by the words “sworn” or “acknowledged.”

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

(d) The exact date of the notarial act.

(e) The name of the person whose signature is being notarized. It is presumed, absent such specific notation by the notary public, that notarization is to all signatures.

(f) The specific type of identification the notary public is relying upon in identifying the signer, either based on personal knowledge or satisfactory evidence specified in subsection (5).

(g) The notary public’s official signature.

(h) The notary public’s name, which must be typed, printed, or stamped below the signature.

(i) The notary public’s official seal affixed below or to either side of the notary public’s signature.

(5) A notary public may not notarize a signature on a document unless he or she personally knows, or has satisfactory evidence, that the person whose signature is to be notarized is the individual who is described in and who is executing the instrument. A notary public shall certify in the certificate of acknowledgment or jurat the type of identification, either based on personal knowledge or other form of identification, upon which the notary public is relying. In the case of an online notarization, the online notary public shall comply with the requirements set forth in part II of this chapter.

(a) For purposes of this subsection, the term “personally knows” means having an acquaintance, derived from association with the individual, which establishes the individual’s identity with at least a reasonable certainty.

(b) For the purposes of this subsection, the term “satisfactory evidence” means the absence of any information, evidence, or other circumstances which would lead a reasonable person to believe that the person whose signature is to be notarized is not the person he or she claims to be and any one of the following:

1. The sworn written statement of one credible witness personally known to the notary public or the sworn written statement of two credible witnesses whose identities are proven to the notary public upon the presentation of satisfactory evidence that each of the following is true:

a. That the person whose signature is to be notarized is the person named in the document;

b. That the person whose signature is to be notarized is personally known to the witnesses;

c. That it is the reasonable belief of the witnesses that the circumstances of the person whose signature is to be notarized are such that it would be very difficult or impossible for that person to obtain another acceptable form of identification;

d. That it is the reasonable belief of the witnesses that the person whose signature is to be notarized does not possess any of the identification documents specified in subparagraph 2.; and

e. That the witnesses do not have a financial interest in nor are parties to the underlying transaction; or

2. Reasonable reliance on the presentation to the notary public of any one of the following forms of identification, if the document is current or has been issued within the past 5 years and bears a serial or other identifying number:

a. A Florida identification card or driver license issued by the public agency authorized to issue driver licenses;

b. A passport issued by the Department of State of the United States;

c. A passport issued by a foreign government if the document is stamped by the United States Bureau of Citizenship and Immigration Services;

d. A driver license or an identification card issued by a public agency authorized to issue driver licenses in a state other than Florida or in a territory of the United States, or Canada or Mexico;

e. An identification card issued by any branch of the armed forces of the United States;

f. A veteran health identification card issued by the United States Department of Veterans Affairs;

g. An inmate identification card issued on or after January 1, 1991, by the Florida Department of Corrections for an inmate who is in the custody of the department;

h. An inmate identification card issued by the United States Department of Justice, Bureau of Prisons, for an inmate who is in the custody of the department;

i. A sworn, written statement from a sworn law enforcement officer that the forms of identification for an inmate in an institution of confinement were confiscated upon confinement and that the person named in the document is the person whose signature is to be notarized; or

j. An identification card issued by the United States Bureau of Citizenship and Immigration Services.

(6) The employer of a notary public shall be liable to the persons involved for all damages proximately caused by the notary's official misconduct, if the notary public was acting within the scope of his or her employment at the time the notary engaged in the official misconduct.

(7) Any person who acts as or otherwise willfully impersonates a notary public while not lawfully appointed and commissioned to perform notarial acts is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(8) Any notary public who knowingly acts as a notary public after his or her commission has expired is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(9) Any notary public who lawfully changes his or her name shall, within 60 days after such change, request an amended commission from the Secretary of State and shall send \$25, his or her current commission, and a notice of change form, obtained from the Secretary of State, which shall include the new name and contain a specimen of his or her official signature. The Secretary of State shall issue an amended commission to the notary public in the new name. A rider to the notary public's bond must accompany the notice of change form. After submitting the required notice of change form and rider to

the Secretary of State, the notary public may continue to perform notarial acts in his or her former name for 60 days or until receipt of the amended commission, whichever date is earlier.

(10) A notary public who is not an attorney who advertises the services of a notary public in a language other than English, whether by radio, television, signs, pamphlets, newspapers, or other written communication, with the exception of a single desk plaque, shall post or otherwise include with the advertisement a notice in English and in the language used for the advertisement. The notice shall be of a conspicuous size, if in writing, and shall state: "I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN THE STATE OF FLORIDA, AND I MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE." If the advertisement is by radio or television, the statement may be modified but must include substantially the same message.

(11) Literal translation of the phrase "Notary Public" into a language other than English is prohibited in an advertisement for notarial services.

(12)(a) A notary public may supervise the making of a copy of a tangible or an electronic record or the printing of an electronic record and attest to the trueness of the copy or of the printout, provided the document is neither a vital record in this state, another state, a territory of the United States, or another country, nor a public record, if a copy can be made by the custodian of the public record.

(b) A notary public must use a certificate in substantially the following form in notarizing an attested copy:

STATE OF FLORIDA

COUNTY OF

On this day of , (year), I attest that the preceding or attached document is a true, exact, complete, and unaltered photocopy made by me of (description of document) presented to me by the document's custodian, , and, to the best of my knowledge, that the photocopied document is neither a vital record nor a public record, certified copies of which are available from an official source other than a notary public.

(Official Notary Signature and Notary Seal)

(Name of Notary Typed, Printed or Stamped)

(c) A notary public must use a certificate in substantially the following form in notarizing a copy of a tangible or an electronic record or a printout of an electronic record:

STATE OF FLORIDA

COUNTY OF

On this day of , (year), I attest that the preceding or attached document is a true, exact, complete, and unaltered (copy of a tangible or an electronic record presented to me by the document's custodian) OF a (printout made by

me from such record. If a printout, I further attest that, at the time of printing, no security features, if any, present on the electronic record, indicated that the record had been altered since execution.

(Signature of Notary Public - State of Florida)

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

(13) The following notarial certificates are sufficient for the purposes indicated, if completed with the information required by this chapter. The specification of forms under this subsection does not preclude the use of other forms.

(a) For an oath or affirmation:

STATE OF FLORIDA

COUNTY OF

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

(Signature of Notary Public - State of Florida)

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

Personally Known OR Produced Identification

Type of Identification Produced

(b) For an acknowledgment in an individual capacity:

STATE OF FLORIDA

COUNTY OF

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this day of , (year), by (name of person acknowledging).

(Signature of Notary Public - State of Florida)

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

Personally Known OR Produced Identification

Type of Identification Produced

(c) For an acknowledgment in a representative capacity:

STATE OF FLORIDA

COUNTY OF

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this day of , (year), by (name of person) as (type of authority, . . . e.g. officer, trustee, attorney in fact) for (name of party on behalf of whom instrument was executed).

(Signature of Notary Public - State of Florida)

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

Personally Known OR Produced Identification



Type of Identification Produced

(14) A notary public must make reasonable accommodations to provide notarial services to persons with disabilities.

(a) A notary public may notarize the signature of a person who is blind after the notary public has read the entire instrument to that person.

(b) A notary public may notarize the signature of a person who signs with a mark if:

- 1. The document signing is witnessed by two disinterested persons;
- 2. The notary public prints the person’s first name at the beginning of the designated signature line and the person’s last name at the end of the designated signature line; and
- 3. The notary public prints the words “his (or her) mark” below the person’s signature mark.

(c) The following notarial certificates are sufficient for the purpose of notarizing for a person who signs with a mark:

- 1. For an oath or affirmation:

          (First Name)          (Last Name)

          His (or Her) Mark          

STATE OF FLORIDA

COUNTY OF

Sworn to and subscribed before me by means of  physical presence or  online notarization, this day of           (year)          , by           (name of person making statement)          , who signed with a mark in the presence of these witnesses:

          (Signature of Notary Public - State of Florida)          

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

Personally Known OR Produced Identification

Type of Identification Produced

- 2. For an acknowledgment in an individual capacity:

          (First Name)          (Last Name)

          His (or Her) Mark          

STATE OF FLORIDA

COUNTY OF

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this day of           (year)          , by           (name of person acknowledging)          , who signed with a mark in the presence of these witnesses:

          (Signature of Notary Public - State of Florida)          

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

Personally Known OR Produced Identification

Type of Identification Produced

(d) A notary public may sign the name of a person whose signature is to be notarized when that person is physically unable to sign or make a signature mark on a document if:

1. The person with a disability directs the notary public to sign in his or her presence by verbal, written, or other means;
2. The document signing is witnessed by two disinterested persons; and
3. The notary public writes below the signature the following statement: "Signature affixed by notary, pursuant to s. 117.05(14), Florida Statutes," and states the circumstances and the means by which the notary public was directed to sign the notarial certificate.

The notary public must maintain the proof of direction and authorization to sign on behalf of the person with a disability for 10 years from the date of the notarial act.

(e) The following notarial certificates are sufficient for the purpose of notarizing for a person with a disability who directs the notary public to sign his or her name:

1. For an oath or affirmation:

STATE OF FLORIDA

COUNTY OF

Sworn to (or affirmed) before me by means of  physical presence or  online notarization, this day of , (year), by (name of person making statement), and subscribed by (name of notary) at the direction of (name of person making statement) by (written, verbal, or other means), and in the presence of these witnesses:

(Signature of Notary Public - State of Florida)

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

Personally Known OR Produced Identification

Type of Identification Produced

2. For an acknowledgment in an individual capacity:

STATE OF FLORIDA

COUNTY OF

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this day of , (year), by (name of person acknowledging) and subscribed by (name of notary) at the direction of (name of person acknowledging), and in the presence of these witnesses:

(Signature of Notary Public - State of Florida)

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

Personally Known OR Produced Identification

Type of Identification Produced

**History.**—ch. 3874, 1889; RS 221; GS 306; RGS 417; CGL 483; s. 8, ch. 81-260; s. 4, ch. 91-291; s. 3, ch. 92-209; s. 4, ch. 93-62; s. 747, ch. 95-147; s. 1, ch. 97-241; s. 33, ch. 98-129; s. 5, ch. 98-246; s. 46, ch. 99-2; s. 7, ch. 2004-5; s. 19, ch. 2014-17; s. 40, ch. 2016-37; s. 1, ch. 2017-17; s. 4, ch. 2019-71.

1 736.1008 Limitations on proceedings against trustees.—

2 (1) Except as provided in subsection (2), all claims by a beneficiary against a trustee for breach  
3 of trust are barred as provided in chapter 95 as to:

4 (a) All matters adequately disclosed in a trust disclosure document issued by the trustee, with  
5 the limitations period beginning on the date of receipt of adequate disclosure.

6 (b) All matters not adequately disclosed in a trust disclosure document if the trustee has issued  
7 a final trust accounting and has given written notice to the beneficiary of the availability of the  
8 trust records for examination and that any claims with respect to matters not adequately disclosed  
9 may be barred unless an action is commenced within the applicable limitations period provided  
10 in chapter 95. The limitations period begins on the date of receipt of the final trust accounting  
11 and notice.

12 (2) Unless sooner barred by adjudication, consent, or limitations, a beneficiary is barred from  
13 bringing an action against a trustee for breach of trust with respect to a matter that was  
14 adequately disclosed in a trust disclosure document unless a proceeding to assert the claim is  
15 commenced within 6 months after receipt from the trustee of the trust disclosure document or a  
16 limitation notice that applies to that disclosure document, whichever is received later.

17 (3) When a trustee has not issued a final trust accounting or has not given written notice to the  
18 beneficiary of the availability of the trust records for examination and that claims with respect to  
19 matters not adequately disclosed may be barred, a claim against the trustee for breach of trust  
20 based on a matter not adequately disclosed in a trust disclosure document is barred as provided in  
21 chapter 95 and accrues when the beneficiary has actual knowledge of:

22 (a) The facts upon which the claim is based, if such actual knowledge is established by clear  
23 and convincing evidence; or

24 (b) The trustee’s repudiation of the trust or adverse possession of trust assets.

25 Paragraph (a) applies to claims based upon acts or omissions occurring on or after July 1, 2008.

26 A beneficiary’s actual knowledge that he or she has not received a trust accounting does not  
27 cause a claim to accrue against the trustee for breach of trust based upon the failure to provide a  
28 trust accounting required by s. 736.0813 or former s. 737.303 and does not commence the  
29 running of any period of limitations or laches for such a claim, and paragraph (a) and chapter 95  
30 do not bar any such claim.

31 (4) As used in this section, the term:

32 (a) “Trust disclosure document” means a trust accounting or any other written report of the  
33 trustee. A trust disclosure document adequately discloses a matter if the document provides  
34 sufficient information so that a beneficiary knows of a claim or reasonably should have inquired  
35 into the existence of a claim with respect to that matter.

36 (b) “Trust accounting” means an accounting that adequately discloses the information required  
37 by and that substantially complies with the standards set forth in s. 736.08135.

38 (c) “Limitation notice” means a written statement of the trustee that an action by a beneficiary  
39 against the trustee for breach of trust based on any matter adequately disclosed in a trust  
40 disclosure document may be barred unless the action is commenced within 6 months after receipt  
41 of the trust disclosure document or receipt of a limitation notice that applies to that trust  
42 disclosure document, whichever is later. A limitation notice may but is not required to be in the  
43 following form: “An action for breach of trust based on matters disclosed in a trust accounting or  
44 other written report of the trustee may be subject to a 6-month statute of limitations from the  
45 receipt of the trust accounting or other written report. If you have questions, please consult your  
46 attorney.”

47 (5) For purposes of this section, a limitation notice applies to a trust disclosure document when  
48 the limitation notice is:

49 (a) Contained as a part of the trust disclosure document or as a part of another trust disclosure  
50 document received within 1 year prior to the receipt of the latter trust disclosure document;

51 (b) Accompanied concurrently by the trust disclosure document or by another trust disclosure  
52 document that was received within 1 year prior to the receipt of the latter trust disclosure  
53 document;

54 (c) Delivered separately within 10 days after the delivery of the trust disclosure document or of  
55 another trust disclosure document that was received within 1 year prior to the receipt of the latter  
56 trust disclosure document. For purposes of this paragraph, a limitation notice is not delivered  
57 separately if the notice is accompanied by another written communication, other than a written  
58 communication that refers only to the limitation notice; or

59 (d) Received more than 10 days after the delivery of the trust disclosure document, but only if  
60 the limitation notice references that trust disclosure document and:

61 1. Offers to provide to the beneficiary on request another copy of that trust disclosure  
62 document if the document was received by the beneficiary within 1 year prior to receipt of the  
63 limitation notice; or

64 2. Is accompanied by another copy of that trust disclosure document if the trust disclosure  
65 document was received by the beneficiary 1 year or more prior to the receipt of the limitation  
66 notice.

67 (6)(a) Notwithstanding subsections (1), (2), and (3), all claims by a beneficiary against a trustee  
68 are barred:

69 1. Upon the later of:

70 a. Ten years after the date the trust terminates, the trustee resigns, or the fiduciary relationship  
71 between the trustee and the beneficiary otherwise ends if the beneficiary had actual knowledge of  
72 the existence of the trust and the beneficiary's status as a beneficiary throughout the 10-year  
73 period; or

74 b. Twenty years after the date of the act or omission of the trustee that is complained of if the  
75 beneficiary had actual knowledge of the existence of the trust and the beneficiary's status as a  
76 beneficiary throughout the 20-year period; or

77 2. Forty years after the date the trust terminates, the trustee resigns, or the fiduciary  
78 relationship between the trustee and the beneficiary otherwise ends.

79 (b) When a beneficiary shows by clear and convincing evidence that a trustee actively  
80 concealed facts supporting a cause of action, any existing applicable statute of repose shall be  
81 extended by 30 years.

82 (c) For purposes of sub-subparagraph (a)1.b., the failure of the trustee to take corrective action  
83 is not a separate act or omission and does not extend the period of repose established by this  
84 subsection.

85 (d) This subsection applies to claims based upon acts or omissions occurring on or after July 1,  
86 2008.

87 (7) Any claim barred against a trustee under this section, is also barred against the directors,  
88 officers, and employees acting for that trustee.

89 ~~(7)~~(8) This section applies to trust accountings for accounting periods beginning on or after  
90 July 1, 2007, and to written reports, other than trust accountings, received by a beneficiary on or  
91 after July 1, 2007.

## WHITE PAPER

### PROPOSED AMENDMENT OF F.S. SECTION 736.1008

#### A. SUMMARY

The proposed amendment adds language to Florida Statutes § 736.1008 so that the same statute of limitations for breach of trust against a trustee applies to directors, officers, and employees acting for the trustee.

#### B. CURRENT SITUATION

Section 736.1008 includes the statute of limitations for a beneficiary's claims against a trustee for a breach of trust. The trustee has the authority to adequately disclose matters in a trust disclosure document and include a limitations notice to utilize a six-month statute of limitations. "Trustee" is defined in the Florida Trust Code as "the original trustee and includes any additional trustee, any successor trustee, and any cotrustee." Fla. Stat. § 736.0103(23) (2018). Local and national banking associations and corporations with trust powers are authorized to engage in trust business and serve as trustees in Florida. Fla. Stat. §§ 658.12(20) and 660.41 (2018). Local and national banking associations employ trust officers, directors, and other personnel that work with and provide information to beneficiaries. Currently, it is unclear whether the statute of limitations periods identified in Section 736.1008 extend to the employees and officers of corporations serving as trustee.

In *Beaubien v. Cambridge Consolidated, LTD*, 652 So. 2d 936 (Fla. 5<sup>th</sup> DCA 1995), trust beneficiaries sued an individual allegedly serving as director and manager of a corporate trustee. The Fifth District noted, "It is well settled that an individual acting for a corporate trustee may be personally liable to third persons injured by his actions even if the individual was acting as agent for the corporation. Such corporate agents owe duties not only to the corporation, but also to the beneficiaries of a trust administered by the corporation." The Court required the individual director to account for the funds held and disposed of while he was in control of the trust account.

Other cases and statutes stand for the same position – that an individual, acting on behalf of a corporate trustee, can be separately liable to the trust beneficiaries. Those cases and statutes include *Raimi v. Furlong*, 702 So. 2d 1273 (Fla. 3d DCA 1997)(bank officers were personally liable for breach of fiduciary duty); *Sun First Nat'l Bank of Melbourne v. Batchelor*, 321 So. 2d 73 (Fla. 1975)(release of bank did not operate to discharge former trust officer/employee); and Fla. Stat. § 736.1002(5)("The beneficiary's recovery of a judgment for breach of trust against one liable person does not of itself discharge other liable persons from liability for the breach of trust unless the judgment is satisfied. The satisfaction of the judgment does not impair any right of contribution.").



The same statute of limitations for claims of breach of trust against a trustee should apply to the trustee's employees, officers, and directors. Accordingly, the proposed changes extend the six-month statute of limitations protections of Section 736.1008 to the employees, officers, and directors of trustees who make adequate disclosures in a trust information document.

**C. EFFECT OF PROPOSED CHANGES**

The proposed amendment adds a new subsection to Section 736.1008 and clarifies that the same statutes of limitations apply to the trustee as to the directors, officers, and employees of that trustee. If claims are barred against the trustee, they are also barred against the trustee's officers, directors, and employees.

**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.

Florida Bankers Association.



# The Florida Bar

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Tallahassee, FL 32399-2300

Joshua E. Doyle  
Executive Director

850/561-5600  
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## LEGISLATIVE OR POLITICAL POSITION REQUEST FORM

### GENERAL INFORMATION

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

Rob Lancaster, Chair, Estate and Trust Tax Planning Committee, RRPTL  
Rob Lancaster, Chair, Estate and Trust Tax Planning Committee, RRPTL and Trust Law Section

**Address:** (address and phone #)

239-649-3178

3001 Tamiami Trail North, Suite 400, Naples, FL 34103  
177 S. Harbour Island Blvd. Ste 215

Tampa, Florida 33602

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

TFB RRPTL/Probate/Estate and Trust Tax Planning  
Probate and Trust Law Section, Committee, RRPTL, Florida Bar

### PROPOSED ADVOCACY

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

#### If Applicable, List the Following:

(Bill or PCB #)

(Sponsor)

SB 1366 N/A

Gruters

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

#### I. Proposed Wording of Legislative Position for Official Publication

Support revisions to section 736.08145, Florida Statutes, to grant a trustee discretionary authority to reimburse the deemed owner of a grantor trust for income taxes attributable to the deemed owner.  
Support legislation to change Fla. Stat. § 736.1000 so that the same statute or limitations for breach of trust against a trustee

**II. Political Proposals:**

**III. Reasons For Proposed Advocacy:**

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

YesYes.

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

N/A

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

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

D. Additional Information:

Fla. Stat. 736.1008 allows a trustee to utilize a six-month statute of limitations when a matter is adequately disclosed in a trust disclosure document. Local and national banking associations are authorized to engage in trust business and serve as trustees in Florida. See Fla. Stat. §§ 658.12(20) and 660.41. The same statute of limitations for claims of breach of trust against a trustee should apply to the trustee's employees, officers, and directors.

**PRIOR POSITIONS TAKEN ON THIS ISSUE**

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

**Most Recent Position**

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

**Others** (*attach list if more than one*)

TFB Section/Division/Committee	Support/Oppose	Date

**REFERRALS TO OTHER SECTIONS, COMMITTEES OR LEGAL ORGANIZATIONS**

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

**Referrals**

Name of Group or Organization	Support, Oppose or No-Position
Elder Law Section of the Florida Bar	
Florida Bankers Association	

**Reasons for Non-Referrals:**

**CONTACTS**

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

Jon Scuderi, Goldman Felcoski & Stone, P.A., 850 Park Shore Drive, Suite 203, Naples, Florida 34103, Telephone: (239) 436-1988, Email: jscuderi@gssestatelaw.com  
 34102, 239-436-1988

Peter M. Dunbar, Dean, Mead & Dunbar, P.A., 215 South Monroe Street, Suite 815, Tallahassee, Florida 32301, Telephone:

(850) 999-4100, Email: pdunbar@deanmead.com

Martha J. Edenfield, Dean, Mead & Dunbar, P.A., 215 South Monroe Street, Suite 815, Tallahassee, Florida 32301, Telephone: (850) 999-4100, Email: medenfield@deanmead.com

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

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

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

Same as above.

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

BILL ORIGINAL YEAR

BILL ORIGINAL YEAR

1 A bill to be entitled  
 2 An act relating to the Florida Guardianship Code;  
 3 creating parts I, II, III, IV, V, VI, VII, VIII, IX,  
 4 X, XI, XII, XIII, XIV, and XV of chapter 745, F.S.;

5 providing a short title; providing general  
 6 provisions and definitions; providing for venue;  
 7 providing for proceedings to determine incapacity;  
 8 providing for proceeding to restore the rights of an  
 9 individual no longer incapacitated; providing for  
 10 the qualifications of a guardian; providing for the  
 11 appointment of a guardian; providing provisions  
 12 relating to different types of guardians; providing  
 13 provisions relating to the duties of guardians;  
 14 providing provisions relating to the powers of  
 15 guardians; providing oversight and monitoring of  
 16 wards and guardians; providing provisions relating  
 17 to the resignation and discharge of guardians;  
 18 providing for the removal of guardians; providing  
 19 for miscellaneous provisions relating to a  
 20 guardian's authorities, the authority of multiple  
 21 guardians; the effect of a guardianship proceeding  
 22 on a power of attorney or trust, and prohibitions on  
 23 abuse by a guardian; provisions relating to the  
 24 Office of Public and Professional Guardians;  
 25 provisions relating to Veteran Guardianships;  
 26 repealing ch 744; providing an effective date.

27  
 28 Be It Enacted by the Legislature of the State of Florida:  
 29  
 30 Section 1. Part I of chapter 745, Florida Statutes, consisting

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

34 PART I  
 35 GENERAL PROVISIONS

36 745.101 Short title.  
 37 This chapter may be cited as the "Florida Guardianship Code" and  
 38 for purposes of this chapter is referred to as the "code".  
 39

40 745.102 Legislative intent.  
 41 The Legislature recognizes the importance of protecting adults and  
 42 minors in the state of Florida; and also finds that:  
 43 (1) Adjudicating an adult partially or totally incapacitated  
 44 deprives such person of important legal rights.  
 45 (2) By recognizing that every person has unique needs and  
 46 differing abilities, it is the purpose of this code to promote the  
 47 public welfare by establishing a legal system that permits  
 48 incapacitated persons to participate as fully as possible in  
 49 decisions affecting them, assists them in meeting the essential  
 50 requirements for their physical health and safety, protects their  
 51 rights and dignity, manages their assets and financial resources,  
 52 provides a mechanism for them to regain their rights and abilities  
 53 to the maximum extent possible, and provides personal and financial  
 54 care and protection while preserving their right to privacy of  
 55 their personal, financial, medical and mental health information to  
 56 the same extent as persons who are not incapacitated.  
 57 (3) It is the intent of this code to recognize appropriate lesser  
 58 restrictive means of assistance to incapacitated persons and  
 59 alternatives to guardianship and to utilize the least restrictive  
 60 means of assistance.

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BILL ORIGINAL YEAR

BILL ORIGINAL YEAR

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

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

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BILL ORIGINAL YEAR

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

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BILL ORIGINAL YEAR

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

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

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

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

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

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

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

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357 (11) The court may determine that a request for compensation by the  
 358 guardian, the guardian's attorney, an attorney appointed under s.  
 359 745.305, an attorney who has rendered services to the ward or other  
 360 professional employed by the guardian is reasonable without  
 361 receiving expert testimony. An interested person or party may offer  
 362 expert testimony for or against a request for compensation after  
 363 giving notice to interested persons. Reasonable expert witness fees  
 364 must be awarded by the court and paid from the assets of the  
 365 guardianship estate using the standards established in subsection  
 366 (5).  
 367  
 368 745.114 Jurisdiction of the court.  
 369 The circuit court has jurisdiction to adjudicate all matters in  
 370 incapacity and guardianship proceedings.  
 371  
 372 Section 2. Part II of chapter 745, Florida Statutes,  
 373 consisting of sections 745.201, 745.202, 745.203, and 745.204, is  
 374 created to read:  
 375 PART II  
 376 VENUE  
 377 745.201 Venue.  
 378 (1) Venue in proceedings for determination of incapacity must be  
 379 the county in which the alleged incapacitated person resides or is  
 380 located.  
 381 (2) Venue in proceedings for appointment of a guardian must be:  
 382 (a) If the incapacitated person or minor is a resident of this  
 383 state, the county in which the incapacitated person or minor  
 384 resides provided, however, that if the adjudication of incapacity  
 385 occurs in a county other than the county of residence pursuant to

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416 such change. In considering the petition, the court shall determine  
 417 that such relocation serves the best interest of the ward.  
 418 (2) A guardian who changes the residence of a ward from the ward's  
 419 current county of residence to another county adjacent to the  
 420 ward's county of residence shall notify the court having  
 421 jurisdiction of the guardianship and next of kin whose addresses  
 422 are known to the guardian within 15 days after relocation of the  
 423 ward. Such notice shall state the reasons for the change of the  
 424 ward's residence. Venue need not be changed unless otherwise  
 425 ordered by the court.  
 426 (3) When the residence of a resident ward has changed to another  
 427 state, in accordance with this section, and the foreign court  
 428 having jurisdiction over the ward at the ward's new residence has  
 429 appointed a guardian and that guardian has qualified and posted a  
 430 bond in an amount required by the foreign court, the guardian in  
 431 this state may file the final report and close the guardianship in  
 432 this state, pursuant to s.745.1105.  
 433  
 434 Section 3. Part III of chapter 745, Florida Statutes,  
 435 consisting of sections 745.301, 745.302, 745.303, 745.304, 745.305,  
 436 745.306, 745.307, 745.308, 745.309, 745.310, 745.311, and 745.312,  
 437 is created to read:  
 438 PART III  
 439 INCAPACITY  
 440 745.301 Petition to determine incapacity.  
 441 (1) A petition to determine incapacity of a person may be executed  
 442 by an adult with personal knowledge of the information specified in  
 443 the petition.  
 444 (2) The petition must be verified and must, to the best of  
 445 petitioner's knowledge and belief,:

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386 subsection (1), venue for appointment of guardian must be the  
 387 county in which the adjudication occurred.  
 388 (b) If the incapacitated person or minor is not a resident of this  
 389 state, any county in this state in which property of the person is  
 390 located.  
 391 (c) If the incapacitated person or minor is under the jurisdiction  
 392 of a dependency court, venue may also be in the county having  
 393 jurisdiction of the dependency case.  
 394  
 395 745.202 Residence of ward.  
 396 The residence of a Florida resident ward is the county in which the  
 397 ward resides. Residence or domicile shall not be deemed to be  
 398 changed when a ward is moved to another county for medical care or  
 399 rehabilitation.  
 400  
 401 745.203 Change of venue.  
 402 When the residence of a ward is changed to another county, the  
 403 guardian shall petition to have venue of the guardianship changed  
 404 to the county of the acquired residence, except as provided in s.  
 405 745.204.  
 406  
 407 745.204 Change of ward's residence.  
 408 (1) A guardian who has power pursuant to this code to determine the  
 409 residence of a ward may not, without court approval, change the  
 410 residence of the ward from this state to another, or from one  
 411 county of this state to another, unless such county is adjacent to  
 412 the county of the ward's current residence. A guardian who seeks to  
 413 change the residence of a ward from the ward's current county of  
 414 residence to another county which is not adjacent to the ward's  
 415 current county of residence must obtain court approval prior to

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446 (a) State the name, residence address of the petitioner, and  
 447 petitioner's relationship to the alleged incapacitated person;  
 448 (b) State the name, age, county of residence, residence address and  
 449 current location of the alleged incapacitated person;  
 450 (c) Specify the primary language spoken by the alleged  
 451 incapacitated person, and if the person speaks English;  
 452 (d) Allege that the petitioner believes the alleged incapacitated  
 453 person to be incapacitated and specify the factual information on  
 454 which such belief is based;  
 455 (e) State the name and address of the alleged incapacitated  
 456 person's attending or primary care physician and other medical and  
 457 mental health professionals regularly treating the alleged  
 458 incapacitated person, if known;  
 459 (f) State which rights enumerated in s. 745.303 the alleged  
 460 incapacitated person is incapable of exercising, to the best of  
 461 petitioner's knowledge. If the petitioner has insufficient  
 462 experience to make such judgment, the petition must so state; and  
 463 (g) State the names, relationships, and addresses of the next of  
 464 kin of the alleged incapacitated person, specifying the ages of any  
 465 who are minors.  
 466  
 467 745.302 Notice of petition to determine incapacity and for  
 468 appointment of guardian.  
 469 (1) Notice of filing a petition to determine incapacity and a  
 470 petition for the appointment of a guardian, if any, and copies of  
 471 the petitions must be personally served on the alleged  
 472 incapacitated person. The notice and copies of the petitions must  
 473 be served by the clerk on the attorney for the alleged  
 474 incapacitated person within 5 days of filing the petitions, and by  
 475 the petitioner on all next of kin identified in the petition. The

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

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

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

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

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

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

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

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

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

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

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

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

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

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

843 PART IV  
 844 RESTORATION TO CAPACITY

845 745.401 Suggestion of capacity.

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

848 (2) Suggestion of Capacity.--

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

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

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

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

896  
 897 745.404 Consideration of examination report.

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

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

916  
 917 745.405 Order restoring capacity.

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

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

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

866  
 867 745.402 Examination of ward.

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

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

880  
 881 745.403 Objection and hearing.

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

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

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

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

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

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

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

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

944 PART V  
 945 QUALIFICATIONS OF GUARDIANS

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

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

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

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

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1010 745.504 Credit and criminal investigation.  
 1011  
 1012 (1) Within 3 days of filing a petition for appointment of a  
 1013 nonprofessional guardian, the proposed guardian shall submit to an  
 1014 investigation of the guardian's credit history and a level 2  
 1015 background screening as required under s. 435.04. The court must  
 1016 consider the credit and background screening reports before  
 1017 appointing a guardian.  
 1018 (2) For nonprofessional guardians, the court may require the  
 1019 satisfactory completion of a criminal history record check as  
 1020 described in this subsection. A nonprofessional guardian satisfies  
 1021 the requirements of this section by undergoing a state and national  
 1022 criminal history record check using fingerprints. A nonprofessional  
 1023 guardian required to submit fingerprints shall have fingerprints  
 1024 taken and forwarded, along with the necessary fee, to the  
 1025 Department of Law Enforcement for processing. The results of the  
 1026 fingerprint criminal history record check shall be transmitted to  
 1027 the clerk, who shall maintain the results in the court file of the  
 1028 nonprofessional guardian's case.  
 1029 (3) For professional and public guardians, the court and Office of  
 1030 Public and Professional Guardians shall accept the satisfactory  
 1031 completion of a criminal history record check by any method  
 1032 described in this subsection. A professional guardian satisfies the  
 1033 requirements of this section by undergoing an electronic  
 1034 fingerprint criminal history record check. A professional guardian  
 1035 may use any electronic fingerprinting equipment used for criminal  
 1036 history record checks. The Office of Public and Professional  
 1037 Guardians shall adopt a rule detailing the acceptable methods for  
 1038 completing an electronic fingerprint criminal history record check  
 1039 under this section. The professional guardian shall pay the actual

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1899 (c) Keep clear, distinct, and accurate records of the  
 1900 administration of the ward's property.  
 1901 (d) Perform all other duties required of a guardian of property by  
 1902 law.  
 1903 (e) At the termination of the guardianship, deliver the property of  
 1904 the ward to the person lawfully entitled to it.  
 1905 (3) A guardian is a fiduciary who must observe the standards in  
 1906 dealing with guardianship property that would be observed by a  
 1907 prudent person dealing with the property of another, and, if the  
 1908 guardian has special skills or is appointed guardian on the basis  
 1909 of representations of special skills or expertise, the guardian is  
 1910 under a duty to use those skills.  
 1911 (4) A guardian of property, if authorized by the court, must secure  
 1912 the ward's property and of the income from it, whether accruing  
 1913 before or after the guardian's appointment, and of the proceeds  
 1914 arising from the sale, lease, or mortgage of the property. All of  
 1915 the property and the income from it are assets in the hands of the  
 1916 guardian for the payment of debts, taxes, claims, charges, and  
 1917 expenses of the guardianship and for the care, support,  
 1918 maintenance, and education of the ward or the ward's dependents, as  
 1919 provided by law.  
 1920 (5) A guardian of property must file a verified inventory of the  
 1921 ward's property as required by s. 745.803 and annual accountings in  
 1922 accordance with s. 745.805. This requirement also applies to a  
 1923 guardian who previously served as emergency temporary guardian for  
 1924 the ward.  
 1925 (6) A guardian must act within the scope of the authority granted  
 1926 by the court and as provided by law.  
 1927 (7) A guardian must act in good faith.

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1958 (3) Along with the verified inventory, the guardian must file a  
 1959 copy of statements of all of the ward's cash assets from all  
 1960 institutions in which funds are deposited. Statements must be for  
 1961 the period ending closest in time to the issuance of letters.  
 1962 (4) If the ward is a beneficiary of a trust, the inventory must  
 1963 identify the trust and the trustee.  
 1964 (5) The inventory shall specify whether the guardian of property  
 1965 will file the annual accounting on a designated fiscal year or  
 1966 calendar year basis.  
 1967 (6) If a guardian of property learns of any property that is not  
 1968 included in the inventory, the guardian shall file an amended or  
 1969 supplemental inventory to report such property within 60 days after  
 1970 the discovery.  
 1971  
 1972 745.804 Audit fee for inventory.  
 1973 (1) When the value of the ward's property, excluding real property,  
 1974 equals or exceeds \$25,000, a guardian shall pay from the ward's  
 1975 property to the clerk an audit fee of up to \$75, at the time of  
 1976 filing the verified inventory. Upon petition by the guardian, the  
 1977 court may waive the audit fee upon a showing of insufficient cash  
 1978 assets in the ward's estate or other good cause.  
 1979 (2) An audit fee may not be charged to any ward whose property,  
 1980 excluding real property, has a value of less than \$25,000.  
 1981  
 1982 745.805 Annual accounting.  
 1983 (1) A guardian of property must file an annual accounting with the  
 1984 court.  
 1985 (2) An annual accounting must include:  
 1986 (a) A full and correct itemization of the receipts and  
 1987 disbursements of all of the ward's property in the guardian's

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1928 (8) When making decisions on behalf of a ward, a guardian of  
 1929 property shall exercise reasonable care, diligence, and prudence.  
 1930 The guardian of property shall base all decisions on substituted  
 1931 judgment if there is competent, substantial evidence of what the  
 1932 ward would have wanted and the decision promotes the ward's best  
 1933 interest. If there is no competent, substantial evidence to support  
 1934 substituted judgment or the decision does not promote the ward's  
 1935 best interest, then the decision shall be made based on the ward's  
 1936 best interest.  
 1937 (9) When two or more guardians have been appointed, the guardians  
 1938 shall consult with each other on matters of mutual responsibility.  
 1939  
 1940 745.803 Verified inventory.  
 1941 (1) A guardian of property shall file a verified inventory of the  
 1942 ward's property within 60 days of issuance of letters.  
 1943 (2) The verified inventory must specify and describe the following:  
 1944 (a) All property of the ward, real and personal, that has come into  
 1945 the guardian's control or knowledge, including a statement of all  
 1946 encumbrances, liens, and other claims on any item, including any  
 1947 cause of action accruing to the ward, and any trusts of which the  
 1948 ward is a beneficiary.  
 1949 (b) The location of the real and personal property in sufficient  
 1950 detail so that it may be identified and located.  
 1951 (c) A description of all sources of income, including, without  
 1952 limitation, social security benefits and pensions.  
 1953 (d) The location of any safe-deposit boxes held by the ward  
 1954 individually or jointly with any other person.  
 1955 (e) identification by name, address, and occupation, of witnesses  
 1956 present, if any, during the initial examination of the ward's  
 1957 tangible personal property.

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1988 control or knowledge at the end of the accounting period and a  
 1989 statement of the ward's property in the guardian's control or  
 1990 knowledge at the end of the accounting period. If the guardian does  
 1991 not have control of an asset, the accounting must describe the  
 1992 asset and the reason it is not in the guardian's control. If the  
 1993 ward is a beneficiary of a trust, the accounting must identify the  
 1994 trust and the trustee, but they need not list the receipts and  
 1995 disbursements of the trust.  
 1996 (b) A copy of statements demonstrating all receipts and  
 1997 disbursements for each of the ward's cash accounts from each of the  
 1998 institutions in which cash is deposited.  
 1999 (3) A guardian must obtain a receipt, canceled check, or other  
 2000 proof of payment for all expenditures and disbursements made on  
 2001 behalf of the ward. A guardian must preserve all evidence of  
 2002 payment, along with other substantiating papers, for a period of 7  
 2003 years after the end of the accounting year. The receipts, proofs of  
 2004 payment, and substantiating papers need not be filed with the court  
 2005 but shall be made available for inspection at such time and place  
 2006 and before such persons as the court may order for cause, after  
 2007 hearing with notice to the guardian.  
 2008 (4) Unless otherwise directed by the court, a guardian of property  
 2009 may file the first annual accounting on either a fiscal year or  
 2010 calendar year basis. The guardian must notify the court as to the  
 2011 guardian's filing intention on the guardian's inventory. All  
 2012 subsequent annual accountings must be filed for the same accounting  
 2013 period as the first annual accounting. The first accounting period  
 2014 must end within 1 year after the end of the month in which the  
 2015 letters were issued to the guardian of property.  
 2016 (5) The annual accounting must be filed on or before the first day  
 2017 of the fourth month after the end of the accounting year.

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2018 (6) Unless the guardian is a plenary guardian of property or the  
 2019 requirement is otherwise waived by the court, the annual accounting  
 2020 must be served on the ward. The guardian shall serve a copy of the  
 2021 annual accounting on interested persons as the court may authorize  
 2022 or require.  
 2023 (7) The court may waive the filing of an accounting if it  
 2024 determines the ward receives income only from social security  
 2025 benefits and the guardian is the ward's representative payee for  
 2026 the benefits.  
 2027  
 2028 745.806 Simplified accounting.  
 2029 (1) In a guardianship of property, when all assets of the estate  
 2030 are in designated depositories under s. 69.031 and the only  
 2031 transactions that occur in that account are interest accrual,  
 2032 deposits from a settlement, financial institution service charges  
 2033 and court authorized expenditures, the guardian may elect to file  
 2034 an accounting consisting of:  
 2035 (a) Statements demonstrating all receipts and disbursements of the  
 2036 ward's account from the financial institution; and  
 2037 (b) A statement made by the guardian under penalty of perjury that  
 2038 the guardian has custody and control of the ward's property as  
 2039 shown in the year-end statement.  
 2040 (2) The accounting allowed by subsection (1) is in lieu of the  
 2041 accounting and auditing procedures under s. 745.805. However, any  
 2042 interested party may seek judicial review as provided in s.  
 2043 745.1002.  
 2044  
 2045 745.807 Audit fee for accounting.

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2075 the guardian is a plenary guardian of property or unless otherwise  
 2076 directed by the court.  
 2077 (3) Nothing may be removed from the ward's safe-deposit box by the  
 2078 guardian of property without court order.  
 2079  
 2080 745.809 Duties of guardian of person.  
 2081 (1) A guardian of person is a fiduciary and may exercise only those  
 2082 rights that have been removed from the ward and delegated to the  
 2083 guardian. A guardian of a minor shall exercise the powers of a  
 2084 plenary guardian.  
 2085 (2) A guardian of person shall make decisions necessary to provide  
 2086 medical, mental health, personal and residential care for the ward,  
 2087 to the extent of the guardian's authority.  
 2088 (3) A guardian of person must ensure that each of the guardian's  
 2089 wards is personally visited by the guardian or, in the case of a  
 2090 professional guardian, by one of the guardian's professional staff  
 2091 at least once each calendar quarter. During the personal visit, the  
 2092 guardian or the guardian's professional staff person shall assess:  
 2093 (a) The ward's physical appearance and condition.  
 2094 (b) The appropriateness of the ward's current residence.  
 2095 (c) The need for any additional services and for continuation of  
 2096 existing services, taking into consideration all aspects of the  
 2097 ward's social, psychological, educational, direct service, health,  
 2098 and personal care needs.  
 2099 (d) The nature and extent of visitation and communication with the  
 2100 ward's family and others.  
 2101 (4) A guardian of person shall file an initial guardianship plan as  
 2102 required by s. 745.810 and annual plans as required by s. 745.813.  
 2103 (5) A guardian shall act within the scope of the authority granted  
 2104 by the court and as provided by law.

