

**Real Property, Probate and Trust Law Section
Executive Council Meeting
Luminary Hotel**

Fort Myers, Florida

Pursuant to Article VII, Section 4 of the Bylaws of the Section, Executive Council members may participate electronically and vote using polling feature on Zoom.

November 6, 2021

9:00 am

Agenda

- I. **Presiding** — *Robert S. Swaine, Chair*
- II. **Secretary's Report** — *W. Cary Wright, Secretary*
 - 1. Motion to approve the minutes of the July 24, 2021 meeting of the Executive Council held at the Breakers Hotel on Palm Beach. **pp. 9 - 33**
 - 2. Meeting Attendance.
- III. **Chair's Report** — *Robert S. Swaine, Chair*
 - 1. Thank you to our Sponsors!
 - 2. Introduction and comments from Sponsors. **pp. 34 - 36**
 - 3. Milestones.
 - 4. Interim Actions Taken by the Executive Committee. **pp. 37 - 68**
 - 5. 2021-2022 Executive Council meetings. **p. 69**
 - 6. General Comments of the Chair.
- IV. **Liaison with Board of Governors Report** — *Scott Westheimer*
- V. **Chair-Elect's Report** — *Sarah S. Butters, Chair-Elect*
 - 1. 2022-2023 Executive Council meetings. **p. 70**
- VI. **Treasurer's Report** — *Jon Scuderj, Treasurer*
 - 1. Statement of Current Financial Conditions. **p. 71**
 - 2. Budget **pp. 72 - 82**
- VII. **Director of At-Large Members Report** — *Steven H. Mezer, Director*

VIII. CLE Seminar Coordination Report — *Sancha Brennan (Probate & Trust) & Lee Weintraub (Real Property), Co-Chairs*

1. Upcoming CLE programs and opportunities. **p. 83**

IX. Legislation Committee – *Wilhelmina Kightlinger and Larry Miller, Co-Chairs*

X. Real Property Law Division Report — *S. Katherine Frazier, Division Director*

General Comments and Recognition of Division Sponsors.

Action Item:

1. **Real Estate Leasing Committee** – *Brenda B. Ezell and Christopher A. Sajdera, Co-Chairs*

Motion to: (A) approve the creation of Florida Statutes Section 49.072 establishing a process to serve unknown parties in possession of real property; (B) find that such legislative position is within the purview of the RPPTL Section; and (C) expend Section funds in support of the proposed legislative position. **pp. 84 - 97**

Information Item:

1. **Condominium and Planned Development Committee** – *Joseph E. Adams and Margaret “Peggy” A. Rolando, Co-Chairs*

Update on Condominium Law and Policy Life Safety Advisory Task Force. **pp. 98 - 276**

XI. Probate and Trust Law Division Report — *John Moran, Division Director*

General Comments and Recognition of Division Sponsors.

Action Items

1. **Trust Law Committee** – *Matt Triggs, Chair*

Proposed amendments to § 736.0705, Fla. Stat. to clarify that a trust instrument may, subject to minimum notice requirements, provide an additional method by which a trustee may resign. **pp. 277 - 283**

Committee motion to:

(A) Support proposed amendments to section §736.0705(1), Fla. Stat. to provide an additional method by which a trustee may resign; and making clear that the options set forth in the statute are alternatives, each of which

may operate exclusive of the others;

(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.

Information Item

1. **Ad Hoc Committee on Electronic Wills – Angela M. Adams, Chair**

Potential committee motion for future consideration to **(pp. 284 – 289)**:

(A) Support proposed legislation which would amend §117.201, Fla. Stat., to create a definition of "witness" (when used as a noun) for purposes of remote online notarization and witnessing of electronic documents.

(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.

2. **Guardianship Law Revision Committee – Nick Curley, Stacey Rubel, David Brennan, Co-Chairs**

Update on status of guardianship code revision. **pp. 290 - 561**

XII. General Standing Division Report — Sarah S. Butters, Chair-Elect

Action Items:

1. **Fellows – Chris Sajdera, Chair**

The RPPTL Fellows is a two-year program that encourages the involvement of attorneys from diverse backgrounds that are traditionally underrepresented in the law and the Section. One of the main benefits of the Fellows program is the dialogue and professional relationship development that occurs during the activities of the in-person meetings. Currently, Fellows are each allocated \$2,500 per year to defray the costs of attendance at the in-state meetings. Due to COVID, many hotel and travel expenses have increased, making the stipend insufficient. Accordingly, the Fellows committee is seeking a stipend increase as follows:

A. Motion to increase each Fellow's stipend by \$500 per year, from the current \$2,500 to \$3,000 annually, effective for Fellows as of the 2021-2022 bar year.

As part of the Section's Strategic Plan, the goals and description of the Fellows program was reviewed with an eye towards highlighting

participation and involvement by Fellows. In furtherance of that goal, the Fellows committee undertook a review of their mission statement and long term goals, and propose the following revisions to the Mission Statement.

B. Motion to approve the revised Mission Statement. (p. 52)

Information Item:

1. **Liaison with Clerks of the Court** – *Laird A. Lile*
2. **Liaison with TFB Pro Bono committee** – *Lorna Brown-Burton*
3. **Law School Mentoring and Programming Committee** – *Johnathan Butler, Chair*
4. **Fellows** – *Chris Sajdera, Chair*
5. **Professionalism & Ethics Committee** – *Andrew B. Sasso, Chair*

Ethics Podcast
6. **Ad Hoc Revocable Transfer on Death Committee** – *Christopher Smart and Stephen Kotler, Co-Chairs*

XIII. Probate and Trust Law Division Committee Reports — *John Moran, Division Director*

1. **Ad Hoc ART Committee** — Alyse Reiser Comiter, Chair; Jack A. Falk and Sean M. Lebowitz, 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 Guardianship Law Revision Committee** — Nicklaus J. Curley, Stacey B. Rubel and David C. Brennan, Co-Chairs; Sancha Brennan, Vice Chair
4. **Ad Hoc Study Committee on Due Process, Jurisdiction & Service of Process** — Barry F. Spivey, Chair; Sean W. Kelley and Shelly Wald Harris, Co-Vice Chairs
5. **Ad Hoc Study Committee on Professional Fiduciary Licensing** — Angela McClendon Adams, Chair; Yoshimi Smith, Vice Chair
6. **Asset Protection** — Michael Sneeringer, Chair; Richard R. Gans and Justin Savioli, Co-Vice-Chairs
7. **Attorney/Trust Officer Liaison Conference** — Cady L. Huss, Chair; Tae Kelley Bronner, Stacey L. Cole (Corporate Fiduciary), Michael Rubenstein, Gail G. Fagan, Mitchell A. Hipsman and Eammon W. Gunther, Co-Vice Chairs
8. **Charitable Planning and Exempt Organizations Committee** — Seth

- Kaplan, Chair; Kelly Hellmuth and Denise S. Cazobon, Co-Vice-Chairs
9. **Elective Share Review Committee** — Jenna G. Rubin, Chair; Cristina Papanikos and Lauren Y. Detzel, Co-Vice-Chairs
10. **Estate and Trust Tax Planning** — Robert L. Lancaster, Chair; Richard N. Sherrill and Sasha Klein, Co-Vice Chairs
11. **Guardianship, Power of Attorney and Advanced Directives** — Stacy B. Rubel, Chair; Elizabeth M. Hughes, Caitlin Powell and Jacobeli Behar, Co-Vice Chairs
12. **IRA, Insurance and Employee Benefits** — Alfred J. Stashis, Co-Chairs; Charles W. Callahan, III and Rachel B. Oliver, Co-Vice-Chairs
13. **Liaisons with ACTEC** — Elaine M. Bucher, Tami F. Conetta, Thomas M. Karr, Shane Kelley, Charles I. Nash, L. Howard Payne and Diana S.C. Zeydel
14. **Liaisons with Elder Law Section** — Travis Finchum and Marjorie E. Wolasky
15. **Liaisons with Tax Section** — William R. Lane, Jr., Brian Malec and Brian C. Sparks
16. **Liaison with Professional Fiduciary Council** — Darby Jones
17. **OPPG Delegate** — Nick Curley
18. **Principal and Income** — Edward F. Koren and Pamela O. Price, Co-Chairs, Joloyon D. Acosta and Keith B. Braun, Co-Vice Chairs
19. **Probate and Trust Litigation** — J. Richard Caskey, Chair; Angela M. — Adams, James R. George and R. Lee McElroy, IV, Co-Vice Chairs
20. **Probate Law and Procedure** — M. Travis Hayes, Chair; Benjamin F. Diamond, Cady Huss, Cristina Papanikos and Theodore S. Kypreos, Co-Vice Chairs
21. **Trust Law** — Matthew H. Triggs, Chair; Jennifer J. Robinson, David J. Akins, Jenna G. Rubin, and Mary E. Karr, Co-Vice Chairs
22. **Wills, Trusts and Estates Certification Review Course** — Rachel Lunsford, Chair; J. Allison Archbold, Eric Virgil, and Jerome L. Wolf, Co-Vice Chairs

XIV. Real Property Law Division Committee Reports — *S. Katherine Frazier, Division Director*

1. **Attorney Banker Conference** — E. Ashley McRae, Chair; Kristopher E. Fernandez, R. James Robbins, Jr. and Salome J. Zikakis, Co-Vice Chairs
2. **Commercial Real Estate** — Jennifer J. Bloodworth, Chair; E. Ashley McRae, Eleanor W. Taft and Alexandra D. Gabel, Co-Vice Chairs
3. **Condominium and Planned Development** — Joseph E. Adams and Margaret “Peggy” A. Rolando, Co-Chairs; Alexander B. Dobrev and Allison L. Hertz, Co-Vice Chairs
4. **Condominium and Planned Development Law Certification Review Course** — Jane L. Cornett and Christine M. Ertl, Co-Chairs; Allison L. Hertz, Vice Chair
5. **Construction Law** — Reese J. Henderson, Jr., Chair; Sanjay Kurian, Bruce D. Partington and Elizabeth B. Ferguson, Co-Vice Chairs
6. **Construction Law Certification Review Course** — Elizabeth B.

- Ferguson, Chair; 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** — Colleen C. Sachs, Chair; Jin Liu and Lisa B. Van Dien, Co-Vice Chairs
9. **Insurance & Surety** — Michael G. Meyer and Katherine L. Heckert, Co-Chairs; Mariela M. Malfeld, Vice Chair
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; Martin S. Awerbach, Lloyd Granet, Laura M. Licastro and Jason M. Ellison, Co-Vice Chairs
12. **Real Estate Leasing** — Brenda B. Ezell and Christopher A. Sajdera, Co-Chairs; Kristen K. Jaiven, Co-Vice Chair
13. **Real Property Finance & Lending** — Richard S. McIver, Chair; Deborah B. Boyd and Jason M. Ellison, Co-Vice Chairs
14. **Real Property Litigation** — Michael V. Hargett, Chair; Amber E. Ashton, Manuel Farach and Shawn G. Brown, Co-Vice Chairs
15. **Real Property Problems Study** — Anne Q. Pollack, Chair; Susan K. Spurgeon, Adele I. Stone and Brian W. Hoffman, Co-Vice Chairs
16. **Residential Real Estate and Industry Liaison** — Nicole M. Villarroel, Chair; Louis E. "Trey" Goldman, James A. Marx and Kristen K. Jaiven, Co-Vice Chairs
17. **Title Insurance and Title Insurance Liaison** — Brian W. Hoffman, Chair; Leonard F. Prescott, IV, Jeremy T. Cranford, Christopher W. Smart and Michelle G. Hinden, Co-Vice Chairs
18. **Title Issues and Standards** — Rebecca L.A. Wood, Chair; Robert M. Graham, Karla J. Staker and Amanda K. Hersem, Co-Vice Chairs
19. **American College of Real Estate Lawyers (ACREL) Liaison** — Martin A. Schwartz and William P. Sklar, Co-Chairs
20. **American College of Construction Lawyers (ACCL) Liaison** — George J. Meyer, Chair

XV. General Standing Division Committee Reports — Sarah S. Butters, *General Standing Division Director and Chair-Elect*

1. **Ad Hoc RTOD** — Steve Kotler and Chris Smart, Co-Chairs
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** — Jon Scuderi, Chair; Tae Kelley Bronner, Linda S. Griffin, and Pamela O. Price, Co-Vice Chairs
5. **CLE Seminar Coordination** — Lee Weintraub and Sancha Brennan, Co-Chairs; Alexander H. Hamrick, Hardy L. Roberts, III, Paul E. Roman (Ethics), Silvia B. Rojas, and Stacy O. Kalmanson, Co-Vice Chairs
6. **Convention Coordination** — Tae Kelley Bronner and Stacy O. Kalmanson, Co-Chairs
7. **Disaster and Emergency Preparedness and Response** — Brian C.

8. Sparks, Chair; Colleen Coffield Sachs and Michael Bedke, Co-Vice Chairs
Fellows — Christopher A. Sajdera, Chair; Christopher Barr, Bridget Friedman and Angela K. Santos, Co-Vice Chairs
9. **Florida Electronic Filing & Service** — Rohan Kelley, Chair
10. **Homestead Issues Study** — Jeffrey S. Goethe, Chair; Amy B. Beller, Michael J. Gelfand, Melissa Murphy and Jeff Baskies, Co-Vice Chairs
11. **Information Technology & Communication** — Hardy L. Roberts III, Chair; Erin H. Christy, Alexander B. Dobrev, Jesse B. Friedman, Michael A. Sneeringer, Sean Lebowitz, Terrance Harvey and Jordan Haines, Co-Vice Chairs
A. **Law School Programing** — Johnathan Butler, Chair; Phillip Baumann, Guy Storms Emerich, Kymberlee Curry Smith and Kristine L. Tucker, Co-Vice Chairs
12. **Legislation** — Larry Miller (Probate & Trust) and Wilhemina Kightlinger (Real Property), Co-Chairs; Grier Pressley and Nick Curley (Probate & Trust), Chris Smart, Manuel Farach and Arthur J. Menor (Real Property), Co-Vice Chairs
13. **Legislative Update (2020-2021)** — Brenda Ezell, Chair; Theodore Stanley Kypreos, Gutman Skrande, Jennifer S. Tobin, Kit van Pelt and Salome J. Zikakis, Co-Vice Chairs
14. **Legislative Update (2021-2022)** — Brenda Ezell, Chair; Theodore Stanley Kypreos, Gutman Skrande, Jennifer S. Tobin, Kit van Pelt and Salome J. Zikakis, Co-Vice Chairs
15. **Liaison with:**
 - a. **American Bar Association (ABA)** — Robert S. Freedman, Edward F. Koren, George J. Meyer 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 and Robert Stern
 - e. **Judiciary** — Judge Mary Hatcher, Judge Hugh D. Hayes, Judge Margaret Hudson, Judge Bryan Rendzio, Judge Mark A. Speiser,; and Judge Michael Rudisill
 - f. **Out of State Members** — Nicole Kibert Basler, John E. Fitzgerald, Jr., and Michael P. Stafford
 - g. **TFB Board of Governors** — Scott Westheimer
 - h. **TFB Business Law Section** — Gwynne A. Young and Manuel Farach
 - i. **TFB CLE Committee** — Sancha Brennan
 - j. **TFB Council of Sections** — Robert S. Swaine and Sarah Butters
 - k. **TFB Pro Bono Legal Services** — Lorna E. Brown-Burton
16. **Long-Range Planning** — Sarah Butters, Chair
17. **Meetings Planning** — George J. Meyer, Chair
18. **Membership and Inclusion** — Annabella Barboza and S. Dresden Brunner, Co-Chairs; Erin H. Christy, Vinette D. Godelia, Jennifer L. Grosso, Tattiana Stahl, and Roger A. Larson, Co-Vice Chairs
19. **Model and Uniform Acts** — Patrick J. Duffey and Richard W. Taylor, Co-Chairs; Adele I. Stone, Chris Wintter, and Benjamin Diamond, Co-Vice Chair
20. **Professionalism and Ethics** — Andrew B. Sasso, Chair; Elizabeth A.

