

## CHAPTER 2020-35

### Committee Substitute for Committee Substitute for Senate Bill No. 994

An act relating to guardianship; amending s. 744.312, F.S.; expanding factors for a court to consider when appointing a guardian; amending s. 744.334, F.S.; revising requirements for a petition for the appointment of a guardian; defining the term “alternatives to guardianship”; prohibiting professional guardians from petitioning for their own appointment except under certain circumstances; defining the term “relative”; providing that a specified provision does not apply to public guardians under specified circumstances; amending s. 744.363, F.S.; expanding requirements for initial guardianship plans; amending s. 744.367, F.S.; expanding requirements for annual guardianship reports; defining the term “remuneration”; amending s. 744.3675, F.S.; expanding requirements for annual guardianship plans; amending s. 744.441, F.S.; authorizing certain guardians to sign an order not to resuscitate; requiring the court to use specified procedures for expedited judicial intervention under certain circumstances; amending s. 744.446, F.S.; prohibiting guardians from taking certain actions on behalf of an alleged incapacitated person or minor; revising provisions relating to conflicts of interest; providing an effective date.

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

Section 1. Paragraph (e) is added to subsection (3) of section 744.312, Florida Statutes, and subsection (1) of that section is republished, to read:

744.312 Considerations in appointment of guardian.—

(1) If the person designated is qualified to serve pursuant to s. 744.309, the court shall appoint any standby guardian or preneed guardian, unless the court determines that appointing such person is contrary to the best interests of the ward.

(3) The court shall also:

(e) Inquire into and consider potential disqualifications under s. 744.309 and potential conflicts of interest under s. 744.446.

Section 2. Section 744.334, Florida Statutes, is amended to read:

744.334 Petition for appointment of guardian or professional guardian; contents.—

(1) Every petition for the appointment of a guardian shall be verified by the petitioner and shall contain statements, to the best of petitioner’s knowledge and belief, showing the name, age, residence, and post office address of the alleged incapacitated person or minor; the nature of her or his

incapacity, if any; the extent of guardianship desired, either plenary or limited; the residence and post office address of the petitioner; the names and addresses of the next of kin of the alleged incapacitated person or minor, if known to the petitioner; the name of the proposed guardian and the reasons why she or he should be appointed guardian; whether the proposed guardian is a professional guardian; the relationship and previous relationship of the proposed guardian to the alleged incapacitated person or minor ward; any other type of guardianship under part III of this chapter or alternatives to guardianship that the alleged incapacitated person or minor has designated or is in currently or has been in previously; the reasons why a guardian advocate under s. 744.3085 or other alternatives to guardianship are insufficient to meet the needs of the alleged incapacitated person or minor; and the nature and value of property subject to the guardianship; and the reasons why this person should be appointed guardian. The petition must state whether If a willing and qualified guardian cannot be located, the petition must so state. As used in this subsection, the term “alternatives to guardianship” means an advance directive as defined in s. 765.101, a durable power of attorney as provided in chapter 709, a representative payee under 42 U.S.C. s. 1007, or a trust instrument as defined in s. 736.0103.

(2) If the petitioner is a professional guardian, she or he may not petition for her or his own appointment unless the petitioner is a relative of the alleged incapacitated person or minor. For purposes of this subsection, the term “relative” means an individual who would qualify to serve as a nonresident guardian under s. 744.309(2). This subsection does not apply to a public guardian appointed under s. 744.2006 who seeks appointment as a guardian of a person of limited financial means and whose compensation as guardian for such person would be paid from the Office of Public and Professional Guardians or any local government ~~The petition for appointment of a professional guardian must comply with the provisions of subsection (1), and must state that the petitioner is a professional guardian.~~

Section 3. Subsection (1) of section 744.363, Florida Statutes, is amended to read:

744.363 Initial guardianship plan.—

- (1) The initial guardianship plan shall include all of the following:
  - (a) The provision of medical, mental, or personal care services for the welfare of the ward.;
  - (b) The provision of social and personal services for the welfare of the ward.;
  - (c) The place and kind of residential setting best suited for the needs of the ward.;
  - (d) The application of health and accident insurance and any other private or governmental benefits to which the ward may be entitled to meet

any part of the costs of medical, mental health, or related services provided to the ward;<sup>3</sup> and

(e) Any physical and mental examinations necessary to determine the ward’s medical and mental health treatment needs.