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2046 (1) A guardian shall pay, from the ward's property, to the clerk an  
 2047 audit fee based upon the following graduated fee schedule at the  
 2048 time of filing the annual accounting:  
 2049 (a) For property having a value of \$25,000 or less, there shall be  
 2050 no audit fee.  
 2051 (b) For property with total value of more than \$25,000 up to and  
 2052 including \$100,000 the clerk may charge a fee of up to \$100.  
 2053 (c) For property with total value of more than \$100,000 up to and  
 2054 including \$500,000 the clerk may charge a fee of up to \$200.  
 2055 (d) For property with a value in excess of \$500,000 the clerk may  
 2056 charge a fee of up to \$400.  
 2057 (2) Upon petition by the guardian, the court may waive the auditing  
 2058 fee upon a showing of insufficient cash assets in the ward's  
 2059 estate.  
 2060  
 2061 745.808 Safe-deposit box.  
 2062 (1) A guardian's initial access to any safe-deposit box leased or  
 2063 co-leased by the ward must be conducted in the presence of an  
 2064 employee of the institution where the box is located. A written  
 2065 inventory of the contents of the safe-deposit box also must be  
 2066 compiled in the presence of the employee. The employee and guardian  
 2067 must then confirm the contents of the safe-deposit box by executing  
 2068 the safe-deposit box inventory in accordance with Florida Probate  
 2069 Rule 5.020. The contents must then be replaced in the safe-deposit  
 2070 box and the guardian must file the verified safe-deposit box  
 2071 inventory within 10 days after the box is opened.  
 2072 (2) A guardian of property must provide any co-lessee a copy of  
 2073 each signed safe-deposit box inventory. A copy of each verified  
 2074 safe deposit box inventory must also be provided to the ward unless

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2105 (6) A guardian shall act in good faith.  
 2106 (7) When making decisions on behalf of a ward, a guardian of person  
 2107 shall act in a manner consistent with the ward's constitutional  
 2108 rights of privacy and self-determination, making decisions based on  
 2109 substituted judgment if there is competent, substantial evidence of  
 2110 what the ward would have wanted. If there is no competent,  
 2111 substantial evidence of what the ward would have wanted, decisions  
 2112 shall be based on the ward's best interest.  
 2113 (8) A guardian of person is a fiduciary who must observe the  
 2114 standards that would be observed by a prudent person making  
 2115 decisions on behalf of another, and, if the guardian has special  
 2116 skills or expertise, or is appointed in reliance upon the  
 2117 guardian's representation that the guardian has special skills or  
 2118 expertise, the guardian is under a duty to use those special skills  
 2119 or expertise when acting on behalf of the ward.  
 2120 (9) A guardian of person shall implement the guardianship plan.  
 2121 (10) When two or more guardians have been appointed, the guardians  
 2122 shall consult with each other on matters of mutual responsibility.  
 2123 (11) Recognizing that every individual has unique needs and  
 2124 abilities, a guardian who is given authority over a ward's person  
 2125 shall, as appropriate under the circumstances:  
 2126 (a) Consider the expressed desires of the ward as known by the  
 2127 guardian when making decisions that affect the ward.  
 2128 (b) Allow the ward to maintain contact with family and friends  
 2129 unless the guardian believes that such contact may cause harm to  
 2130 the ward.  
 2131 (c) Not restrict the physical liberty of the ward more than  
 2132 reasonably necessary to protect the ward or another person from  
 2133 serious physical injury, illness, or disease.  
 2134 (d) Assist the ward in developing or regaining capacity.

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2135 (e) Notify the court if the guardian believes that the ward has  
 2136 regained capacity and that one or more of the rights that have been  
 2137 removed should be restored to the ward.  
 2138 (f) To the extent applicable, make provision for the medical,  
 2139 mental, rehabilitative, or personal care services for the welfare  
 2140 of the ward.  
 2141 (g) To the extent applicable, acquire a clear understanding of the  
 2142 risks and benefits of a recommended course of health care treatment  
 2143 before making a health care decision.  
 2144 (h) Evaluate the ward's medical and health care options, financial  
 2145 resources, and desires when making residential decisions that are  
 2146 best suited for the current needs of the ward.  
 2147 (i) Advocate on behalf of the ward in institutional and other  
 2148 residential settings and regarding access to home and community-  
 2149 based services.  
 2150 (j) When not inconsistent with the person's goals, needs, and  
 2151 preferences, acquire an understanding of the available residential  
 2152 options and give priority to home and other community-based  
 2153 services and settings.  
 2154  
 2155 745.810 Guardianship plan.  
 2156 (1) Each guardian of person, other than an emergency temporary  
 2157 guardian, shall file a guardianship plan within 60 days after  
 2158 letters of guardianship are issued.  
 2159 (2) The guardianship plan shall include the following:  
 2160 (a) The needed medical, mental health, rehabilitative and personal  
 2161 care services for the ward;  
 2162 (b) The social and personal services to be provided for the ward;  
 2163 (c) The kind of residential setting best suited for the needs of  
 2164 the ward;

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2195  
 2196 745.811 Annual guardianship report for minor.  
 2197 (1) An annual guardianship report for a minor ward shall provide  
 2198 current information about ward. The report must specify the current  
 2199 needs of the ward and how those needs are proposed to be met in the  
 2200 coming year.  
 2201 (2) Each report filed by the guardian of person of a minor must  
 2202 include:  
 2203 (a) Information concerning the residence of the ward, including the  
 2204 ward's address at the time of filing the plan, name and address of  
 2205 each location where the ward resided during the preceding year and  
 2206 the length of stay of the ward at each location.  
 2207 (b) A statement of whether the present residential setting is best  
 2208 suited for the current needs of the ward.  
 2209 (c) Plans for ensuring that the ward is in the best residential  
 2210 setting to meet the ward's needs.  
 2211 (d) Information concerning the medical and mental health condition  
 2212 and treatment and rehabilitation needs of the minor, including:  
 2213 1. A description of any professional medical treatment given to the  
 2214 minor during the preceding year, including names of health care  
 2215 providers, types of care and dates of service.  
 2216 2. A report from the physician who examined the minor no more than  
 2217 180 days before the beginning of the applicable reporting period  
 2218 that contains an evaluation of the minor's physical and medical  
 2219 conditions.  
 2220 (e) Anticipated medical care needs and the plan for providing  
 2221 medical services in the coming year.  
 2222 (f) Information concerning education of the minor, including:  
 2223 1. A summary of the minor's educational progress report.

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2165 (d) The ward's residence at the time of issuance of the letters of  
 2166 guardianship, any anticipated change of residence and the reason  
 2167 therefor;  
 2168 (e) The health and accident insurance and any other private or  
 2169 governmental benefits to which the ward may be entitled to meet any  
 2170 part of the costs of medical, mental health, or other services  
 2171 provided to the ward; and  
 2172 (f) Any physical and mental examinations necessary to determine the  
 2173 ward's medical and mental health treatment needs.  
 2174 (3) The guardianship plan for an incapacitated person must consider  
 2175 any recommendations specified in the court appointed examiners'  
 2176 written reports or testimony.  
 2177 (4) Unless the ward has been found to be totally incapacitated or  
 2178 is a minor, the guardianship plan must contain an attestation that  
 2179 the guardian has consulted with the ward and, to the extent  
 2180 reasonable, has honored the ward's wishes consistent with the  
 2181 rights retained by the ward.  
 2182 (5) The guardianship plan may not contain requirements which  
 2183 restrict the physical liberty of the ward more than reasonably  
 2184 necessary to protect the ward from decline in medical and mental  
 2185 health, physical injury, illness, or disease and to protect others  
 2186 from injury, illness or disease.  
 2187 (6) A guardianship plan continues in effect until it is amended or  
 2188 replaced by an annual guardianship report, until the restoration of  
 2189 capacity or death of the ward, or until the ward, if a minor,  
 2190 reaches the age of 18 years whichever first occurs. If there are  
 2191 significant changes in the capacity of the ward to meet the  
 2192 essential requirements for the ward's health or safety, the  
 2193 guardian may modify the guardianship plan and shall serve the  
 2194 amended plan on all persons who served with the plan.

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2224 2. The social development of the minor, including a statement of  
 2225 how well the minor communicates and maintains interpersonal  
 2226 relationships.  
 2227  
 2228 745.812 Annual guardianship report for adults.  
 2229 (1) An annual guardianship report for an adult ward shall provide  
 2230 current information about the condition of the ward. The report  
 2231 must specify the current needs of the ward and how those needs are  
 2232 proposed to be met in the coming year.  
 2233 (2) Each report for an adult ward must, if applicable, include:  
 2234 (a) Information concerning the residence of the ward, including the  
 2235 ward's address at the time of filing the plan, name and address of  
 2236 each location where the ward resided during the preceding year, and  
 2237 the length of stay of the ward at each location.  
 2238 (b) A statement of whether the present residential setting is best  
 2239 suited for the current needs of the ward.  
 2240 (c) Plans for ensuring that the ward is in the best residential  
 2241 setting to meet the ward's needs.  
 2242 (d) Information concerning the medical and mental health condition  
 2243 and treatment and rehabilitation needs of the ward, including:  
 2244 1. A description of any professional medical and mental health  
 2245 treatment given to the ward during the preceding year, including  
 2246 names of health care providers, types of care, and dates of  
 2247 service.  
 2248 2. The report of a physician who examined the ward no more than 120  
 2249 days before the beginning of the applicable reporting period. The  
 2250 report must contain an evaluation of the ward's condition and a  
 2251 statement of the current level of capacity of the ward. If the  
 2252 guardian makes a statement in the report that a physician was not  
 2253 reasonably available to examine the ward, the examination may be

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2254 performed by and the report may be prepared and signed by a  
 2255 physician's assistant acting pursuant to s. 458.347(4) or s.  
 2256 459.022(4) or an advanced practice registered nurse acting pursuant  
 2257 to s. 464.012(3).  
 2258 (e) The plan for providing medical, mental health, and  
 2259 rehabilitative services for the ward in the coming year.  
 2260 (f) Information concerning the social activities of the ward,  
 2261 including:  
 2262 1. The social and personal services currently used by the ward.  
 2263 2. The social skills of the ward, including a statement of the  
 2264 ward's ability to communicate and maintain interpersonal  
 2265 relationships.  
 2266 (g) Each report for an adult ward must address the issue of  
 2267 restoration of rights to the ward and include:  
 2268 1. A summary of activities during the preceding year that were  
 2269 designed to improve the abilities of the ward.  
 2270 2. A statement of whether the ward can have any rights restored.  
 2271 3. A statement of whether restoration of any rights will be sought.  
 2272 (h) The court, in its discretion, may require reexamination of the  
 2273 ward by an appointed examiner at any time.  
 2274  
 2275 745.813 Annual guardianship report - filing.  
 2276 Unless the court requires filing on a calendar-year basis, each  
 2277 guardian of person shall file an annual guardianship report on or  
 2278 before the first day of the fourth month after the last day of the  
 2279 anniversary month the letters of guardianship were issued, and the  
 2280 report must cover the coming plan year, ending on the last day in  
 2281 such anniversary month. If the court requires calendar-year filing,  
 2282 the guardianship report must be filed on or before April 1 of each  
 2283 year.

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2314 (1) Take possession or control of property owned by the ward;  
 2315 (2) Obtain the ward's legal and financial documents and tax records  
 2316 from persons, financial institutions and other entities;  
 2317 (3) Obtain a copy of any trust or any other instrument in which the  
 2318 ward has a beneficial interest, obtain benefits due the ward as a  
 2319 beneficiary of any trust or other instruments, and bind the ward  
 2320 with regard to any trust consistent with Florida Statutes chapter  
 2321 736.0303;  
 2322 (4) Vote stocks or other securities in person or by general or  
 2323 limited proxy or not vote stocks or other securities;  
 2324 (5) Insure the assets of the estate against damage, loss, and  
 2325 liability and insure himself or herself against liability as to  
 2326 third persons;  
 2327 (6) Execute and deliver in the guardian's name, as guardian, any  
 2328 instrument necessary or proper to carry out and give effect to this  
 2329 section;  
 2330 (7) Pay taxes and assessments on the ward's property;  
 2331 (8) Pay valid encumbrances against the ward's property in  
 2332 accordance with their terms, but no prepayment may be made without  
 2333 prior court approval;  
 2334 (9) Pay reasonable living expenses for the ward, taking into  
 2335 consideration the accustomed standard of living, age, health, and  
 2336 financial resources of the ward. This subsection does not authorize  
 2337 the guardian of a minor to expend funds for the ward's living  
 2338 expenses if one or both of the ward's parents are alive;  
 2339 (10) Exercise the ward's right to an elective share. The guardian  
 2340 must comply with the requirements of s. 732.2125(2). The guardian  
 2341 may assert any other right or choice available to a surviving  
 2342 spouse in the administration of a decedent's estate;

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2284  
 2285 745.814 Records retention.  
 2286 (1) A guardian of property shall maintain documents and records  
 2287 sufficient to demonstrate the accuracy of the initial inventory for  
 2288 a period of 7 years after filing the inventory. The documents need  
 2289 not be filed but must be available for inspection at such time and  
 2290 place and before such persons as the court may order for cause,  
 2291 after hearing with notice to the guardian. The guardian of property  
 2292 shall also maintain documents and records sufficient to demonstrate  
 2293 the accuracy of the annual accounting for a period of 7 years after  
 2294 filing the accounting.  
 2295 (2) A guardian of person shall maintain documents and records  
 2296 sufficient to demonstrate the accuracy of the annual report for a  
 2297 period of 4 years after the filing of the respective annual report.  
 2298  
 2299 Section 9. Part IX of chapter 745, Florida Statutes,  
 2300 consisting of sections 745.901, 745.902, 745.903, 745.904, 745.905,  
 2301 745.906, 745.907, and 745.908, is created to read:  
 2302 PART IX  
 2303 GUARDIAN POWERS  
 2304 745.901 Powers and duties of guardian.  
 2305 The guardian of an incapacitated person may exercise only those  
 2306 rights that have been removed from the ward and delegated to the  
 2307 guardian. A guardian of a minor shall exercise the powers of a  
 2308 plenary guardian.  
 2309  
 2310 745.902 Power of guardian of property without court approval.  
 2311 Without obtaining court approval, a plenary guardian of property,  
 2312 or a limited guardian of property within the powers granted by the  
 2313 letters of guardianship, may:

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2343 (11) Deposit or invest liquid assets of the estate, including money  
 2344 received from the sale of other assets, in federally insured  
 2345 interest-bearing accounts, readily marketable secured loan  
 2346 arrangements, money market mutual funds, or other prudent  
 2347 investments. The guardian may redeem or sell such deposits or  
 2348 investments to pay the reasonable living expenses of the ward as  
 2349 provided herein;  
 2350 (12) When reasonably necessary, employ attorneys, accountants,  
 2351 property managers, auditors, investment advisers, care managers,  
 2352 agents, and other persons and entities to advise or assist the  
 2353 guardian in the performance of guardianship duties;  
 2354 (13) Sell or exercise stock subscription or conversion rights and  
 2355 consent, directly or through a committee or other agent, to the  
 2356 reorganization, consolidation, merger, dissolution, or liquidation  
 2357 of a corporation or other business enterprise;  
 2358 (14) Execute and deliver any instrument that is necessary or proper  
 2359 to carry out the orders of the court;  
 2360 (15) Hold a security in the name of a nominee or in other form  
 2361 without disclosure of the interest of the ward, but the guardian is  
 2362 liable for any act of the nominee in connection with the security  
 2363 so held;  
 2364 (16) Pay and reimburse incidental expenses in the administration of  
 2365 the guardianship and for provision of services to the ward  
 2366 including reasonable compensation to persons employed by the  
 2367 guardian pursuant to subsection (12) from the assets of the ward.  
 2368 These payments shall be reported on the guardian's annual  
 2369 accounting, accompanied by itemized statements describing services  
 2370 rendered and the method of charging for such services;  
 2371 (17) Provide confidential information about a ward that is related  
 2372 to an investigation arising under s. 745.1001 to the clerk, part

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2373 XIV of this chapter to an Office of Public and Professional  
 2374 Guardians investigator, or part I of chapter 400 to a local or  
 2375 state ombudsman council member conducting that investigation. Any  
 2376 such clerk, Office of Public and Professional Guardians  
 2377 investigator, or ombudsman shall have a duty to maintain the  
 2378 confidentiality of the information provided;  
 2379 (18) Fulfill financial obligations under the ward's contracts that  
 2380 predate the guardianship;  
 2381 (19) Maintain and repair the ward's property and purchase  
 2382 furnishings, clothing, appliances and furniture for the ward;  
 2383 (20) Pay calls, assessments and other sums chargeable against  
 2384 securities owned by the ward that are obligations predating the  
 2385 guardianship;  
 2386 (21) Contract for residential care and placement for the ward and  
 2387 for services pursuant to subsection (12); and  
 2388 (22) Receive payment and satisfy judgments in favor of the ward.  
 2389  
 2390 745.903 Powers of guardian of property requiring court approval.  
 2391 After obtaining approval of the court pursuant to a petition for  
 2392 authorization to act, a plenary guardian of property, or a limited  
 2393 guardian of property within the powers granted by the letters of  
 2394 guardianship, may:  
 2395 (1) Compromise, or refuse performance of a ward's contracts that  
 2396 predate the guardianship, as the guardian may determine under the  
 2397 circumstances;  
 2398 (2) Execute, exercise, or release any non-fiduciary powers that the  
 2399 ward might have lawfully exercised, consummated, or executed if not  
 2400 incapacitated, if the best interest of the ward requires such  
 2401 execution, exercise, or release;

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2432 relates solely to a post-death distribution. This subsection does  
 2433 not preclude a challenge after the ward's death. Any judicial  
 2434 proceeding specified in 736.0201 must be brought as an independent  
 2435 proceeding and is not a part of the guardianship action;  
 2436 (11) Sell, mortgage, or lease any real or personal property of the  
 2437 ward, including homestead property, or any interest therein for  
 2438 cash or credit, or for part cash and part credit, and with or  
 2439 without security for unpaid balances;  
 2440 (12) Continue any unincorporated business or venture in which the  
 2441 ward was engaged;  
 2442 (13) Purchase, in the name of the ward, real property in this state  
 2443 in which the guardian has no interest;  
 2444 (14) If the ward is married with property owned by the ward and  
 2445 spouse as an estate by the entirety and the property is sold, the  
 2446 proceeds shall retain the same entirety character as the original  
 2447 asset, unless otherwise determined by the court;  
 2448 (15) Exercise any option contained in any policy of insurance  
 2449 payable to, or insuring to the benefit of, the ward;  
 2450 (16) Prepay reasonable funeral, interment, and grave marker  
 2451 expenses for the ward from the ward's property;  
 2452 (17) Make gifts of the ward's property to members of the ward's  
 2453 family for estate and income tax planning purposes or to continue  
 2454 the ward's prior pattern of gifting;  
 2455 (18) When the ward's will evinces an objective to obtain a United  
 2456 States estate tax charitable deduction by use of a split interest  
 2457 trust (as that term is defined in s. 736.1201), but the maximum  
 2458 charitable deduction otherwise allowable will not be achieved in  
 2459 whole or in part, execute a codicil on the ward's behalf amending  
 2460 the will to obtain the maximum charitable deduction allowable

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2402 (3) Make extraordinary repairs or alterations in buildings or other  
 2403 structures; demolish any improvements; raze existing walls or erect  
 2404 new, party walls or buildings;  
 2405 (4) Subdivide, develop, or dedicate land to public use; make or  
 2406 obtain the vacation of plats and adjust boundaries; adjust  
 2407 differences in valuation on exchange or partition by giving or  
 2408 receiving consideration; or dedicate easements to public use  
 2409 without consideration;  
 2410 (5) Enter into a lease as lessor of the ward's property for any  
 2411 purpose, with or without option to purchase or renew, for a term  
 2412 within, or extending beyond, the period of guardianship;  
 2413 (6) Enter into a lease or arrangement for exploration and removal  
 2414 of minerals or other natural resources or enter into a pooling or  
 2415 unitization agreement;  
 2416 (7) Abandon property when it is valueless or is so encumbered or in  
 2417 such condition that it is of no benefit to the ward;  
 2418 (8) Borrow money, with or without security, and advance money for  
 2419 the protection of the ward;  
 2420 (9) Effect a fair and reasonable compromise or settlement with any  
 2421 debtor or obligor or extend, renew, or in any manner modify the  
 2422 terms of any obligation owing to the ward;  
 2423 (10) Prosecute or defend claims or proceedings in any jurisdiction  
 2424 for the protection of the ward and of a guardian in the performance  
 2425 of guardianship duties, including the filing of a petition for  
 2426 dissolution of marriage. Before authorizing a guardian to bring an  
 2427 action described in s. 736.0207, the court shall first find that  
 2428 the action appears to be in the ward's best interest during the  
 2429 ward's probable lifetime. There shall be a rebuttable presumption  
 2430 that an action challenging the ward's revocation of all or part of  
 2431 a trust is not in the ward's best interests if the revocation

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2461 without diminishing the aggregate value of the benefits of any  
 2462 beneficiary under the will;  
 2463 (19) Create or amend revocable trusts or create irrevocable trusts  
 2464 of property of the ward that may extend beyond the disability or  
 2465 life of the ward in connection with estate, gift, income, or other  
 2466 tax planning or to carry out other estate planning purposes. The  
 2467 court shall retain oversight of the assets transferred to a trust,  
 2468 unless otherwise ordered by the court. Before entering an order  
 2469 authorizing creation or amendment of a trust, the court shall  
 2470 appoint counsel to represent the ward in that proceeding. To the  
 2471 extent this provision conflicts with provisions of Chapter 736,  
 2472 Chapter 736 shall prevail;  
 2473 (20) Renounce or disclaim any interest of the ward received by  
 2474 testate or intestate succession, insurance benefit, annuity,  
 2475 survivorship, or inter vivos transfer;  
 2476 (21) Enter into contracts that are appropriate for, and in the best  
 2477 interest of, the ward; and  
 2478 (22) Pay for a minor ward's support, health, maintenance, and  
 2479 education, if the ward's parents, or either of them, are alive.  
 2480  
 2481 745.904 Petition for authority to act.  
 2482 (1) Requests by a guardian for authority to perform, or  
 2483 confirmation of, any acts under s. 745.903 or s. 745.1309 shall be  
 2484 by petition stating facts showing the expediency or necessity for  
 2485 the action; a description of any property involved; and the price  
 2486 and terms of a sale, mortgage, or other contract. The petition must  
 2487 state whether or not the ward has been adjudicated incapacitated to  
 2488 act with respect to the rights to be exercised.  
 2489 (2) No notice of a petition to authorize sale or repair of  
 2490 perishable or deteriorating property shall be required. Notice of a

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2491 petition to perform any other acts under s. 745.903 or s. 745.1309  
 2492 must be given to the ward, to the next of kin, if any, and to those  
 2493 interested persons whom the court has found to be entitled to  
 2494 notice, as provided in the Florida Probate Rules, unless waived by  
 2495 the court for good cause. Notice need not be given to a ward who is  
 2496 a minor or who has been determined to be totally incapacitated.  
 2497  
 2498 745.905 Order authorizing action.  
 2499 (1) If a sale or mortgage is authorized, the order shall:  
 2500 (a) Describe the property;  
 2501 (b) If the property is authorized for sale at private sale, the  
 2502 price and the terms of sale; and  
 2503 (c) If the sale is to be by public auction, the order shall state  
 2504 that the sale shall be made to the highest bidder but that the  
 2505 guardian reserves the right to reject all bids.  
 2506 (2) An order for any other act permitted under s. 745.903 or s.  
 2507 745.1309 shall describe the permitted act and authorize the  
 2508 guardian to perform it.  
 2509  
 2510 745.906 Conveyance of various property rights by guardians of  
 2511 property.  
 2512 (1)(a) All legal or equitable interests in property owned as an  
 2513 estate by the entireties by an incapacitated person for whom a  
 2514 guardian of the property has been appointed may be sold,  
 2515 transferred, conveyed, or mortgaged in accordance with s. 745.903,  
 2516 if the spouse who is not incapacitated joins in the sale, transfer,  
 2517 conveyance, or mortgage. When both spouses are incapacitated, the  
 2518 sale, transfer, conveyance, or mortgage shall be by the guardians  
 2519 only. The sale, transfer, conveyance, or mortgage may be  
 2520 accomplished by one instrument or by separate instruments.

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2551 direct that such payments retain their status as to survivorship or  
 2552 specify that such receipts be allocated in a manner other than  
 2553 equal division.  
 2554 (2) In determining the value of life estates or remainder  
 2555 interests, the American Experience Mortality Tables may be used.  
 2556 (3) Nothing in this section shall prohibit the court in its  
 2557 discretion from appointing a sole guardian to serve as guardian for  
 2558 both spouses.  
 2559 (4) Any contingent or expectant interest in property, including  
 2560 marital property rights and any right of survivorship incident to  
 2561 joint tenancy or tenancy by the entireties, may be conveyed or  
 2562 released in accordance with s. 745.903.  
 2563  
 2564 745.907 Settlement of claims  
 2565 (1) When a settlement of any claim by or against an adult ward,  
 2566 whether arising as a result of personal injury or otherwise, and  
 2567 whether arising before or after appointment of a guardian, is  
 2568 proposed, but before an action to enforce it is begun, on petition  
 2569 by the guardian of property stating the facts of the claim or  
 2570 dispute and the proposed settlement, and on evidence that is  
 2571 introduced, the court may enter an order authorizing the settlement  
 2572 if satisfied that the settlement will be in the best interest of  
 2573 the ward. The order shall relieve the guardian from any further  
 2574 responsibility in connection with the claim or dispute when  
 2575 settlement has been made in accordance with the order. The order  
 2576 authorizing the settlement may also determine whether an additional  
 2577 bond is required and, if so, shall fix the amount of it.  
 2578 (2) In the same manner as provided in subsection (1) or as  
 2579 authorized by s. 745.713, the natural guardians or guardian of a  
 2580 minor may settle any claim by or on behalf of a minor that does not

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2521 (b) In authorizing or confirming the sale and conveyance of real or  
 2522 personal property owned by the ward and the ward's spouse as an  
 2523 estate by the entireties or as joint tenants with right of  
 2524 survivorship, the court may provide that one-half of the net  
 2525 proceeds of the sale shall go to the guardian of the ward and the  
 2526 other one-half to the ward's spouse, or the court may provide for  
 2527 the proceeds of the sale to retain the same character as to  
 2528 survivorship as the original asset.  
 2529 (c) A guardian of property shall collect all payments coming due on  
 2530 intangible property, such as notes and mortgages and other  
 2531 securities owned by the ward and the ward's spouse as an estate by  
 2532 the entireties or as joint tenants with right of survivorship, and  
 2533 shall retain one-half of all principal and interest payments so  
 2534 collected and shall pay the other one-half of the collections to  
 2535 the spouse who is not incapacitated. If both spouses are  
 2536 incapacitated, the guardian of either shall collect the payments,  
 2537 retain one-half of the principal and interest payments, and pay the  
 2538 other one-half to the guardian of the other spouse. The court may  
 2539 direct that such payments retain their status as to survivorship or  
 2540 specify that such receipts be allocated in a manner other than  
 2541 equal division.  
 2542 (d) The guardian of an incapacitated person shall collect all  
 2543 payments of rents on real estate held as an estate by the  
 2544 entireties and, after paying all charges against the property, such  
 2545 as taxes, insurance, maintenance, and repairs, shall retain one-  
 2546 half of the net rents so collected and pay the other one-half to  
 2547 the spouse who is not incapacitated. If both spouses are  
 2548 incapacitated, the guardian of property of either may collect the  
 2549 rent, pay the charges, retain one-half of the net rent, and pay the  
 2550 other one-half to the guardian of the other spouse. The court may

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2581 exceed \$25,000.00 without bond. A guardianship shall be required  
 2582 when the amount of the net settlement to the ward exceeds  
 2583 \$50,000.00. When the amount of the net settlement to the ward  
 2584 exceeds \$25,000.00 but does not exceed \$50,000.00, the court has  
 2585 the discretion to determine whether the natural guardians may  
 2586 settle the claim or whether a guardianship shall be required. No  
 2587 guardianship of the minor is required when the amount of the net  
 2588 settlement is less than \$25,000.00.  
 2589 (3) No settlement after an action has been commenced by or on  
 2590 behalf of a ward shall be effective unless approved by the court  
 2591 having jurisdiction of the guardianship.  
 2592 (4) In making a settlement under court order as provided in this  
 2593 section, the guardian is authorized to execute any instrument that  
 2594 may be necessary to effect the settlement. When executed, the  
 2595 instrument shall be a complete release of the guardian.  
 2596  
 2597 745.908 Authority for extraordinary actions.  
 2598 (1) Without first obtaining authority from the court, as described  
 2599 in this section, a guardian shall not:  
 2600 (a) Commit a ward with developmental disabilities to a facility,  
 2601 institution, or licensed service provider without formal placement  
 2602 proceeding, pursuant to chapters 393.  
 2603 (b) Consent on behalf of the ward to the performance on the ward of  
 2604 any experimental biomedical or behavioral procedure or to the  
 2605 participation by the ward in any biomedical or behavioral  
 2606 experiment. The court may permit such performance or participation  
 2607 only if:  
 2608 1. It is of direct benefit to, and is intended to preserve the life  
 2609 of or prevent serious impairment to the mental or physical health,  
 2610 of the ward; or

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2611 2. It is intended to assist the ward to develop or regain the  
 2612 ward's abilities.  
 2613 (c) Consent on behalf of the ward to termination of the ward's  
 2614 parental rights.  
 2615 (d) Consent on behalf of the ward to the performance of a  
 2616 sterilization or abortion procedure on the ward.  
 2617 (2) Before the court may grant authority to a guardian to exercise  
 2618 any of the powers specified in this section, the court must:  
 2619 (a) Appoint an attorney to represent the ward. The attorney must  
 2620 have the opportunity to meet with the ward and present evidence and  
 2621 cross-examine witnesses at any hearing on the petition for  
 2622 authority to act;  
 2623 (b) Consider independent medical, psychological, and social  
 2624 evaluations with respect to the ward presented by competent  
 2625 professionals. The court may appoint experts to assist in the  
 2626 evaluations. Unless an objection is filed by the ward or  
 2627 petitioner, the court may consider at the hearing written  
 2628 evaluation reports without requiring testimony. Any objection to  
 2629 such consideration must be filed and served on interested persons  
 2630 at least 3 days prior to the hearing;  
 2631 (c) Find by clear and convincing evidence that the ward lacks the  
 2632 capacity to make a decision about the issues before the court and  
 2633 that the ward's capacity is not likely to change in the foreseeable  
 2634 future; and  
 2635 (d) Find by clear and convincing evidence that the authority being  
 2636 requested is consistent with the ward's intentions expressed prior  
 2637 to incapacity or, in the absence of evidence of the ward's  
 2638 intentions, is in the best interests of the ward.  
 2639  
 2640 745.909 Do Not Resuscitate Order.

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2671 consisting of sections 745.1001, 745.1002, 745.1003, 745.1004,  
 2672 745.1005, 745.1006, 745.1007, 745.1008, and 745.1009, is created to  
 2673 read:  
 2674 PART X  
 2675 OVERSIGHT AND MONITORING  
 2676 745.1001 Duties of the clerk - General.  
 2677 In addition to the duty to serve as custodian of guardianship  
 2678 files, the clerk shall have the duties specified below:  
 2679 (1) Within 30 days after the date of filing an initial guardianship  
 2680 plan or annual report of a guardian of person, the clerk shall  
 2681 examine the initial guardianship plan or annual report to assess  
 2682 whether it provides information required by this code and the  
 2683 Florida Probate Rules. Within such time, the clerk shall provide  
 2684 the court and the guardian a written statement of the clerk's  
 2685 findings.  
 2686 (2) Within 60 days after the filing of an inventory or annual  
 2687 accounting by a guardian of property, the clerk shall audit the  
 2688 inventory or accounting to assess whether it provides information  
 2689 required by this code and the Florida Probate Rules. Within such  
 2690 time, the clerk shall provide the court and the guardian a written  
 2691 audit report of the clerk's findings.  
 2692 (3) The clerk shall provide written notice to the court and  
 2693 guardian when an inventory, accounting, plan or report is not  
 2694 timely filed.  
 2695 (4) If the clerk has reason to believe further review is  
 2696 appropriate, the clerk may request and review records and documents  
 2697 that reasonably impact guardianship assets, including, but not  
 2698 limited to, the beginning inventory balance and any fees charged to  
 2699 the guardianship. As a part of this review, the clerk may conduct  
 2700 audits and may cause the plan and annual guardianship report and

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2641 (1) After obtaining approval of the court that a Do Not Resuscitate  
 2642 Order is appropriate under s. 745.809(7) pursuant to a petition for  
 2643 authorization to act, a plenary guardian of person, or a limited  
 2644 guardian of person within the powers granted by the letters of  
 2645 guardianship may authorize a Do Not Resuscitate Order for the ward  
 2646 under Florida Statutes s. 401.45. A guardian may not authorize a Do  
 2647 Not Resuscitate Order without prior court approval except as  
 2648 provided in subsection 3 below.  
 2649 (2) A preliminary hearing on the petition for court approval must  
 2650 be held within 72 hours after the filing of the petition. At that  
 2651 time the court must review the petition and supporting  
 2652 documentation. In its discretion the court shall either:  
 2653 (a) rule on the relief requested immediately after the preliminary  
 2654 hearing; or  
 2655 (b) conduct an evidentiary hearing not later than 4 days after the  
 2656 preliminary hearing and rule on the relief requested immediately  
 2657 after the evidentiary hearing.  
 2658 (3) Court approval is not required prior to the authorize of a Do  
 2659 Not Resuscitate Order by the guardian of person when:  
 2660 (a) the Ward authorized a Do Not Resuscitate Order prior to the  
 2661 Ward's incapacity and the Do Not Resuscitate Order was entered in  
 2662 the Ward's medical records; or  
 2663 (b) the Ward has explicitly requested a Do Not Resuscitate Order be  
 2664 entered in the Ward's living will, designation of healthcare  
 2665 surrogate, or other valid written advance directive.  
 2666 When a Do Not Resuscitate Order is signed without court approval,  
 2667 the guardian of person must file a copy of the Do Not Resuscitate  
 2668 Order with the Court within 10 days of execution.  
 2669  
 2670 Section 10. Part X of chapter 745, Florida Statutes,

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2701 accounting to be audited. The clerk shall notify in writing the  
 2702 court and the guardian of the results of any such audit. Any fee or  
 2703 cost incurred by the guardian in responding to the review or audit  
 2704 may not be paid or reimbursed by the ward's assets if there is a  
 2705 finding of wrongdoing by the guardian.  
 2706 (5) If a guardian fails to produce records and documents to the  
 2707 clerk upon request, the clerk may request that the court enter an  
 2708 order pursuant to s. 745.1004 by filing an affidavit that  
 2709 identifies the records and documents requested and shows good cause  
 2710 as to why the documents and records requested are needed to  
 2711 complete the audit.  
 2712 (6) Upon application to the court pursuant to subsection (5), the  
 2713 clerk may issue subpoenas to nonparties to compel production of  
 2714 books, papers, and other documentary evidence. Before issuance of a  
 2715 subpoena, the clerk must serve notice on the guardian and the ward,  
 2716 unless the ward is a minor or totally incapacitated, of the intent  
 2717 to serve subpoenas to nonparties.  
 2718 (a) The clerk must attach the affidavit and the proposed subpoena  
 2719 to the notice, and the subpoena must:  
 2720 1. State the time, place, and method for production of the  
 2721 documents or items, and the name and address of the person who is  
 2722 to produce the documents or items, if known, or, if not known, a  
 2723 general description sufficient to identify the person or the  
 2724 particular class or group to which the person belongs;  
 2725 2. Include a description of the items to be produced;  
 2726 3. State that the person who will be asked to produce the documents  
 2727 or items has the right to object to the production under this  
 2728 section and that if an objection is filed the person is not  
 2729 required to surrender the documents or items.

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2730 (b) A copy of the notice and proposed subpoena may not be furnished  
 2731 to the person upon whom the subpoena is to be served.  
 2732 (c) If the guardian or ward serves an objection to production under  
 2733 this subsection within 10 days after service of the notice, the  
 2734 subpoena may not be served on the nonparty until resolution of the  
 2735 objection. If an objection is not made within 10 days after service  
 2736 of the notice, the clerk may issue the subpoena to the nonparty.  
 2737 The court may shorten the period within which a guardian or ward is  
 2738 required to file an objection upon a showing by the clerk by  
 2739 affidavit that the ward's property is in imminent danger of being  
 2740 wasted, misappropriated, or lost unless immediate action is taken.  
 2741  
 2742 745.1002 Judicial review of guardianship inventories and  
 2743 accountings.  
 2744 (1) Within 45 days after the filing of the clerk's audit report,  
 2745 the court shall review guardianship inventories and accountings to  
 2746 ensure that they comply with the requirements of law. The court may  
 2747 appoint a general or special magistrate to assist the court in its  
 2748 review function. Upon examining a guardianship inventory or  
 2749 accounting, the court shall enter an order approving or  
 2750 disapproving such document or requiring the guardian to provide  
 2751 more information or cure deficiencies found in the inventory or  
 2752 accounting.  
 2753 (2) If the court finds, upon review of the inventory or accounting  
 2754 and the clerk's audit report, that the document complies with the  
 2755 requirements of law, the court must approve the inventory or  
 2756 accounting. If the audit report indicates that there are  
 2757 deficiencies in the inventory or accounting, the court shall notify  
 2758 the guardian, in writing, of the deficiencies determined by the  
 2759 clerk and provide a reasonable time within which the guardian must

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2789 (2) If the court finds, upon review of the plan or report and the  
 2790 clerk's written statement, that the document complies with the  
 2791 requirements of law, the court may approve the plan or report. If  
 2792 the clerk's written statement indicates that there are deficiencies  
 2793 in the plan or report, the court shall notify the guardian, in  
 2794 writing, of the deficiencies determined by the clerk and provide a  
 2795 reasonable time within which the guardian must correct such  
 2796 deficiencies or otherwise respond by written response to the court.  
 2797 If the guardian does not respond within the time specified by the  
 2798 court, or if the guardian's response indicates a need for further  
 2799 action, the court may conduct a hearing, with notice to the  
 2800 guardian, to determine if a revised plan or report must be filed or  
 2801 if the guardian should provide proof of any matter specified  
 2802 therein.  
 2803 (3) After a guardian has cured any deficiencies in the plan or  
 2804 report to the satisfaction of the court, the guardian's plan or  
 2805 report must be approved.  
 2806 (4) If an objection to a plan or report is filed by an interested  
 2807 person, the objection may be set for hearing with reasonable notice.  
 2808 If a notice of hearing on the objection is not served within 30  
 2809 days of filing of the objection, the objection is deemed abandoned.  
 2810 At the conclusion of the hearing, the court shall enter an order  
 2811 either approving the plan or report or ordering modifications to  
 2812 it. If an objection is found to have been filed in bad faith, the  
 2813 court may award taxable costs including reasonable attorney's fees.  
 2814  
 2815 745.1004 Order requiring guardianship documents; contempt.  
 2816 When a guardian fails to file a plan, report, inventory or  
 2817 accounting, the court shall order the guardian to file such  
 2818 document within 15 days after the service of the order on the

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2760 correct such deficiencies or otherwise respond by written response  
 2761 to the court. If the guardian does not respond within the time  
 2762 specified by the court, or if the guardian's response indicates a  
 2763 need for further action, the court may conduct a hearing, with  
 2764 notice to the guardian, to determine if a revised inventory or  
 2765 accounting must be filed or if the guardian should provide proof of  
 2766 any matter specified therein.  
 2767 (3) After a guardian has cured any deficiencies in the inventory or  
 2768 accounting to the satisfaction of the court, the guardian's  
 2769 inventory or accounting must be approved.  
 2770 (4) If an objection to an inventory or accounting is filed by an  
 2771 interested person, the objection may be set for hearing with  
 2772 reasonable notice. If a notice of hearing on the objection is not  
 2773 served within 30 days of filing of the objection, the objection is  
 2774 deemed abandoned. At the conclusion of the hearing, the court shall  
 2775 enter an order either approving the inventory or accounting or  
 2776 ordering modifications to it. If an objection is found to have been  
 2777 filed in bad faith, the court may award taxable costs, including  
 2778 reasonable attorney's fees.  
 2779  
 2780 745.1003 Judicial review of guardianship plans and reports.  
 2781 (1) Within 45 days after the filing of the clerk's written  
 2782 statement, the court must review guardianship plans and reports to  
 2783 ensure that they comply with the requirements of law. The court may  
 2784 appoint a general or special magistrate to assist the court in its  
 2785 review function. Upon examining a guardianship plan or report, the  
 2786 court must enter an order approving or disapproving such document  
 2787 or requiring the guardian to provide more information or cure  
 2788 deficiencies found in the plan or report.

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2819 guardian or show cause, in writing, why the guardian should not be  
 2820 compelled to do so. A copy of the order shall be served on the  
 2821 guardian. If the guardian fails to file the document within the  
 2822 time specified by the order without good cause, the court shall  
 2823 order the guardian to show cause why the guardian should not be  
 2824 held in contempt of court. At the conclusion of the hearing, the  
 2825 court may sanction the guardian, if good cause is not demonstrated.  
 2826 No fine may be paid from property of the ward.  
 2827  
 2828 745.1005 Action on review of guardianship report.  
 2829 If it appears from the annual guardianship report that:  
 2830 (1) The condition of the ward requires further examination;  
 2831 (2) Any change in the proposed care, maintenance, or treatment of  
 2832 the ward is needed;  
 2833 (3) The ward is qualified for restoration of some or all rights;  
 2834 (4) The condition or maintenance of the ward requires the  
 2835 performance or doing of any other thing for the best interest of  
 2836 the ward which is not indicated in the plan; or  
 2837 (5) There is any other action necessary to protect the interests of  
 2838 the ward,  
 2839 the court may direct the guardian to appear at a hearing with  
 2840 appropriate notice to the guardian, to address such issues. The  
 2841 court may enter such order as it finds appropriate to protect the  
 2842 ward.  
 2843  
 2844 745.1006 Petition for interim judicial review  
 2845 (1) At any time, any interested person may petition the court for  
 2846 review alleging that the guardian is not complying with a  
 2847 guardianship plan or report, is exceeding the guardian's authority  
 2848 under such document, or is acting in a manner contrary to s.