- Bowers, Alexander B. Dobrev, Rt. Judge Celeste Hardee Muir, and Laura Sundberg, Co-Vice Chairs
21. **Publications (ActionLine)** — Jeffrey Baskies and Michael A. Bedke, Co-Chairs (Editors in Chief); Richard D. Eckhard, Jason M. Ellison, George D. Karibjanian, Keith S. Kromash, Daniel L. McDermott, Jeanette Moffa Wagener, Paul E. Roman, Daniel Siegel, Co-Vice Chairs
 22. **Publications (Florida Bar Journal)** — J. Allison Archbold (Probate & Trust) and Homer Duvall, III (Real Property), Co-Chairs; Marty J. Solomon and Mark Brown (Editorial Board — Real Property), Brandon Bellew, Jonathan Galler and Brian Sparks (Editorial Board – Probate & Trust), Co-Vice Chairs
 23. **Sponsor Coordination** — Bill Sklar, Chair; Patrick C. Emans, Marsha G. Madorsky, Jason J. Quintero, J. Michael Swaine, Alex Hamrick, Rebecca Bell, and Arlene C. Udick, Co-Vice Chairs
 24. **Strategic Planning** — Sarah Butters and Robert Swaine, Co-Chairs
 25. **Strategic Planning Implementation** — Robert Freedman, Michael J. Gelfand Michael A. Dribin, Deborah Goodall, Andrew M. O'Malley and Margaret A. “Peggy” Rolando, Co-Chairs

XVI. Adjourn: Motion to Adjourn.

**Real Property, Probate and Trust Law
Section Executive Council Meeting
The Breakers**

Palm Beach, Florida

Pursuant to Article VII, Section 4 of the Bylaws of the Section, Executive Council members
may participate electronically and vote using polling feature on Zoom.

July 24, 2021

9:45 am

Agenda

I. Presiding — Robert S. Swaine, Chair

1. The Chair called the meeting to order at 9:57 a.m. The Chair welcomed those in person as well as those on Zoom. Immediately thereafter the presentation of the first annual Death vs. Dirt Beach Olympics trophy was presented by former Chair, Bill Hennessey, to the death team to the Olympic theme song and a lukewarm applause by those attending.

II. Secretary's Report — Wm. Cary Wright, Secretary

1. A motion was made, and seconded, to approve the minutes of the June 5, 2021 meeting of the Executive Council held at the JW Marriott in Marco Island. The Motion passed.

III. Chair's Report — Robert S. Swaine, Chair

1. The Chair recognized and thanked the Section's General sponsors and the Friends of the Section.

General Sponsors

Attorneys' Title Fund Services, LLC

WFG National Title Insurance Co.

Management Planning, Inc.

JP Morgan

Old Republic National Title Insurance Company

Westcor Land Title Insurance

First American Title Insurance Company

Attorneys' Title Fund Services, LLC

Fidelity National Title Group

Stout Risius Ross, Inc.

Guardian Trust

The Florida Bar Foundation

Stewart Title

The Friends of the Section

Business Valuation Analysts, LLC

CATIC

Cumberland Trust

Fiduciary Trust International of the South

Heritage Investment

North American Title Insurance Company

Probate Cash

Title Resources Guaranty Company

Valuation Services, Inc.

Wells Fargo Private Bank

2. David Shanks thanked the Section on behalf of Stewart Title.
3. Carlos Batlle thanked the Section on behalf of JP Morgan.
4. Melissa Murphy thanked the Section on behalf of Attorneys' Title Fund Services, LLC.
5. The Chair announced the Section milestone of the birth of a baby girl to Erin and Doug Christy.
6. The Chair recognized our special members in attendance.

Scott Westheimer addressed the attendees and gave his report as the Board of Governors Liaison, which is discussed further in the minutes. Scott noted that he is running for President-Elect of The Florida Bar.

Lorna Brown-Burton spoke, talked about the Florida Bar Foundation and encouraged all to get involved. She is also running for President-Elect of The Florida Bar.

7. The Interim Actions Taken by the Executive Committee. Bob noted no Interim Actions had been taken since the last Executive Council meeting.

8. 2021-2022 Executive Council meetings. Bob noted the 2021-2022 Executive Council meeting listed in the Agenda Packet as follows:

July 21 – 25, 2021	The Breakers Palm Beach, Florida
November 3 – 7, 2021	Luminary Hotel & Co. Fort Myers, Florida
March 2 – March 6, 2022	Hotel Bennett Charleston, South Carolina
March 30 – April 2, 2022	AC Hotel by Marriott Tallahassee (contract pending) Tallahassee, Florida
June 1 – June 5, 2022	Hawks Cay Resort Duck Key, Florida

IV. Liaison with Board of Governors Report — *Scott Westheimer*

Scott Westheimer gave the following report from The Florida Bar Board of Governors (“BOG”).

The Bar’s Budget outperformed its projections due to the success of the Bar’s investments. Therefore, there will be no dues increase in the foreseeable future.

President Tanner outlined the detailed process that the Board of Governors will undertake to evaluate the report and recommendations from the Supreme Court’s Special Committee to Improve the Delivery of Legal Services. The Board will have specially set meetings on September 8th and October 26th to hear from the Special Committee and present questions. The BOG is seeking input from its members and the Section. The BOG will meet in November 2021 to determine its response to the report, which it will present to the Florida Supreme Court.

The COVID-19 Pandemic Recovery Task Force continues to study issues regarding remote work and potential related rules changes. Also, it will start to study feasibility of online dispute resolution platforms for civil cases valued at \$1,000 or less.

The BOG Technology Committee is studying the feasibility of the Bar offering the free technology IT Help Line to its members after the tremendous success of the beta test program.

The Bar’s Special Committee on Professionalism, which is being chaired by President-Elect Lesser, had its first meeting. The Special Committee will be reviewing every aspect of how the Bar educates, establishes rules, and enforces professionalism.

V. Chair-Elect's Report — Sarah S. Butters, Chair-Elect

1. The Chair-Elect directed our members to the 2022-2023 Executive Council meetings and provided some updates.

July 21 – 24, 2022

The Breakers
Palm Beach, Florida

September 28 – October 2, 2022

Opal Sands Harborside
Bar Harbor, Maine

December 8 – 12, 2022

Four Seasons
Orlando, Florida

February 22 – 26, 2023

Sandestin Gold and Beach Resort
Destin, Florida

June 1 – 4, 2023

Opal Sands Delray (contract
pending)
Delray Beach, Florida

2. She thanked the past chairs for her inspiration for the locations which are contained in the agenda materials.
3. She called Jim Russick from Old Republic Title to the podium. Jim thanked the Section for allowing Old Republic Title to be a sponsor.

VI. Treasurer's Report — Jon Scuderi, Treasurer

Steve Mezer stepped in for Jon Scuderi and provided the Treasurer's Report, noting that the Section is in a strong financial position, in part, due to the prior Treasurer. He also recognized the CLE committee and thanked all the CLE speakers from this year.

VII. Director of At-Large Members Report — Steven H. Mezer, Director

Steve Mezer recognized all of the lead ALMS. He noted that there are 69 ALMs and they had a great 1-hour meeting. He noted that Colleen Sachs and Arlene Udick are doing a spectacular job updating the ALMs webpage.

Steve also recognized Hung Nguyen for the ALMs project with legal services in the Miami-Dade area.

VIII. CLE Seminar Coordination Report — Sancha Brennan (Probate & Trust) & Lee A. Weintraub (Real Property), Co-Chairs

Sancha Brennan welcomed Lee Weintraub as the new Co-Chair for the RP side. She introduced the members of the CLE Subcommittee:

Alex Hamrick
Paul Roman
Stacy Kalmanson
Silvia Rojas
Hardy Roberts

Sancha thanked Brenda Ezell and the Legislative Update Team who received a welcome round of applause from those in attendance. The applause was much louder and more heartfelt than the applause given to the recipients of the First Annual Death vs. Dirt Beach Olympics.

Sancha mentioned the online on-demand catalog of the 55 plus programs on the RPPTL website. She also encouraged new leaders to attend the Leaders Training Program upcoming on August 18, 2021.

IX. Legislation Committee – *Wilhelmina Kightlinger and Larry Miller, Co-Chairs*

Willie Kightlinger gave the Legislation Committee report from Zoom. She and Larry Miller are the new Co-Chairs of the Legislation Committee. She reminded the Chairs and Vice-Chairs of the early Legislative session next year and that requests for information and feedback from the legislative lobbyist should be turned around quickly.

Larry Miller reminded the attendees that the Legislative forms are fluid at this time, and are changing, but the new forms will be updated to the website, once approved by The Florida Bar. He reminded people to email or call Willie if they have any questions regarding the new forms.

X. General Standing Division Report — *Sarah S. Butters, Chair-Elect*

Sarah called Len Prescott of First American up to address the attendees. Len announced that First American created a 4-month long program to train 19 candidates – similar to a semester of school, in the work place. Len reported the success of the program.

Action Items:

1. Legislative Team Contract Approval:

Members of the Dean Mead & Dunbar firm were asked to exit the room while the Council discussed the following Motion to:

(A) approve the Legislative Advisory Agreement with Dean Mead & Dunbar for the years beginning September 1, 2021 and ending August 31, 2023; and

(B) expend Section funds in furtherance of the Agreement.

Motion was unanimously approved.

Information Items:

1. Liaison with Clerks of the Court – *Laird A. Lile*

Laird's report focused on a decision of the Florida Supreme Court that came down on July 1, 2021, regarding confidential information. The Court ruled that the burden to keep information confidential is on the attorney, not the Clerk of Court.

Laird reminded everyone to be much more mindful that if you are in the Circuit Court arena, it is your responsibility to keep confidential information confidential.

2. Liaison with TFB Pro Bono committee – *Lorna Brown-Burton*

Lorna Brown-Burton gave the update on the Pro Bono committee. She informed the attendees that there were changes made to the Circuit Handbook, which should be finalized by September 2021.

3. Law School Mentoring and Programming Committee – *Johnathan Butler, Chair*

Johnathan gave his report by Zoom. The committee had a Zoom meeting on Monday, July 12, 2021. They are considering collecting and posting law student resumes on line. The committee decided that as law students join or renew as RPPTL law student members that the committee will collect resumes and post them on the committee website for Section members to view/access.

They are also discussing ways to reach out to law students by Zoom, continuing to hold educational sessions such as a "Day in the Life of a Real Estate and/or Probate/Estate Lawyer."

They are also working with Arlene Udick on writing articles for ActionLine.

They are requesting assistance in conducting mock interviews with students for the University of Miami law students. These interviews were held on Wednesday, August 4, Thursday, August 5 and Friday, August 6 via Zoom with RPPTL members participating. We are working with other Florida law schools to schedule further mock interviews virtually in the Fall 2021.

Law School Student Council has met quarterly via Zoom on Monday, March 8, 2021; Wednesday, June 9, 2021 and the next meeting is Wednesday, September 8, 2021 from 5-6pm.

The committee name change to "Law School Programing Committee" was considered and approved by the committee and will be presented

to the Executive Council in the future.

4. Fellows – Chris Sajdera, Chair

Chris gave his report by Zoom. He introduced the newest Fellows class:

First Year

Real Property:

Melissa Martinez Hernandez

Shayla Michelle Johnson Mount

Probate:

Taniquea Reid

Amanda Cummins

And introduced the second year Fellows class:

Second Year

Probate:

Lilleth Bailey

Nicole S. Bell

Real Estate:

Terrence L. Harvey

Erin Miller-Meyers

5. Professionalism & Ethics Committee – Andrew B. Sasso, Chair

Andy gave the report and played a podcast from the RPPTL Professionalism and Ethics Committee Podcast. The title of the podcast was based on Andreas vs. Impact Pest Management, Inc. 157 So.3d. 442 (Fla. 2d DCA 2015) and titled:

Chapter 2 – Got Me, No - Got You.

A lawyer's duty of candor

A lawyer should never allow their silence to mislead anyone.

6. Ad Hoc Revocable Transfer on Death Committee – Christopher Smart and Stephen Kotler, Co-Chairs

Chris Smart gave the report. The idea is to give legal certainty to revocable transfer or death situations. He noted that the committee has met two or three times and is working through policy considerations and proposed legislation, and hopes to have a work product for consideration in the near future for the Section.

XI. Real Property Law Division Report — S. Katherine Frazier, Division Director

Katherine recognized and thanked the following Real Property Committee Sponsors:

Committee Sponsors

AmTrust Financial Services

Residential Real Estate and Industry Liaison

Attorneys' Title Fund Services, LLC

Commercial Real Estate; Real Estate Leasing

Attorneys' Real Estate Councils of Florida, Inc.

Residential Real Estate and Industry Liaison

CATIC

Real Property Finance and Lending

First American Title

Condominium and Planned Development; Real Property Problems Study

Action Items:

1. Real Property Finance & Lending Committee – Richard S. McIver, Chair

Motion to approve the First Supplement to the Report on Third-Party Legal Opinion Customary Practice in Florida. The Section previously adopted the report on Third-Party Legal Opinion Customary Practice in Florida and has worked in connection with the Business Law Section to create the First Supplement.

The Motion was presented by Kip Thornton, and was approved unanimously.

2. The Florida Bar Florida Realtor – Attorney Joint Committee – Fred Jones

Motion to approve the 2021 revisions to The Florida Realtors and The Florida Bar ("FR/BAR") forms submitted by the Florida Realtor-Attorney Joint Committee, as follows: Residential Contract for Sale and Purchase; "As-Is" Residential Contract for Sale and Purchase; and the following Comprehensive Riders to the Residential Contract(s) For Sale and Purchase: Rider B. Homeowners' Association/Community Disclosure (Part B.2(b) & (c)); Rider E. Federal Housing Administration (FHA)/U.S. Department of Veterans Affairs (VA)); Rider I. Mold Inspection [New]; Rider L. Right to Inspect and Right to Cancel, Rider T. Pre-Closing Occupancy by Buyer; Rider U. Post-Closing Occupancy by Seller; Rider V. Sale of Buyer's Property; Rider W. Back-Up Contract; Rider DD. Seasonal and Vacation Rentals After Closing [New]; and Rider EE. Property Assessed Clean Energy

(PACE) Rider [New].

Fred Jones presented the Motion, which was seconded by Steve Mezer. The Motion was approved unanimously.

Information Item:

1. Real Estate Leasing Committee – Brenda B. Ezell, Chair

Consideration of legislation creating Florida Statutes Section 49.072 establishing a process to serve unknown parties in possession of real property.

Mark Brown addressed the attendees with a very short story about his son, who often visited his grandfather when he was around 5 years old. Grandfather eats an olive and looks at his son and says “it’s so good.” Grandson eats an olive out of the bowl and spits it out, making an awful face. Fast forward about 30 years, Grandfather is now 97 and is at the table with grandson who is about 37 years old. Grandfather eats an olive out of the bowl and says “Oh, this is so good.” Grandson takes an olive out of the bowl, spits it out and cries. Grandfather says “what’s wrong my grandson?” Grandson replies “You keep getting all the good olives!” Raucous applause ensued.

Mark then explains the problem is there is no statute authorizing a summons to be issued on unknown parties in possession. The subcommittee is endeavoring to create a new statute authorizing such summonses and specifying how service will be made on them.

The Subcommittee members are Brenda Ezell, Chip Waller, Kris Fernandez, Jeremy Cranford, Kristen Jaiven, Terrence Harvey, and Christopher Sajdera.

The Subcommittee is hopeful that they can move forward with an Action Item at the next Executive Council meeting in November, 2021.

3. Condominium and Planned Development Committee Information Item on Surfside/Champlain Towers Collapse Task Force

Peggy Rolando gave a report on the subcommittee that was formed to study and give recommendations regarding the Sunrise Collapse. Bill Sklar is chairing the subcommittee, which is comprised of the following:

William Sklar-Chair - Tallahassee
Peter Dunbar - Tallahassee
Ivette Blanch - Coral Gables
Jose Rodriguez - Miami
Christopher Davies - Naples
Michael Gelfand - West Palm Beach

Joseph Adams - Fort Myers, Ex Officio
Margaret “Peggy” Rolando - Miami, Ex Officio

The mission statement of the Task Force follows:

Mission: To engage in information-gathering and fact-finding through the review of all aspects of Florida condominium law, development, construction, association operations, and maintenance to determine if changes or additions to legislation and/or regulation could prevent or minimize the likelihood of another tragedy like the Champlain Towers South condominium collapse, or similar tragedies in the future. The Task Force is not a decision-making authority and will not be investigating the cause of the Champlain Towers South building collapse, but instead is intended to serve as a resource to legislative and regulatory agencies as they address this tragedy.

Katherine Frazier then closed her Real Property Division report by introducing Teresa Chiotti of Westcor Land Title Insurance Company. Teresa thanked the Section.

XII. Probate and Trust Law Division Report — John Moran, Division Director

John thanked the following Probate Law Division Committee Sponsors:

BNY Mellon Wealth Management -
Estate and Trust Planning; IRA, Insurance and Employee Benefits

Business Valuation Analysts, LLC -
Trust Law

Coral Gables Trust -
Probate and Trust Litigation; Probate Law Committee

Grove Bank and Trust -
Guardianship and Advanced Directives

Kravit Estate Appraisal -
Estate and Tax Planning

Management Planning, Inc. -
Estate and Tax Planning

Northern Trust -
Trust Law

Action Items:

1. **Probate Law Committee – Travis Hayes, Chair**

Codification of case law on satisfaction of independent action requirements where Personal Representative is timely substituted into pending action.