(f) A list of any preexisting orders not to resuscitate executed under s. 401.45(3) or preexisting advance directives, as defined in s. 765.101, the date an order or directive was signed, whether such order or directive has been suspended by the court, and a description of the steps taken to identify and locate the preexisting order not to resuscitate or advance directive.

Section 4. Subsection (3) of section 744.367, Florida Statutes, is amended to read:

744.367 Duty to file annual guardianship report.—

(3)(a) The annual guardianship report of a guardian of the property must consist of an annual accounting, and the annual guardianship report of a guardian of the person must consist of an annual guardianship plan. The annual guardianship report of a guardian of the property and the annual guardianship report of a guardian of the person must both include a declaration of all remuneration received by the guardian from any source for services rendered to or on behalf of the ward. As used in this paragraph, the term “remuneration” means any payment or other benefit made directly or indirectly, overtly or covertly, or in cash or in kind to the guardian.

(b) The annual guardianship report must ~~shall~~ be served on the ward, unless the ward is a minor or is totally incapacitated, and on the attorney for the ward, if any. The guardian shall provide a copy to any other person as the court may direct.

Section 5. Paragraph (d) is added to subsection (1) of section 744.3675, Florida Statutes, to read:

744.3675 Annual guardianship plan.—Each guardian of the person must file with the court an annual guardianship plan which updates information about the condition of the ward. The annual plan must specify the current needs of the ward and how those needs are proposed to be met in the coming year.

(1) Each plan for an adult ward must, if applicable, include:

(d) A list of any preexisting orders not to resuscitate executed under s. 401.45(3) or preexisting advance directives, as defined in s. 765.101, the date an order or directive was signed, whether such order or directive has been suspended by the court, and a description of the steps taken to identify and locate the preexisting order not to resuscitate or advance directive.

Section 6. Section 744.441, Florida Statutes, is amended to read:

744.441 Powers of guardian upon court approval.—After obtaining approval of the court pursuant to a petition for authorization to act:

(1) A plenary guardian of the property, or a limited guardian of the property within the powers granted by the order appointing the guardian or an approved annual or amended guardianship report, may:

(a)(1) Perform, compromise, or refuse performance of a ward's contracts that continue as obligations of the estate, as he or she may determine under the circumstances.

(b)(2) Execute, exercise, or release any powers as trustee, personal representative, custodian for minors, conservator, or donee of any power of appointment or other power that the ward might have lawfully exercised, consummated, or executed if not incapacitated, if the best interest of the ward requires such execution, exercise, or release.

(c)(3) Make ordinary or extraordinary repairs or alterations in buildings or other structures; demolish any improvements; or raze existing, or erect new, party walls or buildings.

(d)(4) Subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving consideration; or dedicate easements to public use without consideration.

(e)(5) Enter into a lease as lessor or lessee for any purpose, with or without option to purchase or renew, for a term within, or extending beyond, the period of guardianship.

(f)(6) Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement.

(g)(7) Abandon property when, in the opinion of the guardian, it is valueless or is so encumbered or in such condition that it is of no benefit to the estate.

(h)(8) Pay calls, assessments, and other sums chargeable or accruing against, or on account of, securities.

(i)(9) Borrow money, with or without security, to be repaid from the property or otherwise and advance money for the protection of the estate.

(j)(10) Effect a fair and reasonable compromise with any debtor or obligor or extend, renew, or in any manner modify the terms of any obligation owing to the estate.

(k)(11) Prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the guardian in the performance of his or her duties. Before authorizing a guardian to bring an action described in s.

736.0207, the court shall first find that the action appears to be in the ward’s best interests during the ward’s probable lifetime. There shall be a rebuttable presumption that an action challenging the ward’s revocation of all or part of a trust is not in the ward’s best interests if the revocation relates solely to a devise. This paragraph ~~subsection~~ does not preclude a challenge after the ward’s death. If the court denies a request that a guardian be authorized to bring an action described in s. 736.0207, the court shall review the continued need for a guardian and the extent of the need for delegation of the ward’s rights.

~~(l)~~(12) Sell, mortgage, or lease any real or personal property of the estate, including homestead property, or any interest therein for cash or credit, or for part cash and part credit, and with or without security for unpaid balances.

~~(m)~~(13) Continue any unincorporated business or venture in which the ward was engaged.