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2849 745.809. The petition for review must state the interest of the  
 2850 petitioner, nature of the objection to the guardian's action or  
 2851 proposed action, and facts in support of the petition. Upon  
 2852 hearing, the court may prohibit or enjoin any action that is  
 2853 contrary to the guardian's obligations under s. 745.809.  
 2854 (2) The court may award taxable costs and attorney's fees if the  
 2855 petition is found to have been filed in bad faith.  
 2856  
 2857 745.1007 Production of property.  
 2858 On the petition of an interested person, the court may require a  
 2859 guardian of property to produce satisfactory evidence that the  
 2860 property of the ward for which the guardian is responsible is in  
 2861 the guardian's possession or under the guardian's control. The  
 2862 court may order the guardian to produce the property for inspection  
 2863 by the court or under the court's direction.  
 2864  
 2865 745.1008 Guardianship monitors.  
 2866 (1) The court may, upon petition by an interested person or upon  
 2867 its own motion, appoint a monitor after hearing with notice to the  
 2868 petitioner, guardian, and the ward. The court must not appoint as a  
 2869 monitor an employee of the court, the clerk, a family member of the  
 2870 ward, or any person with a personal interest in the proceedings.  
 2871 (2) The order of appointment must be served on the guardian, the  
 2872 ward, and such interested persons as the court may direct.  
 2873 (3) The order of appointment must specify the facts supporting the  
 2874 order, scope of the investigation, powers and duties of the monitor  
 2875 and time frame within which the investigation must be completed.  
 2876 (4) The monitor is deemed an interested person until discharged and  
 2877 may not have ex parte communications with the court.

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2907 (1) The court may, upon petition by an interested person or upon  
 2908 its own motion, appoint a guardianship monitor qualified under s.  
 2909 745.1008(1) on an emergency basis without notice. The court must  
 2910 find that there appears to be imminent danger that the physical or  
 2911 mental health or safety of the ward will be seriously impaired or  
 2912 that the ward's property is in danger of being wasted,  
 2913 misappropriated, or lost unless immediate action is taken.  
 2914 (2) The order appointing an emergency guardianship monitor shall  
 2915 specify the facts supporting the order, scope of the investigation,  
 2916 powers and duties of the monitor and the time frame within which  
 2917 the investigation must be completed. The order appointing an  
 2918 emergency guardianship monitor shall be served on the guardian, the  
 2919 ward, and such interested persons as the court may direct.  
 2920 (3) The monitor shall file a report of the monitor's findings and  
 2921 recommendations. The report shall be verified and may be supported  
 2922 by documents or other evidence.  
 2923 Copies of the report and all documents shall be served on:  
 2924 (a) the guardian,  
 2925 (b) the ward and  
 2926 (c) such other interested persons as the court may determine  
 2927 appropriate after the court has made a determination under  
 2928 subsection (4).  
 2929 (4) Upon review of the report, the court shall determine whether  
 2930 further action is necessary to protect the person or property of  
 2931 the ward.  
 2932 (5)(a) If it appears from the monitor's report that further action  
 2933 to protect the interests of the ward is necessary, the court shall,  
 2934 after a hearing with notice, enter any order necessary to protect  
 2935 the ward or the ward's property, including requiring the guardian  
 2936 to amend a plan or report, requiring an accounting or amended

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2878 (5) The monitor may investigate, seek information, examine  
 2879 documents, and interview the ward and guardian and shall file a  
 2880 written report of the monitor's findings and recommendations. The  
 2881 report shall be verified and may be supported by documents or other  
 2882 evidence. Copies of the report and all documents shall be served on  
 2883 the guardian, the ward, unless the ward is a minor or is totally  
 2884 incapacitated, and such other interested persons as the court may  
 2885 determine. The guardian and the ward may seek information from the  
 2886 monitor using discovery methods authorized in the Florida Probate  
 2887 Rules.  
 2888 (6) If it appears from the monitor's report that further action to  
 2889 protect the interests of the ward is necessary, the court shall,  
 2890 after a hearing with notice, enter any order necessary to protect  
 2891 the ward or the ward's property, including requiring the guardian  
 2892 to amend a plan or report, requiring an accounting or amended  
 2893 accounting, ordering production of assets, freezing assets,  
 2894 suspending a guardian, or initiating proceedings to remove a  
 2895 guardian.  
 2896 (7) Unless otherwise prohibited by law, a monitor may be allowed a  
 2897 reasonable fee as determined by the court and paid from the  
 2898 property of the ward. No full-time state, county, or municipal  
 2899 employee or officer shall be paid a fee for such investigation and  
 2900 report. If the court finds a petition to appoint a monitor or a  
 2901 written communication by a third party which results in appointment  
 2902 of a monitor to have been filed in bad faith, the costs of the  
 2903 proceeding and attorney's fees shall be awarded after hearing with  
 2904 notice to the petitioner or third party.  
 2905  
 2906 745.1009 Emergency guardianship monitor.

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2937 accounting, ordering production of assets, freezing assets,  
 2938 suspending a guardian, or initiating proceedings to remove a  
 2939 guardian.  
 2940 (b) At any time prior to the hearing, the court may issue a  
 2941 temporary injunction, a restraining order, or an order freezing  
 2942 assets; may suspend the guardian; may appoint a guardian ad litem;  
 2943 or may issue any other appropriate order to protect the health,  
 2944 safety, or property of the ward. A copy of all such orders or  
 2945 injunctions shall be transmitted by the court or under its  
 2946 direction to all parties at the time of entry of the order or  
 2947 injunction.  
 2948 Nothing in subsection (5) shall be construed to preclude the  
 2949 mandatory reporting requirements of chapter 39.  
 2950 (6) Unless otherwise prohibited by law, a monitor may be allowed a  
 2951 reasonable fee as determined by the court and paid from the  
 2952 property of the ward. No full-time state, county, or municipal  
 2953 employee or officer shall be paid a fee for such investigation and  
 2954 report. If the court finds the petition to appoint a court monitor  
 2955 or a written communication by a third party which results in  
 2956 appointment of a monitor to have been filed in bad faith, the costs  
 2957 of the proceeding and attorney's fees, shall be awarded after  
 2958 hearing with notice to the petitioner or third party.(7) The  
 2959 monitor shall be deemed an interested person until discharged and  
 2960 may not have ex parte communications with the court.  
 2961  
 2962 Section 11. Part XI of chapter 745, Florida Statutes,  
 2963 consisting of sections 745.1101, 745.1102, 745.1103, 745.1104,  
 2964 745.1105, 745.1106, 745.1107, 745.1108, 745.1109, and 745.1110, is  
 2965 created to read:  
 2966

PART XI



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2967 RESIGNATION AND DISCHARGE  
 2968 745.1101 Resignation of guardian.  
 2969 (1) A guardian may resign at any time.  
 2970 (2) A resigning guardian shall retain the duties and  
 2971 responsibilities of a guardian until discharged by the court as  
 2972 specified in this part.  
 2973 (3) A resigning guardian shall file a resignation with the court  
 2974 and, unless waived, serve a notice of resignation on:  
 2975 (a) next of kin of the ward;  
 2976 (b) the ward, unless the ward has been found to be totally  
 2977 incapacitated or is a minor; and  
 2978 (c) a successor or proposed successor guardian, if any.  
 2979  
 2980 745.1102 Resignation and discharge of guardian of property.  
 2981 (1) A successor guardian of property must be appointed if a  
 2982 guardian dies, becomes incapacitated, resigns or is removed.  
 2983 (2) A resigning guardian of property must file:  
 2984 (a) a petition for distribution and discharge,  
 2985 (b) final accounting, and  
 2986 (c) notice of filing petition for distribution and discharge and  
 2987 final accounting  
 2988 and must serve such documents on any successor guardian and such  
 2989 interested persons as the court may direct.  
 2990 (3) The guardian's final accounting is subject to audit by the  
 2991 clerk in the manner and within the time specified in s. 745.1001,  
 2992 unless waived by the successor guardian.  
 2993 (4) The petition for distribution and discharge must include a  
 2994 schedule of unpaid expenses of the ward and administration expenses  
 2995 to be paid prior to discharge.

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3025 extent consistent with the rules regulating the Florida Bar. The  
 3026 attorney for the ward may assist in locating a successor guardian.  
 3027 (10) A successor guardian may be appointed and have letters issued  
 3028 after a guardian has resigned and before an order of discharge of  
 3029 the resigned guardian has been entered. The successor guardian  
 3030 succeeds to the powers specified in the letters of guardianship and  
 3031 such guardian's authority shall inure as of the date of issuance of  
 3032 letters.  
 3033  
 3034 745.1103 Termination of guardianship of property  
 3035 (1) When a ward becomes sui juris, has been restored to capacity as  
 3036 to all rights related to the ward's property, the guardianship has  
 3037 terminated as a result of the relocation of the ward's residence to  
 3038 an out-of-state jurisdiction, or the guardianship is otherwise  
 3039 terminated, the guardian must file a final accounting and petition  
 3040 for discharge. The accounting and petition, together with a notice  
 3041 of filing the final accounting and petition for discharge, must be  
 3042 served on the ward. The ward may waive audit of the guardian's  
 3043 final accounting.  
 3044 (2) When the ward's property has been exhausted except for clothing  
 3045 and minimal personal effects and the guardian receives no income on  
 3046 behalf of the ward, the guardian may file a final accounting and  
 3047 petition for discharge. The final accounting and petition for  
 3048 discharge, together with a notice of filing the final accounting  
 3049 and petition for discharge, must be served on the ward and such  
 3050 interested persons as the court may direct.  
 3051 (3) When a ward dies, the guardian must file a final accounting and  
 3052 petition for distribution and discharge within 45 days after the  
 3053 guardian has been served with letters of administration or letters  
 3054 of curatorship of the ward's estate. The petition for distribution

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2996 (5) The notice of filing petition for distribution and discharge  
 2997 and final accounting must specify that interested persons have 30  
 2998 days from the date of receipt of the notice to file any objections  
 2999 with the court. If no objections are timely filed, the court may  
 3000 enter an order authorizing distribution of assets without further  
 3001 notice or hearing. If objections are timely filed, the objections  
 3002 must be resolved as provided in the Florida Probate Rules.  
 3003 (6) Upon approval of a resigned guardian's final accounting and  
 3004 petition for distribution and discharge, the guardian is entitled  
 3005 to distribute assets and, upon proof of distribution, to be  
 3006 discharged regardless of whether a successor guardian has been  
 3007 appointed.  
 3008 (7) If no successor guardian is appointed at the time the petition  
 3009 for distribution and discharge is filed, the court may appoint an  
 3010 emergency temporary guardian.  
 3011 (8) Prior to discharge, a resigning guardian shall deliver all  
 3012 assets of the ward and copies of all asset records to a successor  
 3013 guardian, an emergency temporary guardian, or as otherwise directed  
 3014 by the court.  
 3015 (9) Upon petition by an interested person or on the court's own  
 3016 motion, an attorney may be appointed to represent the ward in the  
 3017 discharge proceedings. When a court appoints an attorney for the  
 3018 ward, the court must appoint the office of criminal conflict and  
 3019 civil regional counsel or a private attorney as prescribed in s.  
 3020 27.511(6). A private attorney must be one who is included in the  
 3021 attorney registry compiled pursuant to s. 27.40. Appointments of  
 3022 private attorneys must be made on a rotating basis, taking into  
 3023 consideration conflicts arising under this code. The attorney for  
 3024 the ward represents the preferences expressed by the ward, to the

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3055 and discharge and final accounting and notice of filing shall be  
 3056 served on the personal representative or curator. The personal  
 3057 representative or curator may waive preparation or audit of the  
 3058 guardian's final accounting subject to the provisions of s.  
 3059 745.1104.  
 3060 (4) If no objections are timely filed by the ward, in the case of a  
 3061 ward who has become sui juris or has been restored to capacity, or  
 3062 by the personal representative or curator, in the case of a  
 3063 deceased ward, the guardian may distribute the ward's assets as  
 3064 directed by the court and, upon proof of such distribution, shall  
 3065 be entitled to discharge.  
 3066 (5) If objections to the final accounting or petition for discharge  
 3067 are timely filed, the objections shall be resolved as provided in  
 3068 the Florida Probate Rules.  
 3069 (6) The guardian applying for discharge may retain from the funds  
 3070 in the guardian's possession a sufficient amount to pay the final  
 3071 costs of administration, including guardian and attorney's fees.  
 3072 (7) The court retains jurisdiction over the guardian until the  
 3073 guardian is discharged.  
 3074  
 3075 745.1104 Discharge of guardian of property named as personal  
 3076 representative.  
 3077 (1) A guardian of property who is subsequently appointed sole  
 3078 personal representative of a deceased ward's estate must serve a  
 3079 copy of the guardian's final accounting and petition for  
 3080 distribution and discharge, together with a notice of filing the  
 3081 final accounting and petition for distribution and discharge, on  
 3082 the beneficiaries of the ward's estate who will be affected by the  
 3083 report. If the beneficiary of the estate is a trust of which the  
 3084 guardian is sole trustee, the final accounting must be served on

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3085 qualified beneficiaries of the trust as defined in s. 736.0103. The  
 3086 beneficiaries of the estate or qualified beneficiaries of the trust  
 3087 may waive preparation or audit of the guardian's final accounting.  
 3088 (2) All such beneficiaries shall have 30 days from receipt of the  
 3089 final accounting and petition for distribution and discharge to  
 3090 file objections thereto. If objections are timely filed, the  
 3091 objections shall be resolved as provided in the Florida Probate  
 3092 Rules.  
 3093 (3) The guardian may not be discharged until:  
 3094 (a) All objections have been resolved;  
 3095 (b) The final accounting of the guardian is approved by the court  
 3096 or waived by the persons entitled to notice under subsection (1);  
 3097 and  
 3098 (c) All property has been distributed to the ward's estate or the  
 3099 persons entitled to it.  
 3100  
 3101 745.1105 Termination of guardianship of property on change of  
 3102 residence of ward to foreign jurisdiction.  
 3103 (1) When the residence of a ward has changed to another state or  
 3104 country, and the foreign court having jurisdiction over the ward at  
 3105 the ward's new residence has issued letters or the equivalent, the  
 3106 guardian of property in this state may file a final accounting and  
 3107 petition for discharge.  
 3108 (2) The guardian shall serve the petition for discharge and final  
 3109 accounting on the new guardian, the ward's next of kin and all  
 3110 known creditors of the ward with a notice directing that any  
 3111 objections must be filed within 30 days. If an objection is timely  
 3112 filed, any interested person may set the objection for hearing. If  
 3113 no notice of hearing is served within 60 days after filing the  
 3114 objection, the objection is deemed abandoned.

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3145 (b) If the value of the funds is over \$500, the clerk shall publish  
 3146 the notice once a month for 2 consecutive months in a newspaper of  
 3147 general circulation in the county.  
 3148 (4) Pursuant to subsection (3), after the expiration of 6 months  
 3149 from the posting or first publication, the clerk shall deposit the  
 3150 funds with the Chief Financial Officer after deducting the clerk's  
 3151 fees and the costs of publication.  
 3152 (a) Upon receipt of the funds, the Chief Financial Officer shall  
 3153 deposit them in a separate fund devoted to the provision of  
 3154 guardianship services to indigent wards. All interest and all  
 3155 income that may accrue from the money while so deposited shall  
 3156 belong to the fund. The funds so deposited shall constitute and be  
 3157 a permanent appropriation for payments by the Chief Financial  
 3158 Officer as required by court orders entered as provided by  
 3159 paragraph (b).  
 3160 (b) On petition to the court that directed deposit of the funds and  
 3161 informal notice to the Department of Legal Affairs and the ward's  
 3162 next of kin, any person claiming entitlement to the funds may  
 3163 petition for a court order directing the payment of the funds to the  
 3164 petitioner. Such petition must be filed within 5 years after  
 3165 deposit of the funds with the Chief Financial Officer. All funds  
 3166 deposited with the Chief Financial Officer and not claimed within 5  
 3167 years from the date of deposit shall escheat to the state to be  
 3168 deposited in the Department of Elderly Affairs Administrative Trust  
 3169 Fund to be used solely for the provision of guardianship services  
 3170 for indigent wards as determined by the Secretary of the Department  
 3171 of Elderly Affairs.  
 3172 (c) Upon depositing the funds with the clerk, a guardian of  
 3173 property may file a final accounting and petition for discharge  
 3174 under s. 745.1103.

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3115 (3) Upon disposition of all objections, or if no objection is  
 3116 filed, distribution shall be made by the Florida guardian. On proof  
 3117 that the remaining property in the guardianship has been received  
 3118 by the foreign guardian, the Florida guardian of property shall be  
 3119 discharged.  
 3120 (4) The Florida guardian's final accounting shall not be subject to  
 3121 audit.  
 3122  
 3123 745.1106 Disposition of unclaimed funds held by guardian.  
 3124 (1) When a ward dies and the guardian cannot distribute the ward's  
 3125 property because no estate proceeding has been instituted, the  
 3126 guardian of property shall be considered an interested person  
 3127 pursuant to s. 733.202 and may, after a reasonable time, petition  
 3128 for appointment of a personal representative or curator. In the  
 3129 alternative, the guardian may follow the procedures set forth in  
 3130 subsection (3).  
 3131 (2) When a guardian is unable to locate the ward after diligent  
 3132 search, the guardian may file a petition pursuant to s. 731.103(3)  
 3133 and, upon a determination of death, may proceed under subsections  
 3134 (1) or (3).  
 3135 (3) The court may order the guardian of property to sell the  
 3136 property of the ward and deposit the proceeds and cash on hand  
 3137 after retaining the amounts provided for in paragraph (d) with the  
 3138 clerk. The clerk shall acknowledge receipt of the funds and deposit  
 3139 them in the registry of the court, to be disposed of as follows:  
 3140 (a) If the value of the funds is \$500 or less, the clerk shall post  
 3141 a notice for 30 days at the courthouse specifying the amount, the  
 3142 name of the ward, the guardianship court file number, the name and  
 3143 mailing address of the guardian, and other pertinent information  
 3144 that will put interested persons on notice.

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3175 (d) A guardian depositing assets with the clerk is permitted to  
 3176 retain from the assets in the guardian's possession a sufficient  
 3177 amount to pay the final costs of administration, including guardian  
 3178 and attorney's fees accruing prior to the order of discharge. Any  
 3179 surplus funds so retained must be deposited with the clerk prior to  
 3180 discharge of the guardian of property.  
 3181  
 3182 745.1107 Resignation and discharge of guardian of person.  
 3183 (1) A successor guardian of person must be appointed if a guardian  
 3184 dies, becomes incapacitated, resigns or is removed.  
 3185 (2) A resigning guardian of person must file a resignation and  
 3186 petition for discharge and must serve such documents on any  
 3187 successor guardian and such interested persons as the court may  
 3188 direct. The guardian is entitled to discharge upon proof that the  
 3189 guardian has fully discharged the guardian's duties and proof of  
 3190 delivery to a successor guardian or emergency temporary guardian of  
 3191 copies of all records of medical, personal and residential care for  
 3192 the ward.  
 3193 (3) Upon petition by an interested person or on the court's own  
 3194 motion, an attorney may be appointed to represent the ward in the  
 3195 discharge proceedings. When a court appoints an attorney for a  
 3196 ward, the court must appoint the office of criminal conflict and  
 3197 civil regional counsel or a private attorney as prescribed in s.  
 3198 27.511(6). A private attorney must be one who is included in the  
 3199 attorney registry compiled pursuant to s. 27.40. Appointments of  
 3200 private attorneys must be made on a rotating basis, taking into  
 3201 consideration conflicts arising under this code. The attorney for  
 3202 the ward represents the preferences expressed by the ward, to the  
 3203 extent consistent with the rules regulating the Florida Bar. The  
 3204 attorney for the ward may assist in locating a successor guardian.

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3205 (4) A successor guardian of person may be appointed and have  
 3206 letters issued after a guardian has resigned and before an order of  
 3207 discharge of the resigned guardian has been entered. The successor  
 3208 guardian shall exercise the powers specified in the letters of  
 3209 guardianship and such guardian's authority inures as of the date of  
 3210 issuance of letters.  
 3211 (5) If no successor guardian is appointed at the time the petition  
 3212 for discharge is filed, the court may appoint an emergency  
 3213 temporary guardian.  
 3214  
 3215  
 3216 745.1108 Termination of guardianship of person.  
 3217 (1) When a ward becomes sui juris, has been restored to capacity as  
 3218 to all rights related to the ward's person, the guardianship has  
 3219 terminated as a result of the relocation of the ward's residence to  
 3220 an out-of-state jurisdiction, or the guardianship is otherwise  
 3221 terminated, except as provided in subsection (5), a guardian of  
 3222 person must file a petition for discharge, specifying the grounds  
 3223 therefor. The petition for discharge must be served on the ward.  
 3224 (2) When the guardian has been unable to locate the ward after  
 3225 diligent search, a guardian of person may file a petition for  
 3226 discharge, specifying the guardian's attempts to locate the ward.  
 3227 (3) In the case of a ward who has become sui juris or has been  
 3228 restored to capacity, a copy of the petition for discharge and a  
 3229 notice of hearing on said petition shall be served on the ward,  
 3230 unless waived.  
 3231 (4) If a guardian has been unable to locate the ward, the guardian  
 3232 shall serve the petition for discharge and a notice of hearing on  
 3233 the ward's next of kin and such other persons as the court may, in  
 3234 its discretion, direct.

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3265 or the guardian's surety, as to matters adequately disclosed to  
 3266 interested persons.  
 3267 (2) As to matters not adequately disclosed to interested persons,  
 3268 any action against the guardian, as such and individually, shall be  
 3269 barred unless commenced within 2 years of entry of the order of  
 3270 discharge.  
 3271  
 3272 Section 12. Part XII of chapter 745, Florida Statutes,  
 3273 consisting of sections 745.1201, 745.1202, 745.1203, 745.1204,  
 3274 745.1205, and 745.1206, is created to read:  
 3275 PART XII  
 3276 REMOVAL OF GUARDIANS  
 3277 745.1201 Reasons for removal of guardian.  
 3278 A guardian may be removed for any of the following reasons, and the  
 3279 removal shall be in addition to any other penalties prescribed by  
 3280 law:  
 3281 (1) Fraud in obtaining appointment.  
 3282 (2) Failure to discharge guardianship duties.  
 3283 (3) Abuse of guardianship powers.  
 3284 (4) An incapacity or illness, including substance abuse, which  
 3285 renders the guardian incapable of discharging the guardian's  
 3286 duties.  
 3287 (5) Willful failure to comply with any order of the court.  
 3288 (6) Failure to account for property sold or to produce the ward's  
 3289 property when so required.  
 3290 (7) Waste, embezzlement, or other mismanagement of the ward's  
 3291 property.  
 3292 (8) Failure to give bond or security when required by the court or  
 3293 failure to file with the annual guardianship plan the evidence  
 3294 required by s. 745.607 that the sureties on the guardian's bond are

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3235 (5) A guardian of person is discharged without further proceedings  
 3236 upon filing a certified copy of the ward's death certificate,  
 3237 together with a notice of discharge.  
 3238 (6) The court retains jurisdiction over the guardian until the  
 3239 guardian is discharged.  
 3240  
 3241 745.1109 Termination of guardianship of person on change of  
 3242 residence of ward to foreign jurisdiction.  
 3243 (1) When the residence of a ward has changed to another state or  
 3244 country and the foreign court having jurisdiction of the ward at  
 3245 the ward's new place of residence has issued letters or the  
 3246 equivalent, the guardian of person in this state may file a  
 3247 petition for discharge and serve it on the new foreign guardian and  
 3248 the ward's next of kin with a notice directing that any objections  
 3249 must be filed within 30 days.  
 3250 (2) If an objection is timely filed, any interested person may set  
 3251 the objection for hearing. If no notice of hearing is served within  
 3252 60 days after filing the objection, the objection is deemed  
 3253 abandoned.  
 3254 (3) Upon disposition of all objections, or if no objection is  
 3255 filed, the guardian of person shall be discharged.  
 3256  
 3257 745.1110 Order of discharge.  
 3258 (1) If the court is satisfied that the guardian has faithfully  
 3259 discharged the guardian's duties and, in the case of a guardian of  
 3260 property, has delivered the property of the ward to the person  
 3261 entitled, and that the interests of the ward are protected, the  
 3262 court must enter an order discharging the guardian from any further  
 3263 duties and liabilities as guardian. The discharge shall also act as  
 3264 a bar to any action against the guardian, as such and individually,

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3295 alive and solvent.  
 3296 (9) Conviction of a felony.  
 3297 (10) Appointment of a receiver, trustee in bankruptcy, or  
 3298 liquidator for any corporate guardian.  
 3299 (11) Development of a conflict of interest between the ward and the  
 3300 guardian.  
 3301 (12) Having been found guilty of, regardless of adjudication, or  
 3302 entered a plea of nolo contendere or guilty to, any offense  
 3303 described in s. 435.04(2), s. 741.28 or under any similar statute  
 3304 of another jurisdiction.  
 3305 (13) A failure to fulfill the guardianship education requirements.  
 3306 (14) A material change in the ward's financial circumstances so  
 3307 that the guardian is no longer qualified to manage the finances of  
 3308 the ward, or the previous degree of management is no longer  
 3309 required.  
 3310 (15) After appointment, the guardian becomes a disqualified person  
 3311 as specified in s. 745.503.  
 3312 (16) Upon a showing that removal of the current guardian is in the  
 3313 best interest of the ward.  
 3314  
 3315 745.1202 Proceedings for removal of a guardian.  
 3316 A petition to remove a guardian may be filed by any surety,  
 3317 interested person, or by the ward. Formal notice shall be served on  
 3318 the guardian. After hearing, the court may enter an order that is  
 3319 proper considering the pleadings and the evidence.  
 3320  
 3321 745.1203 Accounting upon removal.  
 3322 A removed guardian of property shall file with the court a true,  
 3323 complete, and final accounting of the ward's property within 30  
 3324 days after removal and shall serve a copy on the successor

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3325 guardian, if any; the attorney for the ward, if any; and the ward,  
 3326 unless the ward is a minor or has been determined to be totally  
 3327 incapacitated to manage or dispose of property.  
 3328  
 3329 745.1204 Appointment of successor guardian upon removal.  
 3330 (1) If there is still the need for a guardian of the ward, the  
 3331 court must appoint a successor guardian as permitted under s.  
 3332 745.501.  
 3333 (2) If no successor guardian has been appointed when a guardian is  
 3334 removed, the court shall appoint an attorney to represent the ward  
 3335 and the accounting shall be served on the ward. The ward may  
 3336 propose a successor guardian and the court may appoint an emergency  
 3337 temporary guardian to serve until letters are issued to a successor  
 3338 guardian.  
 3339  
 3340 745.1205 Surrender of property upon removal.  
 3341 A removed guardian of property shall deliver to the successor or  
 3342 emergency temporary guardian all property of the ward and copies of  
 3343 all records under the guardian's control within 30 days after  
 3344 notice of issuance of letters to the successor or emergency  
 3345 temporary guardian, unless otherwise ordered by the court.  
 3346  
 3347 745.1206 Proceedings for contempt.  
 3348 If a removed guardian of property fails to file a true, complete,  
 3349 and final accounting or turn over to the successor or emergency  
 3350 temporary guardian the property of the ward and copies of all  
 3351 guardianship records that are in the guardian's control, the court  
 3352 shall issue an order requiring the guardian to show cause for such  
 3353 failure. If reasonable cause is shown by the guardian, the court  
 3354 shall set a reasonable time within which to comply, and, on failure

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3385 trust amendment shall be promptly reported in the guardianship  
 3386 proceeding by the guardian of property.  
 3387 (2) Any judicial determination concerning the validity or effect of  
 3388 the ward's health care surrogate designation shall be promptly  
 3389 reported in the guardianship proceeding by the guardian of person.  
 3390 (3) During the guardianship, an interested person may file a  
 3391 petition alleging that, due to a change in circumstances or the  
 3392 discovery of an alternative not previously considered by the court,  
 3393 there is an alternative to guardianship which will sufficiently  
 3394 address the problems of the ward and the court shall consider the  
 3395 continued need for a guardian and the extent of the continued need  
 3396 for delegation of the ward's rights, if any.  
 3397  
 3398 745.1304 Support of ward's dependents.  
 3399 (1) A guardian of property shall first apply the ward's income to  
 3400 the ward's care, support, education, maintenance, health care and  
 3401 cost of funeral and burial or cremation. The guardian shall not use  
 3402 the ward's property for support of the ward's dependents unless  
 3403 approved by the court. The court may approve the guardian to use  
 3404 the ward's income for the care, support, education, maintenance,  
 3405 cost of final illness, and cost of funeral and burial or cremation  
 3406 of the dependents of the ward, to the extent funds are available  
 3407 for such use, without jeopardizing the needs of the ward, taking  
 3408 into consideration the resources of the dependents. If the income  
 3409 is not sufficient for these purposes, the court may approve the  
 3410 expenditure of principal for such purposes.  
 3411 (2) The word "dependents," as used in subsection (1) means, in  
 3412 addition to those persons who are legal dependents of a ward under  
 3413 existing law, the ward's spouse, the ward's parents, and persons to  
 3414 whom the ward was providing support prior to the ward's incapacity.

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3355 to comply with this or any subsequent order, the removed guardian  
 3356 may be held in contempt. Proceedings for contempt may be instituted  
 3357 by the court, by any interested person, including the ward, or by a  
 3358 successor or emergency temporary guardian.  
 3359  
 3360 Section 13. Part XIII of chapter 745, Florida Statutes,  
 3361 consisting of sections 745.1301, 745.1302, 745.1303, 745.1304,  
 3362 745.1305, 745.1306, 745.1307, 745.1308, 745.1309, 745.1310,  
 3363 745.1311, 745.1312, 745.1313, 745.1314, and 745.1315, is created to  
 3364 read:  
 3365 PART XIII  
 3366 MISCELLANEOUS  
 3367 745.1301 Suspension of statutes of limitation in favor of guardian.  
 3368 If a person entitled to bring an action is declared incapacitated  
 3369 before expiration of the time limited for the commencement of the  
 3370 action and the cause of the action survives, the action may be  
 3371 commenced by a guardian of property after such expiration and  
 3372 within 1 year from the date of the issuance of letters or the time  
 3373 otherwise limited by law, whichever is longer.  
 3374  
 3375 745.1302 Appraisals.  
 3376 On petition by an interested person, the court may appoint  
 3377 appraisers to appraise property of the ward that is subject to the  
 3378 guardianship. This section does not limit the power of a guardian  
 3379 of property to employ appraisers without court order pursuant to s.  
 3380 745.902(12).  
 3381  
 3382 745.1303 Determination regarding alternatives to guardianship.  
 3383 (1) Any judicial determination concerning the validity or effect of  
 3384 the ward's power of attorney, durable power of attorney, trust or

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3415 745.1305 Petition for support of ward's dependents.  
 3416 (1) A spouse or dependent of the ward, as defined in s. 745.1304,  
 3417 may petition for an order directing the guardian of property to  
 3418 contribute to the support of the person from the income or property  
 3419 of the ward. The court may enter an order for support of the spouse  
 3420 or dependent out of the ward's income and property that is subject  
 3421 to the guardianship. The grant or denial of an order for support  
 3422 shall not preclude a further petition for support or for increase,  
 3423 decrease, modification, or termination of allowance for support by  
 3424 either the petitioner or the guardian. Delivery to the recipient  
 3425 shall be a release of the guardian for payments made pursuant to  
 3426 the order.  
 3427 (2) If the property of the ward is derived in whole or in part from  
 3428 payments of compensation, adjusted compensation, pension,  
 3429 insurance, or other benefits made directly to the guardian by the  
 3430 United States Department of Veterans Affairs, notice of the  
 3431 petition for support shall be given by the petitioner to the office  
 3432 of the United States Department of Veterans Affairs having  
 3433 jurisdiction over the area in which the court is located and the  
 3434 chief attorney for the Department of Veterans' Affairs in this  
 3435 state at least 15 days before the hearing on the petition.  
 3436 (3) The court may not authorize payments from an incapacitated  
 3437 ward's income or property unless the ward has been adjudicated  
 3438 incapacitated to manage such income or property in accordance with  
 3439 s. 745.311.  
 3440 (4) In a voluntary guardianship, a petition for support may be  
 3441 granted only upon the written consent of the ward.  
 3442  
 3443 745.1306 Payments to guardian of person.

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3445 If there is more than one guardian, either guardian may petition  
 3446 for an order directing the guardian of property to pay to the  
 3447 guardian of person periodic amounts for the support, care,  
 3448 maintenance, education, and other needs of the ward. The amount may  
 3449 be increased or decreased from time to time. If an order is  
 3450 entered, proof of delivery to the guardian of person for payments  
 3451 made shall be a sufficient release of the guardian who makes the  
 3452 payments pursuant to the order. The guardian of property shall not  
 3453 be bound to see to the application of the payments and the guardian  
 3454 of person shall not be required to file an accounting for the funds  
 3455 received, unless otherwise ordered to do so by the court.  
 3456  
 3457 745.1307 Actions by and against guardian or ward.  
 3458 If an action is brought by a guardian against the ward, by a ward  
 3459 against the guardian, or in which the interest of the guardian is  
 3460 adverse to that of the ward, a guardian ad litem shall be appointed  
 3461 to represent the ward in that proceeding. In any litigation between  
 3462 the guardian and the ward, the guardian ad litem may petition the  
 3463 court for removal of the guardian.  
 3464  
 3465 745.1308 Guardian forbidden to borrow or purchase; exceptions.  
 3466 (1) A professional guardian may not purchase property or borrow  
 3467 money from the ward.  
 3468 (2) A guardian who is not a professional guardian may purchase  
 3469 property from the ward if the property is to be purchased at fair  
 3470 market value and the court gives prior authorization for the  
 3471 transaction.  
 3472 (3) A guardian who is not a professional guardian may borrow money  
 3473 from the ward if the loan is to be made at the prevailing interest  
 3474 rate, with adequate security, and the court gives prior

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3505 fiduciary duty, the court shall take action to protect the ward and  
 3506 the ward's assets upon petition by an interested person.  
 3507  
 3508 745.1310 Purchasers and lenders protected.  
 3509 No person or entity purchasing, leasing, or taking a mortgage,  
 3510 pledge, or other lien from a guardian shall be bound to see that  
 3511 the money or other things of value paid to the guardian are  
 3512 actually needed or properly applied. The person or entity is not  
 3513 otherwise bound as to the proprieties or expedencies of the acts  
 3514 of the guardian.  
 3515  
 3516 745.1311 Temporary delegation of authority to surrogate.  
 3517 (1) A guardian may designate a surrogate guardian to exercise the  
 3518 powers of the guardian if the guardian is unavailable to act. A  
 3519 person designated as a surrogate guardian under this section must  
 3520 be a professional guardian or a member of the Florida Bar qualified  
 3521 to act under s. 745.501.  
 3522 (2)(a) A guardian must file a petition with the court requesting  
 3523 permission to designate a surrogate guardian.  
 3524 (b) If the court approves the designation, the order must specify  
 3525 the name and business address of the surrogate guardian and the  
 3526 duration of appointment, which may not exceed 30 days. The court  
 3527 may extend the appointment for good cause shown. The surrogate  
 3528 guardian may exercise all powers of the guardian unless limited by  
 3529 court order. The surrogate guardian must file with the court an  
 3530 oath swearing or affirming that the surrogate guardian will  
 3531 faithfully perform the duties delegated. The court may require the  
 3532 surrogate guardian to post a bond.  
 3533 (3) This section does not limit the responsibility of the guardian  
 3534 to the ward and to the court. The guardian is liable for the acts

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3475 authorization for the transaction.  
 3476  
 3477 745.1309 Conflicts of interest; prohibited activities; court  
 3478 approval; breach of fiduciary duty.  
 3479 (1) The fiduciary relationship which exists between the guardian  
 3480 and the ward may not be used for the private gain of the guardian  
 3481 other than the remuneration for services rendered for the ward. The  
 3482 guardian may not incur any obligation on behalf of the ward which  
 3483 conflicts with the proper discharge of the guardian's duties.  
 3484 (2) Unless prior court approval is obtained, or unless such  
 3485 relationship existed prior to appointment of the guardian, a  
 3486 guardian may not:  
 3487 (a) Have any interest, financial or otherwise, direct or indirect,  
 3488 in any business transaction or activity with the ward;  
 3489 (b) Acquire an ownership, possessory, security, or other pecuniary  
 3490 interest adverse to the ward;  
 3491 (c) Be designated as a beneficiary, co-owner or recipient of any  
 3492 property or benefit of the ward unless such designation or transfer  
 3493 was made by the ward prior to the ward's incapacity; or  
 3494 (d) Directly or indirectly purchase, rent, lease, or sell any  
 3495 property or services from or to any business entity of which the  
 3496 guardian or the guardian's spouse or any of the guardian's lineal  
 3497 heirs, or collateral kindred, is an officer, partner, director,  
 3498 shareholder, or proprietor, or has any financial interest.  
 3499 (3) Any activity prohibited by this section is voidable during the  
 3500 term of the guardianship or by the personal representative of the  
 3501 ward's estate, and the guardian is subject to removal and to  
 3502 imposition of personal liability through a proceeding for  
 3503 surcharge, in addition to any other remedies otherwise available.  
 3504 (4) In the event of a breach by the guardian of the guardian's

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3535 of the surrogate guardian. The guardian may terminate the authority  
 3536 of the surrogate guardian by filing a written notice of termination  
 3537 with the court.  
 3538 (4) The surrogate guardian is subject to the jurisdiction of the  
 3539 court as if appointed to serve as guardian.  
 3540  
 3541 745.1312 Multiple guardians.  
 3542 (1) When separate guardians of person and property have been  
 3543 appointed, the guardians must consult with each other when the  
 3544 decision of one may affect the duties and responsibilities of the  
 3545 other. If there is disagreement as to a proposed action, the  
 3546 decision of the guardian within whose authority the decision lies  
 3547 shall prevail. The other guardian may petition for judicial review  
 3548 pursuant to s. 745.1006.  
 3549 (2) If there are two guardians of person or two guardians of  
 3550 property and there are disagreements between the co-guardians as to  
 3551 a proposed action, neither may act as to such proposed action  
 3552 without court order.  
 3553 (3) If there are three or more guardians of person or property, a  
 3554 majority of them may act. A guardian who serves on all other  
 3555 guardians a written objection to a proposed action shall not be  
 3556 liable for the action taken. Any guardian may petition the court  
 3557 for direction as to such matter.  
 3558  
 3559 745.1313 Effect of power of attorney and trust.  
 3560 (1) An interested person may file a verified petition in a  
 3561 guardianship proceeding seeking authority for the guardian to file  
 3562 an action to have a ward's trust, trust amendment or power of  
 3563 attorney determined to be invalid pursuant to s. 745.903(10). The  
 3564 petition must allege that the petitioner has a good faith belief

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3565 that the ward's trust, trust amendment, or durable power of  
 3566 attorney is invalid, and state a reasonable factual basis for that  
 3567 belief.  
 3568 (2) The petition shall be served on all interested persons by the  
 3569 petitioner.  
 3570 (3) The court shall consider such petition at a hearing with notice  
 3571 to all interested persons and may, for cause, find that such trust,  
 3572 trust amendment or durable power of attorney is not an appropriate  
 3573 alternative to guardianship of property.  
 3574 (4) The appointment of a guardian does not limit the court's power  
 3575 to determine that certain authority granted under a durable power  
 3576 of attorney is to remain exercisable by the agent.  
 3577  
 3578 745.1314 Suspension of power of attorney before incapacity  
 3579 determination.  
 3580 (1) At any time during proceedings to determine incapacity but  
 3581 before the entry of an order determining incapacity, the authority  
 3582 granted under an alleged incapacitated person's power of attorney  
 3583 to a parent, spouse, child, or grandchild is suspended when an  
 3584 interested person files a verified petition stating that a specific  
 3585 power of attorney should be suspended for any of the following  
 3586 grounds:  
 3587 (a) The agent's decisions are not in accord with the alleged  
 3588 incapacitated person's known desires;  
 3589 (b) The power of attorney is invalid;  
 3590 (c) The agent has failed to discharge the agent's duties or  
 3591 incapacity or illness renders the agent incapable of discharging  
 3592 the agent's duties;  
 3593 (d) The agent has abused the agent's powers; or

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3624  
 3625 745.1315 Abuse, neglect, or exploitation by a guardian.  
 3626 (1) A guardian may not abuse, neglect, or exploit a ward.  
 3627 (2) A guardian has committed exploitation when the guardian:  
 3628 (a) Commits fraud in obtaining appointment as a guardian;  
 3629 (b) Abuses the guardian's powers; or  
 3630 (c) Wastes, embezzles, or intentionally mismanages the assets of  
 3631 the ward.  
 3632 (3) A person who believes that a guardian is abusing, neglecting,  
 3633 or exploiting a ward shall report the incident to the central abuse  
 3634 hotline of the Department of Children and Families.  
 3635 (4) This section shall be interpreted in conformity with s.  
 3636 825.103.  
 3637  
 3638 Section 14. Part XIV of chapter 745, Florida Statutes,  
 3639 consisting of sections 745.1401, 745.1402, 745.1403, 745.1404,  
 3640 745.1405, 745.1406, 745.1407, 745.1408, 745.1409, 745.1410,  
 3641 745.1411, 745.1412, 745.1413, 745.1414, 745.1415, 745.1416,  
 3642 745.1417, 745.1418, 745.1419, and 745.1420, is created to read:  
 3643 PART XIV  
 3644 PUBLIC AND PROFESSIONAL GUARDIANS  
 3645 745.1401 Office of Public and Professional Guardians.  
 3646 There is created the Office of Public and Professional Guardians  
 3647 within the Department of Elderly Affairs.  
 3648 (1) The Secretary of Elderly Affairs shall appoint the executive  
 3649 director, who shall be the head of the Office of Public and  
 3650 Professional Guardians. The executive director must be a member of  
 3651 The Florida Bar, knowledgeable of guardianship law and of the  
 3652 social services available to meet the needs of incapacitated  
 3653 persons, shall serve on a full-time basis, and shall personally, or

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3594 (e) There is a danger that the property of the alleged  
 3595 incapacitated person may be wasted, misappropriated, or lost unless  
 3596 the authority under the power of attorney is suspended.  
 3597 Grounds for suspending a power of attorney do not include the  
 3598 existence of a dispute between the agent and the petitioner which  
 3599 is more appropriate for resolution in some other forum or a legal  
 3600 proceeding other than a guardianship proceeding.  
 3601 (2) The verified petition must:  
 3602 (a) Identify one or more of the grounds in subsection (1);  
 3603 (b) Include specific statements of fact showing that grounds exist  
 3604 to justify the relief sought; and  
 3605 (3) Upon the earlier of (a) the filing of a response to the  
 3606 petition by the agent under the power of attorney, or (b) 10 days  
 3607 after the service of the petition on the agent under the power of  
 3608 attorney, the court shall schedule the petition for an expedited  
 3609 hearing. Unless an emergency arises and the agent's response sets  
 3610 forth the nature of the emergency, the property or matter involved,  
 3611 and the power to be exercised by the agent, notice must be given to  
 3612 all interested persons, the alleged incapacitated person, and the  
 3613 alleged incapacitated person's attorney. The court order following  
 3614 the hearing must set forth what powers the agent is permitted to  
 3615 exercise, if any, pending the outcome of the petition to determine  
 3616 incapacity.  
 3617 (4) In addition to any other remedy authorized by law, a court may  
 3618 award reasonable attorney fees and costs to an agent who  
 3619 successfully challenges the suspension of the power of attorney if  
 3620 the petitioner's petition was made in bad faith.  
 3621 (5) The suspension of authority granted to persons other than a  
 3622 parent, spouse, child, or grandchild shall be as provided in  
 3623 s. 709.2109.