Motion to:

- (A) Support proposed amendments to § 733.705(5), Fla. Stat. (Payment of and objection to claims) to codify existing case law such that the requirement to bring an independent action is satisfied if, within 30 days of the filing of an objection to the claim: a motion to substitute the fiduciary is filed in the pending action; an order substituting the fiduciary is entered in the pending action; such other procedure as may exist is initiated to substitute the fiduciary in the pending action; or the timely filing of an arbitration is made when the decedent has entered into an agreement during lifetime which provides for mandatory arbitration relating to the claim, or arbitration is required by the decedent's will or trust;
- (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.

Since the motion came from a Committee, a second was not required. Discussion ensued. On behalf of the Committee, Travis proposed, and the Executive Council unanimously approved, a revision in the body of the proposed legislation contained in the Executive Council Agenda materials, changing the references to a "personal representative" being substituted as a party in a pending case. The proposed legislation now references a "proper party" being substituted. This is the term used in Rule 1.260 of the Florida Rules of Civil Procedure, so the change was made to be consistent with the Rule. The change will be made at lines 38, 40, 42, 58, 59 and 61-62 (based on the version included in the Executive Council agenda materials).

2. Estate & Trust Planning Committee – Robert L. Lancaster, Chair

Rob Lancaster and Burt Bruton provided the background of the Action Item.

Motion to:

- (A) Support amendment of FS §201.02(4) (documentary stamp tax) to create express statutory authority for existing Florida Administrative Code Rule 12B-4.013(28) regarding transfers of real property interests to or from trustees of written trusts under Chapter 689, including revocable 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.

Discussion ensued. A motion to waive the by-law requirement of giving 1-week notice was made by Deborah Boje. The motion to waive the rule was passed with a lone dissent.

Subsequently, the Committee Motion to support amendment of FS §201.02(4) was approved unanimously.

Information Item:

1. Trust Law Committee – *Matthew Triggs, Chair*

Proposed amendments to § 736.0705, Fla. Stat., to clarify that a trust instrument may, subject to minimum notice requirements, provide an additional method by which a trustee may resign.

Matt Triggs explained that the statute provides there is a 30-day period that must expire before a trustee can resign. The committee believes that if the trust documents provide for a shorter period for resignation, the trustee should be able to resign in accordance with the trust requirement.

XIII. Adjourn: Motion to Adjourn was made and passed unanimously.

/s/ Wm. Cary Wright
Wm. Cary Wright
Secretary

ATTENDANCE ROSTER
REAL PROPERTY PROBATE & TRUST LAW SECTION
EXECUTIVE COUNCIL MEETINGS
2021-2022

Executive Committee	Division		July 21 Breakers (Hybrid)	Nov. 3 Fort Myers, FL	March 2 Charleston, SC	March 30 Tallahassee	June 1 Duck Key, FL
	RP	P&T					
Hennessey, William ("Bill") Immediate Past Chair		√	√				
Swaine, Robert S. Chair	√		√				
Butters, Sarah S. Chair-Elect & General Standing Div. Director		√	√				
Frazier, S. Katherine Real Property Div. Director	√		√				
Moran, John C. Probate & Trust Law Div. Director		√	√				
Wright, Wm. Cary Secretary	√		√				
Scuderi, Jon Treasurer		√	√				
Kightlinger, Wilhelmina Legislation Co-Chair Real Property	√		√				
Miller, Lawrence J. Legislation Co-Chair Probate & Trust		√	√				
Brennan, Sancha CLE Co-Chair Probate		√	√				
Weintraub, Lee A. CLE Co-Chair Real Property	√		√				
Mezer, Steven H. Director, At-Large Members	√		√				

Executive Council Members	Division		July 21 Breakers (Hybrid)	Nov. 3 Fort Myers, FL	March 2 Charleston, SC	March 30 Tallahassee	June 1 Duck Key, FL
	RP	P&T					
Acosta, Jolyon Delphin		√	√				
Adams, Angela M.		√	√				
Adams, Joseph	√						
Akins, David J.		√	√				

Executive Council Members	Division		July 21 Breakers (Hybrid)	Nov. 3 Fort Myers, FL	March 2 Charleston, SC	March 30 Tallahassee	June 1 Duck Key, FL
	RP	P&T					
Alaimo, Marve Ann M.		√	√				
Altman, Stuart H.		√					
Archbold, J. Allison		√	√				
Arnold, Casey	√		√				
Aron, Jerry E. Past Chair	√		√				
Ashton, Amber E.	√		√				
Awerbach, Martin S.	√		√				
Bald, Kimberly A.		√	√				
Barboza, Annabella	√		√				
Barr, J. Christopher	√						
Baskies, Jeffrey		√	√				
Battle, Carlos A.		√	√				
Baumann, Phillip A.		√	√				
Beales, III, Walter R. Past Chair	√						
Bedke, Michael A.	√						
Behar, Jacobeli J.		√	√				
Belcher, William F. Past Chair		√					
Bell, Kenneth B.	√						
Bell, Rebecca Coulter		√	√				
Beller, Amy		√	√				
Bellew, Brandon D.		√	√				
Bloodworth, Jennifer J.	√		√				
Boje, Debra Lynn Past Chair		√	√				
Bouchard, Eve	√		√				

Executive Council Members	Division		July 21 Breakers (Hybrid)	Nov. 3 Fort Myers, FL	March 2 Charleston, SC	March 30 Tallahassee	June 1 Duck Key, FL
	RP	P&T					
Bowers, Elizabeth A.		√					
Boyd, Deborah	√		√				
Braun, Keith Brian		√	√				
Brenes-Stahl, Tattiana		√	√				
Brennan, David C. Past Chair		√	√				
Bronner, Tae K.		√					
Brown, Mark A.	√		√				
Brown, Shawn	√		√				
Brown-Burton, Lorna	√						
Brunner, S. Dresden		√	√				
Bruton, Jr., Ed Burt	√		√				
Bucher, Elaine M.		√					
Butler, Johnathan		√	√				
Callahan, Chad W. III		√	√				
Caskey, John R.		√	√				
Cazobon, Denise		√	√				
Christiansen, Patrick Past Chair	√		√				
Christy, Erin Hope	√		√				
Cole, Stacey L.		√	√				
Coleman, Jami A.		√	√				
Comiter, Alyse Reiser		√	√				
Conetta, Tami F.		√	√				
Cope, Jr., Gerald B.	√						
Cornett, Jane Louise	√		√				

Executive Council Members	Division		July 21 Breakers (Hybrid)	Nov. 3 Fort Myers, FL	March 2 Charleston, SC	March 30 Tallahassee	June 1 Duck Key, FL
	RP	P&T					
Cranford, Jeremy	√		√				
Curley, Nick		√	√				
Detzel, Lauren Y.		√	√				
Diamond, Benjamin F.		√	√				
Diamond, Sandra F. Past Chair		√	√				
Dobrev, Alex	√		√				
Dollinger, Jeffrey	√		√				
Dribin, Michael Past Chair		√	√				
Duffey, Patrick J.		√	√				
Duvall, III, Homer	√		√				
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	√		√				
Felcoski, Brian J. Past Chair		√	√				
Ferguson, Elizabeth B.	√		√				
Fernandez, Kristopher E.	√		√				
Fields, Alan B.	√		√				

Executive Council Members	Division		July 21 Breakers (Hybrid)	Nov. 3 Fort Myers, FL	March 2 Charleston, SC	March 30 Tallahassee	June 1 Duck Key, FL
	RP	P&T					
Finchum, Travis		√	√				
Finlen, Erin F.		√	√				
Fitzgerald, Jr., John E.		√	√				
Freedman, Robert (Rob) Past Chair	√		√				
Friedman, Bridget	√		√				
Friedman, Jesse B.		√					
Gabel, Alexandra	√						
Galler, Jonathan		√					
Gans, Richard R.		√	√				
Gelfand, Michael J Past Chair	√		√				
George, James		√	√				
George, Joseph P.		√	√				
Godelia, Vinette D.	√						
Goethe, Jeffrey S.		√	√				
Goldman, Louis “Trey”	√		√				
Goldman, Robert W. Past Chair		√					
Goodall, Deborah P. Past Chair		√	√				
Graham, Robert M.	√		√				
Granet, Lloyd	√		√				
Griffin, Linda S.		√	√				
Grimsley, John G. Past Chair		√					
Grosso, Jennifer		√	√				
Gunther, Eamonn W.		√	√				
Guttmann, III, Louis B Past Chair	√						

Executive Council Members	Division		July 21 Breakers (Hybrid)	Nov. 3 Fort Myers, FL	March 2 Charleston, SC	March 30 Tallahassee	June 1 Duck Key, FL
	RP	P&T					
Hamrick, Alexander H		√	√				
Hargett, Michael Van	√		√				
Hayes, Hon. Hugh D.							
Hayes, Michael Travis		√	√				
Haynes, Jourdan	√		√				
Hearn, Frederick “Ricky”		√	√				
Hearn, Steven L. Past Chair		√	√				
Heckert, Katie	√		√				
Hellmuth, Kelly	√		√				
Henderson, Jr., Reese J.	√		√				
Henderson, III, Thomas N.	√		√				
Hersem, Amanda	√		√				
Heuston, Stephen P.		√	√				
Hertz, Allison	√		√				
Hipsman, Mitchell Alec		√	√				
Hoffman, Brian W.	√		√				
Hudson, Hon. Margaret “Midge”		√					
Hughes, Elizabeth		√					
Huss, Cady L.		√	√				
Hutt, Gregg Evan	√		√				
Isphording, Roger O. Past Chair		√					
Jaiven, Kristen	√		√				
Jarrett, Sharifa K.		√					
Johnson, Amber Jade		√	√				

Executive Council Members	Division		July 21 Breakers (Hybrid)	Nov. 3 Fort Myers, FL	March 2 Charleston, SC	March 30 Tallahassee	June 1 Duck Key, FL
	RP	P&T					
Jones, Darby			√				
Jones, Frederick W.	√		√				
Kalmanson, Stacy O.	√		√				
Kangas, Michael R.		√	√				
Kaplan, Seth		√	√				
Karibjanian, George		√					
Karr, Mary E.		√					
Karr, Thomas M.		√					
Kayser, Joan B. Past Chair		√					
Kelley, Rohan Past Chair		√					
Kelley, Sean W.		√					
Kelley, Shane		√					
Khan, Nishad	√						
Kibert-Basler, Nicole	√		√				
Kinsolving, Ruth Barnes, Past Chair	√						
Kison, Amanda	√		√				
Klein, Sasha	√		√				
Koren, Edward F. Past Chair		√	√				
Kotler, Alan Stephen		√	√				
Kromash, Keith S.		√					
Krumbein, Sandra Elizabeth	√						
Kurian, Sanjay	√						
Kypreos, Theodore S.		√	√				
Lancaster, Robert L.		√	√				

Executive Council Members	Division		July 21 Breakers (Hybrid)	Nov. 3 Fort Myers, FL	March 2 Charleston, SC	March 30 Tallahassee	June 1 Duck Key, FL
	RP	P&T					
Lane, Jr., William R.		√	√				
Larson, Roger A.	√		√				
Lebowitz, Sean	√		√				
Licastro, Laura	√		√				
Lile, Laird A. Past Chair		√	√				
Little, III, John W.	√						
Liu, Jin	√		√				
Lunsford, Rachel Albritton		√	√				
Madorsky, Marsha G.		√					
Malec, Brian		√	√				
Malfeld, Mariela	√		√				
Marger, Bruce Past Chair		√					
Marx, James A.		√	√				
Mastin, Deborah Bovarnick	√		√				
McCall, Alan K.	√						
McDermott, Daniel		√	√				
McElroy, IV, Robert Lee		√	√				
McIver, Richard	√		√				
McRae, Ashley E.	√		√				
Menor, Arthur J.	√						
Meyer, George F. Past Chair	√		√				
Meyer, Michael	√		√				
Middlebrook, Mark		√	√				
Moffa, Jeanette	√						

Executive Council Members	Division		July 21 Breakers (Hybrid)	Nov. 3 Fort Myers, FL	March 2 Charleston, SC	March 30 Tallahassee	June 1 Duck Key, FL
	RP	P&T					
Muir, Hon. Celeste H.		√	√				
Murphy, Melissa J. Past Chair	√		√				
Nash, Charles I.		√					
Neukamm, John B. Past Chair	√		√				
Nguyen, Hung V.		√	√				
Oliver, Rachel							
O'Malley, Andrew M.	√						
Papanikos, Cristina		√	√				
Partington, Bruce	√		√				
Payne, L. Howard		√					
Pence, Scott P.	√		√				
Pilotte, Frank		√	√				
Pinnock, Duane L.		√	√				
Pollack, Anne Q.	√		√				
Powell, Caitlin	√		√				
Prescott, Leonard	√		√				
Pressly, Grier James			√				
Price, Pamela O.		√	√				
Quintero, Jason	√						
Redding, John N.	√		√				
Renzio, Bryan	√						
Rieman, Alexandra V.		√	√				
Robbins, Jr., R.J.	√		√				
Roberts, III, Hardy L.	√		√				

Executive Council Members	Division		July 21 Breakers (Hybrid)	Nov. 3 Fort Myers, FL	March 2 Charleston, SC	March 30 Tallahassee	June 1 Duck Key, FL
	RP	P&T					
Robinson, Jennifer		√	√				
Rojas, Silvia B.	√		√				
Rolando, Margaret A. Past Chair	√		√				
Roman, Paul E.		√	√				
Rubel, Stacy		√	√				
Rubenstein, Michael		√	√				
Rubin, Jenna		√	√				
Rudisill, Michael	√						
Russick, James C.	√		√				
Sachs, Colleen C.	√		√				
Sajdera, Christopher	√		√				
Santos, Angela		√	√				
Sasso, Andrew	√		√				
Savioli, Justin	√		√				
Schwartz, Martin	√		√				
Schwartz, Robert M.	√		√				
Seigel, Daniel A.	√		√				
Shanks, David	√		√				
Sheets, Sandra G.		√	√				
Sherrill, Richard		√	√				
Sklar, William P.	√		√				
Skrande, Gutman		√	√				
Smart, Christopher W.	√		√				
Smith, Kymberlee C.	√		√				

Executive Council Members	Division		July 21 Breakers (Hybrid)	Nov. 3 Fort Myers, FL	March 2 Charleston, SC	March 30 Tallahassee	June 1 Duck Key, FL
	RP	P&T					
Smith, G. Thomas Past Chair/Honorary Member	√						
Smith, Yoshimi O.		√	√				
Sneeringer, Michael		√	√				
Solomon, Marty	√						
Sowell, Amber	√	√					
Sparks, Brian C.		√	√				
Speiser, Hon. Mark A.		√	√				
Spivey, Barry F.		√	√				
Spurgeon, Susan K.	√		√				
Stafford, Michael P.		√	√				
Staker, Karla J.	√		√				
Stashis, Alfred Joseph		√	√				
Stern, Robert G.	√		√				
Stone, Adele I.	√		√				
Stone, Bruce M. Past Chair		√					
Sundberg, Laura K.		√	√				
Swaine, Jack Michael Past Chair	√		√				
Taft, Ellie	√						
Taylor, Richard W.	√						
Thomas, Hon. Patricia		√	√				
Thornton, Kenneth E.	√		√				
Tobin, Jennifer S.	√		√				
Triggs, Matthew H.		√	√				
Tschida, Joseph John	√		√				

Executive Council Members	Division		July 21 Breakers (Hybrid)	Nov. 3 Fort Myers, FL	March 2 Charleston, SC	March 30 Tallahassee	June 1 Duck Key, FL
	RP	P&T					
Tucker, Kristine L.		√	√				
Udick, Arlene C.	√		√				
Van Dien, Lisa Barnett	√		√				
Van Lenten, Jason Paul		√					
Van Pelt, Kit E.		√	√				
Villarroel, Nicole Marie	√		√				
Virgil, Eric		√	√				
Wald Harris, Shelly	√						
Waller, Roland D. Past Chair	√		√				
Warner, Richard	√		√				
Weiss, Brad R.	√		√				
Wells, Jerry B.		√	√				
Westheimer, Scott	√		√				
White, Jr., Richard M.		√					
Williams, Margaret A.	√		√				
Williams, Jorga	√						
Williamson, Julie Ann Past Chair	√						
Wintter, Christopher		√	√				
Wohlust, Gary Charles		√	√				
Wolasky, Marjorie E.		√	√				
Wolf, Jerome L.		√					
Wood, Rebecca	√		√				
Young, Gwynne A.		√					
Zeydel, Diana S.C.		√	√				

Executive Council Members	Division		July 21 Breakers (Hybrid)	Nov. 3 Fort Myers, FL	March 2 Charleston, SC	March 30 Tallahassee	June 1 Duck Key, FL
	RP	P&T					
Zikakis, Salome J.		√	√				
Zschau, Julius J. Past Chair	√						