~~(n)~~(14) Purchase the entire fee simple title to real estate in this state in which the guardian has no interest, but the purchase may be made only for a home for the ward, to protect the home of the ward or the ward’s interest, or as a home for the ward’s dependent family. If the ward is a married person and the home of the ward or of the dependent family of the ward is owned by the ward and spouse as an estate by the entirety and the home is sold pursuant to the authority of paragraph (l) ~~subsection (12)~~, the court may authorize the investment of any part or all of the proceeds from the sale toward the purchase of a fee simple title to real estate in this state for a home for the ward or the dependent family of the ward as an estate by the entirety owned by the ward and spouse. If the guardian is authorized to acquire title to real estate for the ward or dependent family of the ward as an estate by the entirety in accordance with the preceding provisions, the conveyance shall be in the name of the ward and spouse and shall be effective to create an estate by the entirety in the ward and spouse.

~~(o)~~(15) Exercise any option contained in any policy of insurance payable to, or inuring to the benefit of, the ward.

~~(p)~~(16) Pay reasonable funeral, interment, and grave marker expenses for the ward from the ward’s estate.

~~(q)~~(17) Make gifts of the ward’s property to members of the ward’s family in estate and income tax planning procedures.

~~(r)~~(18) When the ward’s will evinces an objective to obtain a United States estate tax charitable deduction by use of a split interest trust (as that term is defined in s. 736.1201), but the maximum charitable deduction otherwise allowable will not be achieved in whole or in part, execute a codicil on the ward’s behalf amending said will to obtain the maximum charitable deduction allowable without diminishing the aggregate value of the benefits of any beneficiary under such will.

~~(s)(19)~~ Create or amend revocable trusts or create irrevocable trusts of property of the ward's estate which may extend beyond the disability or life of the ward in connection with estate, gift, income, or other tax planning or in connection with estate planning. The court shall retain oversight of the assets transferred to a trust, unless otherwise ordered by the court.

~~(t)(20)~~ Renounce or disclaim any interest by testate or intestate succession or by inter vivos transfer.

~~(u)(21)~~ Enter into contracts that are appropriate for, and in the best interest of, the ward.

~~(v)(22)~~ As to a minor ward, pay expenses of the ward's support, health, maintenance, and education, if the ward's parents, or either of them, are alive.

(2) A plenary guardian or a limited guardian of a ward may sign an order not to resuscitate as provided in s. 401.45(3). When a plenary guardian or a limited guardian of a ward seeks to obtain approval of the court to sign an order not to resuscitate, if required by exigent circumstances, the court must hold a preliminary hearing within 72 hours after the petition is filed, and:

(a) Rule on the relief requested immediately after the preliminary hearing; or

(b) Conduct an evidentiary hearing not later than 4 days after the preliminary hearing and rule on the relief requested immediately after the evidentiary hearing.

Section 7. Present subsections (2), (3), and (4) of section 744.446, Florida Statutes, are redesignated as subsections (3), (4), and (5), respectively, a new subsection (2) is added to that section, and present subsection (2) of that section is amended, to read:

744.446 Conflicts of interest; prohibited activities; court approval; breach of fiduciary duty.—

(2) A guardian may not offer, pay, solicit, or receive a commission, benefit, bonus, rebate, or kickback, directly or indirectly, overtly or covertly, in cash or in kind, or engage in a split-fee arrangement in return for referring, soliciting, or engaging in a transaction for goods or services on behalf of an alleged incapacitated person or minor, or a ward, for past or future goods or services.

~~(3)(2)~~ Unless prior approval is obtained by court order, or unless such relationship existed before ~~prior to~~ appointment of the guardian and is disclosed to the court in the petition for appointment of guardian, a guardian may not:

~~(a)~~ Have any interest, financial or otherwise, direct or indirect, in any business transaction or activity with the ward, the judge presiding over the

case, any member of the appointed examining committee, any court employee involved in the guardianship process, or the attorney for the ward;

(b) Acquire an ownership, possessory, security, or other pecuniary interest adverse to the ward;

(c) Be designated as a beneficiary on any life insurance policy, pension, or benefit plan of the ward unless such designation was validly made by the ward before ~~prior to~~ adjudication of incapacity of the ward; and

(d) Directly or indirectly purchase, rent, lease, or sell any property or services from or to any business entity of which the guardian or the guardian's spouse or any of the guardian's lineal descendants, or collateral kindred, is an officer, partner, director, shareholder, or proprietor, or has any financial interest.

Section 8. This act shall take effect July 1, 2020.

Approved by the Governor June 18, 2020.

Filed in Office Secretary of State June 18, 2020.