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3654 through a representative of the office, carry out the purposes and  
 3655 functions of the Office of Public and Professional Guardians in  
 3656 accordance with state and federal law. The executive director shall  
 3657 serve at the pleasure of and report to the secretary.  
 3658 (2) The executive director shall, within available resources:  
 3659 (a) Have oversight responsibilities for all public and professional  
 3660 guardians.  
 3661 (b) Establish standards of practice for public and professional  
 3662 guardians by rule, in consultation with professional guardianship  
 3663 associations and other interested stakeholders, no later than  
 3664 October 1, 2016. The executive director shall provide a draft of  
 3665 the standards to the Governor, the Legislature, and the secretary  
 3666 for review by August 1, 2016.  
 3667 (c) Review and approve the standards and criteria for the  
 3668 education, registration, and certification of public and  
 3669 professional guardians in Florida.  
 3670 (3) The executive director's oversight responsibilities of  
 3671 professional guardians must be finalized by October 1, 2016, and  
 3672 shall include, but are not limited to:  
 3673 (a) Developing and implementing a monitoring tool to ensure  
 3674 compliance of professional guardians with the standards of practice  
 3675 established by the Office of Public and Professional Guardians.  
 3676 This monitoring tool may not include a financial audit as required  
 3677 by the clerk of the circuit court under s. 745.1001.  
 3678 (b) Developing procedures, in consultation with professional  
 3679 guardianship associations and other interested stakeholders, for  
 3680 the review of an allegation that a professional guardian has  
 3681 violated the standards of practice established by the Office of  
 3682 Public and Professional Guardians governing the conduct of  
 3683 professional guardians.

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3684 (c) Establishing disciplinary proceedings, conducting hearings, and  
 3685 taking administrative action pursuant to chapter 120.  
 3686 (4) The executive director's oversight responsibilities of public  
 3687 guardians shall include, but are not limited to:  
 3688 (a) Reviewing the current public guardian programs in Florida and  
 3689 other states.  
 3690 (b) Developing, in consultation with local guardianship offices and  
 3691 other interested stakeholders, statewide performance measures.  
 3692 (c) Reviewing various methods of funding public guardianship  
 3693 programs, the kinds of services being provided by such programs,  
 3694 and the demographics of the wards. In addition, the executive  
 3695 director shall review and make recommendations regarding the  
 3696 feasibility of recovering a portion or all of the costs of  
 3697 providing public guardianship services from the assets or income of  
 3698 the wards.  
 3699 (d) By January 1 of each year, providing a status report and  
 3700 recommendations to the secretary which address the need for public  
 3701 guardianship services and related issues.  
 3702 (e) Developing a guardianship training program curriculum that may  
 3703 be offered to all guardians, whether public or private.  
 3704 (5) The executive director may provide assistance to local  
 3705 governments or entities in pursuing grant opportunities. The  
 3706 executive director shall review and make recommendations in the  
 3707 annual report on the availability and efficacy of seeking Medicaid  
 3708 matching funds. The executive director shall diligently seek ways  
 3709 to use existing programs and services to meet the needs of public  
 3710 wards.  
 3711 (6) The executive director may conduct or contract for  
 3712 demonstration projects authorized by the Department of Elderly  
 3713 Affairs, within funds appropriated or through gifts, grants, or

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3743 (4) Prior to registering a professional guardian, the Office of  
 3744 Public and Professional Guardians must receive and review copies of  
 3745 the credit and criminal investigations conducted under s. 745.504.  
 3746 The credit and criminal investigations must have been completed  
 3747 within the previous 2 years.  
 3748 (5) The executive director of the Office of Public and Professional  
 3749 Guardians may deny registration to a professional guardian if the  
 3750 executive director determines that the guardian's proposed  
 3751 registration, including the guardian's credit or criminal  
 3752 investigations, indicates that registering the professional  
 3753 guardian would violate any provision of this chapter. If a  
 3754 guardian's proposed registration is denied, the guardian has  
 3755 standing to seek judicial review of the denial pursuant to chapter  
 3756 120.  
 3757 (6) The Department of Elderly Affairs may adopt rules necessary to  
 3758 administer this section.  
 3759 (7) A trust company, a state banking corporation or state savings  
 3760 association authorized and qualified to exercise fiduciary powers  
 3761 in this state, or a national banking association or federal savings  
 3762 and loan association authorized and qualified to exercise fiduciary  
 3763 powers in this state, may, but is not required to, register as a  
 3764 professional guardian under this section. If a trust company, state  
 3765 banking corporation, state savings association, national banking  
 3766 association, or federal savings and loan association described in  
 3767 this subsection elects to register as a professional guardian under  
 3768 this subsection, the requirements of subsections (3) and (4) do not  
 3769 apply and the registration must include only the name, address, and  
 3770 employer identification number of the registrant, the name and  
 3771 address of its registered agent, if any, and the documentation  
 3772 described in paragraph (3)(b).

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3714 contributions for such purposes, to determine the feasibility or  
 3715 desirability of new concepts of organization, administration,  
 3716 financing, or service delivery designed to preserve the civil and  
 3717 constitutional rights of persons of marginal or diminished  
 3718 capacity. Any gifts, grants, or contributions for such purposes  
 3719 shall be deposited in the Department of Elderly Affairs  
 3720 Administrative Trust Fund.  
 3721  
 3722 745.1402 Professional guardian registration.  
 3723 (1) A professional guardian must register with the Office of Public  
 3724 and Professional Guardians established in part XIV of this chapter.  
 3725 (2) Annual registration shall be made on forms furnished by the  
 3726 Office of Public and Professional Guardians, and accompanied by the  
 3727 applicable registration fee as determined by rule. The fee may not  
 3728 exceed \$100.  
 3729 (3) Registration must include the following:  
 3730 (a) Sufficient information to identify the professional guardian,  
 3731 as follows:  
 3732 1. If the professional guardian is a natural person, the name,  
 3733 address, date of birth, and employer identification or social  
 3734 security number of the person.  
 3735 2. If the professional guardian is a partnership or association,  
 3736 the name, address, and employer identification number of the  
 3737 entity.  
 3738 (b) Documentation that the bonding and educational requirements of  
 3739 s. 745.1403 have been met.  
 3740 (c) Sufficient information to distinguish a guardian providing  
 3741 guardianship services as a public guardian, individually, through  
 3742 partnership, corporation, or any other business organization.

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3773 (8) The Department of Elderly Affairs may contract with the Florida  
 3774 Guardianship Foundation or other not-for-profit entity to register  
 3775 professional guardians.  
 3776 (9) The department or its contractor shall ensure that the clerks  
 3777 of the court and the chief judge of each judicial circuit receive  
 3778 information about each registered professional guardian.  
 3779 (10) A state college or university or an independent college or  
 3780 university that is located and chartered in Florida, that is  
 3781 accredited by the Commission on Colleges of the Southern  
 3782 Association of Colleges and Schools or the Accrediting Council for  
 3783 Independent Colleges and Schools, and that confers degrees as  
 3784 defined in s. 1005.02(7) may, but is not required to, register as a  
 3785 professional guardian under this section. If a state college or  
 3786 university or independent college or university elects to register  
 3787 as a professional guardian under this subsection, the requirements  
 3788 of subsections (3) and (4) do not apply and the registration must  
 3789 include only the name, address, and employer identification number  
 3790 of the registrant.  
 3791  
 3792 745.1403 Regulation of professional guardians; application; bond  
 3793 required; educational requirements.  
 3794 (1) The provisions of this section are in addition to and  
 3795 supplemental to any other provision of this code, except s.  
 3796 745.505.  
 3797 (2) Each professional guardian who files a petition for appointment  
 3798 after October 1, 1997, shall post a blanket fiduciary bond with the  
 3799 clerk of the circuit court in the county in which the guardian's  
 3800 primary place of business is located. The guardian shall provide  
 3801 proof of the fiduciary bond to the clerks of each additional  
 3802 circuit court in which the guardian is serving as a professional

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3803 guardian. The bond shall be maintained by the guardian in an amount  
 3804 not less than \$50,000. The bond must cover all wards for whom the  
 3805 guardian has been appointed at any given time. The liability of the  
 3806 provider of the bond is limited to the face amount of the bond,  
 3807 regardless of the number of wards for whom the professional  
 3808 guardian has been appointed. The act or omissions of each employee  
 3809 of a professional guardian who has direct contact with the ward or  
 3810 access to the ward's assets is covered by the terms of such bond.  
 3811 The bond must be payable to the Governor of the State of Florida  
 3812 and the Governor's successors in office and conditioned on the  
 3813 faithful performance of all duties by the guardian. In form the  
 3814 bond must be joint and several. The bond is in addition to any  
 3815 bonds required under s. 745.607. This subsection does not apply to  
 3816 any attorney who is licensed to practice law in this state and who  
 3817 is in good standing, to any financial institution as defined in s.  
 3818 745.106, or a public guardian. The expenses incurred to satisfy the  
 3819 bonding requirements prescribed in this section may not be paid  
 3820 with the assets of any ward.  
 3821 (3) Each professional guardian defined in s. 745.106(30) and public  
 3822 guardian must receive a minimum of 40 hours of instruction and  
 3823 training. Each professional guardian must receive a minimum of 16  
 3824 hours of continuing education every 2 calendar years after the year  
 3825 in which the initial 40-hour educational requirement is met. The  
 3826 instruction and education must be completed through a course  
 3827 approved or offered by the Office of Public and Professional  
 3828 Guardians. The expenses incurred to satisfy the educational  
 3829 requirements prescribed in this section may not be paid with the  
 3830 assets of any ward. This subsection does not apply to any attorney  
 3831 who is licensed to practice law in this state or an institution  
 3832 acting as guardian under s. 745.1402(7).

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3862 (a) Proof that the guardian has actively acted as a professional  
 3863 guardian for 5 years or more; and  
 3864 (b) A letter from a circuit judge before whom the professional  
 3865 guardian practiced at least 1 year which states that the  
 3866 professional guardian had demonstrated to the court competency as a  
 3867 professional guardian.  
 3868 (9) The court may not appoint any professional guardian who is not  
 3869 registered by the Office of Public and Professional Guardians.  
 3870 (10) This section does not apply to a professional guardian or the  
 3871 employees of that professional guardian when that guardian is a  
 3872 trust company, a state banking corporation, state savings  
 3873 association authorized and qualified to exercise fiduciary powers  
 3874 in this state, or a national banking association or federal savings  
 3875 and loan association authorized and qualified to exercise fiduciary  
 3876 powers in this state.  
 3877 745.1404 Complaints; disciplinary proceedings; penalties;  
 3878 enforcement.  
 3879 (1) By October 1, 2016, the Office of Public and Professional  
 3880 Guardians shall establish procedures to:  
 3881 (a) Review and, if determined legally sufficient, investigate any  
 3882 complaint that a professional guardian has violated the standards  
 3883 of practice established by the Office of Public and Professional  
 3884 Guardians governing the conduct of professional guardians. A  
 3885 complaint is legally sufficient if it contains ultimate facts that  
 3886 show a violation of a standard of practice by a professional  
 3887 guardian has occurred.  
 3888 (b) Initiate an investigation no later than 10 business days after  
 3889 the Office of Public and Professional Guardians receives a  
 3890 complaint.  
 3891

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3833 (4) Each professional guardian must allow, at the guardian's  
 3834 expense, an investigation of the guardian's credit history, and the  
 3835 credit history of employees of the guardian, in a manner prescribed  
 3836 by the Department of Elderly Affairs.  
 3837 (5) As required in s. 745.504, each professional guardian shall  
 3838 allow a level 2 background screening of the guardian and employees  
 3839 of the guardian in accordance with the provisions of s. 435.04.  
 3840 (6) Each professional guardian is required to demonstrate  
 3841 competency to act as a professional guardian by taking an  
 3842 examination approved by the Department of Elderly Affairs.  
 3843 (a) The Department of Elderly Affairs shall determine the minimum  
 3844 examination score necessary for passage of guardianship  
 3845 examinations.  
 3846 (b) The Department of Elderly Affairs shall determine the procedure  
 3847 for administration of the examination.  
 3848 (c) The Department of Elderly Affairs or its contractor shall  
 3849 charge an examination fee for the actual costs of the development  
 3850 and the administration of the examination. The examination fee for  
 3851 a guardian may not exceed \$500.  
 3852 (d) The Department of Elderly Affairs may recognize passage of a  
 3853 national guardianship examination in lieu of all or part of the  
 3854 examination approved by the Department of Elderly Affairs, except  
 3855 that all professional guardians must take and pass an approved  
 3856 examination section related to Florida law and procedure.  
 3857 (7) The Department of Elderly Affairs shall set the minimum score  
 3858 necessary to demonstrate professional guardianship competency.  
 3859 (8) The Department of Elderly Affairs shall waive the examination  
 3860 requirement in subsection (6) if a professional guardian can  
 3861 provide:

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3892 (c) Complete and provide initial investigative findings and  
 3893 recommendations, if any, to the professional guardian and the  
 3894 person who filed the complaint within 60 days after receipt.  
 3895 (d) Obtain supporting information or documentation to determine the  
 3896 legal sufficiency of a complaint.  
 3897 (e) Interview a ward, family member, or interested party to  
 3898 determine the legal sufficiency of a complaint.  
 3899 (f) Dismiss any complaint if, at any time after legal sufficiency  
 3900 is determined, it is found there is insufficient evidence to  
 3901 support the allegations contained in the complaint.  
 3902 (g) Coordinate, to the greatest extent possible, with the clerks of  
 3903 court to avoid duplication of duties with regard to the financial  
 3904 audits prepared by the clerks pursuant to s. 745.1001.  
 3905 (2) The Office of Public and Professional Guardians shall establish  
 3906 disciplinary proceedings, conduct hearings, and take administrative  
 3907 action pursuant to chapter 120. Disciplinary actions may include,  
 3908 but are not limited to, requiring a professional guardian to  
 3909 participate in additional educational courses provided or approved  
 3910 by the Office of Public and Professional Guardians, imposing  
 3911 additional monitoring by the office of the guardianships to which  
 3912 the professional guardian is appointed, and suspension or  
 3913 revocation of a professional guardian's registration.  
 3914 (3) In any disciplinary proceeding that may result in the  
 3915 suspension or revocation of a professional guardian's registration,  
 3916 the Department of Elderly Affairs shall provide the professional  
 3917 guardian and the person who filed the complaint:  
 3918 (a) A written explanation of how an administrative complaint is  
 3919 resolved by the disciplinary process.  
 3920 (b) A written explanation of how and when the person may  
 3921 participate in the disciplinary process.

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3922 (c) A written notice of any hearing before the Division of  
 3923 Administrative Hearings at which final agency action may be taken.  
 3924 (4) If the office makes a final determination to suspend or revoke  
 3925 the professional guardian's registration, it must provide such  
 3926 determination to the court of competent jurisdiction for any  
 3927 guardianship case to which the professional guardian is currently  
 3928 appointed.  
 3929 (5) If the office determines or has reasonable cause to suspect  
 3930 that a vulnerable adult has been or is being abused, neglected, or  
 3931 exploited as a result of a filed complaint or during the course of  
 3932 an investigation of a complaint, it shall immediately report such  
 3933 determination or suspicion to the central abuse hotline established  
 3934 and maintained by the Department of Children and Families pursuant  
 3935 to s. 415.103.  
 3936 (6) By October 1, 2016, the Department of Elderly Affairs shall  
 3937 adopt rules to implement the provisions of this section.  
 3938  
 3939 745.1405 Grounds for discipline; penalties; enforcement.  
 3940 (1) The following acts by a professional guardian shall constitute  
 3941 grounds for which the disciplinary actions specified in subsection  
 3942 (2) may be taken:  
 3943 (a) Making misleading, deceptive, or fraudulent representations in  
 3944 or related to the practice of guardianship.  
 3945 (b) Violating any rule governing guardians or guardianships adopted  
 3946 by the Office of Public and Professional Guardians.  
 3947 (c) Being convicted or found guilty of, or entering a plea of  
 3948 guilty or nolo contendere to, regardless of adjudication, a crime  
 3949 in any jurisdiction which relates to the practice of or the ability  
 3950 to practice as a professional guardian.

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3981 willfully impeding or obstructing another person's attempt to do  
 3982 so. Such reports or records shall include only those that are  
 3983 signed in the guardian's capacity as a professional guardian.  
 3984 (k) Using the position of guardian for the purpose of financial  
 3985 gain by a professional guardian or a third party, other than the  
 3986 funds awarded to the professional guardian by the court pursuant to  
 3987 s. 745.113.  
 3988 (l) Violating a lawful order of the Office of Public and  
 3989 Professional Guardians or failing to comply with a lawfully issued  
 3990 subpoena of the Office of Public and Professional Guardians.  
 3991 (m) Improperly interfering with an investigation or inspection  
 3992 authorized by statute or rule or with any disciplinary proceeding.  
 3993 (n) Using the guardian relationship to engage or attempt to engage  
 3994 the ward, or an immediate family member or a representative of the  
 3995 ward, in verbal, written, electronic, or physical sexual activity.  
 3996 (o) Failing to report to the Office of Public and Professional  
 3997 Guardians in writing within 30 days after being convicted or found  
 3998 guilty of, or entered a plea of nolo contendere to, regardless of  
 3999 adjudication, a crime in any jurisdiction.  
 4000 (p) Being unable to perform the functions of a professional  
 4001 guardian with reasonable skill by reason of illness or use of  
 4002 alcohol, drugs, narcotics, chemicals, or any other type of  
 4003 substance or as a result of any mental or physical condition.  
 4004 (q) Failing to post and maintain a blanket fiduciary bond pursuant  
 4005 to s. 745.1403.  
 4006 (r) Failing to maintain all records pertaining to a guardianship  
 4007 for a reasonable time after the court has closed the guardianship  
 4008 matter.  
 4009 (s) Violating any provision of this chapter or any rule adopted  
 4010 pursuant thereto.

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3951 (d) Failing to comply with the educational course requirements  
 3952 contained in s. 745.1403.  
 3953 (e) Having a registration, a license, or the authority to practice  
 3954 a regulated profession revoked, suspended, or otherwise acted  
 3955 against, including the denial of registration or licensure, by the  
 3956 registering or licensing authority of any jurisdiction, including  
 3957 its agencies or subdivisions, for a violation under Florida law or  
 3958 similar law under a foreign jurisdiction. The registering or  
 3959 licensing authority's acceptance of a relinquishment of  
 3960 registration or licensure, stipulation, consent order, or other  
 3961 settlement offered in response to or in anticipation of the filing  
 3962 of charges against the registration or license shall be construed  
 3963 as an action against the registration or license.  
 3964 (f) Knowingly filing a false report or complaint with the Office of  
 3965 Public and Professional Guardians against another guardian.  
 3966 (g) Attempting to obtain, obtaining, or renewing a registration or  
 3967 license to practice a profession by bribery, by fraudulent  
 3968 misrepresentation, or as a result of an error by the Office of  
 3969 Public and Professional Guardians which is known by the  
 3970 professional guardian and not disclosed to the Office of Public and  
 3971 Professional Guardians.  
 3972 (h) Failing to report to the Office of Public and Professional  
 3973 Guardians any person who the professional guardian knows is in  
 3974 violation of this chapter or the rules of the Office of Public and  
 3975 Professional Guardians.  
 3976 (i) Failing to perform any statutory or legal obligation placed  
 3977 upon a professional guardian.  
 3978 (j) Making or filing a report or record that the professional  
 3979 guardian knows to be false, intentionally or negligently failing to  
 3980 file a report or record required by state or federal law, or

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4011 (2) When the Office of Public and Professional Guardians finds a  
 4012 professional guardian guilty of violating subsection (1), it may  
 4013 enter an order imposing one or more of the following penalties:  
 4014 (a) Refusal to register an applicant as a professional guardian.  
 4015 (b) Suspension or permanent revocation of a professional guardian's  
 4016 registration.  
 4017 (c) Issuance of a reprimand or letter of concern.  
 4018 (d) Requirement that the professional guardian undergoes treatment,  
 4019 attends continuing education courses, submits to reexamination, or  
 4020 satisfies any terms that are reasonably tailored to the violations  
 4021 found.  
 4022 (e) Requirement that the professional guardian pay restitution to a  
 4023 ward or the ward's estate, if applicable, of any funds obtained or  
 4024 disbursed through a violation of any statute, rule, or other legal  
 4025 authority.  
 4026 (f) Requirement that the professional guardian undergo remedial  
 4027 education.  
 4028 (3) In determining what action is appropriate, the Office of Public  
 4029 and Professional Guardians must first consider what sanctions are  
 4030 necessary to safeguard wards and to protect the public. Only after  
 4031 those sanctions have been imposed may the Office of Public and  
 4032 Professional Guardians consider and include in the order  
 4033 requirements designed to mitigate the circumstances and  
 4034 rehabilitate the professional guardian.  
 4035 (4) The Office of Public and Professional Guardians shall adopt by  
 4036 rule and periodically review the disciplinary guidelines applicable  
 4037 to each ground for disciplinary action that may be imposed by the  
 4038 Office of Public and Professional Guardians pursuant to this  
 4039 chapter.

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4040 (5) It is the intent of the Legislature that the disciplinary  
 4041 guidelines specify a meaningful range of designated penalties based  
 4042 upon the severity and repetition of specific offenses and that  
 4043 minor violations be distinguished from those which endanger the  
 4044 health, safety, or welfare of a ward or the public; that such  
 4045 guidelines provide reasonable and meaningful notice to the public  
 4046 of likely penalties that may be imposed for proscribed conduct; and  
 4047 that such penalties be consistently applied by the Office of Public  
 4048 and Professional Guardians.  
 4049 (6) The Office of Public and Professional Guardians shall by rule  
 4050 designate possible mitigating and aggravating circumstances and the  
 4051 variation and range of penalties permitted for such circumstances.  
 4052 (a) An administrative law judge, in recommending penalties in any  
 4053 recommended order, must follow the disciplinary guidelines  
 4054 established by the Office of Public and Professional Guardians and  
 4055 must state in writing any mitigating or aggravating circumstance  
 4056 upon which a recommended penalty is based if such circumstance  
 4057 causes the administrative law judge to recommend a penalty other  
 4058 than that provided in the disciplinary guidelines.  
 4059 (b) The Office of Public and Professional Guardians may impose a  
 4060 penalty other than those provided for in the disciplinary  
 4061 guidelines upon a specific finding in the final order of mitigating  
 4062 or aggravating circumstances.  
 4063 (7) In addition to, or in lieu of, any other remedy or criminal  
 4064 prosecution, the Office of Public and Professional Guardians may  
 4065 file a proceeding in the name of the state seeking issuance of an  
 4066 injunction or a writ of mandamus against any person who violates  
 4067 any provision of this chapter or any provision of law with respect  
 4068 to professional guardians or the rules adopted pursuant thereto.

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4099 a staff or contract with professionally qualified individuals to  
 4100 carry out the guardianship functions, including an attorney who has  
 4101 experience in probate areas and another person who has a master's  
 4102 degree in social work, or a gerontologist, psychologist, registered  
 4103 nurse, or nurse practitioner. A public guardian that is a nonprofit  
 4104 corporate guardian under s. 745.502 must receive tax-exempt status  
 4105 from the United States Internal Revenue Service.  
 4106 (2) The executive director shall appoint or contract with a public  
 4107 guardian from the list of candidates described in subsection (1). A  
 4108 public guardian must meet the qualifications for a guardian as  
 4109 prescribed in s. 745.501(1)(a). Upon appointment of the public  
 4110 guardian, the executive director shall notify the chief judge of  
 4111 the judicial circuit and the Chief Justice of the Supreme Court of  
 4112 Florida, in writing, of the appointment.  
 4113 (3) If the needs of the county or circuit do not require a full-  
 4114 time public guardian, a part-time public guardian may be appointed  
 4115 at reduced compensation.  
 4116 (4) A public guardian, whether full-time or part-time, may not hold  
 4117 any position that would create a conflict of interest.  
 4118 (5) The public guardian is to be appointed for a term of 4 years,  
 4119 after which the public guardian's appointment must be reviewed by  
 4120 the executive director, and may be reappointed for a term of up to  
 4121 4 years. The executive director may suspend a public guardian with  
 4122 or without the request of the chief judge. If a public guardian is  
 4123 suspended, the executive director shall appoint an acting public  
 4124 guardian as soon as possible to serve until such time as a  
 4125 permanent replacement is selected. A public guardian may be removed  
 4126 from office during the term of office only by the executive  
 4127 director who must consult with the chief judge prior to said

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4069 (8) Notwithstanding chapter 120, if the Office of Public and  
 4070 Professional Guardians determines that revocation of a professional  
 4071 guardian's registration is the appropriate penalty, the revocation  
 4072 is permanent.  
 4073 (9) If the Office of Public and Professional Guardians makes a  
 4074 final determination to suspend or revoke the professional  
 4075 guardian's registration, the office must provide the determination  
 4076 to the court of competent jurisdiction for any guardianship case to  
 4077 which the professional guardian is currently appointed.  
 4078 (10) The purpose of this section is to facilitate uniform  
 4079 discipline for those actions made punishable under this section  
 4080 and, to this end, a reference to this section constitutes a general  
 4081 reference under the doctrine of incorporation by reference.  
 4082 (11) The Office of Public and Professional Guardians shall adopt  
 4083 rules to administer this section.  
 4084  
 4085 745.1406 Office of Public and Professional Guardians; appointment,  
 4086 notification.  
 4087 (1) The executive director of the Office of Public and Professional  
 4088 Guardians, after consultation with the chief judge and other  
 4089 circuit judges within the judicial circuit and with appropriate  
 4090 advocacy groups and individuals and organizations who are  
 4091 knowledgeable about the needs of incapacitated persons, may  
 4092 establish, within a county in the judicial circuit or within the  
 4093 judicial circuit, one or more offices of public guardian and, if so  
 4094 established, shall create a list of persons best qualified to serve  
 4095 as the public guardian, who have been investigated pursuant to s.  
 4096 745.504. The public guardian must have knowledge of the legal  
 4097 process and knowledge of social services available to meet the  
 4098 needs of incapacitated persons. The public guardian shall maintain

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4128 removal. A recommendation of removal made by the chief judge must  
 4129 be considered by the executive director.  
 4130 (6) Public guardians who have been previously appointed by a chief  
 4131 judge prior to the effective date of this act pursuant to this  
 4132 section may continue in their positions until the expiration of  
 4133 their term pursuant to their agreement. However, oversight of all  
 4134 public guardians shall transfer to the Office of Public and  
 4135 Professional Guardians upon the effective date of this act. The  
 4136 executive director of the Office of Public and Professional  
 4137 Guardians shall be responsible for all future appointments of  
 4138 public guardians pursuant to this act.  
 4139  
 4140 745.1407 Powers and duties.  
 4141 (1) A public guardian may serve as a guardian of a person  
 4142 adjudicated incapacitated under this chapter if there is no family  
 4143 member or friend, other person, bank, or corporation willing and  
 4144 qualified to serve as guardian.  
 4145 (2) The public guardian shall be vested with all the powers and  
 4146 duties of a guardian under this chapter, except as otherwise  
 4147 provided by law.  
 4148 (3) The public guardian shall primarily serve incapacitated persons  
 4149 who are of limited financial means, as defined by contract or rule  
 4150 of the Department of Elderly Affairs. The public guardian may serve  
 4151 incapacitated persons of greater financial means to the extent the  
 4152 Department of Elderly Affairs determines to be appropriate.  
 4153 (4) The public guardian shall be authorized to employ sufficient  
 4154 staff to carry out the duties of the public guardian's office.  
 4155 (5) The public guardian may delegate to assistants and other  
 4156 members of the public guardian's staff the powers and duties of the  
 4157 office of public guardian, except as otherwise limited by law. The

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4158 public guardian shall retain ultimate responsibility for the  
 4159 discharge of the public guardian's duties and responsibilities.  
 4160 (6) Upon appointment as guardian of an incapacitated person, a  
 4161 public guardian shall endeavor to locate a family member or friend,  
 4162 other person, bank, or corporation who is qualified and willing to  
 4163 serve as guardian. Upon determining that there is someone qualified  
 4164 and willing to serve as guardian, either the public guardian or the  
 4165 qualified person shall petition the court for appointment of a  
 4166 successor guardian.  
 4167 (7) A public guardian may not commit a ward to a treatment  
 4168 facility, as defined in s. 394.455(47), without an involuntary  
 4169 placement proceeding as provided by law.  
 4170 (8) When a person is appointed successor public guardian, the  
 4171 successor public guardian immediately succeeds to all rights,  
 4172 duties, responsibilities, and powers of the preceding public  
 4173 guardian.  
 4174 (9) When the position of public guardian is vacant, subordinate  
 4175 personnel employed under subsection (4) shall continue to act as if  
 4176 the position of public guardian were filled.  
 4177  
 4178 745.1408 Costs of public guardian.  
 4179 (1) All costs of administration, including filing fees, shall be  
 4180 paid from the budget of the office of public guardian. No costs of  
 4181 administration, including filing fees, shall be recovered from the  
 4182 assets or the income of the ward.  
 4183 (2) In any proceeding for appointment of a public guardian, or in  
 4184 any proceeding involving the estate of a ward for whom a public  
 4185 guardian has been appointed guardian, the court shall waive any  
 4186 court costs or filing fees.  
 4187

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4218  
 4219 745.1411 Surety bond.  
 4220 Upon taking office, a public guardian shall file a bond with surety  
 4221 as prescribed in s. 45.011 to be approved by the clerk. The bond  
 4222 shall be payable to the Governor and the Governor's successors in  
 4223 office, in the penal sum of not less than \$5,000 nor more than  
 4224 \$25,000, conditioned on the faithful performance of all duties by  
 4225 the guardian. The amount of the bond shall be fixed by the majority  
 4226 of the judges within the judicial circuit. In form the bond shall  
 4227 be joint and several. The bond shall be purchased from the funds of  
 4228 the local office of public guardian.  
 4229  
 4230 745.1412 Reports and standards.  
 4231 (1) The public guardian shall keep and maintain proper financial,  
 4232 case control, and statistical records on all matters in which the  
 4233 public guardian serves as guardian.  
 4234 (2) No report or disclosure of the ward's personal and medical  
 4235 records shall be made, except as authorized by law.  
 4236 (3) A public guardian shall file an annual report on the operations  
 4237 of the office of public guardian, in writing, by September 1 for  
 4238 the preceding fiscal year with the Office of Public and  
 4239 Professional Guardians, which shall have responsibility for  
 4240 supervision of the operations of the office of public guardian.  
 4241 (4) Within 6 months of appointment as guardian of a ward, the  
 4242 public guardian shall submit to the clerk of the court for  
 4243 placement in the ward's guardianship file and to the executive  
 4244 director of the Office of Public and Professional Guardians a  
 4245 report on the public guardian's efforts to locate a family member or  
 4246 friend, other person, bank, or corporation to act as guardian of

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4188 745.1409 Preparation of budget.  
 4189 Each public guardian, whether funded in whole or in part by money  
 4190 raised through local efforts, grants, or any other source or  
 4191 whether funded in whole or in part by the state, shall prepare a  
 4192 budget for the operation of the office of public guardian to be  
 4193 submitted to the Office of Public and Professional Guardians. As  
 4194 appropriate, the Office of Public and Professional Guardians will  
 4195 include such budgetary information in the Department of Elderly  
 4196 Affairs' legislative budget request. The office of public guardian  
 4197 shall be operated within the limitations of the General  
 4198 Appropriations Act and any other funds appropriated by the  
 4199 Legislature to that particular judicial circuit, subject to the  
 4200 provisions of chapter 216. The Department of Elderly Affairs shall  
 4201 make a separate and distinct request for an appropriation for the  
 4202 Office of Public and Professional Guardians. However, this section  
 4203 may not be construed to preclude the financing of any operations of  
 4204 the office of public guardian by moneys raised through local effort  
 4205 or through the efforts of the Office of Public and Professional  
 4206 Guardians.  
 4207  
 4208 745.1410 Procedures and rules.  
 4209 The public guardian, subject to the oversight of the Office of  
 4210 Public and Professional Guardians, is authorized to:  
 4211 (1) Formulate and adopt necessary procedures to assure the  
 4212 efficient conduct of the affairs of the ward and general  
 4213 administration of the office and staff.  
 4214 (2) Contract for services necessary to discharge the duties of the  
 4215 office.  
 4216 (3) Accept the services of volunteer persons or organizations and  
 4217 provide reimbursement for proper and necessary expenses.

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4247 the ward and a report on the ward's potential to be restored to  
 4248 capacity.  
 4249 (5)(a) Each office of public guardian shall undergo an independent  
 4250 audit by a qualified certified public accountant at least once  
 4251 every 2 years. A copy of the audit report shall be submitted to the  
 4252 Office of Public and Professional Guardians.  
 4253 (b) In addition to regular monitoring activities, the Office of  
 4254 Public and Professional Guardians shall conduct an investigation  
 4255 into the practices of each office of public guardian related to the  
 4256 managing of each ward's personal affairs and property. If feasible,  
 4257 the investigation shall be conducted in conjunction with the  
 4258 financial audit of each office of public guardian under paragraph  
 4259 (a).  
 4260 (6) A public guardian shall ensure that each of the guardian's  
 4261 wards is personally visited by the public guardian or by one of the  
 4262 guardian's professional staff at least once each calendar quarter.  
 4263 During this personal visit, the public guardian or the professional  
 4264 staff person shall assess:  
 4265 (a) The ward's physical appearance and condition;  
 4266 (b) The appropriateness of the ward's current living situation; and  
 4267 (c) The need for any additional services and the necessity for  
 4268 continuation of existing services, taking into consideration all  
 4269 aspects of social, psychological, educational, direct service,  
 4270 health, and personal care needs.  
 4271 (7) The ratio for professional staff to wards shall be 1  
 4272 professional to 40 wards. The Office of Public and Professional  
 4273 Guardians may increase or decrease the ratio after consultation  
 4274 with the local public guardian and the chief judge of the circuit  
 4275 court. The basis for the decision to increase or decrease the

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4276 prescribed ratio must be included in the annual report to the  
 4277 secretary.  
 4278  
 4279 745.1413 Public records exemption.  
 4280 The home addresses, telephone numbers, dates of birth, places of  
 4281 employment, and photographs of current or former public guardians  
 4282 and employees with fiduciary responsibility; the names, home  
 4283 addresses, telephone numbers, dates of birth, and places of  
 4284 employment of the spouses and children of such persons; and the  
 4285 names and locations of schools and day care facilities attended by  
 4286 the children of such persons are exempt from s. 119.07(1) and s.  
 4287 24(a), Art. I of the State Constitution. As used in this section,  
 4288 the term "employee with fiduciary responsibility" means an employee  
 4289 of a public guardian who has the ability to direct any transactions  
 4290 of a ward's funds, assets, or property; who under the supervision  
 4291 of the guardian, manages the care of the ward; or who makes any  
 4292 health care decision, as defined in s. 765.101, on behalf of the  
 4293 ward. This exemption applies to information held by an agency  
 4294 before, on, or after July 1, 2018. An agency that is the custodian  
 4295 of the information specified in this section shall maintain the  
 4296 exempt status of that information only if the current or former  
 4297 public guardians and employees with fiduciary responsibility submit  
 4298 to the custodial agency a written request for maintenance of the  
 4299 exemption. This section is subject to the Open Government Sunset  
 4300 Review Act in accordance with s. 119.15 and shall stand repealed on  
 4301 October 2, 2023, unless reviewed and saved from repeal through  
 4302 reenactment by the Legislature.  
 4303  
 4304 745.1414 Access to records by the Office of Public and Professional  
 4305 Guardians; confidentiality.

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4336 moneys; to acquire, receive, hold, invest, and administer, in its  
 4337 own name, securities, funds, objects of value, or other property,  
 4338 real or personal; and to make expenditures to or for the direct or  
 4339 indirect benefit of the Office of Public and Professional  
 4340 Guardians; and  
 4341 (c) Determined by the Office of Public and Professional Guardians  
 4342 to be consistent with the goals of the office, in the best  
 4343 interests of the state, and in accordance with the adopted goals  
 4344 and mission of the Department of Elderly Affairs and the Office of  
 4345 Public and Professional Guardians.  
 4346 (2) CONTRACT.— The direct-support organization shall operate under  
 4347 a written contract with the Office of Public and Professional  
 4348 Guardians. The written contract must provide for:  
 4349 (a) Certification by the Office of Public and Professional  
 4350 Guardians that the direct-support organization is complying with  
 4351 the terms of the contract and is doing so consistent with the goals  
 4352 and purposes of the office and in the best interests of the state.  
 4353 This certification must be made annually and reported in the  
 4354 official minutes of a meeting of the direct-support organization.  
 4355 (b) The reversion of monies and property held in trust by the  
 4356 direct-support organization:  
 4357 1. To the Office of Public and Professional Guardians if the  
 4358 direct-support organization is no longer approved to operate for  
 4359 the office;  
 4360 2. To the Office of Public and Professional Guardians if the  
 4361 direct-support organization ceases to exist;  
 4362 3. To the Department of Elderly Affairs if the Office of Public and  
 4363 Professional Guardians ceases to exist; or  
 4364 4. To the state if the Department of Elderly Affairs ceases to  
 4365 exist.

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4306 (1) Notwithstanding any other provision of law to the contrary, any  
 4307 medical, financial, or mental health records held by an agency, or  
 4308 the court and its agencies, or financial audits prepared by the  
 4309 clerk of the court pursuant to s. 745.1001 and held by the court,  
 4310 which are necessary as part of an investigation of a guardian as a  
 4311 result of a complaint filed with the Office of Public and  
 4312 Professional Guardians to evaluate the public guardianship system,  
 4313 to assess the need for additional public guardianship, or to  
 4314 develop required reports, shall be provided to the Office of Public  
 4315 and Professional Guardians or its designee upon that office's  
 4316 request. Any confidential or exempt information provided to the  
 4317 Office of Public and Professional Guardians shall continue to be  
 4318 held confidential or exempt as otherwise provided by law.  
 4319 (2) All records held by the Office of Public and Professional  
 4320 Guardians relating to the medical, financial, or mental health of  
 4321 vulnerable adults as defined in chapter 415, persons with a  
 4322 developmental disability as defined in chapter 393, or persons with  
 4323 a mental illness as defined in chapter 394, shall be confidential  
 4324 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 4325 Constitution.  
 4326  
 4327 745.1415 Direct-support organization; definition; use of property;  
 4328 board of directors; audit; dissolution.  
 4329 (1) DEFINITION.— As used in this section, the term "direct-support  
 4330 organization" means an organization whose sole purpose is to  
 4331 support the Office of Public and Professional Guardians and is:  
 4332 (a) A not-for-profit corporation incorporated under chapter 617 and  
 4333 approved by the Department of State;  
 4334 (b) Organized and operated to conduct programs and activities; to  
 4335 raise funds; to request and receive grants, gifts, and bequests of

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4366 The fiscal year of the direct-support organization shall begin on  
 4367 July 1 of each year and end on June 30 of the following year.  
 4368 (c) The disclosure of the material provisions of the contract, and  
 4369 the distinction between the Office of Public and Professional  
 4370 Guardians and the direct-support organization, to donors of gifts,  
 4371 contributions, or bequests, including such disclosure on all  
 4372 promotional and fundraising publications.  
 4373 (3) BOARD OF DIRECTORS.— The Secretary of Elderly Affairs shall  
 4374 appoint a board of directors for the direct-support organization  
 4375 from a list of nominees submitted by the executive director of the  
 4376 Office of Public and Professional Guardians.  
 4377 (4) USE OF PROPERTY.—The Department of Elderly Affairs may permit,  
 4378 without charge, appropriate use of fixed property and facilities of  
 4379 the department or the Office of Public and Professional Guardians  
 4380 by the direct-support organization. The department may prescribe  
 4381 any condition with which the direct-support organization must  
 4382 comply in order to use fixed property or facilities of the  
 4383 department or the Office of Public and Professional Guardians.  
 4384 (5) MONIES.—Any monies may be held in a separate depository account  
 4385 in the name of the direct-support organization and subject to the  
 4386 provisions of the written contract with the Office of Public and  
 4387 Professional Guardians. Expenditures of the direct-support  
 4388 organization shall be expressly used to support the Office of  
 4389 Public and Professional Guardians. The expenditures of the direct-  
 4390 support organization may not be used for the purpose of lobbying as  
 4391 defined in s. 11.045.  
 4392 (6) PUBLIC RECORDS.—Personal identifying information of a donor or  
 4393 prospective donor to the direct-support organization who desires to  
 4394 remain anonymous is confidential and exempt from s. 119.07(1) and  
 4395 s. 24(a), Art. I of the State Constitution.