RPPTL Fellows	Division		July 21 Breakers (Hybrid)	Nov. 3 Fort Myers, FL	March 2 Charleston, SC	March 30 Tallahassee	June 1 Duck Key, FL
	RP	P&T					
Harvey, Terrence	√		√				
Hinden, Michelle Gomez	√		√				
Jaiven, Kristen King	√		√				
Miller-Meyers, Erin	√		√				
Percopo, Joseph		√	√				
Reid, Taniguesa		√	√				
Romano, Antonio		√	√				

Legislative Consultants	Division		July 21 Breakers (Hybrid)	Nov. 3 Fort Myers, FL	March 2 Charleston, SC	March 30 Tallahassee	June 1 Duck Key, FL
	RP	P&T					
Brown, French	√	√	√				
Dunbar, Marc							
Dunbar, Peter M.	√		√				
Edenfield, Martha Jane	√	√	√				



Thank you to Our General Sponsors

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



Thank you to Our Friends of the Section

Sponsor	Contact	Email
Business Valuation Analysts, LLC	Tim Bronza	tbronza@bvanalysts.com
CATIC	Christopher J. Condie	ccondie@catic.com
Cumberland Trust	Eleanor Claiborne	eclaiborne@cumberlandtrust.com
Fiduciary Trust International of the South	Vaughn Yeager	vaughn.yeager@ftci.com
Heritage Investment	Joe Gitto	jgitto@heritageinvestment.com
North American Title Insurance Company	Jessica Hew	jhew@natic.com
Probate Cash	Karen Iturrino	karen@probatecash.com
Title Resources Guaranty Company	Amy Icenogle	Amy.Icenogle@titleresources.com
Valuation Services, Inc.	Jeff Bae	Jeff@valuationservice.com
Wells Fargo Private Bank	Johnathan Butler	johnathan.l.butler@wellsfargo.com



Thank you to our Committee Sponsors

Sponsor	Contact	Email	Committee
Real Property Division			
AmTrust Financial Services	Anuska Amparo	Anuska.Amparo@amtrustgroup.com	Residential Real Estate and Industry Liaison
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Attorneys Title Fund Services, LLC	Melissa Murphy	mmurphy@thefund.com	Real Estate Leasing
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Vnette Godelia
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Judge Hudson
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Sean Kelley
John Little
Chris Barr
Rick Eckhardt
Jessie Friedman

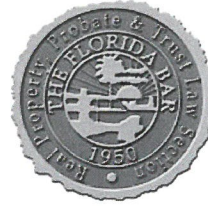
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Re: Final Report of the Special Committee to Improve the Delivery of Legal Services

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Dear President Tanner,

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On behalf of the Real Property, Probate, and Trust Law Section of The Florida Bar, we appreciate this opportunity to provide our commentary and input on the *Final Report of the Special Committee to Improve the Delivery of Legal Services*.

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The Real Property, Probate, and Trust law Section of The Florida Bar serves the State of Florida, the legal community, and its Section members with the highest levels of knowledge, experience and commitment to real property, probate, and trust law¹. We are the largest substantive law section and one of the most active sections of The Florida Bar, with over 11,000 members, and we are dedicated to maintaining our ethical and professional needs and obligations in an ever-changing world. To this end, the Section has and continues to actively evaluate Florida low-income citizens' unmet legal needs, resulting in creating and supporting programs including "No Place Like Home" and "Florida Attorneys Assisting on Evictions". See Appendix A.

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Foremost, we would like to thank the Special Committee for its hard work. The objectives of the Special Committee in seeking out innovative practices within the legal field and increasing access to legal services for our underserved citizens are admirable. As a Section we wholeheartedly agree that these are relevant issues which need to be addressed and researched further within the legal field. We do not,

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¹ See <https://rpptl.org/DrawOnePage.aspx?PageID=7>

however, agree with the report as it currently stands and respectfully submit our commentary and suggestions within for your consideration.

We have no objections to certain proposals of the Special Committee, such as, the promotion of a better understanding of Rule 4-1.2(c), amending the Rules to allow for not-for-profit law firms, not amending Chapter 8 – Lawyer Referral Rule, not amending Rule 4-7.17 and Rule 4-7.22, and the streamlining of lawyer advertising. This letter will address the following items approved in concept by the Special Committee, including:

- Rule 4-5.4, Fee Splitting and Law Firm Ownership;
- Amend Rule 4-5.4 to permit nonlawyers to have a non-controlling equity interest in law firms with restrictions;
- Within the Law Practice Innovation Laboratory Program eliminate the restriction on fee sharing with nonlawyers under Rule 4-5.4;
- Regulation of Nonlawyer Providers of Limited Legal Services; and the
- Law Practice Innovation Laboratory Program.

Concerns of The Real Property, Probate, and Trust law Section. While the proposed items in the Final Report extend to other areas of law, many of the proposals directly affect the areas of law practiced within our Section. We will address these items in further detail below, but overall, we have considerable concerns about relaxing the Rules of Professional Conduct and the resulting harm to the public.

The paramount objectives within our Section are to maintain a high ethical standard in our profession, to provide quality legal services to our clients, and to protect the public from harm. The regulations currently in place are there for a reason and before those protections are relaxed, the Bar and the Court must ensure that any potential entrants to our field will be held to those same standards and that no citizen is left with substandard substitutes.

We cannot disregard that almost all of the data relied upon in the Final Report is from persons in *other states and other countries*. Florida has one of the largest populations over the age of 65 in this country, only second to Maine². Based on estimates provided by the Census Bureau for 2019, Florida has approximately 5,906,182 citizens out of a total 21,477,737 over the age of 65, whereas states such as Arizona and Utah, which are considered as primary examples to the proposed Law Practice Innovation Laboratory, respectively, have populations of 1,308,633 and

² See <https://www.prb.org/resources/which-us-states-are-the-oldest/>, last visited September 11, 2021, and based on the Census Bureau's 2018 population estimates.

365,872 over the age of 65³. The populations over the age of 65 in Arizona and Utah combined amount to only 28% of Florida's elderly population. There is an ever-present concern in our Section for the protection of our most vulnerable citizens. Most of our clients in the areas of probate and trust law are over the age of 65 and the documents we prepare on their behalf have a powerful effect over their families, assets, and finances in life and in death. The potential for fraud and abuse in the areas of "wills"⁴, advanced directives, "guardianship law" and real property⁵ is significant in our state and

the relaxing of regulations that act as a barrier to protect our citizens should not be taken lightly.

In addition to our aging population, Florida also has a large immigrant population. According to the US Census there are 128 languages spoken at home in Miami-Dade, Broward and Palm Beach Counties⁶. In the Miami area, there are "2.7 million bilingual or multilingual speakers, close to half identified themselves as speaking English "less than very well."⁷ We believe that to reach underserved persons within that unique demographic, we need to encourage diversity and inclusion in our practice areas, which has become a priority to our Section. There are communities in Florida who may not seek representation because they do not trust or understand our legal system, they may only feel comfortable dealing with someone who speaks their language or understands their culture, and we believe that increasing the diversity of practicing lawyers within our Section and establishing a rapport within these communities will help close that gap. To this end the Section is devoting ever increasing attention and resources.

While we commend the spirit of the Special Committee's intent to increase innovation in the legal field and make legal services more

³ See <https://www.census.gov/data/tables/time-series/demo/popest/2010s-state-detail.html> last visited 9/11/21.

⁴ Appendix D, Page 1 of the Special Committee's Report lists certain authorized areas of law in the outline for the Limited Assistance Paralegal Pilot Program, including the terms "wills" and "guardianship law." These are general and undefined terms and without further clarification we are unclear about the meaning of these terms as used by the Special Committee in its Final Report.

⁵ See <https://protect-us.mimecast.com/s/iFPGC4x9ynflgw6XHZjMHd?domain=fbi.gov> <https://protect-us.mimecast.com/s/V3ndC5yWzof6ErRBIJrzOz?domain=fbi.gov>, See also <https://protect-us.mimecast.com/s/zY5jC680Apfyz4M5HXzY8j?domain=archives.fbi.gov>, See also https://protect-us.mimecast.com/s/wx30C73ABqFZlByDuXI_UN?domain=archives.fbi.gov, See also <https://protect-us.mimecast.com/s/jHfeC9r2EvH2QwxGh72dZ7?domain=trustrlpl.com/>

⁶ See <https://www.wlrn.org/news/2015-11-03/census-128-languages-spoken-in-south-florida-homes> last visited 9/13/21.

⁷ *Id.*

available to persons of limited means, *Florida presents its own very unique set of challenges and there should be a solid understanding of where the legal disparities exist in Florida prior to making such drastic changes suggested by the Special Committee.*

The Special Committee has proposed relaxing Professional Rule 4-5.4 to allow for fee splitting and law firm ownership with nonlawyers, to allow nonlawyers to have limited, non-controlling equity ownership in law firms, and to remove the fee sharing restriction with nonlawyers in the Law Practice Innovation Laboratory.

Our general concerns about relaxing Rule 4-5.4 are as follows:

1. Lawyer independence. How can we ensure that a lawyer's professional judgment is not compromised by someone who may be more concerned about a business's bottom line rather than what is ethically proper?
2. Ethics. Non-lawyers are not held to the same standards of professional responsibility. What preventative measures would be put in place to avoid an ethical violation by a nonlawyer either by accident or on purpose?
3. Conflict of Interest. If a lawyer is employed by a nonlawyer to provide services to clients, what protective measures would be in place to avoid violation of Rules 4-1.7 and 4-1.8?⁸
4. UPL. How to protect against a nonlawyer practicing law?
5. Attorney/Client Privilege. How to protect communication confidentiality? A nonlawyer's communication with a "client" would normally negate attorney/client privilege⁹.
6. Confidential Information. What measures would be put in to place to prevent a nonlawyer from accessing client confidential communications or information?
7. Fee Splitting. What measures would be in place to prevent a nonlawyer from soliciting clients and violating Rule 4-7.18?

⁸ "If the lawyer is employed by the corporation selling the living trust rather than by the client, then the lawyer's duty of loyalty to the client could be compromised." *The Florida Bar RE Advisory Opinion – Nonlawyer Preparation of Living Trusts*, 613 So. 2d 426, 428 (Fla 1992).

⁹ See Memorandum from ABA Commission on the Future of Legal Services to ABA Entities, Courts, Bar Associations (state, local, specialty, and international), Law Schools, Disciplinary Agencies, Individual Clients and Client Entities on Issues Paper Regarding Alternative Business Structures (Apr. 8, 2016), available at http://msbawebdev.mnbar.org/docs/default-source/default-document-library/alternative_business_issues_paper-2.pdf?sfvrsn=0

8. Alternative Business Structures (ABS). Nonlawyer ownership is alleged to increase access to legal services. What measures are in place to prevent an ABS from focusing on the most profitable areas of law, which are often not the areas that are in dire need of improved accesses to justice?
9. Business Liability/Responsibility. Protections to clients includes Rules prohibiting attorney liability avoidance, but many of the potential ABS clearly have models and agreements that limit liability to users, *sometimes to only \$500*.
10. Reliance of the Public. Protections to clients include Rules about honest and effective communications, and many of the potential ABS have disclaimers to users that the information received does not constitute “legal advice.”

On pages 6-8 of the report, the Special Committee heavily relies on an article from Stanford Law citing that few law firms have incentive to invest in technology; however, since the publishing of that article in April 2020 the entire landscape of our profession has changed because of the pandemic. We agree that the legal field has lagged in its embrace of technology, but that has changed significantly since the 2nd quarter of 2020. Firms have been investing to a great degree in technology and changing the way they do business because they had to, and this evolution is continuing today¹⁰. While the article’s premises may have been true prior to the pandemic, the rapid shift by law firms in the last eighteen months provides tangible proof that those premises are not true today.

The report cites other states and countries who have implemented, or are in the process of implementing, alternate business structures (ABS), which are purportedly a means to increase access to legal services but, research indicates that such ABS do not have the desired effect of improving access to justice but rather risk undesired effects.

Australia, England, Wales, and Quebec (among other jurisdictions) have implemented ABS. The Ontario Trial Lawyers Association commissioned a study that concluded there is “no empirical data to support the argument that [nonlawyer ownership] has improved access to justice” in England or Australia.¹¹ The UK Legal Services Board reported: “Research evidence suggests more people are handling

¹⁰ See <https://www.wolterskluwer.com/en/know/future-ready-lawyer-2021#item1>, last visited October 5, 2021.

¹¹ See Memorandum from Jasminka Kalajdzic to Linda Langston of Ontario Trial Law. Ass’n on ABS Research 1 (Dec. 1, 2014), available at <https://otlablog.com/wp-content/uploads/2015/01/Dr-Kalajdzic-Study-on-NLO.pdf>. See also ABA Center for Innovation, et al., Report to the House of Delegates (Feb. 2020).

legal issues alone and fewer are obtaining professional advice; however, the proportion of those who do nothing when faced with a legal issue appears unchanged."¹²

Further, there are also concerns that the quality of work would be adversely impacted—or at the very least not improved through moving toward a more business-minded versus a legal-services minded model.¹³ While there are studies that suggest that such harm has not occurred in other jurisdictions,¹⁴ it is because the benefits are similarly not substantiated.¹⁵ The Section is not persuaded that the proposed inclusion of ABS in our legal community is a positive direction and we oppose the proposal that ABS be permitted at this time. While we oppose the Special Committee's proposals, we are not suggesting that this be dismissed outright. There is not enough substantive evidence to indicate that this program would result in increasing access to legal services. As we have seen in New York¹⁶, which has also opposed ABS, we believe that the successes and failures of other states, such as Arizona, Utah and California, should be closely evaluated and taken in conjunction with Florida-specific needs so that if, or when, a similar program is structured in the future, it is thoughtfully created with purpose based on reliable data.

Regulation of Nonlawyer Providers of Limited Legal Services.

Overall, our commentary can be focused in the following areas and is expanded upon further in Appendix B:

1. Financial Eligibility Requirements: We suggest a standard of income equal to or below 200% of the then-current Federal Poverty Guidelines for citizens eligible for assistance (rather than the 400% of the Federal Poverty Level as suggested in Paragraph (2) in Appendix B, referencing Rule 4-5.4, Professional Independence of a Lawyer). We need to ensure that underserved population of Florida is the focus of this program.

2. Authorized Areas of Law: The proposed authorized areas of law by the Special Committee include residential landlord tenant law on behalf of the tenant, guardianship law, wills, advanced directives,

¹² See Evaluation: Changes in the legal services market 2006/07 - 2014/15 -Summary, LSB, July 2016.

¹³ See Memorandum from the Ontario Trial Law. Ass'n to the L. Soc'y of Ontario Alternative Business Structures Working Group on Alternative Business Structures 2, 34 (Dec. 15, 2014), available at <http://files.ctctcdn.com/18163298301/9071a07f-257c-4fb6-a2b3-d0ffbcb48d62.pdf>

¹⁴ It is relevant to note that the UK Legal Services Consumer Panel noted that as of its report there was not evidence to support that the dire predictions made regarding the deterioration of the practice of law were proved true.

¹⁵ *Supra*, n. 7.

¹⁶ See https://www-media.floridabar.org/uploads/2021/02/New-York-RegulatoryInnovation_Final_12.2.20.pdf

Baker Act, Marchman Act, guardian advocate of the person only, or debt collection defense.

The scope of these terms is far too broad and needs to be narrowly defined. The term “wills” might include complex estate planning, trusts, will contests, and dispositions impacting surviving spouses and children or creating tax liability or conflicts with fundamental rights, such as homestead, while *the potential harm would not be realized until after the demise of the “limited representation client.”* In *Alrich v. Basile*, Justice Pariente remarked, “I therefore take this opportunity to highlight a cautionary tale of the potential dangers of utilizing pre-printed forms and drafting a will without legal assistance. As this case illustrates, that decision can ultimately result in the frustration of the testator's intent, in addition to the payment of extensive attorney's fees—the precise results the testator sought to avoid in the first place.” 136 So.3d 530, 538 (Fla. 2014). Similarly, guardianships have been the subject of abuses and inadequate documentation, both of which can cause significant harm to the most vulnerable members of the public. We do not believe that the controlled environment of the “sandbox” will prevent these types of harm.

Another area of great concern is non-lawyers providing legal services related to Florida's construction lien law, which protects those who have provided labor and materials for the improvement of real property. *WMS Construction, Inc. v. Palm Springs Mile Associates, Ltd.* 762 So.2d 973 (Fla. 3d DCA 2000). Lien law is strictly construed; failure to follow its notice and filing requirements are fatal to claims by lienors – those whom it is designed to protect. For example, failure to record a claim of lien within 90 days of the final furnishing of labor, materials or services renders the lien invalid. But the question becomes: What is final furnishing? Also, the willful inclusion of amounts not properly lienable renders the lien not only invalid, but the lienor is responsible for the amount of the overstatement plus attorneys' fees. The Section is concerned that those who should be protected by Florida's lien law may receive less protection should non-lawyers be permitted to practice in this perplexing area of the law.

Apart from noting the unclear and potentially broad application of the areas of law proposed by the Special Committee, the Section points out that no state formerly or currently allowing nonlawyers to provide limited legal services extends those services to the areas of wills, trusts, probate or guardianship.

Arizona, Washington and Utah are currently the only states that extend limited licenses to practice law to nonlawyers. In Arizona, licensed legal paraprofessionals may practice in only four areas: family law, limited civil matters (small claims, landlord-tenant and quiet title),

limited criminal matters (traffic or ordinance violations) and administrative law. Washington, which suspended its licensure of limited license legal technicians as of July 31, 2021, permits those already licensed to provide services only in the area of family law. Utah, identified by the Committee for its sandbox program, authorizes end of life or adult care services provided by participating firms that are still performed by lawyers, though partnered with or supervised by non-lawyers. Utah's sandbox has also admitted a few firms that allow non-lawyer professionals to provide "real estate service" but with lawyer involvement. Despite being touted for its progressiveness, Utah restricts its limited paralegal practitioners to select family law matters, post-eviction or post-foreclosure holdover disputes, landlord-tenant disputes and small value debt collection matters. The very few jurisdictions contemplating the licensing of nonlawyers as legal service providers have also limited their consideration to those three select practice areas. *None have identified wills, trusts, probate or guardianship law among the areas of practice that would be available to nonlawyer practitioners.*

The concept of "forms" prepared by an AFRP is loosely defined and it is difficult to comment on without a much more expansive definition of the authorized areas of law. Are these "forms" to be filed in court? Does a "form" include the preparation of a deed that is not in connection with a sale, or contracts, or easements, or construction liens? Is a "form" a will or a trust? It should be noted that under *The Florida Bar RE Advisory Opinion – Nonlawyer Preparation of Living Trusts*, 613 So.2d 426 (Fla 1992), the Florida Supreme Court held that the assembly, drafting, execution and funding of a living trust constitutes the practice of law and that only the gathering of information for the preparation of the document may be performed by a non-lawyer. In *The Florida Bar re Advisory Opinion- Activities of COMMUNITY ASSOCIATION MANAGERS*, (Fla 2015) the Court affirmed its 1996 ruling that drafting of documents which determine substantial rights is the practice of law. See also *Florida Bar v Town*, 174 So.2d 395 (Fla. 1965). The Court affirmed its 1996 ruling that determining the timing, method, and form of giving notices of meetings requires the interpretation of statutes, administrative rules, governing documents, and rules of civil procedure and that such interpretation constitutes the practice of law.

The Role of the Supervising Attorney: In order to assure protection of the public generally and the "client" specifically, the role, the qualifications and the responsibilities of the supervising attorney must be made abundantly clear.

3. Qualifications of the Advanced Florida Registered Paralegal (AFRP): This Section has provided numerous comments to

the Florida Commission on Access to Civil Justice¹⁷, suggesting the need for classes or significant hours of work experience in the specific area of law in which the AFRP will practice. See Appendix C.

4. Information in the Special Committee's report needs to be taken in context. Two Florida Bar surveys are referenced within the Final Report and for this data to be meaningful, the number of participants needs to be expanded significantly.

A. Delivery of Legal Services Survey – Florida Registered Paralegals. Indicates that 45% of respondents (only 150 persons) were in favor of being allowed to have more responsibility and provide additional services to clients and 37% of respondents indicated that the ability to provide more services would help more people obtain legal services¹⁸. There are currently 4,665 Registered Florida Paralegals and the number of respondents to the survey referenced in the Special Committee's Report is 321 – less than 7% of the Registered Paralegals in the state¹⁹.

B. Florida Bar Member Survey. Page 17-18 of the report indicates that the majority of respondents were against fee sharing with nonlawyers, they were against firm ownership interests with nonlawyers and did not approve of passive ownership by nonlawyers. As of 2015, there were 83,894 licensed attorneys in Florida²⁰ and the number of respondents to this survey are 1,270 - *roughly 1.5% of the licensed attorneys in the state.*

i. The Special Committee concludes that the underlying reasons for these survey results are because lawyers fear change or fear the unknown. We disagree with this notion and believe that a more detailed survey addressing Special Committee's proposals along with a much larger sample size would provide more insight about the opinions of the Florida Bar members.

Recommendations for the Analytic Approach to a Florida Law Practice Innovation Laboratory Program. Our Section recognizes that the idea of “sandboxing” provides a safe space for experimentation with new methods of delivering services, including legal services. A properly defined and designed sandbox environment has the potential to

¹⁷ Note The Florida Commission on Access to Civil Justice was founded by Justice Labarga in 2014 and the work of this Commission has been transferred to the Workgroup on Access to Justice on September 20, 2021, by Chief Justice Canady.

¹⁸ See <https://www-media.floridabar.org/uploads/2021/06/Results-of-the-Delivery-of-Legal-Services-Survey-Florida-Registered-Paralegals.pdf>.

¹⁹ See <https://www.floridabar.org/directories/find-frp/?IName=&INameSdx=N&fName=&fNameSdx=N&eligible=&deceased=&firm=&locValue=florida&locType=S&pracAreas=&lawSchool=&services=&langs=&certValue=&pageNumber=1&pageSize=10>

²⁰ See <https://www.floridabar.org/the-florida-bar-news/how-many-lawyers-practice-in-florida/>

encourage innovation and improve access to justice for underserved Florida residents, while mitigating the risk of potential harm to consumers of those services. We concur with much of the data-driven approach and recommendations discussed in Appendix E of the Special Committee Report. In our review, we offer some additional suggestions and emphasis which are discussed in more detail in Appendix D and are touched on below.

A. Using a data-driven assessment criterion to maximize the evaluative value of the program.

B. Defining stakeholders, resources, functions, and processes and mapping relationships between the same.

C. Considering the environmental factors in which the sandbox operates and where potential consumers reside.

D. Use of the existing network of 44 legal services providers to help identify the areas of greatest need and provide invaluable insight in structuring and administering a successful sandbox of this nature. We also suggest the creation of a clearinghouse for the existing legal aid organizations and programs so that these resources can be identified and utilized by the citizens of Florida as well as by the Special Committee.

E. Collaboration with the Workgroup on Access to Civil Justice established by Chief Justice Canady, formerly the Florida Commission on Access to Civil Justice²¹ which has been studying “the unmet civil legal needs of disadvantaged, low-income, and moderate-income Floridians” for years.

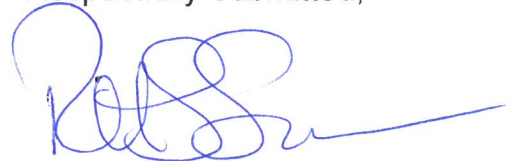
Conclusion. Our members have worked diligently to provide thoughtful commentary to the recommendations of the Special Committee. We believe our feedback is important because there are significant proposals in this Final Report which directly impact our areas of law and given our specialized knowledge, we would like to be involved with this process and be a part of the solution. We encourage the Florida Bar and the Florida Supreme Court to take all of our responses into consideration.

Given the limited period of time for review and response to the Special Committee’s Report, as well as the general lack of specificity of the items approved in concept, we have endeavored to provide constructive commentary on this report. We acknowledge and

²¹ See <https://www.floridasupremecourt.org/content/download/788855/file/AOSC21-48.pdf>. See also <https://atj.flcourts.org/>. The Florida Commission on Access to Civil Justice was founded by Justice Labarga in 2014 and the work of this Commission has been transferred to the Workgroup on Access to Justice on September 20, 2021, by Chief Justice Canady.

appreciate the Special Committee's work in striving to bring innovation and to improve the availability of legal services to the citizens of Florida – this is a common goal of us all. Nevertheless, given the potential for public harm to our citizens and the lack of data to determine if these concepts will be effective at best and detrimental at worst, we respectfully disagree with certain recommendations made by the Special Committee at this time.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read 'R. S. Swaine', with a long horizontal flourish extending to the right.

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

Appendix A – Programs established by the Real Property, Probate, and Trust Law Section

Our Section has created and supported programs such as No Place Like Home (“NPLH”) and Florida Attorneys Assisting on Evictions (“FACE”) to address issues facing Floridians, specifically our low-income citizens. NPLH, in conjunction with legal aid and legal services offices around the state, provides training and lawyer assistance in addressing longstanding record title defects which preclude residents from accessing relief and community development funds to repair and rebuild residences following individual and collective disasters. The FACE program provides assistance to those who need access to advice and direction in defending their occupancy of residential rental properties in the context of an anticipated wave of residential evictions resulting from COVID 19 related residential tenant issues. The FACE program also coordinates with legal aid organizations across the state and is undertaken in conjunction with The Florida Bar Foundation.

Appendix B – Regulation of Nonlawyer Providers of Limited Legal Services

1. **Financial Eligibility Requirements:** We suggest a standard of income equal to or below 200% of the then-current Federal Poverty Guidelines for citizens eligible for assistance (rather than the 400% of the Federal Poverty Level as suggested in Paragraph (2) in Appendix B, referencing Rule 4-5.4, Professional Independence of a Lawyer). We need to ensure that underserved population of Florida is the focus of this program. The proposed 400% of the Federal Poverty Guidelines is well above the standards in Florida for legal aid (typically 125% of the Federal Poverty Guidelines) and no longer only includes the underserved community¹. These suggested parameters would include a person with intangible or tangible personal property having an equity value of \$50,000.00 or less excluding homestead and one vehicle having a net worth not exceeding \$5,000.00.

2. **Authorized Areas of Law:** The proposed authorized areas of law by the Special Committee include residential landlord tenant law on behalf of the tenant, guardianship law, wills, advanced directives, Baker Act, Marchman Act, guardian advocate of the person only, or debt collection defense. The scope of these terms is far too broad and need to be narrowly defined. The term “wills” might include complex estate planning, trusts, will contests, and dispositions impacting surviving spouses and children or creating tax liability or conflicts with fundamental rights, such as homestead, while *the potential harm would not be realized until after the demise of the “limited representation client.”* To illustrate, in *Alrich v. Basile*, the decedent used an “E-Z Legal Form” which failed to include a residuary clause and resulted in part of the decedent’s estate passing by intestacy. 136 So. 3d 530, 531-532 (Fla. 2014). Costly litigation ensued between family members as to who should inherit that portion of the decedent’s estate. *Id.* In her concurring opinion, Justice Pariente remarked, “I therefore take this opportunity to highlight a cautionary tale of the potential dangers of utilizing pre-printed forms and drafting a will without legal assistance. As this case illustrates, that decision can ultimately result in the frustration of the testator’s intent, in addition to the payment of extensive attorney’s fees—the precise results the testator sought to avoid in the first place.” *Id.* at 538. Similarly, guardianships have been the subject of abuses and inadequate documentation, both of which can cause significant harm to the most vulnerable members of the public. We do not believe that the controlled environment of the “sandbox” will prevent these types of harm to the public.

Another area of great concern is non-lawyers providing legal services related to Florida’s construction lien law. The purpose of the lien law is to protect those who have provided labor and materials for the improvement of real property. *WMS Construction*,

¹ See <https://www.clsmf.org/eligibility/>. See also

<http://www.acgov.org/probation/documents/BayAreaLegalAidanditsServices.pdf>

See also <https://thefloridabarfoundation.org/what-we-do/grant-programs/community-based-civil-legal-services/>.

(NOTE: this is Florida Bar Foundation guideline for grants to Community Based Civil Legal Services- to receive grant, must be staffed by full-time attorney or have access to the equivalent of full-time attorney.). See also

<https://www.dadelegalaid.org/do-you-need-help/>.

Inc. v. Palm Springs Mile Associates, Ltd. 762 So. 2d 973 (Fla. 3d DCA 2000). Since the lien law is a deviation from the common law, it is strictly construed; failure to follow its notice and filing requirements are fatal to claims by lienors – those whom it is designed to protect. For example, failure to record a claim of lien within 90 days of the final furnishing of labor, materials or services renders the lien invalid. But the question becomes: What is final furnishing? Also, the willful inclusion of amounts not properly lienable renders the lien not only invalid, but the lienor is responsible for the amount of the overstatement plus attorneys' fees. The Section is concerned that those who should be protected by Florida's lien law may receive less protection should non-lawyers be permitted to practice in this perplexing area of the law.

As a further area of concern, in the area of community association law the Florida Supreme Court reaffirmed its 1996 concerns and prohibitions regarding non-lawyers engaging in drafting what some considered simple forms, but which in reality substantially impacted citizens' rights. *The Florida Bar Re Community Ass'n Managers*, 177 So. 3d 941 (Fla, 2015).

Apart from noting the unclear and potentially broad application of the areas of law proposed by the Special Committee, the Section points out that no state formerly or currently allowing nonlawyers to provide limited legal services extend those services to the areas of wills, trusts, probate or guardianship. Arizona, Washington and Utah are currently the only states that extend limited licenses to practice law to nonlawyers. In Arizona, licensed legal paraprofessionals may practice in only four areas: family law, limited civil matters (small claims, landlord-tenant and quiet title), limited criminal matters (traffic or ordinance violations) and administrative law. Washington, which suspended its licensure of limited license legal technicians as of July 31, 2021, permits those already licensed to provide services only in the area of family law. Utah, identified by the Committee for its sandbox program, authorizes end of life or adult care services provided by participating firms that are still performed by lawyers, though partnered with or supervised by non-lawyers. Utah's sandbox has also admitted a few firms that allow non-lawyer professionals to provide "real estate service" but with lawyer involvement. Despite being touted for its progressiveness, Utah restricts its limited paralegal practitioners to select family law matters, post-eviction or post-foreclosure holdover disputes, landlord-tenant disputes and small value debt collection matters. The very few jurisdictions contemplating the licensing of nonlawyers as legal service providers have also limited their consideration to those three select practice areas. None have identified wills, trusts, probate or guardianship law among the areas of practice that would be available to nonlawyer practitioners.

The concept of "forms" prepared by an AFRP is loosely defined and it is difficult to comment on without a much more expansive definition of the authorized areas of law. Is a form ever filed with the court? If a form includes a will, what happens when there is a will contest? Or if there is a form for landlord tenant, such as a three-day notice, can it be filed in the court, or not? Does a "form" include the preparation of a deed that is not in connection with a sale, or contracts, or easements, or construction liens?

We would also like to point out that under *The Florida Bar RE Advisory Opinion – Nonlawyer Preparation of Living Trusts*, 613 So. 2d 426 (Fla 1992), the Florida Supreme Court held that the assembly, drafting, execution and funding of a living trust constitutes the practice of law and that only the gathering of information for the preparation of the document may be performed by a non-lawyer.

The Report includes in Paragraph (3), Section (D), “taking notes for a limited representation client;” it should be obvious that for one to take notes in a court proceeding, one must understand the legally significant occurrences, one must be extremely accurate, and the notes must provide value. The Section respectfully suggests that a verbatim transcript would not be subject to the limitations of the notetaker and would serve a far more useful purpose to the limited representation client, as the notes would not be admissible in court or acceptable in further judicial proceedings. The suggestion that there is legal value in “notes” taken by a paid person regardless of his or her training taking those notes when compared to a verbatim transcript provided by the official court reporter is misleading and potentially harmful to the public. Potential risk of delayed harm must be considered and mitigated in such a design.

3. The Role of the Supervising Attorney: In order to assure protection of the public generally and the “client” specifically, the role and responsibility of the supervising attorney must be made abundantly clear. The Final Report suggests providing these services in a law office as a means to lessen potential harm to the public, but is the physical presence of a supervising attorney required in his or her supervision? An attorney could “supervise” multiple persons without ever setting foot in a law office. As a supervising lawyer, is there greater detail regarding disclosure to the limited representation client? Should increased recordkeeping be required for the protection of the public? Additionally, we question what effect, if any, this would have on a supervising attorney’s malpractice insurance. Further, after observing adverse issues with current supervising lawyers, criteria that would help alleviate chronic problems would include: qualifications for the supervising attorney such as years of service, lack of disciplinary history, board certification, a limit on the number of persons supervised and a requirement for active review of work product.

4. Qualifications of the Advanced Florida Registered Paralegal: This Section has provided numerous comments to the Florida Commission on Access to Civil Justice², established by Justice Labarga in 2014, suggesting the need for classes or significant hours of specific work experience in the specific area of law in which the Advanced Florida Registered Paralegal will practice. See Appendix C accompanying this response.