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4396 (7) AUDIT.—The direct-support organization shall provide for an  
 4397 annual financial audit in accordance with s. 215.981.  
 4398 (8) DISSOLUTION.—A not-for-profit corporation incorporated under  
 4399 chapter 617 that is determined by a circuit court to be  
 4400 representing itself as a direct-support organization created under  
 4401 this section, but that does not have a written contract with the  
 4402 Office of Public and Professional Guardians in compliance with this  
 4403 section, is considered to meet the grounds for a judicial  
 4404 dissolution described in s. 617.1430(1)(a). The Office of Public  
 4405 and Professional Guardians shall be the recipient for all assets  
 4406 held by the dissolved corporation which accrued during the period  
 4407 that the dissolved corporation represented itself as a direct-  
 4408 support organization created under this section.  
 4409  
 4410 745.1416 Joining Forces for Public Guardianship grant program;  
 4411 purpose.  
 4412 The Legislature establishes the Joining Forces for Public  
 4413 Guardianship matching grant program for the purpose of assisting  
 4414 counties to establish and fund community-supported public  
 4415 guardianship programs. The Joining Forces for Public Guardianship  
 4416 matching grant program shall be established and administered by the  
 4417 Office of Public and Professional Guardians within the Department  
 4418 of Elderly Affairs. The purpose of the program is to provide  
 4419 startup funding to encourage communities to develop and administer  
 4420 locally funded and supported public guardianship programs to  
 4421 address the needs of indigent and incapacitated residents.  
 4422 (1) The Office of Public and Professional Guardians may distribute  
 4423 the grant funds as follows:  
 4424 (a) As initial startup funding to encourage counties that have no  
 4425 office of public guardian to establish an office, or as initial

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4455 county may not exceed 75 percent of the total amount of grant funds  
 4456 awarded within that county in year one.  
 4457 (b) In the third year that grant funds are awarded, the cumulative  
 4458 sum of the award provided to one or more applicants within the same  
 4459 county may not exceed 60 percent of the total amount of grant funds  
 4460 awarded within that county in year one.  
 4461 (c) In the fourth year that grant funds are awarded, the cumulative  
 4462 sum of the award provided to one or more applicants within the same  
 4463 county may not exceed 45 percent of the total amount of grant funds  
 4464 awarded within that county in year one.  
 4465 (d) In the fifth year that grant funds are awarded, the cumulative  
 4466 sum of the award provided to one or more applicants within the same  
 4467 county may not exceed 30 percent of the total amount of grant funds  
 4468 awarded within that county in year one.  
 4469 (e) In the sixth year that grant funds are awarded, the cumulative  
 4470 sum of the award provided to one or more applicants within the same  
 4471 county may not exceed 15 percent of the total amount of grant funds  
 4472 awarded within that county in year one.  
 4473 The Office of Public and Professional Guardians may not award grant  
 4474 funds to any applicant within a county that has received grant  
 4475 funds for more than 6 years.  
 4476 (4) Grant funds shall be used only to provide direct services to  
 4477 indigent wards, except that up to 10 percent of the grant funds may  
 4478 be retained by the awardee for administrative expenses.  
 4479 (5) Implementation of the program is subject to a specific  
 4480 appropriation by the Legislature in the General Appropriations Act.  
 4481  
 4482 745.1417 Program administration; duties of the Office of Public and  
 4483 Professional Guardians.

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4426 startup funding to open an additional office of public guardian  
 4427 within a county whose public guardianship needs require more than  
 4428 one office of public guardian.  
 4429 (b) As support funding to operational offices of public guardian  
 4430 that demonstrate a necessity for funds to meet the public  
 4431 guardianship needs of a particular geographic area in the state  
 4432 which the office serves.  
 4433 (c) To assist counties that have an operating public guardianship  
 4434 program but that propose to expand the geographic area or  
 4435 population of persons they serve, or to develop and administer  
 4436 innovative programs to increase access to public guardianship in  
 4437 this state.  
 4438 Notwithstanding this subsection, the executive director of the  
 4439 office may award emergency grants if the executive director  
 4440 determines that the award is in the best interests of public  
 4441 guardianship in this state. Before making an emergency grant, the  
 4442 executive director must obtain the written approval of the  
 4443 Secretary of Elderly Affairs. Subsections (2), (3), and (4) do not  
 4444 apply to the distribution of emergency grant funds.  
 4445 (2) One or more grants may be awarded within a county. However, a  
 4446 county may not receive an award that equals, or multiple awards  
 4447 that cumulatively equal, more than 20 percent of the total amount  
 4448 of grant funds appropriated during any fiscal year.  
 4449 (3) If an applicant is eligible and meets the requirements to  
 4450 receive grant funds more than once, the Office of Public and  
 4451 Professional Guardians shall award funds to prior awardees in the  
 4452 following manner:  
 4453 (a) In the second year that grant funds are awarded, the cumulative  
 4454 sum of the award provided to one or more applicants within the same

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4484 The Office of Public and Professional Guardians shall administer  
 4485 the grant program. The office shall:  
 4486 (1) Publicize the availability of grant funds to entities that may  
 4487 be eligible for the funds.  
 4488 (2) Establish an application process for submitting a grant  
 4489 proposal.  
 4490 (3) Request, receive, and review proposals from applicants seeking  
 4491 grant funds.  
 4492 (4) Determine the amount of grant funds each awardee may receive  
 4493 and award grant funds to applicants.  
 4494 (5) Develop a monitoring process to evaluate grant awardees, which  
 4495 may include an annual monitoring visit to each awardee's local  
 4496 office.  
 4497 (6) Ensure that persons or organizations awarded grant funds meet  
 4498 and adhere to the requirements of this act.  
 4499  
 4500 745.1418 Eligibility.  
 4501 (1) Any person or organization that has not been awarded a grant  
 4502 must meet all of the following conditions to be eligible to receive  
 4503 a grant:  
 4504 (a) The applicant must meet or directly employ staff that meet the  
 4505 minimum qualifications for a public guardian under this chapter.  
 4506 (b) The applicant must have already been appointed by, or is  
 4507 pending appointment by, the Office of Public and Professional  
 4508 Guardians to become an office of public guardian in this state.  
 4509 (2) Any person or organization that has been awarded a grant must  
 4510 meet all of the following conditions to be eligible to receive  
 4511 another grant:  
 4512 (a) The applicant must meet or directly employ staff that meet the  
 4513 minimum qualifications for a public guardian under this chapter.

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4514 (b) The applicant must have been appointed by, or is pending  
 4515 reappointment by, the Office of Public and Professional Guardians  
 4516 to be an office of public guardian in this state.  
 4517 (c) The applicant must have achieved a satisfactory monitoring  
 4518 score during the applicant's most recent evaluation.  
 4519  
 4520 745.1419 Grant application requirements; review criteria; awards  
 4521 process.  
 4522 Grant applications must be submitted to the Office of Public and  
 4523 Professional Guardians for review and approval.  
 4524 (1) A grant application must contain:  
 4525 (a) The specific amount of funds being requested.  
 4526 (b) The proposed annual budget for the office of public guardian  
 4527 for which the applicant is applying on behalf of, including all  
 4528 sources of funding, and a detailed report of proposed expenditures,  
 4529 including administrative costs.  
 4530 (c) The total number of wards the applicant intends to serve during  
 4531 the grant period.  
 4532 (d) Evidence that the applicant has:  
 4533 1. Attempted to procure funds and has exhausted all possible other  
 4534 sources of funding; or  
 4535 2. Procured funds from local sources, but the total amount of the  
 4536 funds collected or pledged is not sufficient to meet the need for  
 4537 public guardianship in the geographic area that the applicant  
 4538 intends to serve.  
 4539 (e) An agreement or confirmation from a local funding source, such  
 4540 as a county, municipality, or any other public or private  
 4541 organization, that the local funding source will contribute  
 4542 matching funds to the public guardianship program totaling not less  
 4543 than \$1 for every \$1 of grant funds awarded. For purposes of this

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4573 2. Meet all of the requirements for being awarded a grant under  
 4574 this act; and  
 4575 3. Demonstrate a need for grant funds during the current fiscal  
 4576 year due to a loss of local funding formerly raised through court  
 4577 filing fees.  
 4578 (b) In each fiscal year after the first year that grant funds are  
 4579 distributed, the Office of Public and Professional Guardians may  
 4580 give priority to awarding grant funds to those entities that:  
 4581 1. Meet all of the requirements of this section and ss. 745.1416,  
 4582 745.1417, and 745.1418 for being awarded grant funds; and  
 4583 2. Submit with their application an agreement or confirmation from  
 4584 a local funding source, such as a county, municipality, or any  
 4585 other public or private organization, that the local funding source  
 4586 will contribute matching funds totaling an amount equal to or  
 4587 exceeding \$2 for every \$1 of grant funds awarded by the office. An  
 4588 entity may submit with its application agreements or confirmations  
 4589 from multiple local funding sources showing that the local funding  
 4590 sources will pool their contributed matching funds to the public  
 4591 guardianship program for a combined total of not less than \$2 for  
 4592 every \$1 of grant funds awarded. In-kind contributions allowable  
 4593 under this section shall be evaluated by the Office of Public and  
 4594 Professional Guardians and may be counted as part or all of the  
 4595 local matching funds.  
 4596  
 4597 745.1420 Confidentiality.  
 4598 (1) The following are confidential and exempt from the provisions  
 4599 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution,  
 4600 when held by the Department of Elderly Affairs in connection with a  
 4601 complaint filed and any subsequent investigation conducted pursuant  
 4602 to this part, unless the disclosure is required by court order:

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4544 section, an applicant may provide evidence of agreements or  
 4545 confirmations from multiple local funding sources showing that the  
 4546 local funding sources will pool their contributed matching funds to  
 4547 the public guardianship program for a combined total of not less  
 4548 than \$1 for every \$1 of grant funds awarded. In-kind contributions,  
 4549 such as materials, commodities, office space, or other types of  
 4550 facilities, personnel services, or other items as determined by  
 4551 rule shall be considered by the office and may be counted as part  
 4552 or all of the local matching funds.  
 4553 (f) A detailed plan describing how the office of public guardian  
 4554 for which the applicant is applying on behalf of will be funded in  
 4555 future years.  
 4556 (g) Any other information determined by rule as necessary to assist  
 4557 in evaluating grant applicants.  
 4558 (2) If the Office of Public and Professional Guardians determines  
 4559 that an applicant meets the requirements for an award of grant  
 4560 funds, the office may award the applicant any amount of grant funds  
 4561 the executive director deems appropriate, if the amount awarded  
 4562 meets the requirements of this act. The office may adopt a rule  
 4563 allocating the maximum allowable amount of grant funds which may be  
 4564 expended on any ward.  
 4565 (3) A grant awardee must submit a new grant application for each  
 4566 year of additional funding.  
 4567 (4)(a) In the first year of the Joining Forces for Public  
 4568 Guardianship program's existence, the Office of Public and  
 4569 Professional Guardians shall give priority in awarding grant funds  
 4570 to those entities that:  
 4571 1. Are operating as appointed offices of public guardians in this  
 4572 state;

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4603 (a) Personal identifying information of a complainant or ward.  
 4604 (b) All personal health and financial records of a ward.  
 4605 (c) All photographs and video recordings.  
 4606 (2) Except as otherwise provided in this section, information held  
 4607 by the department is confidential and exempt from s. 119.07(1) and  
 4608 s. 24(a), Art. I of the State Constitution until the investigation  
 4609 is completed or ceases to be active, unless the disclosure is  
 4610 required by court order.  
 4611 (3) This section does not prohibit the department from providing  
 4612 such information to any law enforcement agency, any other  
 4613 regulatory agency in the performance of its official duties and  
 4614 responsibilities, or the clerk of the circuit court pursuant to s.  
 4615 745.1001.  
 4616 (4) The exemption under this section applies to all documents  
 4617 received by the department in connection with a complaint before,  
 4618 on, or after July 1, 2017.  
 4619 (5) This section is subject to the Open Government Sunset Review  
 4620 Act in accordance with s. 119.15 and shall stand repealed on  
 4621 October 2, 2022, unless reviewed and saved from repeal through  
 4622 reenactment by the Legislature.  
 4623 Section 15. Part XV of chapter 745, Florida Statutes,  
 4624 consisting of sections 745.1501, 745.1502, 745.1503, 745.1504,  
 4625 745.1505, 745.1506, 745.1507, 745.1508, 745.1509, 745.1510,  
 4626 745.1511, 745.1512, 745.1513, 745.1514, 745.1515, 745.1516,  
 4627 745.1517, 745.1518, 745.1519, 745.1520, 745.1521, 745.1522,  
 4628 745.1523, 745.1524, 745.1525, and 745.1526, is created to read:  
 4629 PART XV  
 4630 VETERANS' GUARDIANSHIP  
 4631 745.1501 Short title; scope of part.

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4632 (1) This part shall be known and may be cited as the "Veterans'  
 4633 Guardianship Law."  
 4634 (2) The application of this part is limited to veterans and other  
 4635 persons who are entitled to receive benefits from the United States  
 4636 Department of Veterans Affairs. This part is not intended to  
 4637 replace the general law relating to guardianship except insofar as  
 4638 this part is inconsistent with the general law relating to  
 4639 guardianship; in which event, this part and the general law  
 4640 relating to guardianship shall be read together, with any conflict  
 4641 between this part and the general law of guardianship to be  
 4642 resolved by giving effect to this part.  
 4643  
 4644 745.1502 Definitions.  
 4645 As used in this part, the term:  
 4646 (1) "Adjudication by a court of competent jurisdiction" means a  
 4647 judicial decision or finding that a person is or is not  
 4648 incapacitated as provided in chapter 745 Part III.  
 4649 (2) "Adjudication by the United States Department of Veterans  
 4650 Affairs" means a determination or finding that a person is  
 4651 competent or incompetent on examination in accordance with the laws  
 4652 and regulations governing the United States Department of Veterans  
 4653 Affairs.  
 4654 (3) "Secretary" means the Secretary of Veterans Affairs as head of  
 4655 the United States Department of Veterans Affairs or her or his  
 4656 successor.  
 4657 (4) "Benefits" means arrears of pay, bonus, pension, compensation,  
 4658 insurance, and all other moneys paid or payable by the United  
 4659 States through the United States Department of Veterans Affairs by  
 4660 reason of service in the Armed Forces of the United States.

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4691 745.1504 Procedure for commitment of veteran to United States  
 4692 Department of Veterans Affairs hospital.  
 4693 The procedure for the placement into a United States Department of  
 4694 Veterans Affairs hospital of a ward hereunder shall be the  
 4695 procedure prescribed in s. 394.4672.  
 4696  
 4697 745.1505 Appointment of guardian for ward authorized.  
 4698 (1) Whenever, pursuant to any law of the United States or  
 4699 regulation of the United States Department of Veterans Affairs, the  
 4700 secretary requires, prior to the payment of benefits, that a  
 4701 guardian be appointed for a ward, the appointment may be made in  
 4702 the manner hereinafter provided.  
 4703 (2) When a petition is filed for the appointment of a guardian of a  
 4704 minor ward, a certificate of the secretary or the secretary's  
 4705 authorized representative setting forth the age of such minor, as  
 4706 shown by the records of the United States Department of Veterans  
 4707 Affairs, and a statement that the appointment of a guardian is a  
 4708 condition precedent to the payment of any moneys due to the minor  
 4709 by the United States Department of Veterans Affairs are prima facie  
 4710 evidence of the necessity for such appointment.  
 4711 (3) When a petition is filed for the appointment of a guardian of a  
 4712 mentally incompetent ward, a certificate of the secretary or the  
 4713 secretary's authorized representative, setting forth the fact that  
 4714 the person has been found incompetent and has been rated  
 4715 incompetent by the United States Department of Veterans Affairs, on  
 4716 examination in accordance with the laws and regulations governing  
 4717 the United States Department of Veterans Affairs, and that the  
 4718 appointment of a guardian is a condition precedent to the payment  
 4719 of any moneys due to such person by the United States Department of

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4661 (5) "Estate" means income on hand and assets acquired in whole or  
 4662 in part with income.  
 4663 (6) "Guardian" means any person acting as a fiduciary for a ward's  
 4664 person or the ward's estate, or both.  
 4665 (7) "Income" means moneys received from the United States  
 4666 Department of Veterans Affairs as benefits, and revenue or profit  
 4667 from any property acquired in whole or in part with such moneys.  
 4668 (8) "Person" means an individual, a partnership, a corporation, or  
 4669 an association.  
 4670 (9) "United States Department of Veterans Affairs" means the United  
 4671 States Department of Veterans Affairs or its predecessors or  
 4672 successors.  
 4673 (10) "Ward" means a beneficiary of the United States Department of  
 4674 Veterans Affairs.  
 4675  
 4676 745.1503 Secretary of Veterans Affairs as party in interest.  
 4677 The Secretary of Veterans Affairs shall be a party in interest in  
 4678 any proceeding for the appointment or removal of a guardian or for  
 4679 the removal of the disability of minority or mental incapacity of a  
 4680 ward, and in any suit or other proceeding affecting in any manner  
 4681 the administration by the guardian of the estate of any present or  
 4682 former ward whose estate includes assets derived in whole or in  
 4683 part from benefits heretofore or hereafter paid by the United  
 4684 States Department of Veterans Affairs. Not less than 15 days prior  
 4685 to hearing in such matter, notice in writing of the time and place  
 4686 thereof shall be given by mail (unless waived in writing) to the  
 4687 office of the United States Department of Veterans Affairs having  
 4688 jurisdiction over the area in which any such suit or any such  
 4689 proceeding is pending.  
 4690

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4720 Veterans Affairs, is prima facie evidence of the necessity for such  
 4721 appointment.  
 4722  
 4723 745.1506 Petition for appointment of guardian.  
 4724 (1) A petition for the appointment of a guardian may be filed in  
 4725 any court of competent jurisdiction by, or on behalf of, any person  
 4726 who under existing law is entitled to priority of appointment. If  
 4727 no person is so entitled, or if the person so entitled neglects or  
 4728 refuses to file such a petition within 30 days after the mailing of  
 4729 notice by the United States Department of Veterans Affairs to the  
 4730 last known address of such person, indicating the necessity for  
 4731 filing the petition, a petition for such appointment may be filed  
 4732 in any court of competent jurisdiction by, or on behalf of, any  
 4733 responsible person residing in this state.  
 4734 (2)(a) The petition for appointment shall set forth:  
 4735 1. The name, age, and place of residence of the ward;  
 4736 2. The names and places of residence of the nearest relative, if  
 4737 known;  
 4738 3. The fact that the ward is entitled to receive moneys payable by  
 4739 or through the United States Department of Veterans Affairs;  
 4740 4. The amount of moneys then due and the amount of probable future  
 4741 payments;  
 4742 5. The name and address of the person or institution, if any,  
 4743 having actual custody of the ward; and  
 4744 6. The name, age, relationship, if any, occupation, and address of  
 4745 the proposed guardian.  
 4746 (b) In the case of a mentally incompetent ward, the petition shall  
 4747 show that the ward has been found incompetent and has been rated  
 4748 incompetent on examination by the United States Department of

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4749 Veterans Affairs, in accordance with the laws and regulations  
 4750 governing the United States Department of Veterans Affairs.  
 4751  
 4752 745.1507 Notice by court of petition filed for appointment of  
 4753 guardian.  
 4754 (1) When a petition for the appointment of a guardian has been  
 4755 filed pursuant to s. 745.1506, the court shall cause such notice to  
 4756 be given as provided by the general guardianship law. In addition,  
 4757 notice of the petition shall be given to the office of the United  
 4758 States Department of Veterans Affairs having jurisdiction over the  
 4759 area in which the court is located.  
 4760 (2) A copy of the petition provided for in s. 745.1506 shall be  
 4761 mailed by the clerk of the court to the person or persons for whom  
 4762 a guardian is to be appointed, the clerk of court mailing the copy  
 4763 of the petition to the last known address of such person or persons  
 4764 not less than 5 days prior to the date set for the hearing of the  
 4765 petition by the court.  
 4766  
 4767 745.1508 Persons who may be appointed guardian.  
 4768 (1) Notwithstanding any law with respect to priority of persons  
 4769 entitled to appointment, or nomination in the petition, the court  
 4770 may appoint some other individual or a bank or trust company as  
 4771 guardian if the court determines that the appointment of the other  
 4772 individual or bank or trust company would be in the best interest  
 4773 of the ward.  
 4774 (2) It is unlawful for a circuit judge to appoint either herself or  
 4775 himself, or a member of her or his family, as guardian for any  
 4776 person entitled to the benefits provided for in 38 U.S.C., as  
 4777 amended, except in a case when the person entitled to such benefits  
 4778 is a member of the family of the circuit judge involved.

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4809 right to receive for the account of the ward any moneys due from  
 4810 the United States Government in the way of arrears of pay, bonus,  
 4811 compensation or insurance, or other sums due by reason of his or  
 4812 her service (or the service of the person through whom the ward  
 4813 claims) in the Armed Forces of the United States and any other  
 4814 moneys due from the United States Government, payable through its  
 4815 agencies or entities, together with the income derived from  
 4816 investments of these moneys.  
 4817  
 4818 745.1512 Guardian's application of estate funds for support and  
 4819 maintenance of person other than ward.  
 4820 A guardian shall not apply any portion of the estate of her or his  
 4821 ward to the support and maintenance of any person other than her or  
 4822 his ward, except upon order of the court after a hearing, notice of  
 4823 which has been given to the proper office of the United States  
 4824 Department of Veterans Affairs as provided in s. 745.1513.  
 4825  
 4826 745.1513 Petition for support, or support and education, of ward's  
 4827 dependents; payments of apportioned benefits prohibit contempt  
 4828 action against veteran.  
 4829 (1) Any person who is dependent on a ward for support may petition  
 4830 a court of competent jurisdiction for an order directing the  
 4831 guardian of the ward's estate to contribute from the estate of the  
 4832 ward to the support, or support and education, of the dependent  
 4833 person, when the estate of the ward is derived in whole or in part  
 4834 from payments of compensation, adjusted compensation, pension,  
 4835 insurance, or other benefits made directly to the guardian of the  
 4836 ward by the United States Department of Veterans Affairs. A notice  
 4837 of the application for support, or support and education, shall be  
 4838 given by the applicant to the office of the United States

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4779  
 4780 745.1509 Bond of guardian.  
 4781 When the appointment of a guardian is made, the guardian shall  
 4782 execute and file a bond to be approved by the court in an amount  
 4783 not less than the sum of the amount of moneys then due to the ward  
 4784 and the amount of moneys estimated to become payable during the  
 4785 ensuing year. The bond shall be in the form, and shall be  
 4786 conditioned, as required of guardians appointed under the general  
 4787 guardianship laws of this state. The court has the power to  
 4788 require, from time to time, the guardian to file an additional  
 4789 bond.  
 4790  
 4791 745.1510 Inventory of ward's property; guardian's failure to file  
 4792 inventory; discharge; forfeiture of commissions.  
 4793 Every guardian shall, within 30 days after his or her qualification  
 4794 and whenever subsequently required by the circuit judge, file in  
 4795 the circuit court a complete inventory of all the ward's personal  
 4796 property in his or her hands and, also, a schedule of all real  
 4797 estate in the state belonging to his or her ward, describing it and  
 4798 its quality, whether it is improved or not, and, if it is improved,  
 4799 in what manner, and the appraised value of same. The failure on the  
 4800 part of the guardian to conform to the requirements of this section  
 4801 is a ground for the discharge of the guardian, in which case the  
 4802 guardian shall forfeit all commissions.  
 4803  
 4804 745.1511 Guardian empowered to receive moneys due ward from the  
 4805 United States Government.  
 4806 A guardian appointed under the provisions of s. 745.1506 may  
 4807 receive income and benefits payable by the United States through  
 4808 the United States Department of Veterans Affairs and also has the

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4839 Department of Veterans Affairs having jurisdiction over the area in  
 4840 which the court is located at least 15 days before the hearing on  
 4841 the application.  
 4842 (2) The grant or denial of an order for support, or support and  
 4843 education, does not preclude a further petition for an increase,  
 4844 decrease, modification, or termination of the allowance for such  
 4845 support, or support and education, by either the petitioner or the  
 4846 guardian.  
 4847 (3) The order for the support, or support and education, of the  
 4848 petitioner is valid for any payment made pursuant to the order, but  
 4849 no valid payment can be made after the termination of the  
 4850 guardianship. The receipt of the petitioner shall be a sufficient  
 4851 release of the guardian for payments made pursuant to the order.  
 4852 (4) When a claim for apportionment of benefits filed with the  
 4853 United States Department of Veterans Affairs on behalf of a  
 4854 dependent or dependents of a disabled veteran is approved by the  
 4855 United States Department of Veterans Affairs, subsequent payments  
 4856 of such apportioned benefits by the United States Department of  
 4857 Veterans Affairs prohibit an action for contempt from being  
 4858 instituted against the veteran.  
 4859  
 4860 745.1514 Exemption of benefits from claims of creditors.  
 4861 Except as provided by federal law, payments of benefits from the  
 4862 United States Department of Veterans Affairs or the Social Security  
 4863 Administration to or for the benefit of a disabled veteran or the  
 4864 veteran's surviving spouse or dependents are exempt from the claims  
 4865 of creditors and shall not be liable to attachment, levy, or  
 4866 seizure by or under any legal or equitable process whatever, either  
 4867 before or after the receipt of the payments by the guardian or the  
 4868 beneficiary.

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4869  
 4870 745.1515 Investment of funds of estate by guardian.  
 4871 Every guardian shall invest the funds of the estate in such manner  
 4872 or in such securities, in which the guardian has no interest, as  
 4873 allowed by chapter 518.  
 4874  
 4875 745.1516 Guardian's petition for authority to sell ward's real  
 4876 estate; notice by publication; penalties.  
 4877 (1) When a guardian of the estate of a minor or an incompetent  
 4878 ward, which guardian has the control or management of any real  
 4879 estate that is the property of such minor or incompetent, deems it  
 4880 necessary or expedient to sell all or part of the real estate, the  
 4881 guardian shall apply, either in term time or in vacation by  
 4882 petition to the judge of the circuit court for the county in which  
 4883 the real estate is situated, for authority to sell all or part of  
 4884 the real estate. If the prayer of the petition appears to the judge  
 4885 to be reasonable and just and financially beneficial to the estate  
 4886 of the ward, the judge may authorize the guardian to sell the real  
 4887 estate described in the petition under such conditions as the  
 4888 interest of the minor or incompetent may, in the opinion of the  
 4889 judge, seem to require.  
 4890 (2) The authority to sell the real estate described in the petition  
 4891 shall not be granted unless the guardian has given previous notice,  
 4892 published once a week for 4 successive weeks in a newspaper  
 4893 published in the county where the application is made, of his or  
 4894 her intention to make application to the judge for authority to  
 4895 sell such real estate, the guardian setting forth in the notice the  
 4896 time and place and to what judge the application will be made. If  
 4897 the lands lie in more than one county, the application for such  
 4898 authority shall be made in each county in which the lands lie.

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4928 to the United States Department of Veterans Affairs not less than  
 4929 15 days prior to the date fixed for the hearing.  
 4930 (3) The court need not appoint a guardian ad litem to represent the  
 4931 ward at the hearing provided for in subsection (2). If the  
 4932 residence of the next kin of the ward is known, notice by  
 4933 registered mail shall be sent to such relative. Notice also shall  
 4934 be served on the ward; or, if the ward is mentally incapable of  
 4935 understanding the matter at issue, the notice may be served on the  
 4936 person in charge of the institution where the ward is detained, or  
 4937 on the person having charge or custody of the ward.  
 4938 (4) When a hearing on an account is required by the court or  
 4939 requested in the petition of an interested party as provided in  
 4940 subsection (2), the judge of the court on the day of the hearing as  
 4941 provided for in subsection (2) shall carefully examine the vouchers  
 4942 and audit and state the account between the guardian and ward.  
 4943 Proper evidence shall be required in support of any voucher or item  
 4944 of the account that may appear to the court not to be just and  
 4945 proper, such evidence to be taken by affidavit or by any other  
 4946 legal mode. If any voucher is rejected, the item or items covered  
 4947 by the disapproval of any voucher or vouchers shall be taxed  
 4948 against the guardian personally. After such examination, the court  
 4949 shall render a decree upon the account, which shall be entered on  
 4950 the record, and the account and vouchers shall be filed. Such  
 4951 partial settlement shall be taken and presumed as correct on final  
 4952 settlement of the guardianship.  
 4953 (5) If a guardian fails to file any account of the moneys received  
 4954 by him or her from the United States Department of Veterans Affairs  
 4955 on account of his or her ward within 30 days after such account is  
 4956 required by either the court or the United States Department of  
 4957 Veterans Affairs, or fails to furnish the United States Department

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4899 (3) The failure on the part of the guardian to comply with the  
 4900 provisions of this section makes the guardian and the guardian's  
 4901 bond agents individually responsible for any loss that may accrue  
 4902 to the estate of the ward involved, and is a ground for the  
 4903 immediate removal of such guardian as to his or her functions, but  
 4904 does not discharge the guardian as to his or her liability or  
 4905 discharge the liabilities of his or her sureties.  
 4906  
 4907 745.1517 Guardian's accounts, filing with court and certification  
 4908 to United States Department of Veterans Affairs; notice and hearing  
 4909 on accounts; failure to account.  
 4910 (1) Every guardian who receives on account of his or her ward any  
 4911 moneys from the United States Department of Veterans Affairs shall  
 4912 annually file with the court on the anniversary date of the  
 4913 appointment, in addition to such other accounts as may be required  
 4914 by the court, a full, true, and accurate account under oath, which  
 4915 account is an account of all moneys so received by him or her and  
 4916 of all disbursements from such moneys, and which account shows the  
 4917 balance of the moneys in his or her hands at the date of such  
 4918 filing and shows how the moneys are invested. A certified copy of  
 4919 each of such accounts filed with the court shall be sent by the  
 4920 guardian to the office of the United States Department of Veterans  
 4921 Affairs having jurisdiction over the area in which such court is  
 4922 located. If the requirement of certification is waived in writing  
 4923 by the United States Department of Veterans Affairs, an uncertified  
 4924 copy of each of such accounts shall be sent.  
 4925 (2) The court, at its discretion or upon the petition of an  
 4926 interested party, shall fix a time and place for the hearing on  
 4927 such account; and notice of the hearing shall be given by the court

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4958 of Veterans Affairs a copy of his or her accounts as required by  
 4959 subsection (1), such failure shall be a ground for the removal of  
 4960 the guardian.  
 4961  
 4962 745.1518 Certified copies of public records made available.  
 4963 When a copy of any public record is required by the United States  
 4964 Department of Veterans Affairs to be used in determining the  
 4965 eligibility of any person to participate in benefits made available  
 4966 by the United States Department of Veterans Affairs, the official  
 4967 charged with the custody of such public record shall, without  
 4968 charge, provide to the applicant for such benefits or any person  
 4969 acting on her or his behalf, or to the authorized representative of  
 4970 the United States Department of Veterans Affairs, a certified copy  
 4971 of such record. For each and every certified copy so furnished by  
 4972 the official, the official shall be paid by the board of county  
 4973 commissioners the fee provided by law for copies.  
 4974  
 4975 745.1519 Clerk of the circuit court; fees; duties.  
 4976 Upon the filing of the petition for guardianship, granting of same,  
 4977 and entering decree thereon, the clerk of the circuit court is  
 4978 entitled to the service charge as provided by law, which shall  
 4979 include the cost of recording the petition, bond, and decree and  
 4980 the issuing of letters of guardianship. The certificate of the  
 4981 secretary or the secretary's authorized representative provided for  
 4982 in s. 745.1505 need not be recorded but must be kept in the file.  
 4983 Upon issuing letters of guardianship or letters appointing a  
 4984 guardian for the estate of a minor or incompetent, the clerk of the  
 4985 circuit court shall send to the regional office of the United  
 4986 States Department of Veterans Affairs having jurisdiction in this  
 4987 state two certified copies of the letters and two certified copies

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4988 of the bond approved by the court, without charge or expense to the  
 4989 estate involved. The clerk of the circuit court shall also send a  
 4990 certified copy of such letters to the property appraiser and to the  
 4991 tax collector in each county in which the ward owns real property.  
 4992  
 4993 745.1520 Attorney's fee.  
 4994 The fee for the attorney filing the petition and conducting the  
 4995 proceedings shall be fixed by the court in an amount as small as  
 4996 reasonably possible, not to exceed \$250. However, this section is  
 4997 not to be interpreted to exclude a petition for extraordinary  
 4998 attorney's fees, properly filed, and if approved by the United  
 4999 States Department of Veterans Affairs, does not necessitate a  
 5000 hearing before the court for approval, but the court shall enter  
 5001 its order for withdrawal of said attorney's fees from the ward's  
 5002 guardianship account accordingly.  
 5003  
 5004 745.1521 Guardian's compensation; bond premiums.  
 5005 The amount of compensation payable to a guardian shall not exceed 5  
 5006 percent of the income of the ward during any year and may be taken,  
 5007 by the guardian, on a monthly basis. In the event of extraordinary  
 5008 services rendered by such guardian, the court may, upon petition  
 5009 and after hearing on the petition, authorize additional  
 5010 compensation for the extraordinary services, payable from the  
 5011 estate of the ward. Provided that extraordinary services approved  
 5012 by the United States Department of Veteran's Affairs do not require  
 5013 a court hearing for approval of the fees, but shall require an  
 5014 order authorizing the guardian to withdraw the amount from the  
 5015 guardianship account. No compensation shall be allowed on the  
 5016 corpus of an estate received from a preceding guardian. The  
 5017 guardian may be allowed from the estate of her or his ward

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5048 745.1524 Notice of appointment of general guardian; closing of  
 5049 veteran's guardianship; transfer of responsibilities and penalties  
 5050 to general guardian.  
 5051 When the appointment of a general guardian has been made in the  
 5052 proper court and such guardian has qualified and taken charge of  
 5053 the other property of the ward, the general guardian shall file  
 5054 notice of such appointment in the court in which the veteran's  
 5055 guardianship is pending and have the veteran's guardianship settled  
 5056 and closed so that the general guardian may take charge of the  
 5057 moneys referred to and described in ss. 745.1505(2) and (3) and  
 5058 745.1511. When the appointment of a general guardian, whether for  
 5059 an incompetent or minor child or another beneficiary entitled to  
 5060 the benefits provided in 38 U.S.C., as amended, has been confirmed  
 5061 by the court having jurisdiction, such general guardian is  
 5062 responsible and is subject to the provisions and penalties  
 5063 contained in 38 U.S.C., as amended, as well as the requirements  
 5064 pertaining to guardians as set forth in this part.  
 5065  
 5066 745.1525 Construction and application of part.  
 5067 This part shall be construed liberally to secure the beneficial  
 5068 intents and purposes of this part and applies only to beneficiaries  
 5069 of the United States Department of Veterans Affairs. It shall be so  
 5070 interpreted and construed as to effectuate its general purpose of  
 5071 making the welfare of such beneficiaries the primary concern of  
 5072 their guardians and of the court.  
 5073  
 5074 745.1526 Annual guardianship report.  
 5075 Guardians appointed under the Veterans' Guardianship Law shall not  
 5076 be required to comply with the provisions of s. 745.805 or s.  
 5077 745.813.

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5018 reasonable premiums paid by the guardian to any corporate surety  
 5019 upon the guardian's bond.  
 5020  
 5021 745.1522 Discharge of guardian of minor or incompetent ward.  
 5022 When a minor ward, for whom a guardian has been appointed under the  
 5023 provisions of this part or other laws of this state, attains his or  
 5024 her majority and, if such minor ward has been incompetent, is  
 5025 declared competent by the United States Department of Veterans  
 5026 Affairs and the court, or when an incompetent ward who is not a  
 5027 minor is declared competent by the United States Department of  
 5028 Veterans Affairs and the court, the guardian shall, upon making a  
 5029 satisfactory accounting, be discharged upon a petition filed for  
 5030 that purpose.  
 5031  
 5032 745.1523 Final settlement of guardianship; notice required;  
 5033 guardian ad litem fee; papers required by United States Department  
 5034 of Veterans Affairs.  
 5035 On the final settlement of the guardianship, the notice provided  
 5036 herein for partial settlement must be given and the other  
 5037 proceedings conducted as in the case of partial settlement, except  
 5038 that a guardian ad litem may be appointed to represent the ward,  
 5039 the fee of which guardian ad litem shall in no case exceed \$150.  
 5040 However, if the ward has been pronounced competent, is shown to be  
 5041 mentally sound, appears in court, and is 18 years of age, the  
 5042 settlement may be had between the guardian and the ward under the  
 5043 direction of the court without notice to the next of kin, or the  
 5044 appointment of a guardian ad litem. A certified copy of the final  
 5045 settlement so made in every case must be filed with the United  
 5046 States Department of Veterans Affairs by the clerk of the court.  
 5047

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5078  
 5079 Section 16. Chapter 744 is repealed.  
 5080  
 5081 Section 17. This act shall take effect on July 1, 2020 and  
 5082 shall apply to all proceedings pending before such date and all  
 5083 proceedings commenced on or after the effective date.  
 5084

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**FIRST SUPPLEMENT TO THE  
REPORT ON THIRD-PARTY LEGAL OPINION  
CUSTOMARY PRACTICE IN FLORIDA**

**Opinion Standards Committee of The Florida Bar  
Business Law Section**

**And**

**Legal Opinions Committee of The Florida Bar  
Real Property, Probate and Trust Law Section**

**July \_\_, 2019**



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## OVERVIEW OF THE FIRST SUPPLEMENT TO THE REPORT

On December 11, 2011, the Legal Opinion Standards Committee of The Florida Bar Business Law Section (the "**Business Section Committee**") and the Legal Opinions Committee of The Florida Bar Real Property Probate and Trust Section (the "**Real Property Section Committee**", and, together with the Business Section Committee, the "**Committees**") promulgated their "*Report on Third-Party Legal Opinion Customary Practice in Florida*" dated December 3, 2011 (the "**Report**"). This First Supplement to the Report (the "**First Supplement**") updates several sections of the Report to reflect the adoption in 2013 of the Florida Revised Limited Liability Company Act and revisions to the Florida land trust statute (Section 689.071, Florida Statutes). This First Supplement also adds several new sections to the Report on the topics of (a) issuances of preferred shares by a Florida corporation, and (b) issuances of membership interests by a Florida limited liability company. Finally, this First Supplement discusses several important issues of customary opinion practice that have arisen since the Report was published in 2011.

This First Supplement should be read in conjunction with the Report, and words defined in the Report are so defined in the First Supplement unless the context otherwise requires. For ease of reference, sections and subsections of the Report that are changed by this First Supplement are referenced in this First Supplement by the section and subsection name and by the page number where the modified section or subsection can be found in the Report. In all cases, this First Supplement restates in its entirety the subsection of the Report that has been modified.

This First Supplement was approved by the Executive Council of the Business Law Section of The Florida Bar on January 17, 2019 and by the Executive Council of the Real Property, Probate and Trust Section of The Florida Bar on July \_\_, 2019. Following publication of this First Supplement, a composite PDF version of the Report, including the First Supplement, will be made available for download at [www.flabizlaw.org](http://www.flabizlaw.org) (the website of the Business Law Section) on the Business Section Committee's webpage, and [www.rpptl.org](http://www.rpptl.org) (the website of the RPPTL Section), on the Real Property Section Committee's webpage.

The Members of the Committees who participated in the preparation of this First Supplement are listed below. This First Supplement reflects the consensus views of the members of the Committees. It does not necessarily reflect the views of the individual members of each of the Committees or their respective law firms, nor does it mean that each member of each of the Committees agrees with every position taken in this First Supplement.

Legal Opinion Standards Committee of the  
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**REVISIONS TO "ENTITY STATUS AND ORGANIZATION OF A FLORIDA ENTITY"**

**A. Modifications to Subsection E – "Limited Liability Company"**

In 2013, the Florida legislature adopted Chapter 605 of the Florida Statutes, which is called the Florida Revised Limited Liability Company Act ("FRLCA"). FRLCA became effective for Florida limited liability companies organized after December 31, 2013 on January 1, 2014, and became effective for all Florida limited liability companies whenever organized on January 1, 2015. At the time that FRLCA became effective with respect to all Florida limited liability companies, whenever formed, Chapter 608 of the Florida Statutes, which previously was the chapter in the Florida Statutes governing Florida limited liability companies, was repealed.

The following section replaces in its entirety subsection E. of the Report entitled: "*Entity Status and Organization of a Florida Entity – Limited Liability Company*" that is contained on pages 50-52 of the Report. In large measure, the changes made to this subsection relate to updating the statutory references for the adoption of FRLCA. There is also a change dealing with the recommended filing of a Statement of Authority in circumstances where the transaction involves the acquisition or financing of Florida real estate. Finally, the Supplement reflects a decision by the Committees that in the context of a single-member limited liability company, the LLC does not have to have an operating agreement in order for Florida counsel to render legal opinions on an LLC if there is a record sufficient to reflect the ownership and management of the LLC. This change is a recognition of the informality often followed by Florida lawyers in the context of single member LLCs.

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**E. Limited Liability Company**

**Recommended opinion:**

<p><b>The Client is a [limited liability company] organized under Florida law, and its [limited liability company] status is active.</b></p>
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(1) Basic Meaning of this Opinion. A Florida limited liability company ("LLC") is governed by Chapter 605 of the Florida Statutes, which is generally referred to as FRLCA. The opinion that a company "is a limited liability company organized under Florida law, and its limited liability company status is active" (or "its status is active") means that: (i) the company has complied in all material respects with the requirements for the formation of an LLC under FRLCA, (ii) governmental officials have taken all steps required by law to form the company as an LLC, (iii) the company's existence began prior to the effective date and time of the opinion letter, (iv) the company is currently in existence and its status is active, and (v) the company has not been converted into a different form of entity. Under Sections 605.0201(4) and 605.0207 of FRLCA, a Florida LLC is formed upon the later of (i) the date and time when the articles of organization are filed with the Department (or on such earlier date as specified in the articles of organization, if such date is within five business days prior to the date of filing, or at any later date (up to 90 days) specified in the articles of organization) and (ii) when at least one person has become a member. In order to file such articles of organization, the person filing is confirming that at least one person is or becomes a member of the LLC at the time the articles of organization become effective. Section 605.0211(3) of FRLCA provides that, subject to any qualification stated in the certificate of status, a certificate of status issued by the Department is conclusive evidence that the Florida limited liability company is in existence.

(2) Organized. An opinion that an LLC is properly organized is often part of the LLC status opinion. This opinion means that Opining Counsel has verified that: (i) the LLC has articles of organization executed by at least one member (or an authorized representative of the member), (ii) the articles of organization comply with the requirements set forth in Section 605.0201 of FRLCA, (iii) the articles of organization have been filed with the Department, (iv) if the LLC has more than one member, an operating agreement has been adopted by the member(s) of the LLC, (v) if the LLC has only one member, a written operating agreement has been adopted by the member of the LLC or a record exists sufficient to confirm the identity of the member, to establish whether the LLC is member-managed or manager-managed, and to establish who is authorized to act on behalf of the LLC, (vi) if the articles of organization or operating agreement provide that the LLC is a manager-managed company, then one or more managers have been appointed by the members, and (vii) the LLC has active status.