5. Information referenced in the Special Committee’s report needs to be taken in context. Two Florida Bar surveys are referenced within the Special

² Note The Florida Commission on Access to Civil Justice was founded by Justice Labarga in 2014 and the work of this Commission has been transferred to the Workgroup on Access to Justice on September 20, 2021, by Chief Justice Canady.

Committee's report and in order for this information to be meaningful, the number of participants needs to be expanded significantly.

A. Delivery of Legal Services Survey – Florida Registered Paralegals. Indicates that 45% of respondents were in favor of being allowed to have more responsibility and provide additional services to clients and 37% of respondents indicated that the ability to provide more services would help more people obtain legal services³. There are currently 4,665 Registered Florida Paralegals and the number of respondents to the survey referenced in the Special Committee's Report is 321 – less than 7% of the Registered Paralegals in the state⁴. Thus, the largest number in favor was less than 150 persons.

i. Even with the limited response to the survey mentioned above, there is not an overwhelming positive response that expanding a Florida Registered Paralegal's role will increase access to legal services in our state.

B. Florida Bar Member Survey. Page 17-18 of the report indicates that a majority of respondents were against fee sharing with nonlawyers, they were against firm ownership interests with nonlawyers and did not approve of passive ownership by nonlawyers. As of 2015, there were 83,894 licensed attorneys in Florida⁵ and the number of respondents to this survey are 1,270 - roughly 1.5% of the licensed attorneys in the state

i. The Special Committee concludes that the underlying reasons for these survey results are because lawyers fear change or fear the unknown. We disagree with this notion and believe that a more detailed survey addressing Special Committee's proposals along with a much larger sample size would provide more insight about the opinions of the Florida Bar members. Further, we remind you that lawyers have consistently risen to the occasion to consider and implement programs benefiting our profession.

³ See <https://www-media.floridabar.org/uploads/2021/06/Results-of-the-Delivery-of-Legal-Services-Survey-Florida-Registered-Paralegals.pdf>.

⁴ See [https://www.floridabar.org/directories/find-](https://www.floridabar.org/directories/find-frp/?IName=&INameSdx=N&fName=&fNameSdx=N&eligible=&deceased=&firm=&locValue=florida&locType=S&prac)

[frp/?IName=&INameSdx=N&fName=&fNameSdx=N&eligible=&deceased=&firm=&locValue=florida&locType=S&pracAreas=&lawSchool=&services=&langs=&certValue=&pageNumber=1&pageSize=10](https://www.floridabar.org/directories/find-frp/?IName=&INameSdx=N&fName=&fNameSdx=N&eligible=&deceased=&firm=&locValue=florida&locType=S&pracAreas=&lawSchool=&services=&langs=&certValue=&pageNumber=1&pageSize=10)

⁵ See <https://www.floridabar.org/the-florida-bar-news/how-many-lawyers-practice-in-florida/>

Appendix C

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REAL PROPERTY, PROBATE & TRUST LAW SECTION



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April 21, 2020

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

Via Email to:
etarbert@floridabar.org

Re: Revised Proposal - Advanced Florida Registered Paralegals

Dear Ms. Farrior:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,



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Chair, Real Property, Probate and
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REAL PROPERTY, PROBATE & TRUST LAW SECTION



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September 30, 2019

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

Dear Ms. Holcomb:

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

The RPPTL Section.

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

Current Situation.

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

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

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

Opposition to Proposal; Discussion and Analysis.

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

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

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

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

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

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

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

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

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

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

b. Harm to the Public.¹

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

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

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

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

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

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

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

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

c. Practice Areas.

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

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

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

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

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

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

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

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

d. Concerns Regarding Fraud.

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

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

e. Other Issues Identified.

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

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

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

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

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

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

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

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

2. Examinations Requirement: 3 examinations

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

3. Experience Requirement

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

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

Conclusion.

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

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

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

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

Thank you in advance for your courtesies.

Respectfully submitted,



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

Enclosure

Appendix D - Recommendations for the Analytic Approach to a Florida Law Practice Innovation Laboratory Program

We strongly recommend an analytic approach that defines a Florida legal services system model and incorporates data-driven assessment criteria to maximize the evaluative value of the program. A suggested system design for legal services would define stakeholders, resources, functions, and processes and map relationships between the same. The design should also consider environmental factors in which the legal services system operates and where associated consumers reside. Multi-dimensional, rigorous evaluative criteria are then developed to properly assess system components and the aggregate. This type of analytic approach will provide a deeper understanding of the delivery of legal services in Florida and a way to identify and assess key factors and risks in that system. In addition to an advisory body that evaluates applications, such an approach requires a diverse team of subject matter expert lawyers and paralegals that represent the range of practice areas that will be employed in the lab. Similarly, we agree with the Special Committee Report and believe that it will be critical to include technical expertise (members of the Florida Bar or not) with experience in strategic planning, management, and decision analytics.

The logical approach would be to work closely with one or more of our state's excellent Legal Aid Programs. An existing network of 44 legal services providers are devoted to improving access to justice and are uniquely well-situated to help identify the areas of greatest need and provide invaluable insight in structuring and administering a successful sandbox of this nature. And if the technology providers in particular have the ability to better streamline and automate some of the processes involved, so as to enable these services to reach a larger segment of Florida's underserved population, this can be a win-win opportunity for all involved.

Another resource for the Lab is to collaborate with the Workgroup on Access to Civil Justice established by Chief Justice Canady, formerly the Florida Commission on Access to Civil Justice¹. Our Section worked closely with this Commission in the past several years in their analysis of relaxing certain Rules of Professionalism and the implementation of the AFRP program. This Commission has been studying "the unmet civil legal needs of disadvantaged, low-income, and moderate-income Floridians" for years. It makes sense that the Special Committee join forces with a Commission that has such common goals and resources. Our point in making these recommendations is that identifying the legal issues facing our citizens and the areas in need of improvement should be a collaborative effort including all stakeholders in Florida. We should be utilizing the knowledge within in our state in striving for a solution.

¹ See <https://www.floridasupremecourt.org/content/download/788855/file/AOSC21-48.pdf>. See also <https://atj.flcourts.org/>. The Florida Commission on Access to Civil Justice was founded by Justice Labarga in 2014 and the work of this Commission has been transferred to the Workgroup on Access to Justice on September 20, 2021, by Chief Justice Canady.

RPPTL 2021-2022

Executive Council Meeting Schedule

Robert Swaine's Year

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

NOTE- Committee meetings may be conducted virtually via Zoom prior to the Executive Council meeting weekend.

Date	Location
July 21 – July 25, 2021	Executive Council Meeting & Legislative Update The Breakers Palm Beach, Florida Room Rate (Deluxe Room – King): \$245 Premium Room Rate: \$299
November 3 – November 7, 2021	Executive Council Meeting Luminary Hotel & Co. Fort Myers, FL Standard Guest Room Rate (King): \$209 Standard Guest Room Rate (Two Queen): \$234
March 2 – March 6, 2022	Out of State Executive Council Meeting Hotel Bennett Charleston, South Carolina Standard Guest Room Rate: \$429
March 30 – April 2, 2022	Executive Council Meeting AC Hotel by Marriott Tallahassee (Contract Pending) Tallahassee, Florida Standard Guest Room Rate: \$179
June 1 – June 5, 2022	Executive Council Meeting & Annual Convention Hawks Cay Resort Duck Key, Florida Standard Guest Room Rate: \$249 Two Bedroom Villa Rate: \$299

RPPTL 2022-2023
Executive Council Meeting Schedule
Sarah Butters' Year

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

NOTE- Committee meetings may be conducted virtually via Zoom prior to the Executive Council meeting weekend.

Date	Location
July 21 – July 24, 2022	Executive Council Meeting & Legislative Update The Breakers Palm Beach, Florida Room Rate (Deluxe Room – King): \$250 Premium Room Rate: \$305
September 28 – October 2, 2022	Executive Council Meeting Opal Sands Harborside Bar Harbor, Maine Standard Guest Room Rate (King): \$318 Premium King: \$376
December 8 – 12, 2022	Executive Council Meeting Four Seasons Orlando, FL Standard Guest Room Rate: \$299
February 22 – 26, 2023	Executive Council Meeting Sandestin Golf and Beach Resort Destin, Florida Grand Complex 1 Bedroom: \$195 Hotel Effie Standard Guest Room Rate: \$244
June 1 – June 4, 2023	Executive Council Meeting & Annual Convention Opal Sands Delray (Contract Pending) Delray Beach, FL Standard Guest Room Rate: \$189



RPPTL Budget Summary

TO DATE REPORT

General Budget

YTD

Revenue	\$ 1,020,189
Expenses	\$ 518,648
Net:	\$ 501,541

Attorney Bankers Conf.

YTD

Revenue	\$ 150
Expenses	\$ 5
Net:	\$ 145

CLI

YTD

Revenue	\$ 9,120
Expenses	\$ 709
Net:	\$ 8,411

Trust Officer Conference

Revenue	\$ 296,340
Expenses	\$ 172,606
Net:	\$ 123,734

Legislative Update

Revenue	\$ 9,400
Expenses	\$ 47,571
Net:	\$ (38,171)

Convention

Revenue	\$ -
Expenses	\$ (1,001)
Net:	\$ 1,001

Roll-up Summary (Total)

Revenue:	\$ 1,335,199
Expenses	\$ 738,538
Net Operations	\$ 596,661

Beginning Fund Balance:	\$ 3,030,620
Current Fund Balance (YTD):	\$ 3,627,281
Projected June 2021 Fund Balance	\$ 2,760,360

Proposed Budget 22- 23
Real Property Probate Trust Law Section

Account	18-19 Actuals	19-20 Actuals	20-21 Actuals	21-22 Budget	22-23 Budget
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SUMMARY

Beginning Fund Balance	\$ 1,823,263	\$ 2,136,908	\$ 2,339,334	\$ 3,030,619	2,760,359
Net Operations *	203,254	(9,239)	752,713	(245,185)	(481,654)
Legislative Update	(42,185)	(24,263)	8,718	(71,250)	(71,250)
Convention	(35,940)	2,726	(175,494)	(148,900)	(163,900)
Attorney Trust Officer	110,402	94,657	24,294	83,500	70,500
CLI	110,992	136,540	81,473	114,525	74,525
Attorney Loan Officer	(28,400)	2,006	(420)	(2,950)	(2,950)
Ending Fund Balance #	2,141,386	\$ 2,339,335	\$ 3,030,618	\$ 2,760,359	\$ 2,185,630
Net Operations *	318,123	\$ 202,427	\$ 691,284	\$ (270,260)	\$ (574,729)

*Total Contract Liabilities are \$2,799,502.90

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Real Property, Probate and Trust Law General
Budget 2022-2023

	2018-19 Actual	2019-20 Actual	2020-21 Actual	2021-22 Budget	2022-23 Budget
3001-Annual Fees	\$626,460	633,200	648,900	625,200	625,200
3002-Affiliate Fees	8,680	9,760	9,590	5,000	5,000
Total Fee Revenue	635,140	642,960	658,490	630,200	630,200
3301-Registration-Live	180,582	171,961	171,003	180,000	180,000
3331-Registration-Ticket					
Total Registration Revenue	180,582	171,961	171,003	180,000	180,000
3351-Sponsorships	237,476	225,875	192,313	180,000	180,000
3391 Section Profit Split	276,501	336,907	562,502	250,000	260,000
3392-Section Differential	25,440	15,463	12,960	25,000	15,000
Other Event Revenue	539,417	578,245	767,775	455,000	455,000
3561-Advertising	18,117	20,466	14,918	18,000	18,000
Advertising & Subscription Revenue	18,117	20,466	14,918	18,000	18,000
3899-Investment Allocation	100,919	-29,830	582,529	106,469	25,000
Non-Operating Income	100,919	-29,830	582,529	106,469	25,000
Total Revenue	1,474,175	1,383,802	2,194,715	1,389,669	1,308,200
4131-Telephone Expense	1,321	1,539	0	0	0
4134-Web Services	45,372	36,099	47,049	75,000	75,000
4301-Photocopying	65			0	0
4311-Office Supplies	2,021	1489	1018	5000	5,000
Total Staff & Office Expense	48,779	39,127	48,067	80,000	80,000
5051-Credit Card Fees	11,178	12,762	11,638	12,000	12,000
5101-Consultants	120,000	110,000	152,025	120,000	120,000
5581-Legislative Consultant Travel**	NEW	8,123		15,000	15,000
5121-Actionline (Printing-Outside)	103,658	99,276	69,541	120,000	120,000
5199-Other Contract Services	15,125	8,640	49,685	45,000	125,000
Total Contract Services	249,961	238,801	282,889	312,000	392,000
5501-Employee Travel	18,438	8,703	9,510	20,000	20,000
5531-Board/Off/Memb Travel	32,741	14,804	14,293	20,000	20,000
Total Travel	51,179	23,507	23,803	40,000	40,000
6001-Post 1st Class/Bulk	1,046	28,362	26,018	10,000	10,000
6101-Products Purch for Sale		0	0	0	0
6251-Promotion Sponsorship		1000	0	0	0
6311-Mtgs General Meeting	559,586	637,324	677,186	650,000	750,000
6321- Mtgs Meals	250		164		
6325-Mtgs Hospitality	20,938	36,242	41,234	35,000	35,000
6361-Mtgs Entertainment			0		
6399-Mtgs Other	10,306	8,538	3,101	15,000	15,000
6401-Speaker Expense	328	2,719	0	7,500	7,500
6451-Committee Expense	67,348	122,124	82,368	125,000	100,000
6531-Brd/Off Special Project	491	1,275	0	50,000	50,000
6599-Brd/Off Other (ALMS)	6,632	8,081	2,610	15,000	15,000
7001-Grant/Award/Donation	18,099	5,883	12,137	8,000	8,000
5521-Law School Programming*	NEW	1,622	0	5,500	5,500
5522-Professional Outreach*	NEW	0	0	3,000	3,000
5520-Diversity Initiatives*	590	572	0	12,000	12,000
7011-Scholarship/Fellowship	14,091	11,301	12,115	27,000	27,000
7999-Other Operating Exp	1,475	230	1,207	5,000	5,000
8901-Eliminated IntFund Exp		3000	0	3000	3000
Total Other Expense	701,180	868,273	858,140	971,000	1,046,000
8021-Section Admin Fee	217,024	222,046	227,939	229,354	229,354
8101-Printing In-House	86	485	664	2,000	2,000
8111-Meetings Services	3,000	0	0	0	0
Total Admin & Internal Expense	220,110	222,531	228,603	231,354	231,354
9692-Transfer Out-Council of Sections	300	300	500	500	500

	2018-19 Actual	2019-20 Actual	2020-21 Actual	2021-22 Budget	2022-23 Budget
Total InterFund Transfers Out	300	300	500	500	500
Total Expense	1,271,509	1,392,539	1,442,002	1,634,854	1,789,854
Net Income	202,666	(8,737)	752,713	(245,185)	(481,654)

*The Grant/Award-Donation Line item has been split out to three new line items including Law School Programming, Professional Outreach, and Divesity Initiatives.

** The Legislative Consultant Travel Line Item has been added in 2019-20

***5199 - Other contract services is an expense related to extra AV costs for 2022 Hybrid CLI

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RPPTL Legislative Update
Budget 2021 -2022

	2018-19 Actual	2019-20 Actual	2020-21 Actual	2021-22 Budget	2022-23 Budget
3321-Registration-Webcast	\$8,509	9,078	0	0	0
Total Registration Revenue	8,509	9,078	0	0	0
3341-Exhibit Fees	18,250	27,175	9,336	14,000	14,000
3351-Sponsorships	0	0	0	0	0
Other Event Revenue	18,250	27,175	9,336	14,000	14,000
3401-Sales-CD/DVD	24,535	27,045	4,310	0	0
3411-Sales-Published Materials	630	-60	0	0	0
Sales, Rents & Royalties Revenue	25,165	26,985	4,310	0	0
Total Revenue	51,924	63,238	13,646	14,000	14,000
4111-Rent Equipment		0	0		
4301-Photocopying	127	0	0	100	100
4311-Office Supplies	71	0	0	150	150
Total Staff & Office Expense	198	0	0	250	250
5031-A/V Services	1,495	1,495	0	0	0
5051-Credit Card Fees	1,043	906	-66	500	500
5121-Printing-Outside	2,846	33	363	5,000	5,000
5199-Other Contract Services	0	0	0	0	0
Total Contract Services	5,384	2,434	297	5,500	5,500
5501-Employee Travel	450	2,315	0	3,000	3,000
5571-Speaker Travel	227	6,034	0	6,500	6,500
Total Travel	677	8,349	0	9,500	9,500
6001-Post 1st Class/Bulk	49	403	10	50	50
6021-Post Express Mail	283	860	58	500	500
6311 - Mtgs General Meeting	81	64	0		
6321-Mtgs Meals	48,321	52,525	0	45,000	45,000
6325-Mtgs Hospitality	707	455	0	1,500	1,500
6341-Mtgs Equip Rental	30,162	14,193	0	15,000	15,000
6401-Speaker Expense	1,258	993	50	0	0
6451-Committee Expense		977	0		
7001-Grant/Award/Donation		0	3,245	5,000	5,000
7999-Other Operating Exp	84	302	55	500	500
Total Other Expense	80,945	70,772	3,418	67,550	67,550
8011-Administration CLE	3,200	1,000	1,000	500	500
8101-Printing In-House	0	102	0	350	350

	2018-19 Actual	2019-20 Actual	2020-21 Actual	2021-22 Budget	2022-23 Budget
8131-A/V Services	3,703	4,544	63	0	0
8141-Journal/News Service	0	0	0	1,600	1,600
8171-Course Approval Fee	0	300	150	0	0
Total Admin & Internal Expense	6,903	5,946	1,213	2,450	2,450
Total Expense	94,107	87,501	4,928	85,250	85,250
Net Income	(42,183)	(24,263)	8,718	(71,250)	(71,250)

**The 2020 Legislative Update program was entirely virtual due to covid-19.

THE FLORIDA BAR
RPPTL Attorney Bankers Conference
Budget 2022 -2023

	2018-19 Actual	2019-20 Actual	2020-21 Actual	2021-22 Budget	2022-23 Budget
3301-Registration-Live	\$5,875	8,662	0	12,500	12,500
Total Registration Revenue	5,875	8,662	0	12,500	12,500
3341-Exhibit Fees	750	0	0	1,500	1,500
3351-Sponsorships	8,500	14,000	0	8,000	8,000
Other Event Revenue	9,250	14,000	0	9,500	9,500
3401-Sales-CD/DVD	0	900	-300	2,000	2,000
Total Revenue	15,125	23,562	-300	24,000	24,000
5051-Credit Card Fees	223	326	0	500	500
Total Contract Services	223	326	0	500	500
5501-Employee Travel	0	274	0	1,250	1,250
5571-Speaker Travel	4,990	2,187	0	4,000	4,000
Total Travel	4,990	2,461	0	5,250	5,250
6021-Post Express Mail			-11		
6321-Mtgs Meals	30,443	6,194	0	5,000	5,000
6325-Mtgs Hospitality	0	0	0	5,000	5,000
6341-Mtgs Equip Rental	1,563	0	0	3,000	3,000
6401-Speaker Expense	5	0	0	0	0
7999-Other Operating Exp		1,425	0	300	300
Total Other Expense	32,011	7,619	-11	13,300	13,300
8011-Administration CLE	5,722	10,000	0	6,000	6,000
8101-Printing In-House	5	0	0	200	200
8131-A/V Services	0	0	105	550	550
8141-Journal/News Service	425	850	0	1,000	1,000
8171-Course Approval Fee	150	300	0	150	150
Total Admin & Internal Expense	6,302	11,150	105	7,900	7,900
Total Expense	43,526	21,556	120	26,950	26,950
Net Income	(28,401)	2,006	(420)	(2,950)	(2,950)

THE FLORIDA BAR
Real Property Construction Law Institute
2022-2023 Budget

	2018-19 Actual	2019-20 Actual	2020-21 Actual	2021-22 Budget	2022-23 Budget
3301-Registration-Live	\$93,580	122,045	114,105	90,000	100,000
3331-Registration-Ticket	1,097	2,806		2,000	2,000
Total Registration Revenue	94,677	124,851	114,105	92,000	102,000
3351-Sponsorships	208,276	207,340	167,050	190,000	190,000
3392-Section Differential	0	0	0	0	0
Other Event Revenue	208,276	207,340	167,050	190,000	190,000
3401-Sales-CD/DVD	13,160	24,295	36,540	15,000	15,000
3411-Sales-Published Materials	900	840	300	500	500
Sales, Rents & Royalties Revenue	14,060	25,135	36,840	15,500	15,500
3699-Other Operating Revenue		0	0	800	800
Other Revenue Sources		0		800	800
Total Revenue	317,013	357,326	317,995	298,300	308,300
5051-Credit Card Fees	6,719	8,249	6,881	4,000	4,000
5181-Speaker Honorarium	0	2,000		5,000	5,000
5199 - Other Contract Services			3,425		
Total Contract Services	6,719	10,249	10,306	9,000	9,000
5501-Employee Travel	1,923	2,470	2,250	2,000	2,000
5571-Speaker Travel	7,199	15,849	6,903	9,000	9,000
Total Travel	9,122	18,319	9,153	11,000	11,000
6001-Post 1st Class/Bulk	6	11	2	25	25
6021-Post Express Mail	172	178	156	200	200
6319-Mtgs Other Functions	20,017	22,082	33,571	15,000	25,000
6321-Mtgs Meals	62,278	77,501	0	50,000	75,000
6325-Mtgs Hospitality	45,508	42,840	43,870	40,000	45,000
6341-Mtgs Equip Rental	25,833	24,032	106,907	25,000	35,000
6399-Mtgs Other	163	0	0	0	0
6401-Speaker Expense	5,141	2,214	0	0	0
7999-Other Operating Exp	2,484	3,277	2,093	1,500	1,500
Total Other Expense	161,602	172,135	186,599	131,725	181,725
8011-Administration CLE	25,000	15,400	25,000	25,000	25,000
8101-Printing In-House	264	903	0	2,000	2,000
8131-A/V Services	2,738	2,780	5,315	3,250	3,250
8141-Journal/News Service	425	850	0	1,650	1,650
8171-Course Approval Fee	150	150	150	150	150

	2018-19 Actual	2019-20 Actual	2020-21 Actual	2021-22 Budget	2022-23 Budget
Total Admin & Internal Expense	28,577	20,083	30,465	32,050	32,050
Total Expense	206,020	220,786	236,523	183,775	233,775
Net Income	110,993	136,540	81,472	114,525	74,525

*Note - Due to an invoice dispute the 2021-22 invoice was paid after the EOY closing which caused the RPPTL Equipment rental line item to be grouped with the meeting meals line item.

THE FLORIDA BAR
RPPTL Attorney Trust Officer Liaison Conference
2022 -2023 Budget

	2018-19 Actual	2019-20 Actual	2020-21 Actual	2021-22 Budget	2022-23 Budget
3301-Registration-Live	\$160,924	154,870	0	160,000	160,000
3331-Registration-Ticket	12,085	4,270	0	10,000	10,000
Total Registration Revenue	173,009	159,140	0	170,000	170,000
3341-Exhibit Fees	20,700	51,200	12,000	40,000	40,000
3351-Sponsorships	81,900	66,750	14,000	80,000	80,000
Other Event Revenue	102,600	117,950	26,000	120,000	120,000
3401-Sales-CD/DVD	11,290	10,820	0	5,000	5,000
3411-Sales-Published Materials	1,740	1,680	0	1,000	1,000
Sales, Rents & Royalties Revenue	13,030	12,500	0	6,000	6,000
Total Revenue	288,639	289,590	26,000	296,000	296,000
4111-Rent Equipment	0	0	0	0	0
Total Staff & Office Expense	0	0	0	0	0
5051-Credit Card Fees	3,340	2,821	1,556	8,000	8,000
5121-Printing-Outside	1,154	1,469	0	2,500	2,500
Total Contract Services	4,494	4,290	1,556	10,500	10,500
5501-Employee Travel	2,652	3,649	0	2,000	2,000
5571-Speaker Travel	1,056	6,093	0	8,100	8,100
Total Travel	3,708	9,742	0	10,100	10,100
6001-Post 1st Class/Bulk	173	2	0	1,000	1,000
6021-Post Express Mail	166	122	0	150	150
6319-Mtgs Other Functions	7,844	6,201	0	10,000	10,000
6321-Mtgs Meals	43,044	43,464	0	57,000	57,000
6325-Mtgs Hospitality	62,353	72,994	0	70,000	70,000
6341-Mtgs Equip Rental	18,391	33,259	0	17,000	30,000
6399-Mtgs Other	750		0		
6401-Speaker Expense	3,799	-259	0	0	0
7999-Other Operating Exp	300	1,360	0	1,000	1,000
Total Other Expense	136,820	157,143	0	156,150	169,150
8011-Administration CLE	25,000	17,050	0	25,000	25,000
8101-Printing In-House	2,563	3,165	0	2,000	2,000
8131-A/V Services	5,503	2,968	0	7,000	7,000
8141-Journal/News Service	0	425	0	1,600	1,600
8171-Course Approval Fee	150	150	150	150	150
Total Admin & Internal Expense	33,216	23,758	150	35,750	35,750

	2018-19 Actual	2019-20 Actual	2020-21 Actual	2021-22 Budget	2022-23 Budget
Total Expense	178,238	194,933	1,706	212,500	225,500
Net Income	110,401	94,657	24,294	83,500	70,500

*2020 Conference was cancelled due to covid. Revenues rolled over to the 2021 year.

**THE FLORIDA BAR
RPPTL Convention
2022-2023 Budget**

	2018-19 Actual	2019-20 Actual	2020-21 Actual	2021-22 Budget	2022-23 Budget
3301-Registration-Live	\$66,035	-125	67,702	50,000	60,000
Total Registration Revenue	66,035	-125	67,702	50,000	60,000
3341-Exhibit Fees	20,582	4,145	-214	10,000	10,000
3351-Sponsorships	25,000	0	5,000	10,000	10,000
Other Event Revenue	45,582	4,145	4,786	20,000	20,000
Total Revenue	111,617	4,020	72,488	70,000	80,000
4111-Rent Equipment	3,874	450	0	0	0
4311-Office Supplies	19	0	0	0	0
Total Staff & Office Expense	3,893	450	0	0	0
5051-Credit Card Fees	1,375	294	-178	3,000	3,000
Total Contract Services	1,375	294	(178)	3,000	3,000
5501-Employee Travel	3,994	0	3,526	5,000	5,000
Total Travel	3,994	0	3,526	5,000	5,000
6001-Post 1st Class/Bulk	9	0	0	500	500
6021- Post Express Mail	4	0	0		
6321-Mtgs Meals	121,486	550	194,234	150,000	175,000
6341-Mtgs Equip Rental	8,530	0	34,744	20,000	20,000
6361-Mtgs Entertainment	8,256	0	15,656	40,000	40,000
7001 - Grant Donation	10	0	0		
Total Other Expense	138,285	550	244,634	210,500	235,500
8101-Printing In-House		0	0	400	400
Total Admin & Internal Expense		0	0	400	400
Total Expense	147,547	1,294	247,982	218,900	243,900
Net Income	(35,930)	2,726	(175,494)	(148,900)	(163,900)

Date of Presentation	Crs. #	Title	Location
11/19/2021	5367	<i>Probate Law</i>	Bahia Mar, Fort Lauderdale
12/1/2021	4941	<i>Guardianship CLE</i>	Video Webcast Replay
12/8/2021	5168	<i>RPPTL Audio Webcast : Death and Dirt Lawyers</i>	Audio Webcast
1/19/2021	5169	<i>RPPTL Audio Webcast: Residential Purchase/Loan Closing Statement</i>	Audio Webcast
2/4-5/2022	5481	<i>Condominium Law Certification Review Course</i>	Hyatt Orlando Airport
3/10-12/2022	5560	<i>CLI</i>	JW Grande Lakes, Orlando
3/9-12/2022	5566	<i>Construction Law Certification Review</i>	JW Grande Lakes, Orlando
4/8-9/2022	5482	<i>Wills, Trusts and Estates Certification Review</i>	Hyatt Orlando Airport
4/8-9/2022	5484	<i>Real Property Certification Review</i>	Hyatt Orlando Airport



The Florida Bar

651 East Jefferson Street
Tallahassee, FL 32399-2300

Joshua E. Doyle
Executive Director

(850) 561-5600
www.FLORIDABAR.org

SECTION LEGISLATIVE OR POLITICAL ACTIVITY REQUEST FORM

- This form is for committees, divisions and sections to seek approval for section legislative or political activities.
- Requests for legislative and political activity must be made on this form.
- Political activity is defined in SBP 9.11(c) as “activity by The Florida Bar or a bar group including, but not limited to, filing a comment in a federal administrative law case, taking a position on an action by an elected or appointed governmental official, appearing before a government entity, submitting comments to a regulatory entity on a regulatory matter, or any type of public commentary on an issue of significant public interest or debate.”
- Voluntary bar groups must advise TFB of proposed legislative or political activity and must identify all groups the proposal has been submitted to; if comments have been received, they should be attached. SBP 9.50(d).
 - The Legislation Committee and Board will review the proposal unless an expedited decision is required.
 - If expedited review is requested, the Executive Committee may review the proposal.
 - The Bar President, President-Elect, and chair of the Legislation Committee may review the proposal if the legislature is in session or the Executive Committee cannot act because of an emergency.

General Information

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

Real Estate Leasing Committee of the Real Property, Probate, and Trust Law Section

Address: *(address and phone #)* c/o Brenda Ezell, Chair, 904.432.3200

3560 Cardinal Point Drive, Suite 202, Jacksonville, FL 32257

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

651 East Jefferson Street • Tallahassee, FL 32399-2300 • FAX: (850) 561-9405

Proposed Advocacy

Complete Section 1 below if the issue is legislative, 2 if the issue is political. Section 3 must be completed.

1. Proposed Wording of Legislative Position for Official Publication

Proposal to create Florida Statutes 49.072 establishing a process to serve unknown parties in possession of real property.

2. Political Proposal

3. Reasons For Proposed Advocacy

a. Is the proposal consistent with *Keller v. State Bar of California*, 496 US 1 (1990), and *The Florida Bar v. Schwarz*, 552 So. 2d 1094 (Fla. 1989)? Yes

b. Which goal or objective of the [Bar's strategic plan](#) is advanced by the proposal?
Objective 1: Ensure the Judicial System, a co-equal branch of government, is fair, impartial, adequately funded and open to all.

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

- ☐ Regulation and discipline of attorneys
- ☒ Improvement of the functioning of the courts, judicial efficacy, and efficiency
- ☐ Increasing the availability of legal services to the public
- ☐ Regulation of lawyer client trust accounts
- ☐ Education, ethics, competency, integrity and regulation of the legal profession

d. Additional Information:

THE FLORIDA BAR

Referrals to Other Committees, Divisions & Sections

The section must provide copies of its proposed legislative or political action to all bar divisions, sections, and committees that may be interested in the issue. SBP 9.50(d). List all divisions, sections, and committees to which the proposal has been provided pursuant to this requirement. Please include with your submission any comments received. **The section may submit its proposal before receiving comments but only after the proposal has been provided to the bar divisions, sections, or committees.** Please feel free to use this [form](#) for circulation among the other sections, divisions and committees. Business Law Section. Note: We have provided a copy to the Clerks of Court.

Contacts

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

Wilhelmina F. Kightlinger, 1408 N. West Shore Blvd., Suite 900, Tampa, FL 33607, (612) 371-1123

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

Peter Dunbar, Dean Mean & Dunbar, 215 S. Monroe, Suite 815 815; Tallahassee, FL 32301 (850) 999-4100

French Brown, Dean Mean & Dunbar, 215 S. Monroe, Suite 815 815; Tallahassee, FL 32301 (850) 999-4100

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

Peter Dunbar, Dean Mean & Dunbar, 215 S. Monroe, Suite 815, Tallahassee, FL 32301 (850) 999-4100

French Brown, Dean Mean & Dunbar, 215 S. Monroe, Suite 815, Tallahassee, FL 32301 (850) 999-4100

Submit this form and attachments to the OGC, jhooks@floridabar.org, (850) 561-5662.



The Florida Bar

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Tallahassee, FL 32399-2300

Joshua E. Doyle
Executive Director

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To: Leadership of the _____
Section/Division/Committee

From: _____

Re: Proposed Legislative Position re: _____

As you are aware, Standing Board Policy 9.50(d) requires voluntary bar groups to contact all divisions, sections and committees that might be interested in proposed legislative or political activity. The policy also requires sections to identify all groups to which proposals have been submitted for comment and to include comments when submitting the proposal.

We thought your section might be interested in the above issue and have attached a copy of our proposal for your review and comment. Our proposal is in _____:

Thanks for your consideration of this request. Please let us know if your section will provide comments.



The Florida Bar

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Tallahassee, FL 32399-2300

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Executive Director

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To: Leadership of the _____
Section/Division/Committee

From: _____

Re: Proposed Legislative Position re: _____

As you are aware, Standing Board Policy 9.50(d) requires voluntary bar groups to contact all divisions, sections and committees that might be interested in proposed legislative or political activity. The policy also requires sections to identify all groups to which proposals have been submitted for comment and to include comments when submitting the proposal.