Sometimes the word "duly" is added before the word "organized." However, the addition of the word "duly" to the opinion does not change the meaning of the opinion or change the diligence recommended in order to render this opinion.

Generally speaking, the articles of organization for a Florida LLC rarely contain more than the minimum information required under FRLCA, although its filing constitutes notice of all facts that are set forth in the articles of organization. The operating agreement of the LLC is generally more substantive and by definition sets forth the provisions adopted for the management and regulation of the affairs of the LLC and the relationships of the members, the managers (if the LLC is manager-managed), and the LLC. The statute provides that an operating agreement may be oral, but, as in the case of an oral partnership agreement, in the view of the Committees, Opining Counsel should generally not opine that an LLC is "organized" if the LLC has not adopted a written operating agreement. However, in the context of a single-member LLC, a written operating agreement may not be necessary if there is a record sufficient to confirm the identity of the member, to establish whether the LLC is member-managed or manager-managed, and to establish who is authorized to act on behalf of the LLC. This might be accomplished, for example, by identifying the member in the articles of organization and stating in the articles of organization that the LLC is member-managed.

(3) Active Status vs. Good Standing. The opinion that an LLC's status is "active" means that as of the date of the opinion letter the company is a limited liability company and is current with all filings and fees then due to the State of Florida. This opinion should be based on a certificate of status issued by the Department. In addition to the provisions of Section 605.0211 of FRLCA, Section 605.0215 of FRLCA provides that "all certificates issued by the department in accordance with this chapter shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts stated. A certificate from the department delivered with a copy of a document filed by the department is conclusive evidence that the original document is on file with the department."

This opinion uses the term "its status is active" or "its limited liability company status is active" since the "active status" language is used in the certificate provided by the Department. However, Opining Counsel in Florida are often asked to render an opinion that an LLC is in "good standing," particularly if the Opinion Recipient is represented by out-of-state counsel. Under customary practice in Florida, the use of the phrase "good standing" in an opinion as to the active status of an LLC has the same meaning as "its limited liability company status is active" or "its status is active."

(4) General Exclusions for Opinion. Unless otherwise expressly stated in the opinion letter, an opinion that an LLC's status is "active" does not mean that: (i) the LLC has established any tax, accounting or other records required to commence operating its business, (ii) the LLC maintains at its registered office any of the information required to be maintained under Section 605.0410 of FRLCA, (iii) the members of the LLC will not have personal liability, or (iv) the LLC will be treated as a partnership for tax purposes.

(5) Involuntary Dissolution. An opinion that an LLC's "status is active" merely indicates that the LLC exists and has not been dissolved as of the date of the certificate of status issued by the Department. Because it would be impossible or extremely difficult for Opining Counsel to establish that no grounds exist under the statute for involuntary dissolution of the LLC, this opinion does not mean or imply that no grounds exist under the statute for involuntary dissolution of the LLC. The circumstances under which an LLC may be administratively dissolved by the Department are set forth in Section 605.0714 of FRLCA and the grounds for judicial dissolution are specified in Section 605.0702 of FRLCA. Opining Counsel may opine that the LLC exists on the date of the opinion in reliance on a certificate of status from the Department, even if circumstances exist that could result in involuntary dissolution with the passage of time. Opining Counsel is not obligated to conduct any investigation regarding this issue. However, if Opining Counsel knows (or ought to reasonably know based on the facts (red flags) in such counsel's possession) that such circumstances for dissolution exist, Opining Counsel should advise the Client to take the necessary actions to cure those circumstances promptly, since dissolution of the LLC will generally constitute a violation of the Transaction Documents. For example, the Department may administratively dissolve an LLC under Section 605.0714(1)(c) of FRLCA if the company is without a registered agent as required by Section 605.0113, and, under Section 605.0115(3)(a) of FRLCA, the resignation of a registered agent becomes effective 31 days after the registered agent files a statement of resignation with the Department.

(6) Real Estate Transaction – Statement of Authority. If the transaction in question involves the transfer or financing of real estate, then, it is recommended that Opining Counsel obtain from the Department a copy of any Statement of Authority (preferably a certified copy) with respect to the LLC filed with the Department (or if one is not on file with the Department, require that a Statement of Authority be executed in accordance with Section 605.0302 and have it filed with the Department). Further, if the transaction involves a purchase or financing of real property, it is recommended that a certified copy of the Statement of Authority be recorded in the public records of the County in which the real property is located for opinions on all real estate related transactions.

(7) Foreign Entity. If Opining Counsel determines that Opining Counsel is competent to render an opinion regarding the organization, existence and status of an LLC organized under the laws of a jurisdiction other than Florida, and agrees to render such opinion, then with respect to that opinion, Opining Counsel likely will be held to the standard of care of a competent lawyer in the jurisdiction of organization of the entity that is the subject of the opinion. See "Common Elements of Opinions – Opinions under Florida or Federal Law; Opinions under the Laws of Another Jurisdiction." The diligence involved in giving an opinion regarding the organization, existence and status of a foreign LLC, and the form of such opinion, are beyond the scope of this Report.

**Diligence Checklist – Limited Liability Company.** To render an entity status and organization opinion with respect to a Florida LLC, Opining Counsel should take the following actions:

- Obtain a copy of the LLC's articles of organization (preferably a certified copy obtained from the Department) and review them to confirm that they substantially comply with the requirements of Section 605.0201 of FRLCA.
- Obtain a "certificate of status" for the LLC from the Department. If the certificate of status indicates that the LLC has not filed its annual report or paid its annual fee for the current year, then the recommended (but not mandatory) practice is to require the Client to make satisfactory arrangements for filing the report and paying the fee before Opining Counsel renders an "active status" opinion regarding the LLC.

- Obtain and examine a copy of the LLC’s operating agreement, certified by a manager of the LLC (if manager-managed), by a member of the LLC (if member-managed), or by an officer of the LLC (if officers have been appointed by the members or the managers, as applicable, under the LLC’s operating agreement), as being a true and complete copy, including all amendments. In the view of the Committees, if the LLC has more than one member and does not have a written LLC operating agreement, Opining Counsel should generally not render an opinion with respect to the LLC and should counsel the Client to reduce its operating agreement to writing. However, in the context of a single member LLC, Opining Counsel should not generally render an opinion with respect to the LLC unless the LLC has a written operating agreement or the LLC has a record sufficient to confirm the identity of the member, to establish whether the LLC is member-managed or manager-managed, and to establish who is authorized to act for the LLC.
- Determine from reviewing the operating agreement and the articles of organization whether the LLC is a member-managed company or a manager-managed company; if the latter, confirm that a manager (or managers) has been appointed in accordance with the requirements of those documents (generally through obtaining a written certificate from the Client).
- Obtain a current factual certificate from either (i) a manager of the LLC (if manager-managed), (ii) a member of the LLC (if member-managed), or (iii) an officer (if officers have been appointed) certifying that the LLC has at least one member, that no circumstances exist which would trigger dissolution under the articles of organization or operating agreement, and that no proceedings have commenced for dissolution of the LLC.
- If the transaction in question involves the transfer or financing of real estate, then it is recommended that Opining Counsel obtain a Statement of Authority (preferably certified) from the Department (or if one is not on file with the Department, require that a Statement of Authority be executed in accordance with Section 605.0302 and have it filed with the Department). The Committees recommend that Opining Counsel require the recordation of a certified copy of the Statement of Authority in the public records of the County in which the real property is located for opinions on all real estate related transactions.

**B. Modifications to Subsection F – "Trusts"**

In 2013, the Florida legislature adopted a new version of the Florida Land Trust Act (the "FLTA"), Section 689.071, Florida Statutes. A Florida trust organized under the FLTA is referred to herein as a "Florida Land Trust".

The following sections replace in their entirety subsection F. of the Report entitled: "*Entity Status and Organization of a Florida Entity – Trusts*" that is contained on pages 52-57 of the Report.

\* \* \* \* \*

**F. Trusts**

**(1) In General.**

Opining Counsel may be asked for an opinion on the status of a Florida trust. Unlike Florida corporations, partnerships or LLCs, a Florida trust is not a separate statutory entity under Florida law. Rather, a Florida trust is a fiduciary relationship with respect to property (whether real property, personal property or both) subjecting the person or persons by whom the title to the property is held (known as the "trustee" or "trustees") to equitable duties to deal with the property for the benefit of another person or



persons (known as the beneficiary or beneficiaries), all of which arises as a result of a manifestation of an intention to create a trust arrangement. Thus, for purposes of giving an opinion regarding a Florida trust, the Client is really not the trust itself, but rather the person or persons serving as the trustee or trustees of the trust for the benefit of the beneficiaries. As such, the proper status inquiry in the context of a trust should be based on whether the trustee or trustees is or are properly organized and existing and has or have active status. Thus, if Florida counsel is asked for an opinion concerning the status of a Florida trust, the Opinion Recipient should want to know whether the Client(s) is or are the trustee(s) of the trust. For this reason, the recommended forms of opinion state that the Client(s) is or are the trustee(s) of the trust and go on to specify the legal basis for such designation.

(2) **Trusts Other than Florida Land Trusts.**

(a) *Trusts with Written Trust Agreements.*

In the context of most Florida trusts, with the possible exception of Florida land trusts arising strictly by operation of Section 689.071, Florida Statutes (referred to as a "**Florida Land Trust**"), the designation of the trustee occurs pursuant to the provisions of a written trust agreement. In this context, the recommended opinion is as follows:

**The Client(s) [is/are] the trustee(s) of a trust pursuant to the provisions of that certain trust agreement dated \_\_\_\_\_, 20\_\_.**

When the foregoing recommended form of opinion is to be rendered, Opining Counsel should obtain a copy of the current trust agreement governing the trust. The trust agreement needs to be reviewed by Opining Counsel for Opining Counsel to render any opinions with respect to the trust and, in particular, to determine who is designated as the trustee(s) of the trust.

(b) *Trusts Without Written Trust Agreements.*

If the Transaction is large enough or important enough to require a third-party legal opinion, then the trust's affairs are sufficiently complex to require a written trust agreement. Accordingly, in this context, the Committees believe that Opining Counsel should not opine with respect to a trust if there is no written trust agreement, other than in the limited circumstances described below with respect to a Florida Land Trust.

(c) *Trustees that are Entities.*

If the trustee or one of the trustees is an entity, then in connection with giving this opinion Opining Counsel should obtain a certificate of status from the Department with respect to such entity and complete the diligence required with respect to such entity's organization and entity status (see discussions above with respect to Florida corporations, Florida partnerships and Florida LLCs).

(3) **Trusts Owning Real Estate.**

(a) *Generally*

In Florida, trusts whose trustee(s) hold title to Florida real estate under the trust arrangement generally fall into one of two general categories. The first category are trustees of Florida Land Trusts. These trusts must satisfy the statutory requirements of Section 689.071, Florida Statutes, to qualify as a Florida Land Trust. The second category are trustees who hold title to Florida real estate under a trust

arrangement that does not qualify as a Florida Land Trust. Opinions concerning this second category of trusts are governed by the same customary practice that is applicable with respect to other trusts in Florida.

(b) *Florida Land Trusts Without a Written Trust Agreement.*

A Florida Land Trust that falls into the first category described above arises pursuant to Section 689.071, Florida Statutes.

- For Land Trusts created prior to July 1, 2013, a trust is a land trust under Section 689.071, Florida Statutes, if a deed or other recorded instrument naming the trustee as grantee or transferee sets forth the trustee's powers and the recorded instrument or trust agreement expresses the intent to create a land trust (see Section 689.071(12)(b), Florida Statutes).
- For Land Trusts created on or after July 1, 2013, a trust is a land trust under Section 689.071, Florida Statutes, if (1) a deed or other recorded instrument naming the trustee as grantee or transferee sets forth the trustee's powers, and (2) the trustee has limited duties that do not exceed the duties set forth in Section 689.071(2)(c), Florida Statutes.

The recommended form of opinion with respect to a Florida Land Trust that meets the requirements of Section 689.071, Florida Statutes, is as follows:

**The Client(s) [is/are] the trustee(s) of a Florida land trust pursuant to Section 689.071, Florida Statutes.**

If the trust satisfies the requirements of Section 689.071, Florida Statutes, Opining Counsel can render the trust status opinion even if there is no separate trust agreement governing the trust relationship. However, because the customary practice in dealing with most opinions involving trusts is not to render an opinion unless a written trust agreement exists, the exception from this general rule should be applied only in very limited circumstances. For the limited exception to apply, the following three requirements must all be satisfied:

(i) The property that is the subject of the Transaction Documents must be limited to an interest in real property;

(ii) The trust must satisfy the requirements of Section 689.071, Florida Statutes, and particularly, the trustee must be designated as trustee in the recorded instrument and the recorded instrument must expressly confer on the trustee any one or more of the following powers: the power and authority to protect, to conserve, to sell, to lease, to encumber, or otherwise to manage and dispose of the real property or interest in real property described in the recorded instrument; and

(iii) Opining Counsel must be satisfied that no separate trust agreement or other agreement governing the trust relationship exists. To be satisfied in this regard, Opining Counsel should secure a written certificate or affidavit signed by at least the trustee, and preferably also by all of the beneficiaries of the trust, confirming that no separate trust agreement or other agreement governing the trust relationship exists. This certificate or affidavit should not be recorded in the public records if the benefits of Section 689.071, Florida Statutes, are to be retained because any



such recordation might be deemed to constitute an addendum to the declaration of trust for purposes of the Florida Land Trust statute.

(c) *Florida Land Trusts with Written Trust Agreements.*

In the case of a Florida Land Trust, if Opining Counsel is unable to confirm that there is no separate trust agreement governing the trust relationship or if Opining Counsel has knowledge that a written trust agreement exists, Opining Counsel should not render the status opinion with respect to the trust unless Opining Counsel, in addition to addressing the requirements set forth in the recorded instrument, obtains a copy of the trust agreement and performs the diligence required with respect to other trusts in Florida as set forth above in subsection (2) ("**Trusts Other than Florida Land Trusts**") above.

Notwithstanding the recommendations set forth herein that Opining Counsel review any underlying trust agreement that may exist, such recommendation is not intended to modify or affect the protections afforded to third parties by Section 689.073, Florida Statutes.

(4) **Successor Trustee.**

Because an opinion concerning a Florida trust focuses on the trustee, and in particular may address the entity status of the trustee, the power of the trustee, and whether the trustee has properly authorized the Transaction, Opining Counsel first needs to determine that the party purporting to be the trustee of the trust is the current trustee. This determination can be complicated where the party purporting to be the trustee is a successor trustee and can be further complicated where the Transaction involves the ownership of and/or a mortgage against real estate (and particularly where the real estate is held in a Florida Land Trust).

If the named trustee of the trust is no longer serving (whether because of, for example, death, incapacity, termination or resignation), then Opining Counsel's diligence must focus on the entity status of the successor trustee, the power of the successor trustee, and whether the successor trustee properly authorized the Transaction. In the real estate context, it is not uncommon for the real estate records to continue to reflect the original trustee as the named owner or the named mortgagor, as the case may be. Thus, where real estate is involved, Opining Counsel's diligence must first establish that the real estate records have been properly updated to reflect the change in the designated trustee.

(a) **Trusts Other than Florida Land Trusts.**

In the context of trusts other than Florida Land Trusts and presumably where a written trust agreement is in existence, the trust agreement hopefully names either the successor trustee, or if not, then sets forth a method for determining the successor trustee (in which case the trust agreement will be determinative of the procedure for establishing a successor trustee). Opining Counsel should review the trust agreement from this perspective, addressing the appropriate situation, as follows:

(i) If the trustee has resigned, or has become incapable of serving due to death or incapacity, then in circumstances where real estate is not involved, Opining Counsel should, at a minimum, obtain a certificate from the successor trustee certifying that the prior trustee resigned or is incapable of serving due to death or incapacity, as the case may be, and that such successor trustee is the then current trustee of the trust.

(ii) In the real estate context, the parties must have taken additional actions. In particular, if the trustee has resigned, then a trustee's declaration of appointment of successor trustee reciting such trustee's name, address and its resignation, the appointment of the successor trustee by name and address and the successor's acceptance of appointment should be signed by

the successor trustee (and preferably by the prior trustee), should be witnessed and acknowledged in the manner provided for acknowledgment of deeds, and should be recorded in the office of the recorder in the county where the trust's property is located. The declaration should have attached to it each of the following: (a) the first page of the trust agreement, (b) the successor trustee page of the trust agreement, (c) the powers page(s) of the trust agreement, (d) the signature page of the trust agreement, and (e) the legal description of the trust property.

(iii) In the real estate context, if the trustee has become incapable of serving due to death or incapacity, then a declaration of appointment of successor trustee reciting such trustee's name, address and the reason for the failure to serve (attach a death certificate if due to death), the appointment of the successor trustee by name and address, and the successor's acceptance of appointment should be signed by the successor trustee, should be witnessed and acknowledged in the manner provided for acknowledgment of deeds and should be recorded in the office of the recorder in the county where the trust's property is located. The declaration should have attached to it each of the following: (a) the first page of the trust agreement, (b) the successor trustee page of the trust agreement, (c) the powers page(s) of the trust agreement, (d) the signature page of the trust agreement, and (e) the legal description of the trust property.

(b) *Florida Land Trusts.* In the case of a Florida Land Trust, where no successor trustee is named in the recorded instrument and a trust agreement exists, Section 689.071(9), Florida Statutes, should be followed as the procedure whereby one or more persons or entities having the power of direction of the land trust agreement may appoint a successor trustee or trustees of the land trust by filing a declaration of appointment of a successor trustee or trustees in the office of the recorder of deeds in the county in which the trust's property is located. The declaration must be signed by a beneficiary or beneficiaries of the trust and by each successor trustee, must be acknowledged in the manner provided for acknowledgment of deeds, and must contain: (a) the legal description of the trust property, (b) the name and address of the former trustee, (c) the name and address of the successor trustee, and (d) a statement that each successor trustee has been appointed by one or more persons or entities having the power of direction of the land trust, together with an acceptance of appointment by each successor trustee.

(5) **Diligence Concerning Beneficiaries.** Although Opining Counsel may need to consider whether the beneficiaries of the trust have approved the Transaction to render an opinion that the Transaction has been approved by all requisite formality, Opining Counsel does not need to do so to render a status opinion on the trust (see "Authorization of the Transaction by a Florida Entity"), since the status opinion relating to a Florida trust focuses solely on the status of the trustee.

(6) **Use of Different Language.** Notwithstanding the lack of statutory entity status for the trust itself and the need to focus on the proper designation of the trustee(s) to render the opinion, the Committees recognize that some Florida practitioners include language in their opinions that appears to assume that the Florida trust to which the opinion relates is a separate statutory entity under Florida law. Thus, it is not uncommon for Florida practitioners to render a status opinion involving a trust to the effect that "The Client is a trust formed under Florida law," that "The Client is a trust duly formed under Florida law," or words to similar effect. Under customary practice in Florida, an Opining Counsel who renders the opinion in one of these alternative forms is effectively giving an opinion that has the same meaning (and is subject to the same recommended diligence) as the recommended opinion, and is confirming that a trustee or trustees has/have been designated for the trust either pursuant to the provisions of a trust agreement or, in the case of a statutory Florida Land Trust, pursuant to Section 689.071, Florida Statutes.

(7) **Effect of Presumption Arising Under Section 689.07, Florida Statutes.** Section 689.07, Florida Statutes, is separate and apart from Section 689.071, Florida Statutes, and the two should not be confused. Under Section 689.07, Florida Statutes, a deed by which real property is conveyed to a person or

entity simply "as trustee," without setting forth any of the powers required to avail the trustee of the benefit of the Florida land trust presumption arising under Section 698.071, Florida Statutes, grants an absolute fee simple estate in the real property to the "trustee," individually, including both legal and equitable title, provided the other requirements of Section 689.07, Florida Statutes, are met. In such case, a Florida Land Trust is not created, the recital of trust status is disregarded as a matter of law, and Opining Counsel should not render the recommended trust opinion. Indeed, in such case, the owner of the real property is not the trustee of a trust and no special form of opinion on trust status is pertinent. In such case, the entity opinion should be an opinion concerning the direct entity status of the entity designated as the trustee.

Nevertheless, before proceeding in this fashion, because the subject deed indicated that the putative "trustee" was acquiring title in a trust capacity, Opining Counsel should ask for and obtain a certificate from the "trustee" regarding whether the "trustee" has made a declaration of trust and, if so, whether any written trust instrument or instruments relating to such declaration exists. If a trust agreement actually exists, then Opining Counsel should review the trust agreement and determine whether further inquiries need to be made and/or whether any corrective instruments are required before any entity opinions can be rendered.

**Diligence Checklist - Trusts, including Florida Land Trusts**

- If the trustee is a corporation, partnership, or limited liability company, Opining Counsel should confirm that the trustee is properly organized and/or exists, and has active status (or in good standing in the state of its incorporation) and, if it is a foreign entity required to obtain a certificate of authority to transact business in Florida, that it has obtained such a certificate of authority from the Department.
- If the deed or other instrument of conveyance is dated prior to July 3, 1992 and the trustee is a corporation, Opining Counsel should confirm that the corporation has trust powers. As of July 2, 1992, those portions of Section 660.41, Florida Statutes, which mandated that corporate trustees have trust powers were repealed. Thus, if the deed or other instrument of conveyance is dated after July 2, 1992 and the trustee is a corporation, Opining Counsel does not need to confirm the existence of trust powers. See Fund Title Note 31.02.06 (2001). The existence of trust powers for state chartered institutions may be confirmed by obtaining a Certificate from the Department of Financial Institutions, and the existence of such powers for federally chartered institutions may be obtained from the Comptroller of the Currency, at the following respective addresses:
 

Director, Division of Financial Institutions Florida Office of Financial Institutions 200 E. Gaines Street Tallahassee, Florida 32399	Assistant Comptroller of the Currency Southeastern District 3 Ravinia Drive, Suite 1950 Atlanta, Georgia 30346
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- To opine that the Client is the trustee of a Florida land trust that is in compliance with the provisions of Section 689.071, Florida Statutes, Opining Counsel should examine the deed or other instrument of conveyance naming the trustee as grantee or transferee and any written trust agreement for compliance with the requirements set forth in Section 689.071, Florida Statutes.

- If the trust satisfies the requirements set forth in Section 689.071, Florida Statutes, Opining Counsel should obtain a written certificate or affidavit signed by at least the trustee, and preferably also by all of the beneficiaries of the trust, confirming that no separate trust agreement or other agreement governing the trust relationship exists. If the trust satisfies the requirements set forth in Section 689.071, Florida Statutes, but Opining Counsel has knowledge that a trust agreement governing the trust relationship exists, Opining Counsel should obtain and review a copy of the written trust agreement governing the trust, in particular, to determine who is designated as the trustee(s) of the trust.
- If the trust does not satisfy the requirements of Section 689.071, Florida Statutes, Opining Counsel should obtain and review a copy of the written trust agreement governing the trust, in particular, to determine who is designated as the trustee(s) of the trust.

**REVISIONS TO "ENTITY POWER OF A FLORIDA ENTITY"**

**A. Modifications to Subsection E – "Limited Liability Company"**

The following section replaces in its entirety subsection E of the Report entitled "*Entity Power of a Florida Entity – Limited Liability Company*" that is contained on page 71 of the Report. The principal changes made to this section relate to updating the statutory references under Chapter 605, Florida Statutes (FRLCA).

\* \* \* \* \*

**E. Limited Liability Company**

**Recommended opinion:**

<p><b>The Client has the limited liability company power to execute and deliver the [Transaction Documents] and to perform its obligations thereunder.</b></p>
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A Florida limited liability company derives its entity power from FRLCA, from its articles of organization, and from the operating agreement adopted by the members of the LLC. Opining Counsel should obtain copies of the LLC's Organizational Documents together with a certificate confirming that such documents are true and correct by a manager of the LLC (if the LLC has elected to be manager-managed), by a member of the LLC (if member-managed), or by an officer of the LLC (if officers have been appointed by the LLC pursuant to the LLC's operating agreement). Section 605.0107 of FRLCA provides that any company that is member-managed grants all members apparent authority to bind the company, and any company that is manager-managed grants all managers apparent authority to bind the company (its members having no apparent authority to bind the company). Section 605.0212 provides that the company must identify the name, title or capacity and address of at least one person who has the authority to manage the company on the Annual Report that the company files with the Department.

In the context of an LLC with more than one member, if the Client does not have a written operating agreement, the Committees believe that Opining Counsel should not render an entity power opinion with respect to the Client. In the context of an LLC with only one member, Opining Counsel should not render an entity power opinion with respect to the Client unless the Client has either (i) a written operating agreement, or (ii) a record sufficient to confirm the identity of the member, to establish whether the LLC is member-managed or manager-managed, and to establish who is authorized to act on behalf of the LLC.

Unless the Client's articles of organization or operating agreement provide otherwise, each Florida limited liability company has the requisite entity power to engage in any lawful activity, and Section 605.0109 of FRLCA provides that an LLC has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including a non-exclusive list of permitted actions enumerated in that section.

Under Section 605.0709 of FRLCA, an LLC that is dissolved only has the power to wind up its affairs. As a result, before rendering a power opinion with respect to the LLC, Opining Counsel should determine whether the LLC has filed Articles of Dissolution with the Department or has been administratively dissolved, and if Articles of Dissolution have been filed or the LLC has been administratively dissolved, Opining Counsel should confirm that the transaction as to which the opinion is

being rendered is solely for the purpose of winding up the affairs of the LLC or, if the LLC has been administratively dissolved, should arrange for the LLC to be reinstated before completing the transaction.<sup>1</sup>

In most cases, an LLC's operating agreement (and sometimes the LLC's articles of organization) empowers the LLC to engage in any legal activity. However, Opining Counsel should carefully examine the LLC's Organizational Documents to determine whether they contain provisions limiting the power of the LLC to engage in certain types of transactions or include any SPE provisions. If any such limitations are included in the LLC's Organizational Documents, Opining Counsel will need to determine whether any such provisions preclude or otherwise limit the LLC from having the power to enter into the Transaction or perform its obligations under the Transaction Documents. See "Limitations on Power and Special Purpose Entities" below.

**B. Modifications to Subsection F – "Trusts"**

The following section replaces in its entirety subsection F. of the Report entitled: "*Entity Power of a Florida Entity – Trusts*" that is contained on pages 72-75 of the Report.

\* \* \* \* \*

**F. Trusts**

**Recommended opinion:**

<p><b>The Client(s), as trustee(s) of the trust, has/have the trust power to execute and deliver the [Transaction Documents] and to perform the Client(s)' obligations thereunder.</b></p>
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(1) General

Because a trust is not a separate statutory entity under Florida law (see "Entity Status and Organization of a Florida Entity – Trusts"), the trust power is not derived from the trust itself. Rather, the trust power is derived from the power of the trustee(s) to act on behalf of the trust. Accordingly, in addressing trust power, Opining Counsel must make two key inquiries: (i) first, whether a trustee that is an entity rather than an individual has the power to engage in the Transaction based on the trustee's Organizational Documents and the Florida law governing such entity's organization and existence, and (ii) second, whether the trustee has the power to engage in the Transaction under the trust agreement, and for a Florida Land Trust without a written trust agreement, whether the trustee has the power to engage in the Transaction pursuant to a recorded instrument that qualifies the arrangement as a Florida Land Trust under Section 689.071, Florida Statutes.

(a) Trustee as Business Entity. If the trustee is a Florida corporation, partnership or LLC, Opining Counsel should first inquire as to the entity power of that particular entity. Generally, this inquiry will be the same as the inquiry set forth above relative to the steps to be taken to determine whether that business entity, in its own capacity, has the power to engage in the Transaction and deal with trust property, and therefore has the power to execute and deliver the Transaction Documents and perform its obligations under such documents on behalf of the trust beneficiaries.

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<sup>1</sup> The discussion in this paragraph regarding matters to be considered if a Florida entity has filed Articles of Dissolution or if a Florida entity has been administratively dissolved applies equally to opinions regarding Florida corporations, Florida limited partnerships, and other types of Florida entities. Future versions of this Report will include this same analysis with respect to opinions on "entity power" for other types of Florida entities.

(b) Trustee Power. The extent of the second inquiry is dependent upon: (i) whether the trust relationship satisfies the requirements of Section 689.071, Florida Statutes and therefore qualifies as a Florida Land Trust, (ii) whether, in the context of a Transaction involving real property, the provisions of Section 689.07, Florida Statutes, are applicable because the real property has been conveyed to a person or entity simply "as trustee," without setting forth any of the powers required to avail the trustee of the benefit of the presumption arising under Section 689.071, Florida Statutes, (iii) whether a separate written trust document or other agreement governing the trust relationship exists, and (iv) whether the beneficiaries of the trust need to consent to the execution, delivery and performance of the Transaction Documents for the trustee to have the power to take the required actions. If a written trust document or other agreement governing the trust relationship exists, then, even if the trust relationship is a Florida Land Trust created pursuant to Section 689.071, Florida Statutes, or the real property has been conveyed to a person or entity simply "as trustee," a review of the trust document or other agreement governing the trust relationship must be made by Opining Counsel to render the opinion.

(2) Florida Trusts Other than Florida Land Trusts

(a) Trusts with Written Trust Agreements.

In most cases, each trustee of a Florida trust derives the power to own and deal with trust property and to transact business, and thus to execute and deliver the Transaction Documents and to perform his, her or its obligations under such documents, from the terms of the trust agreement or other agreement governing the trust. Except in the limited situations described below, Opining Counsel should not render an opinion regarding the trust unless Opining Counsel obtains a copy of the trust agreement or other agreement governing the trust relationship and performs the following further diligence. In this regard, Opining Counsel should: (i) review the trust agreement or other agreement governing the trust relationship to determine whether any trust beneficiaries and/or other parties hold the power of direction over the actions of the trustee and, if so, to determine which trust beneficiaries and/or other parties hold such power of direction; (ii) review any other agreement that may have been made among the trust beneficiaries regarding their direction of the trustee to determine compliance with any approval requirements in any such other agreement; and (iii) determine that the appropriate trust beneficiaries and/or other parties (or any required majority, if not required to be unanimous) have executed a written direction to the trustee with respect to the action to be taken.

(b) Trusts without Written Trust Agreements

If the Transaction is large enough or important enough to require a third-party legal opinion, then the trust's affairs are sufficiently complex to require a written trust agreement. Accordingly, in this context, Opining Counsel should not opine with respect to any trust (other than possibly with respect to a Florida Land Trust) unless the trust is subject to or has a written trust agreement.

(c) Passive Trusts – Powers of Beneficiaries

If Opining Counsel determines that the trust is "passive," that is, that the trustee has no active managerial or decision-making authority, then the beneficiaries, as well as the trustee, should execute all necessary Transaction Documents. The beneficiaries also need to execute all necessary Transaction Documents or provide a written consent or similar written instrument in circumstances where the trust agreement requires such execution or fails to extend clear express power to the trustee(s).



(d) Trusts Where Title to Real Property is Held by Trustee

This analysis is particularly true in the case of a trust in which title to real property is held by a trustee, whether or not the trustee has the benefit of any statutory presumption concerning the organization of the trust and his, her or its authority to deal with the real property. See Fund Title Note 31.03.03 (2001). Furthermore, in the case of a trust in which title to real property is held by a trustee, Opining Counsel should cause to be recorded in the public real estate records either: (i) the unrecorded trust instrument (to which the Client may object), or (ii) an affidavit, certificate, or other instrument by the trustee or the trustee's counsel establishing the identity of the trustee, the execution of the trust instrument, the power of the trustee to act under the trust instrument and confirming that the trustee's power has not been revoked and remains in full force and effect.

(e) Consents from Trustee and Beneficiaries

Additionally, to render the foregoing opinion, Opining Counsel must obtain properly executed certificates of consent or similar written instruments from the trustee and each beneficiary of the trust who has a power to direct the activities of the trust under the trust agreement, confirming the trust's power to enter into and perform the Transaction Documents and the trustee's power to execute and deliver the Transaction Documents on behalf of the trust. In such certificates: (i) all such beneficiaries, as well as the holders of any security interests in their beneficial interests, should be identified and (ii) the trustee should be directed to consummate the Transaction and execute and deliver the Transaction Documents. If any holders of security interests are identified, Opining Counsel should confirm that all such holders have consented to the Transaction.

(3) Effect of Presumption Arising Under Section 689.071, Florida Statutes

(a) Generally

For trusts created prior to July 1, 2013, a trust is a Florida Land Trust under Section 689.071, Florida Statutes, if a deed or other recorded instrument naming the trustee as grantee or transferee sets forth the trustee's powers and the recorded instrument or trust agreement expresses the intention to create a land trust (see Section 689.071(12), Florida Statutes).

For land trusts created on or after July 1, 2013, a trust is a land trust under Section 689.071 if: (i) a deed or other recorded instrument naming the trustee as grantee or transferee sets forth the trustee's powers; and, (ii) the trustee has limited duties that do not exceed the duties set forth in Section 689.071(2)(c), Florida Statutes.

The trustee of a Florida Land Trust derives his, her, or its power or capacity to transact business on behalf of the trustee from Section 689.071, Florida Statutes, and the deed or other instrument of conveyance naming the trustee as grantee or transferee. In such case, third parties dealing with the trustee who do not have actual or constructive notice of the terms of a trust agreement may be entitled to the benefit of Section 689.073, Florida Statutes, if the conveyance into the trust qualifies under such statute. In that case, trust powers exist to the extent specified in the deed or other instrument of conveyance into the trustee.

(b) Florida Land Trusts Without Written Trust Agreements

If the trust satisfies the requirements of Section 689.071, Florida Statutes, Opining Counsel can render the trust power opinion even if there is no separate written trust agreement governing the trust relationship. However, because the customary practice in dealing with most opinions involving trusts is not to render an opinion unless a written trust agreement exists, the exception from this rule should only be



applied in limited circumstances. For the exception to apply, the three requirements set forth in "Entity Status and Organization of a Florida Entry – Trusts – Trusts Owning Real Estate – Florida Land Trust without Written Trust Agreements" must all be satisfied.

If all three requirements are satisfied, then Opining Counsel must review the recorded instrument and determine whether the express language in the recorded instrument confers on the trustee the power to execute, deliver and perform the Transaction Documents without any power of direction by the trust beneficiaries or any other parties.

In the case of a Florida Land Trust, if there is no trust agreement or other agreement governing the trust relationship, but the express language in the recorded instrument creating the Florida Land Trust establishes that there are trust beneficiaries or other parties who hold a power of direction over the actions of the trustee, then Opining Counsel must also: (i) review any documents that may have been executed by the designated trust beneficiaries or other parties regarding their direction of the trustee, (ii) confirm compliance with any approval requirements in any such recorded instrument, and (iii) confirm that such trust beneficiaries or other parties (or any required majority, if not required to be unanimous) have executed a written direction to the trustee with respect to the action to be taken.

(c) Florida Land Trusts with Written Trust Agreements.

In the case of a Florida Land Trust, if a separate written trust agreement or other agreement governing the trust relationship also exists, Opining Counsel should not render the opinion unless Opining Counsel, in addition to addressing the requirements in the recorded instrument, performs the following further diligence: (i) Opining Counsel should review whatever documents are available that govern the trust relationship to determine whether any trust beneficiaries and/or other parties hold the power of direction over the actions of the trustee and, if so, which trust beneficiaries and/or other parties hold such power of direction; (ii) Opining Counsel should review any other agreement that may have been made among the trust beneficiaries regarding their direction of the trustee to determine compliance with any approval requirements in any such other agreement; and (iii) Opining Counsel should determine that the appropriate trust beneficiaries and/or other parties (or any required majority, if not required to be unanimous) have executed a written direction to the trustee with respect to the action to be taken. Moreover, if the terms of the trust agreement or other agreement governing the trust relationship are inconsistent with the powers set forth in the recorded instrument, the terms in the trust agreement or other agreement governing the trust relationship will generally prevail over the powers set forth in the recorded instrument.

Notwithstanding the requirement set forth herein that Opining Counsel review any underlying trust agreement that may exist, such requirement is not intended to modify or affect the protection of third parties set forth in Section 689.073, Florida Statutes.

(4) Effect of Presumption Arising Under Section 689.07, Florida Statutes.

Under Section 689.07, Florida Statutes, a deed by which real property is conveyed to a person or entity simply "as trustee," without setting forth any of the powers required to avail the trustee of the benefit of the presumption arising under Section 689.071, Florida Statutes, grants an absolute fee simple estate in the real property to the "trustee," individually, including both legal and equitable title, provided the other requirements of Section 689.07, Florida Statutes, are met. In such case, a Florida land trust is not created, the recital of trust status is disregarded as a matter of law, and Opining Counsel should ensure that the "trustee" executes the Transaction Documents in his, her or its individual capacity. In such case, the owner of the real property is not the trustee of a trust and no special form of opinion is necessary. In addition, if the "trustee" is an entity, Opining Counsel must determine whether such entity has the entity power, in its

own right, to own and deal with such property and to execute and deliver the Transaction Documents and perform its obligations thereunder.

Nevertheless, because the deed indicated that the putative "trustee" was acquiring title in a trust capacity, Opining Counsel should obtain a certificate from the "trustee" regarding whether he, she or it has made a declaration of trust and, if so, whether any written trust instrument or instruments exist. If a trust instrument exists, then Opining Counsel should obtain a copy and perform the diligence described above in "Florida Trusts Other than Florida Land Trusts."

**REVISIONS TO "AUTHORIZATION OF THE TRANSACTION  
BY A FLORIDA ENTITY"**

**B. Modifications to Subsection D – "Limited Liability Company"**

The following section replaces in its entirety subsection D. of the Report entitled "*Authorization of the Transaction by a Florida Entity – Limited Liability Company*" that is contained on pages 82-85 of the Report. The principal changes made to this section relate to updating the statutory references under FRLUCA.

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**D. Limited Liability Company**

**Recommended opinion:**

<p><b>The Client has authorized the execution, delivery and performance of the [Transaction Documents] by all necessary limited liability company action.</b></p>
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To render an authorization opinion, Opining Counsel must determine whether its LLC Client has authorized the Transaction in accordance with Chapter 605, Florida Revised Limited Liability Company Act (effective January 1, 2015) (FRLUCA), the LLC's articles of organization and the LLC's operating agreement, and whether the member, manager or officer authorized to execute and deliver the Transaction Documents on behalf of the LLC has been authorized to bind the LLC to the Transaction Documents.

The Committees believe that a third-party legal opinion with respect to the authorization of a transaction by a Florida LLC should not be rendered with respect to an LLC unless (i) if the LLC that has more than one member, the LLC has a written operating agreement, or (ii) if the LLC has only one member, the LLC has a written operating agreement or the LLC has a record sufficient to confirm the identity of the member, to establish whether the LLC is member-managed or manager-managed, and to establish who is authorized to act on behalf of the LLC.

In most cases, the operating agreement of an LLC authorizes it to engage in any lawful activity. Sometimes, however, the operating agreement will include provisions that expressly limit the LLC's power and capacity to authorize a particular transaction or a particular type of transaction or will include SPE provisions. See "Limitations on Power and Special Purpose Entities" below.

The threshold question for Opining Counsel in determining which persons have authority to bind the LLC is whether the LLC is member-managed company or manager-managed. Section 605.0407 of FRLUCA provides that a Florida LLC is a member-managed company by default unless the articles of organization or the operating agreement provide that it is a manager-managed company. The distinction between the two management models with respect to the authority of members and managers of an LLC is discussed below. However, in both cases, Opining Counsel must review the articles of organization and operating agreement of the LLC to opine on the authorization of actions to be taken by the LLC.

Section 605.0201(3)(a) of FRLUCA permits the articles of organization to include an optional statement that the LLC is to be a manager-managed company, and Section 605.0201(3)(d) of FRLUCA permits the articles of organization to include a notice of any limitations on the authority of a manager or member. If either of these provisions are added or changed by an amendment or restatement of the articles of organization, Section 605.0103(4)(b)5. of FRLUCA provides that the amended and restated articles of organization do not constitute notice of the addition or change until 90 days after the effective date of the

amendment or restatement. Further, Section 605.0103(4)(b)5. of FRLCA provides that a provision in an LLC's articles of organization limiting the authority of a manager or a member to transfer real property held in the name of the LLC is not notice of the limitation to any person (except to a member or manager) unless such limitation appears in an affidavit, certificate or other instrument that bears the name of the LLC and is recorded in the public records in the county where the real property is located.

Section 605.04074 of FRLCA provides that an LLC that is member-managed grants all members apparent authority to bind the LCC, and that while an LLC that is manager-managed grants all managers apparent authority to bind the LLC, its members have no apparent authority to bind the company. Section 605.0212 of FRLCA provides that the LLC must identify the name, title or capacity and address of at least one person who has the authority to manage the LLC on the Annual Report that the LLC files with the Department.

Under Section 605.0301 of FRLCA, a person has the power to bind an LLC: (1) as an agent by virtue of Section 605.0407 of FRLCA; (2) by grant of authority under the LLC's articles of organization or operating agreement; (3) by authority pursuant to a filed Statement of Authority under Section 605.0302 of FRLCA; or (4) by having status as an agent of the LLC, authority or power to bind the LLC under laws other than Chapter 605.

Under Section 605.0302 of FRLCA, an LLC may file a Statement of Authority (SOA) with the Department (or in the case of transferring real property, recording a certified copy of the SOA in the proper recording office) to put third parties on notice of specific individuals who have the power and authority to bind the LLC. The individuals named in the SOA do not have to be members or managers of the LLC. A certified copy of a SOA recorded in the public records of a particular county applies to all real property owned by the LLC in that county and can be relied upon by bona fide purchasers and mortgagees. The SOA permits reliance on behalf of third parties for those named individuals of the LLC to execute documents on behalf of the LLC or to limit the authority of certain managers or members. Where a proper SOA is recorded, the deed or mortgage must come from the individual(s) authorized under the SOA. A recorded SOA is valid for 5 years after the statement is effective unless a statement of cancellation, limitation, or denial is recorded. The recorded SOA does not eliminate the need to confirm the active status of the LLC; if an LLC has been dissolved, no reliance can be placed on any SOA recorded prior to the dissolution. A dissolved LLC may file a post-dissolution SOA that identifies individuals who can execute documents on behalf of the dissolved LLC. The SOA can be cancelled, limited, or denied, so it is important to check the public records of the county in which the real property is located in order to confirm that a statement of cancellation, limitation, or denial has not been recorded.

In considering authorization of a transaction by an LLC, it is important to keep in mind that under Section 605.0709 of FRLCA, an LLC that is dissolved only has the power to wind up its affairs. As a result, before rendering an authorization opinion with respect to an LLC, Opining Counsel should determine whether the LLC has filed Articles of Dissolution with the Department or has been administratively dissolved, and if Articles of Dissolution have been filed or the LLC has been administratively dissolved, Opining Counsel should confirm that the transaction as to which the opinion is being rendered is solely for the purpose of winding up the affairs of the LLC, of, if the LLC has been administratively dissolved, should arrange for the LLC to be reinstated before completing the transaction.<sup>2</sup>

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<sup>2</sup> The discussion in this paragraph regarding matters to be considered if a Florida entity has filed Articles of Dissolution or if a Florida entity has been administratively dissolved applies equally to opinions regarding Florida corporations, Florida limited partnerships, and other types of Florida entities. Future versions of this Report will include this same analysis with respect to opinions on the "authorization of the transaction" for other types of Florida entities.

If neither a Statement of Authority has been filed nor a grant of authority has been provided for in the articles of organization (or with respect to a transfer of real estate, neither a certified copy of a Statement of Authority nor an affidavit, certificate or other instrument indicating such authority, has been recorded), under Section 605.0474(3) of FRLCA a third party can rely upon a deed, mortgage, or other instrument executed by any member of a member-managed LLC or any manager of a manager-managed LLC listed on the Florida Division of Corporation's website, without reviewing the operating agreement of the LLC. Under Florida Statutes Section 605.0201 of FRLCA, the articles of organization may, but are not required to, contain the names and addresses of the members or managers of the LLC. Accordingly, if the articles of organization of a newly formed LLC filed with the Department do not identify the members or managers of the LLC, or the member or manager who is executing the documents is not listed in the filed articles of organization of the LLC as a member or manager, Opining Counsel should obtain and review a copy of the operating agreement of the LLC (or in the context of a single member LLC, an operating agreement or a record sufficient to confirm the identity of the member, to establish whether the LLC is member-managed or manager-managed, and to establish who is authorized to act on behalf of the LLC) to confirm the authority of the executing member or manager.

Nevertheless, in giving an opinion on the approval of the Transaction and the Transaction Documents, Opining Counsel should base the opinion on the affirmative act of the LLC, its members and/or managers, as applicable, and not on principles of estoppel, apparent authority, waiver and the like. In particular, although certificates and affidavits of authority are estoppel devices upon which third parties without contrary knowledge may rely, they are generally not sufficient support (standing alone), under Florida customary practice, for an opinion regarding authorization of a Transaction or Transaction Documents.

The following sections discuss matters for Opining Counsel to consider in determining whether an LLC has properly authorized a Transaction.

(1) Member-Managed. Under Sections 605.0407(2) and 605.04073(1)(b) of FRLCA, unless otherwise provided in the articles of organization or operating agreement, the management of a member-managed LLC is vested in its members in proportion to the then-current percentage or other interest of members in the profits of the LLC owned by all of the members. Except as otherwise provided in the articles of organization or operating agreement or FRLCA, in a member-managed LLC the decision of a majority-in-interest of the members is controlling.

Because there is no prohibition in FRLCA, the articles of organization or operating agreement may provide for classes or groups of members having such relative rights, powers, and duties as the articles of organization or operating agreement may provide. The articles of organization or operating agreement may also provide for the taking of an action, including the amendment of the articles of organization or operating agreement, without the vote or approval of any member or class or group of members. Further, the articles of organization or operating agreement may provide that any member or class or group of members shall have no voting rights, may grant to all or certain identified members or a specified class or group of the members the right to vote separately or with all or any class or group of the members or manager on any matter. Similarly, the articles of organization or operating agreement of the LLC may provide that voting by members will be on a per capita, number, financial interest, class, group, or any other basis.

Section 605.04073(4) of FRLCA states that unless otherwise provided in the articles of organization or operating agreement, on any matter that is to be voted on by members, the members may take such action without a meeting, without prior notice, and without a vote if a consent or consents in writing, setting forth the action so taken, are signed by members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting, but in no event by a vote of

less than a majority-in-interest of the members that would be necessary to authorize or take such action at a meeting. However, within 10 days after obtaining such authorization by written consent, notice is to be given to those members who have not consented in writing or who are not entitled to vote on the action.

With respect to the agency authority of members of an LLC, Section 605.04074 of FRLLLCA provides, unless properly limited, that, in a member-managed LLC, each member is an agent of the LLC for the purpose of its business, and an act of a member, including the signing of an instrument in the LLC's name, for apparently carrying on in the ordinary course the LLC's business or business of the kind carried on by the LLC, binds the LLC unless the member had no authority to act for the LLC in the particular matter and the person with whom the member was dealing knew or had notice that the member lacked authority. An act of a member that is not apparently for carrying on in the ordinary course the LLC's business or business of the kind carried on by the LLC binds the LLC only if the act was authorized by appropriate vote of the other members of the LLC. As noted in (3) below, however, the real estate rule set forth in Section 605.04074(3) of FRLLLCA overrides these agency and authority rules for member-managed companies.

To render an opinion that a member-managed LLC has approved a Transaction and the Transaction Documents by all necessary action, Opining Counsel should review the articles of organization and operating agreement of the LLC (which documents should be certified to the Opining Counsel as being a true and correct copy by a member or an officer (if officers have been appointed) of the LLC). Opining Counsel should then obtain evidence as to the approval by the requisite members required to approve the Transaction and the Transaction Documents (which approval should be documented in writing). Opining Counsel should also review FRLLLCA to determine whether authorization of the members is required with respect to the particular Transaction even if not otherwise required by the LLC's articles of organization or operating agreement. Alternatively, if a SOA has been filed with the Department (or, in the case of a transfer of real estate, a certified copy of the SOA has been recorded in the public records of the County of the transaction), Opining Counsel can rely on the acts of the named individuals of the LLC to execute documents on behalf of the LLC.

(2) Manager-Managed. Under Sections 605.0407(3) and 605.04074(2) of FRLLLCA, in a manager-managed LLC, the management of the company is vested in a manager or managers, and each manager has equal rights in the management and conduct of the LLC's business. Except as otherwise provided in FRLLLCA, in a manager-managed LLC, any matter relating to the business of the LLC may be exclusively decided by the manager or, if the LLC has more than one manager, by a majority of the managers. Similarly, Section 605.04073(2)(b) of FRLLLCA provides that, except as otherwise provided in the articles of organization or the operating agreement of the LLC, if the members have appointed more than one manager to manage the business of the LLC, then decisions of the managers shall be made by majority vote of the managers at a meeting or by unanimous written consent. Section 605.04072(2) of FRLLLCA provides that, in a manager-managed LLC, a manager: (i) must be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of a majority-in-interest of the members; and (ii) holds office until a successor has been elected and qualified, unless the manager sooner resigns or is removed. The manager or managers also may hold the offices and have such other responsibilities accorded to them by the members and set out in the articles of organization or the operating agreement of the LLC.

With respect to the agency authority of members in a manager-managed LLC, Section 605.04074(2) of FRLLLCA provides that in a manager-managed LLC, a member is not an agent of the LLC for the purpose of its business solely by reason of being a member. In a manager-managed LLC, each manager is an agent of the LLC for the purpose of its business, and an act of a manager, including the signing of an instrument in the LLC's name, for apparently carrying on in the ordinary course the LLC's business or business of the kind carried on by the LLC binds the LLC, unless the manager had no authority to act for the LLC in the particular matter and the person with whom the manager was dealing knew or had



notice that the manager lacked authority. An act of a manager that is not apparently for carrying on in the ordinary course the LLC's business or business of the kind carried on by the LLC binds the LLC only if the act was authorized under Section 605.04074(2)(c) of FRLCA. As noted in (3) below, however, the real estate rule set forth in Section 605.04074(3) of FRLCA overrides these agency and authority rules.

To render an opinion that a manager-managed LLC has approved a Transaction, Opining Counsel should review the articles of organization and the operating agreement of the LLC, determine the requisite vote of managers (and, if applicable, the requisite vote of members) to approve the Transaction and then obtain evidence as to the approval by such requisite vote of managers (and, if applicable, members). Each requisite vote should be documented in writing. Additionally, Opining Counsel should review FRLCA to determine whether the action to be taken by the manager-managed LLC nevertheless requires the LLC to obtain member approval for the particular Transaction even if not otherwise required by the operating agreement. Alternatively, if a SOA has been filed with the Department (or, in the case of a transfer of real estate, a certified copy of the SOA has been recorded in the public records of the county of the transaction), Opining Counsel can rely on the acts of the named individuals of the LLC to execute documents on behalf of the LLC.

(3) General Real Estate Rule. As an overriding rule applicable to real property held by an LLC, Section 605.04074(3) of FRLCA provides that, unless a certified statement of authority recorded in the applicable real estate records limits the authority of a member or manager, any member of a member-managed LLC, or any manager of a manager-managed LLC may sign and deliver any instrument transferring or affecting the LLC's interest in its real property. The transfer instrument is conclusive in favor of a person who renders value without knowledge of the lack of the authority of the person signing and delivering the instrument. Nevertheless, the Committees recommend that, for opinion purposes, Opining Counsel should obtain and review the documents set forth in (1) above (for a member-managed LLC) or in (2) above (for a manager-managed LLC) before giving an opinion regarding authorization of the Transaction by an LLC.

(4) Authority. An opinion with respect to the authorization of a Transaction by an LLC reflects Opining Counsel's judgment that the persons or entities signing for the LLC have authority to execute the Transaction Documents. Although apparent authority may protect third parties who rely on the signature of a member or manager of the LLC, the Committees believe that Opining Counsel should not base an opinion on the authorization of a Transaction solely on the basis of apparent authority. The Committees also recommend that for opinions on all real estate related transactions, Opining Counsel should require the execution and recordation of a certified copy of the SOA in the public records of the County in which the real property is located.

(5) Other Entities. An opinion on an LLC may require Opining Counsel to look at the authorization of the Transaction by entities other than the LLC that is a party to the Transaction and the Transaction Documents. Opining Counsel should examine the structure of the LLC to determine what members or managers who have to approve the Transaction are entities. In reviewing authorization by the LLC, Opining Counsel should also review the authorization by these other entities to a level where such Opining Counsel is comfortable, based on the particular facts and circumstances, that the requisite approval of the LLC entering into the Transaction and the Transaction Documents has, in fact, been obtained.

Opining Counsel should recognize that Opining Counsel has the responsibility to become comfortable, based on the particular facts and circumstances, that the requisite approval of the other entities that are members and/or or managers of the LLC entering into the Transaction and the Transaction Documents has been obtained. If Opining Counsel cannot satisfy themselves in that regard, Opining Counsel should expressly set forth in the opinion letter any limitations on the scope of Opining Counsel's



opinion (or make assumptions on those topics) as a result of not having been able to satisfy themselves regarding necessary approvals by other entities that are members and/or managers of the LLC.

(6) Fiduciary Duties. The authorization opinion does not mean that the LLC's managers or the managing members who are managing the LLC, as applicable, complied with their fiduciary duties in approving the Transaction and the Transaction Documents.

**NEW SECTION OF THE REPORT – OPINIONS WITH RESPECT TO ISSUANCES OF  
PREFERRED STOCK BY A FLORIDA CORPORATION**

This First Supplement addresses opinions regarding issuances of preferred shares by Florida corporations. It is largely based on the guidance contained in the 2008 report by the TriBar Opinion Committee ("**TriBar**") on the topic of "Duly Authorized Opinions on Preferred Stock" (the "**TriBar Preferred Stock Report**"). The TriBar Preferred Stock Report is available at 63 *The Business Lawyer*, 921. Additionally, this First Supplement discusses principles contained in the report of the Legal Opinions Committee of the Business Law Section of the State Bar of California (the "**California Committee**") in their 2009 report entitled: "Report on Selected Legal Opinion Issues in Venture Capital Financing Transactions" (the "**California VC Report**"). The California VC Report is available at 65, *The Business Lawyer*, 161.

While these reports do not necessarily reflect customary practice in Florida, the guidance contained in these reports may be helpful to Florida lawyers who are called upon to deliver opinions regarding issuances of preferred stock covered by this section.

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**OPINIONS WITH RESPECT TO ISSUANCES OF PREFERRED STOCK  
BY A FLORIDA CORPORATION**

In Transactions in which a Florida corporation is issuing equity securities, Opining Counsel may be asked to render opinions regarding the Client's preferred equity securities ("**preferred shares**" or "**preferred stock**"). Below are examples of those opinions, together with a discussion of the opinion language and the diligence recommended with respect to each opinion.

**A. Corporations – Authorized Capitalization – Preferred Stock**

**Recommended opinion:**

<b>The Client's authorized capitalization includes ____ shares of preferred stock, \$__ par value per share.</b>
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The authorized capitalization opinion for preferred stock means that, as of the date of the opinion, the Client is authorized to issue the number of shares of preferred stock set forth in its articles of incorporation filed with the Department, as amended to the date of the opinion letter. Pursuant to Section 607.01401(25) of the FBCA, the term "shares" means the units into which the proprietary interests in a corporation are divided.

Section 607.0202(1)(c) of the FBCA requires a corporation organized in Florida to set forth in its articles of incorporation the number of shares that it is authorized to issue. A Florida corporation does not have the legal authority to issue more shares than the number of shares set forth in its articles of incorporation. Section 607.0601 of the FBCA also requires the corporation to set forth in its articles of incorporation the classes of shares and the number of shares of each class of shares that it is authorized to issue. If more than one class of shares is authorized, the articles of incorporation must set forth a distinguishing designation for each class and, prior to the issuance of shares of a class, the preferences, limitations and relative rights of that class.

A corporation organized in Florida may increase or decrease its authorized capitalization by amending its articles of incorporation pursuant to Section 607.1006 of the FBCA. As a result, if a

corporation has amended its articles of incorporation, Opining Counsel should review all articles of amendment to and restatements of the corporation's articles of incorporation in order to determine the current authorized capitalization.

Under Section 607.0702, the articles of incorporation may provide for "blank check" authority allowing the board of directors, without further shareholder action, to create the preferences, rights and limitations of a particular class or series of shares. In such circumstances, Opining Counsel should (i) review the articles of incorporation to confirm that "blank check" shares have been created, and (ii) review the amendment to the articles filed with the Department that establishes the rights, preferences and limitations of the particular class or series of preferred shares.

The authorized capitalization opinion does not mean that Opining Counsel has reviewed the organization of the corporation, which is a matter covered by the "entity status and organization" opinion. See "Entity Status and Organization of a Florida Entity." However, because a corporation must have been organized and be active to authorize the issuance of shares, Opining Counsel should not render the authorized capitalization opinion, or any other opinion regarding issuances of the corporation's securities, unless Opining Counsel has confirmed (or expressly assumed in the opinion letter) that the corporation has been organized and is active. Because opinions regarding securities of Florida corporations are usually given at the same time as opinions on the entity status and organization of Florida corporations, this should rarely be an issue. Further, the authorized capitalization opinion does not mean that Opining Counsel has reviewed the documents with respect to the actions taken to approve a previous amendment to the articles of incorporation (or previously adopted amended and restated articles of incorporation). For purposes of rendering the authorized capitalization opinion, absent knowledge to the contrary (or knowledge of facts (red flags) that ought to cause a reasonable Opining Counsel to call the underlying assumptions into question), Opining Counsel may assume that each previous amendment to the Client's articles of incorporation was properly proposed and adopted based on the acceptance of such filings by the Department.

**Diligence Checklist – Corporation – Preferred Stock.** To render the "authorized capitalization" opinion with respect to preferred stock of a Florida corporation, Opining Counsel should take the following actions:

- Obtain a copy of the corporation's articles of incorporation, as amended (preferably a certified copy obtained from the Department).
- If applicable, obtain a copy of any certificate of designation, rights, preferences and limitations related to the preferred stock.
- Review the articles of incorporation (or the most recent restated articles of incorporation) and, if applicable, any certificates of designation, rights, preferences, and limitations to determine the classes of shares and the number of shares authorized for each class as set forth therein.
- If the articles of incorporation have been amended and/or any certificates of designation, rights, preferences, and limitations have been filed since the date of the initially filed articles of incorporation (or, if applicable, since the date of the most recent restated articles of incorporation), review all such amendments and certificates to determine the current classes of shares and the current number of shares authorized for each class as set forth therein.

**B. Corporations – Number of Shares Outstanding – Preferred Stock**

An opinion regarding the number of outstanding shares of preferred stock of a corporation is a factual confirmation. Often, a corporation will make a representation and warranty in the Transaction Documents regarding the number of its outstanding preferred shares. However, Opinion Recipients often request an opinion on this issue in an effort to obtain further assurance.

The recommended form of opinion is as follows:

**Based solely on a certificate of \_\_\_\_\_, the Client has \_\_\_\_\_ shares of its \_\_\_\_\_ preferred stock outstanding.**

The Committees believe that this opinion should generally be rendered based solely on a certificate from the Client's transfer agent and/or on a certificate from the Client. Although some Opining Counsel may elect to review the corporation's stock register and any other stock records contained in the corporation's minute book, such diligence is not necessary under Florida customary practice in order to render the opinion in its recommended form.

Notwithstanding the foregoing, if Opining Counsel engages in further diligence to support this opinion, the limitation contained in the recommended opinion above should be expanded to describe whatever further diligence has been conducted. Further, Opining Counsel should be aware that, if contrary to the position stated above, this opinion is rendered without the "based solely on" qualifying language, the Opinion Recipient may reasonably expect that the opinion rendered was based on a complete review by Opining Counsel of the corporation's stock register and the corporation's other stock records.

**C. Corporations – Reservation of Shares – Preferred Stock**

The "reserved shares" preferred stock opinion addresses the fact that certain securities of the corporation have been reserved for future issuance upon some future event, such as the conversion of convertible securities or the exercise of derivative securities (e.g., options or warrants to purchase shares of preferred stock). This opinion means that the corporation has taken the necessary corporate actions to reserve a portion of its authorized shares of preferred stock for future issuance.

The FBCA does not specifically address reservation of shares or provide any legal effect to this "reservation" by the board of directors of the corporation. If the "reserved shares" preferred stock opinion is rendered, it means that: (i) sufficient additional shares of preferred stock have been authorized for issuance in the future on the exercise of the convertible or derivative securities, but are not yet issued, (ii) the board of directors has adopted a resolution to designate and reserve such authorized, but unissued, preferred shares for future issuance, and (iii) such resolution of the board of directors has not been revoked as of the date of the opinion letter. After confirming the number of authorized shares of the corporation from a review of the corporation's articles of incorporation as amended to date, Opining Counsel may rely upon an officer's certificate confirming the factual issues described in clauses (i), (ii) and (iii) above as the basis for this opinion.

The recommended form of opinion is as follows:

**The Client has reserved \_\_\_\_\_ shares of its [preferred stock] for issuance upon [describe the triggering event with specificity, such as the conversion of convertible securities or the exercise of derivative securities].**

The "reserved shares" preferred stock opinion does not confirm the absence of anti-dilution provisions in any convertible securities, options or warrants issued by the corporation that in the future could cause the number of shares of preferred stock reserved to be inadequate. In addition, the "reserved shares" preferred stock opinion does not provide absolute assurance that such preferred shares will be available for issuance at the time the preferred shares are to be issued or converted, because the corporation's board of directors has the legal ability to revoke the reservation of preferred shares and authorize the issuance of those preferred shares in the future for an entirely different purpose. Accordingly, as with each of the other opinions that are being rendered, the "reserved shares" preferred stock opinion speaks only as of the date of the opinion letter.

To provide greater assurance to the Opinion Recipient that the preferred shares reserved will continue to be available for issuance in the future upon the designated triggering event, the Opinion Recipient should consider obtaining a contractual covenant from the corporation in a Transaction Document or in some other document that obligates the corporation to continue to reserve the appropriate number of authorized but unissued preferred shares.

#### **D. Corporations – Issuances of Preferred Shares**

The following opinions relate to the validity of the particular issuances of preferred shares that are contemplated by the Transaction Documents.

##### **Recommended opinion:**

**The [preferred shares] have been duly authorized and [the preferred shares], when delivered and paid for in accordance with the [Transaction Documents], will be validly issued, fully paid and nonassessable.**

##### **1. Duly Authorized.**

Under Florida customary practice, this opinion means that: (a) the issuance of the preferred shares has been authorized by all necessary corporate action in compliance with the FBCA and the articles of incorporation and bylaws of the corporation, (b) the number of preferred shares that have been issued (together with any additional preferred shares proposed to be issued) are not in excess of the number of preferred shares of the particular class or classes authorized by the articles of incorporation, as amended to date, and (c) the corporation has the power under the FBCA, the articles of incorporation and the bylaws of the corporation to create the preferred shares having the rights, powers and preferences of the preferred shares in question. This opinion does not mean that any previously issued and outstanding preferred shares were properly issued and, in rendering this opinion, Opining Counsel is not expected to take any steps to confirm whether any previously issued and outstanding preferred shares were properly issued. See "Outstanding Preferred Equity Securities" below.

In determining the number of preferred shares available for issuance, Opining Counsel may rely on the information contained in the corporation's financial statements, on a statement from the corporation's transfer agent or on a statement from the Client, unless Opining Counsel has knowledge that the information being relied upon is not correct or unless Opining Counsel is aware of other facts (red flags) that call into question the reliability of such information. See "Common Elements of Opinions—Knowledge."

The board of directors (or the shareholders, if such power is reserved to the shareholders in the articles of incorporation) may approve the issuance of preferred shares of stock for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, promises to perform services evidenced by a written contract, or other securities of the

corporation. Before the corporation issues any preferred shares, the board of directors of the corporation (or its shareholders, if such power is reserved to them) must determine that the consideration received or to be received for the preferred shares to be issued satisfies statutory requirements (which, under the FBCA, is a determination that the consideration being paid for the shares is adequate).

Under Section 607.0825(1)(e) of the FBCA, although the board of directors of a Florida corporation cannot delegate authority to authorize or approve the issuance or sale or contract for the sale of preferred shares, it can give a committee (or a senior executive officer of the corporation) the power to authorize or approve the issuance or sale or contract for the sale of the preferred shares so long as such issuance, sale or contract for sale is within limits specifically prescribed by the board of directors in the authorizing resolutions. However, Florida law is unclear on whether a committee (or a senior officer of a corporation) can currently be given the power to set or establish the rights, powers and preferences of a particular series of "blank check" preferred stock even if the board of directors appears to have set limits in authorizing resolutions.<sup>3</sup>

Opinion recipients sometimes request that the opinion state that the terms of the preferred shares do not violate the FBCA or the articles of incorporation of the corporation. One form of this requested opinion is set forth below:

***The rights, powers and preferences of the preferred stock set forth in [the articles of incorporation of the corporation] do not violate [the FBCA] or [the articles of incorporation of the corporation].***

The Committees believe that this statement of opinion is implicit in the duly authorized opinion and is therefore unnecessary.

An opinion that preferred shares have been "duly authorized" does not address whether the creation of such shares violates or breaches any agreement to which the corporation is a party, such as a shareholders' agreement. In addition, the "duly authorized" opinion does not address whether any fiduciary duty has been violated in connection with the creation or authorization of such preferred shares.

## **2. Enforceability of Outstanding Preferred Stock**

The duly authorized opinion does not cover a shareholder's ability to enforce the provisions of the preferred shares. The opinion addresses only the corporation's power under the FBCA and the corporation's articles of incorporation to create the class or series of preferred shares in question. Accordingly, the duly authorized opinion does not address the question whether, assuming that the corporation has the power to create such preferred shares, the terms of the preferred shares will be given effect by the courts in a particular situation.

Opinion recipients will sometimes request that the opinion state that the provisions of the preferred shares (or certain provisions of such preferred shares) are "*enforceable in accordance with their terms.*" At least two bar reports have addressed this issue, and both reports state that it is inappropriate for an opinion recipient to request an enforceability opinion with respect to the issuance of preferred shares.

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<sup>3</sup> The FBCA was modified in 2019, effective January 1, 2020. Among the amendments made to the FBCA, the provision that imposed limits on the ability of the board to delegate to a board committee the issuance or sale of shares, or the designation of relative rights, preferences and limitations of a voting group, has been eliminated. The elimination of this limitation also eliminates the limitation on the board's ability to delegate such issuance to a senior executive of the company.

In discussing this enforceability request, the TriBar Preferred Stock Report noted that "the enforceability of an agreement addresses contract law concepts (and includes the standard exceptions) and preferred stock provisions are not governed by contract law but rather are governed by corporation law." Because the enforceability opinion addresses the remedies available to a party to a contract, the TriBar Preferred Stock Report noted that the "concepts underlying an enforceability opinion do not easily fit" a preferred stock opinion.

In 2009, the California Committee adopted the position of the TriBar Preferred Stock Report that "a duly authorized" opinion confirms that the corporation has the power to create stock with the rights, powers and preferences of the shares in question. The California VC Report noted that an opinion giver is sometimes asked to provide an opinion that "*the rights, preferences and privileges of the stock being purchased in the transaction are as set forth in the Company's Articles*" and, occasionally, the opinion is formulated as a request for an enforceability opinion, such as the Company's Articles "*are enforceable against the Company in accordance with their terms.*" The California Committee stated in the California VC Report that both requested opinions were "technically incorrect" and "inappropriate" because (i) the attributes of the preferred shares are set forth not only in the corporation's articles of incorporation, but also in the applicable corporation statute and case law, and (ii) the corporation's articles of incorporation are not, in fact, a contract as to which a remedies opinion can be given because the provisions of the articles of incorporation relating to the rights of the preferred shares are governed by the relevant corporate law.

Although both the TriBar Preferred Stock Report and the California VC Report have adopted the position that preferred shares are governed by (or at least primarily governed by) corporate law and not contract law, several more recent Delaware cases have held that the rights of preferred shareholders are "primarily contractual in nature." See Fletcher International, Ltd. v. ION Geophysical Corporation, Del. Ch. LEXIS 125 (2010) (holding that a corporation that caused its subsidiary to issue a convertible note without obtaining the required consent of a preferred shareholder of such corporation violated the terms of such preferred shares). As noted by another Delaware court, "[a] preferred shareholder's rights are defined in either the corporation's articles of incorporation or in the certificate of designation, which acts as an amendment to a certificate of incorporation. Thus, rights of preferred shareholders are contractual in nature and the 'construction of preferred stock provisions are matters of contract interpretation for the courts.'" In re Appraisal of Metromedia International Group, Inc., 971 A.2d 893, 899 (Del.Ch. 2009). The Metromedia court noted that former Delaware "Chancellor Allen analyzed the rights conferred upon preferred shareholders by the certificate of designation because, '[t]o the extent it possesses any special rights or powers and to the extent it is restricted or limited in any way, the relation between the holder of the preferred shares and the corporation is contractual.'"

Notwithstanding these Delaware court decisions, the Committees believe that, under Florida customary practice, it is inappropriate for recipient counsel to request that Opining Counsel opine as to the enforceability of the preferred shares or the certificate of designation for such preferred shares, regardless of the formulation of such opinion.

### 3. **Potential Exceptions to Duly Authorized Opinion.**

In some complex issuances of preferred shares, Opining Counsel may not be able to provide an unqualified "due authorization" opinion. Instead, Opining Counsel, if able to render any opinion, may need to include one or more exceptions addressing specific terms of the articles of incorporation of the corporation that conflict with the applicable provisions of the FBCA, the articles of incorporation or applicable case law. Examples of these special exceptions include, without limitation:

- (i) the articles of incorporation establish a procedure for declaring dividends that conflict with the FBCA;



(ii) the articles of incorporation provide for "drag along" rights that arguably conflict with the FBCA's appraisal rights;

(iii) the articles of incorporation provide for a lower percentage vote for approval of certain matters than permitted by the FBCA;

(iv) the articles of incorporation render holders of a class of stock the right to designate members of a committee of the board of directors but the FBCA limits that right to the members of the board of directors; and

(v) the board of directors pursuant to its blank check authority creates a non-voting class of stock but the articles of incorporation only permit voting stock.

No exception to the "due authorization" opinion is required if the articles of incorporation require redemption of the preferred shares and the preferred shares are callable; however, the Committees believe that an exception would be required if the holder of the preferred shares has a "put right" with respect to such preferred shares. In any event, the FBCA only permits redemption when the corporation has sufficient legal funds available to effect such redemption. Although many opinions include the phrase "*to the extent funds are lawfully available therefor*", the Committees believe that including that phrase in the opinion is unnecessary. However, the Committees suggest that Opining Counsel consider informing recipient's counsel of this limitation.

Finally, the TriBar Preferred Stock Report notes that the corporation's lack of corporate power to create a certain provision of the preferred shares "might" give rise to a question regarding the validity of the preferred shares itself. In this situation, if the offending provision in the articles of incorporation is not removed or adequately modified to cure the issue to the satisfaction of Opining Counsel, Opining Counsel may not be able to render the duly authorized opinion without expressly addressing in the opinion the possible effect of the provision on the validity of the preferred shares in its entirety.

**Diligence Checklist – Corporation – Preferred Stock.** To render the "duly authorized" portion of this opinion, Opining Counsel should take the following actions<sup>4</sup>:

- Assuming that Opining Counsel is also opining on the authorized capital of the corporation and has performed the diligence necessary to render that opinion (see "Corporations-Authorized Capitalization – Preferred Stock" above), Opining Counsel should review the articles of incorporation, as amended (preferably a certified copy obtained from the Department) to determine whether the right to authorize the issuance of preferred shares is reserved to the shareholders.
- Opining Counsel should confirm that the issuance of the preferred shares has been approved by the board of directors of the corporation (or the shareholders, if the articles of incorporation reserve this power to the shareholders) in accordance with the FBCA and the corporation's articles of incorporation and bylaws.

<sup>4</sup> A number of the actions to be taken that are recommended in this diligence checklist on the duly authorized portion of this opinion technically relate to the "valid issuance" of the shares rather than the "authorization of the shares." However, because these two concepts are most often considered together by Opining Counsel, the recommended diligence steps described in this "authorization" diligence checklist also include those items that relate to the "valid issuance" opinion.

- If any aspects of the issuance of the preferred shares was delegated to a committee of the board of directors (or to a senior executive officer), Opining Counsel should confirm that the authority delegated to the committee (or to a senior executive officer) was permitted under the FBCA and that the committee (or such senior executive officer) properly acted within that authority. In this regard, Section 607.0825 of the FBCA provides that no committee of the board of directors of a corporation shall have the authority to authorize or approve the issuance or sale or contract for the sale of preferred shares, or determine the designation and relative rights, preferences, and limitations of a voting group, except that the board of directors may authorize a committee (or a senior executive officer) to do so within limits specifically prescribed by the board of directors. Opining Counsel should also verify that any actions taken by the committee (or such senior executive officer) with respect to the issuance of the preferred shares were taken in accordance with the FBCA and the corporation's articles of incorporation and bylaws.<sup>5</sup>
- Opining Counsel should obtain a factual certificate from the Client providing Opining Counsel with copies of the resolutions (or written consents) adopted with respect to the preferred share issuance, certified by an appropriate officer of the Client. Unless Opining Counsel has notice that such facts are inaccurate (or is aware of other facts (red flags) that reasonably call into question the reliability of such facts), Opining Counsel may assume under Florida customary practice that: (i) in authorizing the issuance of the preferred shares, the board of directors (or shareholders, committee or a senior executive officer) acted at a properly called and held meeting (or by written consent, provided that taking such action by written consent is not prohibited by the articles of incorporation or bylaws), and (ii) the authorizing resolution received the requisite votes in accordance with the FBCA, the articles of incorporation and the bylaws.
- Opining Counsel should examine the authorizing resolution(s) to confirm that the board of directors (or shareholders and/or committee): (a) approved the issuance of the preferred shares, (b) recited the consideration for which the preferred shares were to be issued, and (c) determined in such resolution that the consideration received or to be received for the preferred shares satisfied statutory requirements (which includes, under the FBCA, a determination that the consideration being paid for the shares is adequate).
- Opining Counsel should confirm that the terms of the preferred shares do not conflict with or violate the FBCA, the articles of incorporation of the corporation or applicable case law.
- Opining Counsel should determine whether a "put right" has been granted in connection with such preferred shares and, if so, whether an exception should be included in the opinion.
- Opining Counsel should examine the authorizing resolution(s) to confirm that the board of directors (or shareholders and/or committee and/or a senior executive officer): (a) approved the issuance of the shares, (b) recited the consideration for which the shares were to be issued, and (c) determined in such resolution that the consideration received or to be received for the shares satisfied statutory requirements (which includes, under the FBCA, a determination that the consideration being paid for the shares is adequate).

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<sup>5</sup> See Footnote 3 above.

#### **4. Validly Issued – Preferred Stock.**

This opinion means that the preferred shares have been issued in accordance with the FBCA, the corporation's articles of incorporation and bylaws and any resolution of the board of directors or shareholders (or committee or a senior executive officer) of the corporation which authorized such issuance. The "validly issued" opinion should not be rendered by Opining Counsel unless the preferred shares are: (i) included within the authorized capitalization of the corporation, (ii) have been duly authorized, (iii) are fully paid and are nonassessable (see below), and (iv) comply with any applicable statutory preemptive rights or any applicable preemptive rights contained in the corporation's articles of incorporation.

The corporation may issue the number of preferred shares of each class or series authorized by its articles of incorporation pursuant to Section 607.0603 of the FBCA. A corporation may also issue fractional preferred shares pursuant to Section 607.0604 of the FBCA. Before a corporation issues preferred shares, the board of directors (or shareholders, if the power to issue preferred shares has been reserved to the shareholders in the articles of incorporation) must determine that the consideration received or to be received for the preferred shares to be issued is adequate pursuant to Section 607.0621(3) of the FBCA, which defines broadly the consideration for which shares may be issued. If the preferred shares are to be issued pursuant to a written subscription agreement approved by the board of directors in the authorizing resolutions (which subscription agreement sets forth the terms of the preferred share purchase), the preferred shares will not be deemed to have been validly issued until the consideration for the issuance of such preferred shares has been paid as required by such subscription agreement. Opining Counsel should confirm that payment was received by the corporation by obtaining an officer's certificate confirming such payment or by some other method reasonably acceptable to Opining Counsel.

Pursuant to Section 607.0625(1) of the FBCA, preferred shares may, but need not be, represented by certificates. However, if preferred shares are represented by a certificate or certificates, then, at a minimum, each preferred share certificate must state on its face the following information:

- (a) the name of the corporation and that the corporation is organized under the laws of the State of Florida;
- (b) the name of the person to whom the preferred shares are issued; and
- (c) the number and class of preferred shares and the designation of the series, if any, the certificate represents.

In addition, as required by Section 607.0625(3) of the FBCA, if the corporation is authorized to issue one or more classes of preferred shares or one or more series within a class of preferred shares, the designations, relative rights, preferences, and limitations applicable to each class and the variations in rights, preferences and limitations determined for each series (and the authority of the board of directors to determine variations for future series) must be summarized on the front or back of each certificate. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder with a full statement of this information on request and without charge.

Finally, pursuant to Section 607.0625(4)(a) of the FBCA, each preferred share certificate must be signed (either manually or in facsimile) by an officer or officers designated in the bylaws or designated by the board of directors.

An opinion that preferred shares are validly issued subsumes within it an opinion that the certificates issued representing the preferred shares are in proper form (or if uncertificated securities (see below), that such securities have been properly issued). A separate opinion as to whether the certificates

representing the preferred shares being issued are in proper form is sometimes requested and given. See "Corporations – Stock Certificates in Proper Form – Preferred Stock" below.

Pursuant to Section 607.0626 of the FBCA, unless the articles of incorporation or the bylaws provide otherwise, the board of directors of the corporation may authorize the issuance of some or all of the preferred shares without certificates. If the preferred shares are not evidenced by certificates, then, within a reasonable time after the issue or transfer of the preferred shares without certificates, the corporation shall send the shareholder a written statement of the information required by Section 607.0625(2) and (3) of the FBCA (if applicable) and Section 607.0627 of the FBCA regarding restrictions on transfer of preferred shares (if applicable). However, the failure of the corporation to deliver the written statement described in Section 607.0626 of the FBCA after the preferred shares without certificates are issued does not affect an opinion regarding whether the preferred shares were validly issued. It is recommended (but not required) that Opining Counsel obtain a certificate from the Client confirming that the Client has complied with such requirement or an undertaking from the Client that it will in the future comply with the Client's obligations under this statute.

In rendering the "valid issuance" opinion, Opining Counsel should also consider whether the contemplated issuance of preferred shares violates a preemptive right contained in the FBCA or in the corporation's articles of incorporation. See "Corporations – No Preemptive Rights – Preferred Stock" below. If such preemptive rights exist, Opining Counsel should make certain that such rights have been properly extended and addressed, or waived, before issuing an opinion that such preferred shares are validly issued.

An opinion that preferred shares have been "validly issued" does not address whether the issuance of such preferred shares violates or breaches any agreement to which the corporation is a party, such as a shareholders' agreement. In addition, the "validly issued" opinion does not address whether any fiduciary duty has been violated in connection with the issuance of the preferred shares. However, if Opining Counsel is aware that a particular issuance of preferred shares violates a shareholders' agreement, Opining Counsel should consider advising the Opinion Recipient of such fact so as to avoid a potential claim that the opinion is misleading.

**Diligence Checklist – Corporation – Preferred Stock.** To render the "validly issued" portion of this opinion, Opining Counsel should take the following actions:

- Confirm that the preferred shares to be issued are duly authorized (by following the steps recommended above regarding opinions on authorization).
- Obtain a copy of the corporation's articles of incorporation, as amended, (preferably a certified copy obtained from the Department), and review such articles and bylaws to verify compliance with any specified minimum amount or form of consideration.
- Review the corporation's bylaws (a copy certified as true and correct by an officer) to verify compliance with any specified minimum amount or form of consideration.
- Obtain all subscription agreements, if any, whether pre-incorporation or post-incorporation, if applicable, referred to in the authorizing resolutions, confirming the consideration to be received by the corporation.

- Review resolutions of the board of directors, committee and/or a senior executive officer (a copy certified as true and correct by an officer) confirming the consideration to be received for the issuance of the shares and the adequacy thereof under the FBCA and the articles of incorporation and bylaws.
- Confirm that the preferred share certificates are in proper form or, if the preferred shares are to be uncertificated, that the statutory requirements with respect to uncertificated securities have been (or are being) followed.

## 5. Fully Paid and Nonassessable – Preferred Stock.

This opinion means that the corporation has received the required consideration (except in the case of stock dividends, where no consideration is required) for the preferred shares being issued and that the corporation cannot call for any additional consideration to be paid by the holder of such shares.

(a) Fully Paid. This opinion means that the consideration, as specified in the authorizing resolutions or in a subscription agreement, has been received in full and the requirements, if any, in the corporation's articles of incorporation and bylaws, have been satisfied. Pursuant to Section 607.0621(2) of the FBCA, such consideration may consist of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, promises to perform services evidenced by a written contract, or other securities of the corporation. Opining Counsel may rely on a certificate from the Client regarding the receipt of such consideration unless Opining Counsel is aware of facts that would make such reliance unreasonable or unreliable under the circumstances.

The determination by the corporation's board of directors (or shareholders, if such power is reserved to the shareholders) is conclusive insofar as the adequacy of consideration for the issuance of the preferred shares, and this opinion is based on an unstated assumption regarding compliance by the directors with their fiduciary obligations in determining the adequacy of consideration. Although Florida eliminated par value in 1990 as it relates to share issuances, some companies continue to use par value in order to minimize out-of-state taxes or fees. Unless the corporation's articles of incorporation provide otherwise, preferred shares with par value may be issued for less than their stated value. Further, under Section 607.0623(1) of the FBCA, preferred shares of a corporation's stock issued as a dividend may be issued without consideration unless the articles of incorporation otherwise provide.

(b) Nonassessable. Nonassessable means that, once the corporation has received the specified consideration, it cannot call for any additional consideration. Under Section 607.0621(4) of the FBCA, consideration in the form of a promise to pay money or perform services is deemed received by the corporation at the time of the making of the promise, unless the agreement otherwise provides.

Since this opinion is rendered under the FBCA, it does not address whether preferred shares might be assessable under another statute or under an agreement. This is important because, for example, in contrast to corporations organized under the FBCA, shares of a Florida banking corporation organized under Chapter 658 of the Florida Statutes must have a specified par value and shares cannot be issued at a price less than par value.

Similarly, this opinion does not mean that shareholders will not be subject to liability for receipt of an unlawful dividend or, as to a controlling shareholder, if the corporate veil is pierced.

**Diligence Checklist – Corporation – Preferred Stock.** To render the "fully paid and non-assessable" portion of this opinion, Opining Counsel should take the following actions:

- Confirm that the preferred shares are duly authorized and validly issued (by following the steps recommended above regarding opinions on authorization and opinions on valid issuance).
- Obtain an officer's certificate confirming receipt of the consideration required by the authorizing resolutions and/or confirming that no consideration for the preferred shares remains unpaid.

**E. Corporations – No Preemptive Rights – Preferred Stock**

**Recommended opinion:**

**The issuance of the [preferred shares] will not give rise to any preemptive rights under the Florida Business Corporation Act or the Client's Articles of Incorporation.**

This opinion means that existing shareholders of a corporation do not have a right under the FBCA or the corporation's articles of incorporation to maintain their percentage ownership of the corporation by buying a proportional number of shares of any future issuance of preferred shares. Existing shareholders with preemptive rights have the right, but not the obligation, to purchase as many shares of the newly issued preferred stock as are necessary to maintain their proportional ownership interest in the corporation before the corporation sells the preferred shares to persons outside the shareholder group that holds the preemptive rights.

Prior to 1976, Florida's general business corporation statute mandated preemptive rights unless the articles of incorporation provided otherwise. For corporations formed on or after January 1, 1976, no statutory preemptive rights exist unless they are expressly provided for in the articles of incorporation. Thus, in 1976, Florida changed from a statutory "opt-out" state to a statutory "opt-in" state. The opt-in approach recognizes that preemptive rights may be inconvenient and severely impair a corporation's ability to raise capital through future equity issuances. Therefore, Florida corporations formed on or after January 1, 1976 do not have statutory preemptive rights unless specifically stated in their articles of incorporation, but Florida corporations formed prior to January 1, 1976 continue to have preemptive rights unless their articles of incorporation expressly provide that the corporation's shareholders do not have preemptive rights.

Regardless of whether a corporation grants or denies preemptive rights in its articles of incorporation, a corporation may, by contract or otherwise, grant a shareholder the equivalent of preemptive rights or some other right to purchase preferred shares from the corporation. The recommended form of opinion regarding preemptive rights does not cover contractual preemptive rights. However, although such confirmation is discouraged, a factual confirmation that Opining Counsel is not aware of any contractual preemptive rights that have been granted to other shareholders of the corporation is sometimes requested and given. See "No Violation and No Breach or Default – No Breach of or Default under Agreements" for a discussion of opinions regarding contractual preemptive rights. Further, if Opining Counsel is aware that a particular issuance of preferred shares violates a contractual preemptive right contained in a particular agreement under circumstances where Opining Counsel is not rendering an opinion regarding "no breach of or default under agreements" with respect to that particular agreement, Opining Counsel should consider advising the Opinion Recipient of such fact so as to avoid a potential claim that the opinion is misleading.



**Diligence Checklist – Corporation Incorporated On or After January 1, 1976.**

- When issuing this opinion for a corporation formed on or after January 1, 1976, Opining Counsel should review the corporation’s articles of incorporation, as amended (preferably a certified copy obtained from the Department), to ascertain if such articles of incorporation grant preemptive rights to shareholders.
- If the articles of incorporation grant preemptive rights to shareholders, Opining Counsel should ascertain whether the preferred share issuance in question triggers the granting of preemptive rights as described in the articles of incorporation.
- If the preferred share issuance in question triggers the grant of preemptive rights under the articles of incorporation, Opining Counsel should determine if shareholders have waived their preemptive rights or whether the shareholders holding preemptive rights have already been properly given the opportunity to exercise their preemptive rights. Pursuant to Section 607.0630(2)(b) of the FBCA, "[a] shareholder may waive his or her preemptive right," and a waiver "evidenced by a writing is irrevocable even though it is not supported by consideration." If all shareholders with preemptive rights have not waived them, or if such preemptive rights have not been provided in accordance with the FBCA, this opinion should not be rendered.

**Diligence Checklist – Corporation Incorporated Prior to 1976.**

- When issuing this opinion for a corporation formed prior to 1976, Opining Counsel should review the corporation’s articles of incorporation to determine if they expressly deny preemptive rights to shareholders. If such articles of incorporation do not specifically provide that they deny preemptive rights, Opining Counsel should determine if shareholders have waived their preemptive rights. Because current Section 607.0630(2)(b) of the FBCA, which statutorily provides for the waiver of preemptive rights, does not apply to corporations incorporated prior to January 1, 1976, a waiver must be noted on the shareholders’ stock certificates to be effective. This opinion should not be rendered unless all shareholders have expressly waived their preemptive rights.

**F. Corporations – Stock Certificates in Proper Form – Preferred Stock**

**Recommended opinion:**

**The stock certificate(s) representing the [preferred shares] comply in all material respects with the Florida Business Corporation Act and the Client’s Articles of Incorporation and bylaws.**

This opinion means that, as of the date of the opinion, each preferred stock certificate: (i) includes on its face the name of the issuing corporation, a statement that the corporation is organized under the laws of the State of Florida, the name of a person designated as the person to whom the preferred shares are issued, the number and class of preferred shares the preferred stock certificate represents and the designation of the series, if any, the stock certificate represents, and (ii) is signed, either manually or by facsimile, by an officer or officers designated in the bylaws or designated in resolutions of the board (whether or not such person is still an officer when the certificate is issued) or by a person or persons who purport to be an officer or officers of the corporation. In addition, this opinion means that, as of the date of the opinion, each stock certificate either: (i) includes on its face or back language relating to: (a) any designations, relative rights,



preferences, and limitations applicable to each class, and (b) any variations in rights, preferences, and limitations for each series (and the authority of the board to determine variations for future series), or (ii) if any such designations, relative rights, preferences, and/or limitations are applicable and/or any such variations in rights, preferences and/or limitations are applicable, states conspicuously on its face or back that the corporation will furnish the shareholder with a full statement of the information required by Section 607.0625(3) of the FBCA upon request and without charge. Although a stock certificate may bear an actual or facsimile corporate seal, this opinion means that the preferred stock certificate bears a corporate seal only if the corporation's articles of incorporation and/or bylaws requires that the corporation's stock certificates bear a corporate seal.

This opinion does not address whether the preferred stock certificates contain legends that may be required by contract or may be required or advisable under applicable federal or state securities laws (such as customary private placement legends). If the Transaction Documents require the preferred stock certificates to contain legends and Opining Counsel is asked for an opinion that the preferred stock certificates also comply with the specific requirements as set forth in the Transaction Documents, Opining Counsel may give that opinion if such information is correct. However, any such coverage should be expressly set forth in the opinion letter.

#### **F. Outstanding Preferred Equity Securities.**

Sometimes, an Opinion Recipient will request an opinion that *all outstanding preferred equity securities (and, in some cases, all outstanding common equity securities) that have previously been issued by the corporation* were duly authorized and that all such securities were validly issued and are fully paid and nonassessable. The Committees believe that such an opinion should be resisted because such an opinion would require Opining Counsel to look at each historic issuance of preferred shares (and possibly common shares) by the corporation to determine if each such issuance was proper at the time of each such issuance. As a result, except in very limited circumstances, such as in connection with a public sale of such securities, the Committees believe that the value of this opinion will almost never justify the cost of providing it. See "Introductory Matters – Reasonableness; Inappropriate Subjects for Opinions."

**NEW SECTION OF THE REPORT – OPINIONS WITH RESPECT TO ISSUANCES OF MEMBERSHIP INTERESTS OF A FLORIDA LIMITED LIABILITY COMPANY**

In Transactions in which a Florida limited liability company is issuing membership interests in a Florida limited liability company, Opining Counsel may be asked for opinions regarding the Client’s membership interests and/or the enforceability of the company’s operating agreement. This First Supplement addresses opinions regarding issuances of membership interests by Florida limited liability companies and opinions as to the enforceability of a Florida limited liability company’s operating agreement. It is largely based on the guidance contained in two TriBar Reports: (i) the "Supplemental TriBar LLC Opinion Report: Opinions on LLC Membership Interests" issued in 2011 (the "**TriBar LLC Membership Interest Report**"), which is available at 66 *The Business Lawyer* 1065, and (ii) the report entitled: "Third Party Closing Opinions: Limited Liability Companies" (the "**2006 Tribar LLC Report**"), which was issued in 2006 and is available at 61 *The Business Lawyer* 679.

The TriBar Membership Interest Report and the 2006 TriBar LLC Report address opinions regarding the issuance of LLC membership interests by Delaware LLCs, including the enforceability of LLC operating agreements. Although these reports do not necessarily reflect customary practice in Florida, they may provide helpful guidance to Florida lawyers who are called upon to deliver opinions regarding the matters covered by this section.

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**OPINIONS WITH RESPECT TO ISSUANCES OF MEMBERSHIP INTERESTS OF A FLORIDA LIMITED LIABILITY COMPANY**

**A. Limited Liability Company – Issuance of Membership Interests**

The following opinions relate to the validity of the particular issuances of membership interests (the "**LLC Interests**") in a Florida limited liability company (the "**LLC**") that are contemplated by the Transaction Documents.

**Recommended opinion:**

<b>The [LLC Interests] are validly issued.</b>
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This opinion means that the LLC Interests have been issued in accordance with the Florida Revised Limited Liability Company Act ("**FRLICA**"), the LLC’s articles of organization, operating agreement and any written consent or resolution of the manager(s) and/or members of the LLC that may be required by such articles of organization or operating agreement. The “validly issued” opinion should not be rendered by Opining Counsel unless the LLC Interests: (i) have been duly authorized in the articles of organization or operating agreement of the LLC, (ii) comply with any applicable terms of the articles of organization and operating agreement of the LLC, and (iii) comply with FRLICA.

An LLC may issue LLC Interests as set forth in Section 605.0401 of FRLICA. The "validly issued" opinion confirms that the issuance of the LLC Interests complied with any conditions to such issuance in the operating agreement or resolution authorizing such issuance, if any, including the receipt of the required kind and amount of consideration for the LLC Interests. Opining counsel may rely upon an express assumption or upon a certificate of an appropriate officer or representative of the LLC that the LLC has received the required consideration.

Unlike corporations, typically an LLC operating agreement (or an amendment) does not create "authorized" LLC Interests for future issuance, but rather creates the particular LLC Interests that are to be issued in the Transaction. As such, if LLC Interests were not validly issued to a transferor prior to the transfer of such LLC Interests to a transferee, then Opining Counsel may render the "validly issued" opinion with respect to such LLC Interests if all necessary limited liability company action has been taken by the LLC and its members to ratify the valid issuance of such LLC Interests to the transferor or the managers are given the right in the operating agreement to create and approve the issuance of additional LLC interests without consent of the members.

In addition, a person may be a member of the LLC without making a financial contribution to the LLC. Section 605.0401(4) of FRLCA states that "[a] person may become a member without acquiring a transferable interest and without making or being obligated to make a contribution to the limited liability company. "

Pursuant to Section 605.0502(4) of FRLCA, an LLC Interest may, but need not be, evidenced by a certificate and, subject to such section, the LLC Interest that is evidenced by a certificate may be transferred by the transfer of the certificate. An opinion that LLC Interests are validly issued subsumes an opinion that the certificates issued representing the LLC Interests are in proper form (or if uncertificated securities (see below), that such securities have been properly issued).

An opinion that LLC Interests have been "validly issued" does not address (i) whether their issuance violates or breaches any agreement to which the LLC is a party (other than the operating agreement), (ii) the enforceability of the terms of the operating agreement of the issuing LLC or the enforceability of the terms of the LLC Interests, (iii) compliance with securities or antitrust laws, or (iv) the status of the LLC Interests as general intangibles or securities under the Uniform Commercial Code, even if the operating agreement of the LLC states that the LLC Interests are securities under Article 8 of the Uniform Commercial Code. In addition, the "validly issued" opinion does not address whether any fiduciary duty has been violated in connection with the issuance of the LLC Interests. However, if Opining Counsel is aware that a particular issuance of LLC Interests violates any agreement (other than the operating agreement) in which a member is a party, Opining Counsel should consider advising the Opinion Recipient of such fact so as to avoid a potential claim that the opinion is misleading.

Since Series LLCs are not authorized under FRLCA, no opinion should be rendered on a Florida LLC that contemplates the creation of one or more series of LLCs under the umbrella of a single LLC.

**Diligence Checklist – Limited Liability Company.** To render the "validly issued" portion of this opinion, Opining Counsel should take the following actions:

- Confirm that the LLC Interests to be issued are duly authorized (see discussion above).
- Obtain a copy of the LLC's articles of organization, as amended, (preferably a certified copy obtained from the Department) and review them to confirm compliance with any specified minimum amount or form of consideration.
- Review the LLC's operating agreement (a copy certified as true and correct by a manager, member or an officer) to confirm compliance with any specified minimum amount or form of consideration.
- Review compliance with Sections 605.0401-605.0402 of FRLCA.

- Obtain all subscription agreements, if any, whether pre-formation or post-formation, if applicable, referred to in the authorizing resolutions, confirming the consideration to be received by the LLC.
- Review resolutions of the manager(s) or member(s) (a copy of same certified as true and correct by a manager, member or officer) confirming that they have taken the action(s) required by FRLUCA, the LLC's articles of organization and the LLC's operating agreement, and that the consideration to be received for the issuance of the LLC Interests satisfies the requirements of FRLUCA and the articles of organization and the operating agreement.
- Include an express assumption in the opinion letter or obtain a certificate from an appropriate officer or representative of the LLC that any required consideration for the issuance of the LLC Interests has been received by the LLC.

**B. Duly Authorized Opinion Not Necessary.** It is customary for opinions rendered in connection with the issuance of corporate stock to state that the shares have been "duly authorized." Opinions regarding the issuance of LLC Interests sometimes state that the LLC Interests have been "duly authorized." However, FRLUCA does not provide for authorized capital or specify any requirement for authorized capital for an LLC. In addition, unlike the articles of incorporation of a corporation, operating agreements do not typically create a "pool of authorized LLC Interests" from which the LLC Interests may be issued from time to time in the future. Since the issues that are required to be addressed in providing the "validly issued" opinion are the same issues that would need to be addressed in providing a "duly authorized" opinion, it is the view of the Committees that the "duly authorized" opinion does not add anything of value if the validly issued opinion already is being rendered with the respect to the LLC Interests.

**C. Admission of Purchasers of LLC Interests as Members of the LLC.**

**Recommended opinion:**

**Each of the [Purchasers] has been duly admitted to the LLC as a member of the LLC.**

Unless otherwise permitted by the articles of organization or the operating agreement of the LLC, only members are permitted to exercise membership rights in the LLC. Section 605.0401(3)(a) of FRLUCA provides that, after formation of an LLC, a person becomes a member of the LLC as provided in the operating agreement or as otherwise provided in such section. Section 605.0502(1)(c) of FRLUCA provides that a transfer of an LLC Interest does not entitle the transferee to participate in the management or conduct of the LLC's activities or affairs. Accordingly, any purchaser of an LLC Interest is required to comply with the operating agreement for such purchaser to become a "member" of the LLC and have the right to participate in the management and conduct of the LLC's activities and affairs.

Section 605.0102(40) of FRLUCA defines a "member" as a person who: (i) is a member of an LLC under Section 605.401 of FRLUCA or was a member in a LLC when the LLC became subject to FRLUCA and (ii) has not dissociated from the LLC under Section 605.602 of FRLUCA. Person is defined very broadly under Section 605.0102(48) of FRLUCA, and care should be taken to review the operating agreement to determine whether it contains any limitations on who may become a member of the LLC under the operating agreement.

An opinion that the purchaser of an LLC Interest has been "duly admitted" as a member of the LLC means that the purchaser (A) has been admitted as a "member" of the LLC in compliance with the requirements, if any, of (i) FRLUCA, (ii) the LLC's operating agreement, (iii) the LLC's articles of

organization, and (iv) any subscription agreement applicable to the issuance of such LLC Interest, if any, and (B) has not dissociated from the LLC under or pursuant to the terms of: (i) Section 605.602 of FRLUCA, (ii) the LLC's operating agreement, or (iii) the LLC's articles of organization.

Opining Counsel may rely on an express assumption or a certificate of an appropriate officer or representative of the LLC that the transferee of an LLC Interest has satisfied each condition to admission as a "member" of the LLC that is set forth in (i) FRLUCA, (ii) the LLC's operating agreement, (iii) the LLC's articles of organization, and (iv) any subscription agreement applicable to the issuance of the LLC Interest.

An opinion that the purchaser of an LLC Interest has been duly admitted as a member of the LLC subsumes the opinion that such LLC Interests have been validly issued to such transferee or that all necessary limited liability company action has been taken by the LLC and its members to ratify the valid issuance of the LLC Interest to the transferee. We note that Section 605.0502(6) of FRLUCA provides that a transfer of an LLC Interest in violation of a restriction on transfer contained in the operating agreement is ineffective as to a person who has knowledge or notice of the restriction at the time of transfer.

An opinion that a purchaser or transferee of an LLC Interest is a member of the LLC does not address (i) whether the LLC or its members can enforce the member's obligations under the LLC's operating agreement, or (ii) if the member is a legal entity rather than an individual, that the member has the power to be a member under the law under which it was formed.

**Diligence Checklist – Limited Liability Company.** To render the "duly admitted to the LLC as a member" portion of this opinion, Opining Counsel should take the following actions:

- Confirm that the LLC Interests to be issued are validly issued (see discussion above).
- Obtain a copy of the LLC's articles of organization, as amended, (preferably a certified copy obtained from the Department) and review them to confirm compliance with any specified conditions to admission as a member of the LLC, if any.
- Review the LLC's operating agreement (a copy certified as true and correct by a manager, member or an officer) to confirm compliance with any specified conditions on admission as a member of the LLC.
- If the Purchaser is a transferee of an LLC Interest, review Section 605.0401 of FRLUCA to confirm that such new transferee has complied with such statute.
- Review Section 605.0602 of FRLUCA to confirm that such Purchaser has not dissociated from the LLC and, if the Purchaser is a transferee of an LLC interest that the Transferor has not dissociated from the LLC.
- Obtain all subscription agreements, if any, whether pre-formation or post-formation, if applicable, referred to in the authorizing resolutions, to confirm compliance with any specified conditions on admission as a member of the LLC.
- Review resolutions of the manager(s) or member(s) (a copy certified as true and correct by a manager, member or officer) to confirm compliance with any specified conditions to the issuance or transfer, as the case may be, of an LLC Interest and admission as a member of the LLC.

- Include an express assumption that the Purchaser does not have knowledge or notice of a restriction at the time of purchase or transfer, as the case may be, that limits the Purchaser's ability to become a member (if Opining Counsel has not confirmed that all specified conditions to the purchase or transfer, as the case may be, of an LLC Interest and admission as a member of the LLC have been satisfied).
- Include an express assumption in the Opinion or obtain a certificate from an appropriate officer or representative of the LLC that any conditions set forth any subscription agreement and the operating agreement that are required for admission as a member of the LLC have been satisfied.

**D. Obligations of Purchaser of LLC Interest for Payments and Contributions.**

**Recommended opinion:**

**Under the Florida Revised Limited Liability Company Act, as amended ("FRLCA"), purchasers of LLC Interests have no obligation to make further payments for their purchase of LLC Interests or contributions to the LLC solely by reason of their ownership of LLC Interests or their status as members of the LLC, except as provided in [the Subscription Agreement or the Operating Agreement] and [except for their obligation to repay any funds wrongfully distributed to them as set forth in Section 605.0406 of FRLCA].**

When LLC Interests are initially issued, purchasers often request an opinion on their obligation to make payments and contributions to the LLC in connection with their purchase and ownership of the LLC Interests. Some purchasers request that the opinion use the "fully paid and nonassessable" terminology that is commonly used in opinions on the issuance of capital stock by a corporation.

Often the subscription agreement executed in connection with the issuance of the LLC Interests or the operating agreement of the LLC require members of the LLC to make additional capital contributions and to make additional payments to the LLC under specified circumstances. Including the reference to these two agreements as exceptions to this opinion is based upon the understanding that Opining Counsel should not be required to provide an opinion regarding factual matters that can be readily determined by a review of those agreements by the opinion recipient or its counsel. Accordingly, this opinion requires Opining Counsel to determine whether under the law covered by the opinion (and apart from the operating agreement and the subscription agreement), purchasers of LLC Interests will be subject to any obligation following the closing to make payments for their LLC Interests or contributions solely by reason of their ownership of LLC Interests. The purchaser remains responsible to understand its obligations to make payments and contributions under the operating agreement and the subscription agreement, if any. Numerous exceptions and assumptions to the opinion would typically be required by the Opining Counsel if this opinion did not exclude the operating agreement and the subscription agreement.

Opinion Recipients sometimes ask Opining Counsel to identify any sections of the operating agreement and the subscription agreement that require payments or contributions after the closing. If willing to address this request, Opining Counsel would delete the exception for the two agreements from the opinion and substitute references to the sections of the operating agreement and the subscription agreement that impose obligations to make further payments or contributions (such as, "**except as provided in Sections \_\_\_ of the Operating Agreement and in Section \_\_\_ of the Subscription Agreement**").

Opining Counsel may address the possibility that a member may have agreed, apart from the subscription agreement and the operating agreement, to be liable personally to make payments and

contributions to or for the benefit of the LLC by including an express assumption in the opinion or relying upon a certificate from an appropriate representative of the LLC.

The Committees suggest that the form of opinion set forth above be used rather than an opinion worded like an opinion on corporate stock that the LLC Interests are "**fully paid and nonassessable**." Since these terms are not defined in FRLUCA, and their meaning is not generally understood in the context of the issuance of LLC Interests, the Committees believe that the use of these terms is not appropriate with respect to the issuance of LLC Interests.

However, if the Opinion Recipient inappropriately insists that Opining Counsel use the "**fully paid and nonassessable**" terminology, the Committees believe that "**fully paid and nonassessable**" should be understood to mean that "**purchasers of LLC Interests have no obligation to make further payments for their purchase of LLC Interests or contributions to the LLC solely by reason of their ownership of LLC Interests or their status as members of the LLC, except for their obligation to repay any funds wrongfully distributed to them as set forth in Section 605.0406 of FRLUCA.**"

If the operating agreement or the subscription agreement require additional payments or contributions by a purchaser of an LLC Interest after the closing, or if those documents are not being reviewed by Opining Counsel, then such "**fully paid and nonassessable**" terminology should be limited by expressly excluding the terms of the operating agreement and subscription agreement, if any, from the opinion (i.e. "**and except as may be required by the Subscription Agreement and the Operating Agreement**").

**Diligence Checklist – Limited Liability Company.** To render the "no obligation to make payments or contributions" portion of this opinion, Opining Counsel should take the following actions:

- Confirm that under FRLUCA, the purchaser has no obligation to make additional payments or contributions to or for the benefit of the LLC.
- Consider excluding from the opinion the subscription agreement or the operating agreement of the LLC.
- Consider including an express assumption in the opinion letter or obtain a certificate from an appropriate officer or representative of the LLC that the purchaser has not agreed to make additional payments or contributions to or for the benefit of the LLC, except as forth in the subscription agreement or the operating agreement of the LLC.



**E. Liability of Purchaser of LLC Interest to Third Parties.**

**Recommended opinion:**

Under the Florida Revised Limited Liability Company Act, as amended ("**FRLLLCA**"), purchasers of LLC Interests have no obligation to make further payments for their purchase of LLC Interests or contributions to the LLC solely by reason of their ownership of LLC Interests or their status as members of the LLC **and have no personal liability for the debts, obligations and liabilities of the LLC, whether arising in contract, tort or otherwise, solely by reason of being or acting as a member or manager of the LLC**, except as provided in [the Subscription Agreement or the Operating Agreement and except for their obligation to repay any funds wrongfully distributed to them as set forth in Section 605.0406 of FRLLLCA and **[provided that such member does not engage in conduct that may impose personal liability upon such member as set forth in Section 605.04093 of FRLLLCA]**].

When LLC Interests are initially issued, purchasers may request a supplement to the opinion described in subsection (D) above on their obligation to make payments and contributions to the LLC in connection with their purchase and ownership of the LLC Interests that, as members of the LLC, they will have no personal liability to third parties for debts, obligations and liabilities of the LLC.

This opinion addresses a subject that is not typically addressed in opinions rendered in connection with the issuance of capital stock by corporations. The Committees are hopeful that this supplemental opinion will not be requested in the future as practitioners become more familiar with FRLLLCA and the appropriate nomenclature for dealing with opinions on LLC Interests.

Section 605.0304 of FRLLLCA provides that a member or manager of a LLC is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation or other liability of the LLC solely by reason of being or acting as a member or a manager, except as set forth in Section 605.04043 of FRLLLCA which provides certain exceptions to the limitation of liability for managers (in a manager-managed LLC) and members (in a member- managed LLC) in the event that they engage in certain egregious conduct.

An opinion that addresses the personal liability of a purchaser of an LLC Interest for the debts, obligations and liabilities of the LLC that is limited to liability "solely by reason of being or acting as a member or manager" does not address: (i) a purchaser's status as a controlling person under the securities laws, the environmental laws or other applicable laws, (ii) a purchaser's execution of any guaranty agreement, indemnity agreement or other agreement in his, her or its personal capacity and not on behalf of the LLC, such as a financial guaranty and/or an environmental indemnification agreement in connection with a loan provided to the LLC, (iii) a purchaser's service in another capacity for the LLC, for example, as a manager of a manager-managed LLC or as a member of a member-managed LLC or as an officer of the LLC, (iv) a purchaser's own tortious or wrongful conduct or (v) application of "piercing the veil legal theory," alter ego, or similar equitable doctrines with respect to the purchaser and the LLC.

The Committees believe that the foregoing opinion, by being limited to "solely by reason of being or acting as a member or manager," automatically incorporates and includes each of the exclusions listed in the prior paragraph. However, Opining Counsel may wish to include those exceptions in Opining Counsel's opinion letter using the following paragraph:

The phrase "solely by reason of being or acting as a member or manager" in opinion paragraph \_\_\_\_ is taken from Section 605.0304(1) of FRLCA and, together with the reference in the opinion to FRLCA, has been included to make clear that such opinion does not cover personal liability that a purchaser may have that is not attributable solely to the purchaser's status as a member or manager, such as the personal liability a purchaser may have as a result of: (i) a purchaser's status as a controlling person under the securities laws, the environmental laws or other applicable laws, (ii) a purchaser's execution of any guaranty agreement, indemnity agreement or other agreement in his, her or its personal capacity and not on behalf of the LLC, such as a financial guaranty and/or an environmental indemnification agreement in connection with a loan provided to the LLC, (iii) a purchaser's service in another capacity for the LLC, for example, as a manager of a manager-managed LLC or as a member of a member-managed LLC or as an officer of the LLC, (iv) a purchaser's own tortious or wrongful conduct or (v) application of "piercing the veil legal theory," alter ego, or similar equitable doctrines with respect to the purchaser and the LLC.

**Diligence Checklist – Limited Liability Company.** To render the "no personal liability of member, solely by reason of being or acting as a member or manager" portion of this opinion, Opining Counsel should take the following actions:

- Consider excluding from the opinion the subscription agreement, if any, and the LLC's operating agreement.
- Consider including the recommended exception set forth above in the opinion letter.
- Consider including an express assumption in the opinion letter that, if the purchaser is acting as a manager in a manager-managed LLC or a member in a member-managed LLC, the purchaser does not engage in any conduct that may impose personal liability upon a manager or member as described in Section 605.04093 of FRLCA.
- Include an express assumption in the opinion letter or obtain a certificate from an appropriate officer or representative of the LLC that the purchaser has not agreed to be personally liable for any debts, obligations or liabilities of the LLC, except as forth in the subscription agreement, if any, and the operating agreement of the LLC.

#### F. **Enforceability of an Operating Agreement**

An opinion that an operating agreement is valid, binding and enforceable may be requested when the Opinion Recipient is acquiring a membership interest in a Florida LLC or when investment banking firms, lenders or rating agencies in structured finance transactions are concerned about the enforceability of covenants, restrictions and internal governance provisions in an operating agreement. This opinion is often more difficult to render than the entity status, entity power, and authorization of the transaction opinions because it requires Opining Counsel to consider issues of state contract law that are not necessarily straightforward and because it covers all the provisions in the operating agreement rather than simply those applicable to status, power and approval. Whenever Opining Counsel renders such a remedies opinion, Opining Counsel must satisfy itself that the Client has taken the steps required to enter into the agreement or Opining Counsel must assume expressly in the opinion that it took those steps. Often, these opinions are provided along with this opinion.

"*The Remedies Opinion*" section of the Report discusses generally the delivery of a "remedies" opinion, and the discussion in that section also apply to opinions on the enforceability of an operating

agreement. As indicated in that section, the opinion addresses the legal effect of the contractual undertakings of Opining Counsel's Client, subject to various assumptions and qualifications, express and implied.

When giving a remedies opinion on an LLC's operating agreement, Opining Counsel will need to review an executed copy of that agreement (and this particular opinion should not be rendered, even in the context of a single-member LLC, unless the LLC has a written operating agreement). Further, it is best practice for Opining Counsel to require that all of the LLC's members have executed the operating agreement.

Additionally, if the LLC is manager-managed, it is best practice to have all of the managers execute the operating agreement, even though under Section 605.0106(4) of FRLCA, the managers of an LLC are bound to the operating agreement even if they don't sign the agreement. When a member or manager is a legal entity and not a natural person, Opining Counsel should confirm that the entity has authorized the execution and delivery of the operating agreement and has authorized the persons signing the operating agreement to execute the operating agreement on the entity's behalf.

The recommended form of the opinion is as follows:

**The Operating Agreement is a valid and binding agreement, enforceable against the LLC members [and managers] in accordance with its terms.**

In some cases, the Opinion Recipient may request that the opinion also provide that the LLC is bound by the operating agreement. Under Section 605.0106(1) of FRLCA, a Florida limited liability company is bound by and may enforce the operating agreement, regardless of whether the LLC has itself manifested assent to the operating agreement. As such, this opinion is believed to be unnecessary.

A remedies opinion regarding an operating agreement means that (i) the rights and obligations of the LLC and its members and managers (or other equity holders or decision makers) set forth in the operating agreement, (ii) the provisions specifying a remedy in the event of a breach, and (iii) the provisions relating to governance and administration, will be given legal effect, subject to the qualifications, exclusions and assumptions, express or implied. Thus, for provisions in an operating agreement that obligate members or managers to perform an affirmative act, such as making a capital contribution upon the occurrence of a specified event, but that do not specify a remedy for a failure to perform, the opinion is understood to mean that in the event of a breach, a court applying applicable law either will require the member to perform that act (subject to qualifications, exclusions and assumptions, express or implied) or will grant money damages or some other remedy. For a provision that does specify a remedy, such as a reduction of a member's interest in the LLC if the member fails to make a contribution, the opinion is understood to mean that a court (again subject to qualifications, exclusions and assumptions, express or implied) will render effect to the specified remedy as written.

Operating agreements often contain detailed provisions on how the LLC is to be governed, how the operating agreement is to be amended, and how disputes, including interpretive questions, are to be resolved. The opinion on these provisions means that a court will require the LLC and its members and managers to abide by their terms as written (again subject to qualifications, exclusions and assumptions, express or implied).

In a structured finance transaction, the operating agreement will often include provisions that require a lender's or an independent manager's consent to dissolve, amend the operating agreement or engage in material transactions, such as a merger; and a remedies opinion on an operating agreement

provides comfort that these provisions are enforceable against the members. It may also include one or more separateness covenants that are necessary to support a nonconsolidation opinion. As a result, Opining Counsel will need to consider whether to add qualifications to the remedies opinion with respect to the enforceability of these types of provisions. Because Florida has little case law on the enforceability of these types of provisions and Delaware has considerably more case law on this topic, in many cases in structured finance transactions the Opinion Recipient will require the use of a Delaware LLC.

Another problematic area, which may be open to question under Section 605.0105 of FRLCA, relates to provisions that seek to limit or restrict fiduciary duties. As a result, Opining Counsel may wish to add a qualification to its remedies opinion regarding this subject.

**Diligence Checklist – Enforceability of an Operating Agreement.** To render the "enforceability" opinion on an operating agreement, Opining Counsel should take the following actions:

- Obtain a fully executed copy of the LLC's operating agreement, preferably signed by all of the LLC's members (and, if manager-managed, also by all of the managers).
- Confirm that the operating agreement has been approved by all members (and, if manager-managed, by all managers) that are entities, and that the persons who have executed the operating agreement were authorized to do so.
- Consider adding qualifications regarding various provisions in the operating agreement that may not be enforceable under Florida law or as to which Florida law is unclear because there is no case law in Florida supporting the enforceability of such provisions.

## ADDITIONS TO THE REPORT – EXCLUDED LAWS

In Section M of the Report (pages 30-33), a list of "Excluded Laws" is provided. These excluded laws are understood to be excluded from coverage in the opinions provided in the opinion letter under customary practice, although the Report recommends that these excluded laws be expressly set forth in the opinion letter as being expressly excluded from coverage in the opinion letter. Any other laws sought to be excluded must be expressly identified as being excluded from the opinion letter.

In addition to the excluded laws already discussed in the Report, consideration should be given to including in the Opining Counsel's opinion letter the following additional excluded laws:

### **A. The Dodd-Frank Wall Street Reform and Consumer Protection Act.**

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the "**Dodd Frank Act**") contains many laws that potentially affect financial institutions and other types of entities. In some cases, Opining Counsel may be familiar with those laws and how they may affect Opining Counsel's client, and therefore does not need to exclude these laws from the scope of its opinion letter. However, in many situations, because of the complexities of the Dodd-Frank Act, Opining Counsel may wish to exclude the scope of the Dodd-Frank Act from the opinion letter. In such circumstances, the following additional excluded laws may be added to the opinion letter:

**... any law, rule, or regulation relating to the Dodd-Frank Wall Street Reform and Consumer Protection Act, as amended (including any and all requests, guidelines, or directives thereunder or issued in connection therewith).**

### **B. Laws, Rules, and Regulations Affecting the Client's Business**

The Report states (at pages 30-32) that "**Applicable Laws**" includes regulatory laws that affect the Client and its business, unless expressly excluded in the opinion letter. In many cases, Opining Counsel has little or no knowledge about the business activities of the Client. In such cases, Opining Counsel may wish to consider including the following qualification in the opinion letter:

**... any law, rule or regulation applicable to any of the Client or the Transaction Documents solely because such law, rule or regulation is part of a regulatory regime applicable to any party to any of the Transaction Documents or any of its affiliates due to the specific assets owned, leased or operated by, or the business of, or the goods or services produced by, such party or such affiliate;**

This qualification puts the Opinion Recipient on notice that Opining Counsel is not familiar with the business of the Client and allows the Opinion Recipient to request opinion coverage of such regulatory laws that affect the Client's business if relevant to the Transaction or the Transaction Documents.

### **C. EU Bail-In Rules**

On January 1, 2016, the European Union Bank Recovery and Resolution Directive (the "**BRRD**") became effective. The BRRD establishes a framework for the recovery and resolution of European credit institutions and investment firms and has been adopted into the national law of most member states of the European Economic Area ("**EEA**"), which includes the following countries - Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and, at least for the time being, the

United Kingdom. Among the broad resolution powers conferred on bank regulators under the BRRD and the implementing legislation of EEA member countries (the "**Bail-In Legislation**") are the powers to write down, reform the terms of, cancel and convert into equity the liabilities of failing EEA Financial Institutions (the "**Writedown and Conversion Powers**").

Under Article 55 of the BRRD, financial institutions in the EEA are required to ensure that all contracts governed by non-EEA law include contractual recognition of, and agreement to be subject to, the Bail-In Legislation ("**Contractual Recognition Provisions**"). These Contractual Recognition Provisions must provide that: (A) the liabilities may be subject to the Writedown and Conversion Powers; (B) the parties to the contract agree to accept those provisions being applied; and (C) the terms of the contract may be amended as necessary to render effect to the exercise of the Writedown and Conversion Powers (a "**Bail-In Action**"). These rules are often collectively referred to as the "**E.U. Bail-In Rules**."

When Opining Counsel represents a borrower, Opining Counsel may need to consider the impact of the E.U. Bail-In Rules on the enforceability of a credit agreement (and, by extension, the collateral and other documentation of the credit facility) against the borrower. The E.U. Bail-In Rules are complex and often are outside the general knowledge of Opining Counsel. At the same time, counsel for the Opinion Recipient (when the Opinion Recipient is a financial institution) is much more likely to have an understanding of these rules.

As a result, in most cases, Opining Counsel should to expressly exclude the E.U. Bail-In Rules from the scope of a remedies opinion on a credit agreement containing Contractual Recognition Provisions. The recommended form of exclusion is as follows:

***We express no opinion on the enforceability of any provision of any [Credit and Security Document] incorporating the [Bail-In Legislation] or authorizing any [Bail-In Action].***

Under this approach, Opining Counsel declines to render an opinion on whether a U.S. court would enforce the E.U. Bail-In Rules. Because this exception only applies to the Contractual Recognition Provisions, it does not excuse Opining Counsel from having to conclude that all the other provisions of the agreement are enforceable under the law governing the agreement. This approach leaves it to Recipient's Counsel, rather than borrower's counsel, to advise the lenders or agents on the enforceability under U.S. law of the Contractual Recognition Provisions, the BRRD and the Bail-In Legislation. That advice may take the form of a legal opinion if, as permitted by Article 55 of the BRRD, an EU regulator asks for it.

Some commentators take the position that this qualification is unnecessary because these EU Bail-In Rules are already excluded from the opinion letter under either the bankruptcy exception or the equitable principles limitation. Others believe that the qualification should be narrower or more targeted. An alternative form of qualification is often expressed as follows:

***We express no opinion as to the enforceability of the [Loan Parties'] obligations under the [Credit and Security Documents owed to, or for the benefit of, a Lender that becomes the subject of a [Bail-In Action].***

The EU Bail-In Rules are complex and should only be dealt with by counsel knowledgeable on this topic. An excellent article on the EU Bail-In Rules by Ettore Santucci of Goodwin Procter LLP is contained in the Spring 2016 edition of "*In Our Opinion*", the publication of the ABA Business Law Section Legal Opinions Committee, starting at page 11.

#### **D. Hague Securities Convention**

The Hague Securities Convention became effective as a matter of U.S. law on April 1, 2017. It provides choice-of-law rules for many commercial law issues affecting intermediated securities and thereby preempts portions of the corresponding choice-of-law rules provided or mandated by the common law, Articles 1, 8 and 9 of the UCC and by related federal book-entry regulations.

The Hague Securities Convention rules are complex and a full description of these rules is beyond the scope of this Report, although a brief overview is provided below in "*Additions to the Report – Opinions With Respect to Collateral Under the Uniform Commercial Code.*"

Opinions on this topic should only be rendered by a knowledgeable Opining Counsel. As a result, Opining Counsel should consider excluding the application of the Hague Securities Convention from the scope of an opinion letter covering enforceability of the Transaction Documents, choice of law, or matters arising under the UCC (such as perfection of a security interest). The recommended form of exception is as follows:

**We express no opinion as to the applicability or effect of the choice-of-law rules of the Hague Securities Convention for matters governed by Article 2(1) of that Convention.**



**ADDITIONS TO THE REPORT – OPINIONS WITH RESPECT TO  
COLLATERAL UNDER THE UNIFORM COMMERCIAL CODE**

**A. Perfection Opinions – Location of Debtor for Limited Liability Partnership.**

The Report, in discussing the location of various types of debtors for purpose of analysis in regard to perfection opinions on collateral under the UCC, inadvertently left off the location of a limited liability partnership. To remedy that oversight, the following paragraph should be added to Section 7, entitled "Location of Debtor" contained on pages 140-141 of the Report), as the last paragraph of such Section:

A partnership may become a limited liability partnership pursuant to Section 620.9001 of the Florida Revised Uniform Partnership Act. Because a limited liability partnership is not "formed or organized" by the filing of a "public organic record" as defined in Section 679.1021(1)(ooo) of the Florida UCC, a limited liability partnership is not a "registered organization" under Section 679.1021(1)(qqq) of the Florida UCC. Thus, the location of a limited liability partnership under the Florida UCC would be determined in the same manner as the location of a general partnership is determined under the Florida UCC. Accordingly, the Opinion Recipient should be willing to accept the opinion regarding the location of the limited liability partnership based solely on Opining Counsel's reliance upon a certificate from the debtor as to the sole place of business or chief executive office, as the case may be.

**B. Hague Securities Convention.**

The Hague Securities Convention became effective as a matter of U.S. law on April 1, 2017. It provides choice-of-law rules for many commercial law issues affecting intermediated securities and thereby preempts portions of the corresponding choice-of-law rules provided or mandated by the common law, Articles 1, 8 and 9 of the UCC and by related federal book-entry regulations. In most cases, the choice-of-law results under the Convention will be the same as those under the UCC, but there are some differences.

The Convention's choice-of-law rules apply to a wide range of commercial law issues affecting the ownership or transfer of interests in "securities held with an intermediary," which generally tracks what U.S. lawyers know as UCC Article 8's indirect holding system. The Convention defines "securities" as "any shares, bonds or other financial instruments or financial assets (other than cash), or any interest therein," a definition broader in some respects than the corresponding one in UCC Article 8. However, the Convention's scope is fixed, in contrast to the scope of UCC Article 8, which is subject to expansion beyond securities by agreement between the intermediary and its customer or account holder. The Convention's exclusion of "cash" (i.e., credit balances) from the definition of "securities" also contrasts with the UCC Article 8 system. Nonetheless, the Convention is designed like the UCC to be flexible in scope overall, with fluid, broad coverage that will meet the demands of market practices.

The Convention applies to any transaction or dispute "involving a choice" between the laws of two or more nations — a circumstance that may arise in any intermediated securities transaction, either at the transaction's outset or later in its life. Without limitation, the "choice" will be involved whenever any of the issuer, the underlying certificates or the issuer's books, or a wide range of parties (including account holder, intermediary, clearing corporation, secured party, adverse claimant, creditor of account holder, and creditor of intermediary) have connecting factors to different nations, regardless of whether the nations in question are parties to the Convention. Many of these elements, while having been acknowledged by U.S. lawyers for general transaction planning purposes, are immaterial to a choice-of-law analysis under UCC §§ 8-110 and 9-305 alone.

Given the very broad range of facts that can cause the Convention's "choice" to arise, virtually every intermediated securities transaction should be planned with both the Convention and the UCC in mind. For purposes of opinion giving, at the most basic level, Opining Counsel will need to assume expressly or confirm (a) that the account in question is a "securities account" as defined in both the Convention and the UCC and (b) that every broker, custodian bank, clearing corporation or similar party is an "intermediary" as defined in the Convention and a "securities intermediary" as defined in the UCC.

The commercial law issues to which the Convention applies are those (and only those) enumerated in Convention Article 2(1). The issues are expressed in broad and sometimes overlapping terms, but for purposes of this discussion, the issues clearly include perfection of a security interest and the exercise of remedies against collateral. A number of other important issues also are covered by the Convention, including priority, whether a purchaser takes free of adverse claims (also not discussed here because opinions on secondary sales transactions are a separate subject), and the characterization of a transaction as being a collateral transfer to secure an obligation or an outright disposition as against third parties.

For reference, an excellent article on the Hague Securities Convention by Steven O. Weise of Proskauer Rose LLP is contained in the Spring 2017 edition of "*In Our Opinion*", the publication of the ABA Business Law Section Legal Opinions Committee, starting at page 11.

**THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR**

**If initialed by all parties**, the clauses below will be incorporated into the Florida Realtors®/Florida Bar Residential Contract For Sale And Purchase between \_\_\_\_\_ (SELLER) and \_\_\_\_\_ (BUYER) concerning the Property described as \_\_\_\_\_

**Buyer's Initials** \_\_\_\_\_ **Seller's Initials** \_\_\_\_\_

**PROPERTY ASSESSED CLEAN ENERGY (PACE)**

QUALIFYING IMPROVEMENTS FOR ENERGY EFFICIENCY, RENEWABLE ENERGY, OR WIND RESISTANCE.—The property being purchased is located within the jurisdiction of a local government that has placed an assessment on the property pursuant to s. [163.08](#), Florida Statutes. The assessment is for a qualifying improvement to the property relating to energy efficiency, renewable energy, or wind resistance, and is not based on the value of property. You are encouraged to contact the county property appraiser's office to learn more about this and other assessments that may be provided by law.