We thought your section might be interested in the above issue and have attached a copy of our proposal for your review and comment. Our proposal is in _____:

Thanks for your consideration of this request. Please let us know if your section will provide comments.

1 49.072 Service of Process for removal of unknown parties in
2 possession. - This section applies only to actions
3 governed by Section 51.011, Florida Statutes, and only to
4 the extent such actions seek relief for the removal of
5 unknown parties in possession of real property. All
6 provisions of this section are cumulative to other
7 provisions of law or rules of court about service of
8 process, and all other provisions about service of process
9 are cumulative to this section.

10 (1) A Summons shall be issued in the name of "Unknown
11 Party in Possession" when the name of an occupant of real
12 property is not known to the Plaintiff and the property
13 which the unknown party occupies is identified in the
14 Complaint and Summons. A separate Summons shall be issued
15 for each such unknown occupant.

16 (2) The Plaintiff shall attempt to serve the Summons on
17 any unknown occupant(s) of the property described in the
18 Summons and Complaint. If service on the unknown occupant
19 is not affected on the first attempt, at least two further
20 attempts must be made. The three attempts to obtain service
21 must be made once during business hours, once during non-
22 business hours and once on a weekend. The process server
23 shall make an inquiry as to the name(s) of the unknown
24 occupant(s) at the time of service. The return of service
25 shall note the name(s) of the occupant(s) if obtained by

RM:6724080:1

26 the process server or state that the name(s) of the
27 occupant(s) could not be obtained after inquiry. If the
28 name(s) of the occupant(s) become known to the Plaintiff
29 through the return of service or otherwise, then without
30 notice or hearing thereon, all subsequent proceedings shall
31 be taken under the true name(s) of such occupant(s) and all
32 prior proceedings shall be deemed amended accordingly.

33 (3) If service is not affected on an unknown party in
34 possession after three attempts to obtain service as
35 provided in subsection (2), and even if an unknown party in
36 possession is served as provided in subsection (2), service
37 of process shall also be made on unknown parties in
38 possession as follows:

39 (a) by attaching the Summons and Complaint to a
40 conspicuous location on the premises involved in the
41 proceedings, and

42 (b) upon issuance of the Summons, the Plaintiff shall
43 provide the Clerk of Court with one additional copy of the
44 Summons and Complaint for each unknown occupant and a pre-
45 stamped envelope for each unknown occupant addressed to the
46 unknown occupant at the address of the premises involved in
47 the proceedings. The Clerk of Court shall immediately mail
48 a copy of the Summons and Complaint by first class mail,
49 note the fact of mailing in the Docket, and file a
50 certificate in the court file of the fact and date of

RM:6724080:1

51 mailing. The Clerk of Court shall charge such fees for such
52 services as provided by law.

53 (4) Service shall be effective on the Unknown Party in
54 Possession, whether or not personal service is made, on the
55 date of attaching the Summons and Complaint to a
56 conspicuous location on the premises or mailing, whichever
57 occurs later, and at least 5 days from the date of service
58 must have elapsed before a Judgment for final removal of
59 the unknown party in possession may be entered.

60 (5) The Judgment and Writ of Possession shall refer to any
61 "Unknown Party in Possession" by name if the name is shown
62 on the return of service or is otherwise known to the
63 Plaintiff. If the name of any unknown party in possession
64 is not shown on the return of service or otherwise known to
65 the Plaintiff, and service has been affected as provided in
66 this section, the Judgment and Writ of Possession shall
67 refer to each such person as an "Unknown Party in
68 Possession" and the Writ of Possession shall be executed by
69 the Sheriff by placing the Plaintiff in possession of the
70 property and dispossessing the occupants.

71 (6) This bill shall be effective upon becoming law.

WHITE PAPER

SERVICE OF PROCESS ON UNKNOWN PARTIES IN POSSESSION

I. SUMMARY

This legislation fills a gap in Florida law by authorizing the issuance and service of a Summons to remove people who are wrongfully occupying another's property, but whose identities are unknown to the landowner or landlord.

II. CURRENT SITUATION

Florida has an extensive statutory scheme detailing how landowners and landlords may (1) evict a tenant from property (the Landlord/Tenant Act, Chapter 83, Florida Statutes), or (2) remove a party who is in unlawful possession of property (the Unlawful Detainer Statute, Chapter 82, Florida Statutes).

A hole has been revealed in that statutory scheme, however, that is wreaking havoc on landowners and landlords.

In recent years more and more landowners and landlords who have been preparing to have parties evicted or removed from their property have discovered *strangers* occupying their property - parties they do not know and whom they cannot identify by name in a Complaint.

In such cases, because they do not know the names of the strangers occupying their property, it has been common practice when filing eviction and unlawful detainer actions for the Plaintiff to name as a Defendant in the Complaint "John Doe, unknown party in possession," and to seek the issuance of a Summons for "John Doe, unknown party in possession."

Because "John Doe, unknown party in possession" is descriptive of the party being sued, but does not identify someone by name, some Clerks of Courts have refused to issue such a Summons.

Florida's statutes and rules for the issuance of Summonses do not specify precisely how the identity of the party being sued is to be described in the Summons, but they generally contemplate a Summons being issued in the name of each Defendant identified in the Complaint. *Section 48.031, Florida Statutes; Rule 1.070, Florida Rules of Civil Procedure; Forms 1.902, 1.923 Florida Rules of Civil Procedure.*

Given this, some Clerks have interpreted Florida law as not authorizing the issuance of a Summons to a party who is not identified by name, and will not issue a "John Doe" Summons.

Moreover, several Florida Courts have ruled that a Complaint filed against a party whose identity is unknown and who is identified only as "John Doe," does not commence an action against that party. *Grantham v. Blount, Inc.*, 683 So. 2d 538 (Fla. 2d DCA 1996); *Gilliam v. Smart*, 809 So. 2d 905 (Fla. 2d DCA 2002).

Even if the unnamed individual is personally served with the Complaint, the Courts have ruled that no action has been commenced against him unless he is properly identified by name. *Liebman v. Miami-Dade County Code Compliance Office*, 54 So. 3d 1043 (Fla. 3d DCA 2011) (citing *Grantham*, 683 So. 2d 538). See also *Unknown Pers. In Possession of Subject Prop. V. MTGLQ Inv'rs, LP*, 217 So. 3d 1193 (Fla. 3d DCA 2017); *Dinardo v. Bayview Loan Servicing, LLC*, 307 So. 3d 718 (Fla. 4th DCA 2020) (dissenting opinion).

To compound the problem, there is no statutory requirement that strangers occupying another's property identify themselves to landowners or landlords who ask them for their names.

As such, landowners and landlords have been frustrated in their efforts to remove strangers who are wrongfully occupying their property. They cannot convince some Clerks to issue a Summons for such unknown parties, nor can they obtain the names of the strangers which those Clerks require before they will issue the Summons.

While Chapter 49, Florida Statutes authorizes constructive service of process by publication against persons whose names are unknown, it only applies when

personal service “cannot be had.” Sections 49.011, 49.021, Florida Statutes. *See, Shephard v. Deutsche Bank Trust Co. Americas*, 922 So. 2d 340, 343 (Fla. 5th DCA 2006).

Since the address of unknown parties in possession is known, personal service on such individuals may be possible. Ironically, in those instances where such individuals could be readily served with personal service, the only reason personal service “cannot be had,” is that some Clerks refuse to issue a Summons for unnamed parties.

Furthermore, even assuming constructive service by publication is authorized for unknown parties in possession who could be served personally if only the Clerks would issue a Summons, service by publication requires 4 weeks of publication. Section 49.10, Florida Statutes.

Eviction and unlawful detainer actions are expedited proceedings under Section 51.011, Florida Statutes. *See* Sections 82.03(4), 83.21, and 83.59(2), Florida Statutes. Those statutes recognize the rights of landowners and landlords to promptly obtain possession of their property when others are no longer there lawfully. Defendants must respond to a Complaint within 5 days of service, or a default can be entered allowing the landowner or landlord immediate possession.

Requiring weeks of publication to serve a stranger occupying one’s property, but authorizing immediate service and 5 days to respond for a known party, wrongfully favors the stranger. It permits strangers to unjustifiably extend their use of another’s property simply because their identity is unknown. This is bad public policy, and strangers who wrongfully possess another’s property should not be advantaged over known parties.

Over the past several years Florida has seen a huge influx of “squatters” – strangers who take possession of property without the knowledge or consent of the landowner or landlord. As a result, the need to correct this problem is growing, urgent, compelling, and widespread.

III. EFFECT OF PROPOSED CHANGES

This statute would allow landowners and landlords to have a Summons issued for unknown parties in possession when filing an eviction or unlawful detainer action, and it would prescribe a method for service of process on such individuals which is substantially similar to the long-standing method for service of process on known parties.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

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

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

This statute will have a direct positive economic impact on the private sector by allowing landowners and landlords to efficiently and cost-effectively retake possession of their property from unknown parties in possession.

VI. CONSTITUTIONAL ISSUES

Notice which is “reasonably calculated, under all the circumstances, to apprise interested persons of the pendency of (an) action (to which they are a party) and afford them an opportunity to present their objections,” is a fundamental requirement of due process under the Fourteenth Amendment to the United States Constitution. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

The purpose of service of process is to satisfy this requirement of due process. “The object to be accomplished by service of process is to advise the defendant that an action has been commenced against him and warn him that he must appear within a certain time and at a certain place to make such defense as he has.” *Abbate v. Provident Nat’l Bank*, 631 So. 2d 312, 313 (Fla. 5th DCA 1994).

In this instance, the service of process provisions in the proposed statute will give clear notice to an unknown person occupying the property that an eviction

or wrongful detainer action has been filed against him, and that he has 5 days to respond with any defenses. Because both the Summons and Complaint must identify the property that the unknown party occupies, and specify that the party being served is an “Unknown Party in Possession” of that specific property, the recipient will clearly know he is the person against whom relief is being sought, and he will know by when, and how, to respond with any defenses.

As to the method of service, the service of process provisions in the proposed bill are patterned after the service of process provisions in three other statutes: (1) the Landlord/Tenant Statute (Section 83.22, Florida Statutes), (2) the Unlawful Detainer Statute (Section 82.05, Florida Statutes), and (3) the Service of Process Statute for Actions for Possession of Real Property (Section 48.183, Florida Statutes).

The service of process provisions in the three other statutes provide for (a) personal service of process on the occupant, or (b) if the occupant cannot be found after at least two attempts, constructive service by attaching the Summons to a conspicuous location on the premises and having the Clerk mail a copy of the Complaint and Summons to the unknown occupant at the address of the premises involved in the proceedings.

These methods for constructive service of process have been part of the eviction and unlawful detainer statutes for over 50 years and have been regularly used for known occupants. No reported Florida decision has found them unconstitutional.

The proposed bill goes even further than these three other statutes in assuring due process to the unknown occupant. The proposed bill specifies that even if there is personal service on the occupant, since the name of the party being served may be unknown, the Plaintiff must still post the Summons and Complaint on the property and have copies mailed to the unknown parties at the property address. This assures that if personal service is affected on someone who is unknown, but someone else actually occupies the property, there will still be service through posting on the property and mailing.

By using the same posting and mailing methods for service of process on unknown parties in possession as have been used for decades on known parties, no new constitutional issues should be presented.

Indeed, posting the Summons and Complaint on the property and mailing copies to the address of the unknown occupants is a more targeted method of giving unknown occupants constructive notice, and more likely to provide the occupants actual notice of the action against them, than is service by publication. As such, it is more likely to withstand constitutional scrutiny than publication, which is the only existing alternative. *Mullane v. Central Hanover Bank & Trust Co.*, *supra* at 318-19. *Accord*, *Estela v. Cavalcanti*, 76 So.3d 1054 (Fla.3d DCA 2011).

Finally, and moreover, because an action solely for possession of property is an *in rem* or *quasi in rem* proceeding, no personal jurisdiction is required, and the proposed service of process procedure for unknown parties in possession should not run afoul of any due process rights. *See McDaniel v. McElvy*, 108 So. 820, 830-31 (Fla. 1926); *Hinton v. Gold*, 813 So. 2d 1057, 1059 (Fla. 4th DCA 2002).

V. OTHER INTERESTED PARTIES

The Clerks of Courts

**Report of the Florida Bar RPPTL Condominium Law
and Policy Life Safety Advisory Task Force**

October 12, 2021



DEDICATION

This report of the Condominium Law and Policy Life Safety Advisory Task Force is dedicated to the memory of the 98 individuals who lost their lives in the Champlain Towers South building collapse tragedy and to their families, loved ones and friends, all of whom have suffered a tragedy of immeasurable proportion. While no findings or implementation of recommendations can replace the lives cut short or the memories of loved ones lost, the efforts of the Task Force are first and foremost dedicated to the memories of those lost in this tragedy.

Additionally, this report is dedicated to all the first responders who worked tirelessly and gave their utmost to search, rescue and save any lives to be saved, as well as recover with deep respect those lost in this tragedy.



William P. Sklar
Chair

TASK FORCE FORMATION

Within two days of the Champlain Towers South tragedy, discussions occurred among the leadership of the Condominium and Planned Development Committee ("Committee") of the Real Property, Probate and Trust Law ("RPPTL") Section of The Florida Bar, specifically outgoing Committee Co-Chair, William Sklar, Committee Co-Chair Joe Adams and incoming Committee Co-Chair, Peggy Rolando, discussed the role of the Committee, RPPTL, and the Florida Bar regarding the public policy issues emanating from the building collapse tragedy. It became immediately clear that, while the Committee was not capable of investigating any specific factual aspect of the tragedy or specific role of any party related to the building collapse, condominium law and policy issues would be addressed, including those relating to the governance and operation of residential condominium associations, building inspections, and financial issues regarding deferred maintenance and capital repairs of condominium buildings.

Committee Co-Chairs Adams and Rolando requested on July 1, 2021 that William Sklar serve as Chair of a Task Force consisting of a diverse group of condominium attorneys with experience in the formation, development, governance and operational issues of residential condominiums and representing a broad spectrum of interested groups, including condominium associations, boards of directors, unit owners, developers, and others involved in the development, governance and operation of condominium projects. In consultation, Adams, Rolando and Sklar selected and invited 5 other distinguished practitioners of condominium and community association law to be members of the Task Force. From its inception, the Task Force made clear that it was not investigating either a specific cause of the Champlain Towers South Condominium building collapse nor the role of any particular party relative to that tragic event. Further, the Task Force is strictly advisory and not a decision-making body and does not act on behalf of the Florida Bar nor the RPPTL Section.

The Task Force held its organizational meeting on July 9, 2021, at which it adopted its Mission Statement, and conducted its first substantive meeting on July 22, 2021 in conjunction with the regularly scheduled Committee meeting at The Breakers in Palm Beach, Florida. The Task Force members are William P. Sklar, Chair, Tallahassee and West Palm Beach; Joseph E. Adams, Ex Officio, Fort Myers and Naples; Margaret Rolando, Ex Officio, Miami; Ivette Machado Blanch, Coral Gables; Christopher Davies, Naples; Peter Dunbar, Tallahassee; Michael Gelfand, West Palm Beach; and Jose "Joe" Rodriguez, Miami. The Task Force was supported by Committee Co-Vice Chairs, Allison L. Hertz, Palm Beach Gardens, serving as Reporter, and, Alexander Dobrev, Orlando, providing technical and data support.

MISSION STATEMENT

The mission of the Task Force is to engage in information-gathering and fact-finding through the review all aspects of Florida Condominium law, development, construction, association operations, and maintenance to determine if changes or additions to legislation and/or regulations could prevent or minimize the likelihood of another tragedy like the Champlain Towers South condominium collapse, or similar tragedies in the future. The Task Force is not a decision-making authority and will not be investigating the cause of the Champlain Towers South building collapse.

METHODOLOGY

Chapter 718 of the Florida Statutes, the Florida Condominium Act (“the Act”) imposes on the condominium association the responsibility to maintain the common elements and certain other portions of the condominium property. F.S. 718.113(1). Indeed, there have been numerous Florida appellate decisions upholding the right of the association through its board of directors to undertake such maintenance, to protect the common elements and to alter the common elements or other appurtenances to condominium units to maintain and protect the common elements. *Tiffany Plaza Condo. Ass’n, Inc. v. Spencer*, 416 So. 2d 823 (Fla. 2d DCA 1982), *Ralph v. Envoy Point Condo. Ass’n, Inc.*, 455 So. 2d 454, 455 (Fla. 2d DCA 1984), and *Cottrell v. Thornton*, 449 So. 2d 1291 (Fla. 2d DCA 1984). Additionally, Section 718.301(4)(p) of the Act requires the developer to deliver a report prepared by a Florida licensed engineer or architect describing the condition of 13 major components of the condominium property. The report is due at the time the developer turns over control of the association to the non-developer unit owners.

The Task Force believes that the condition report delivered at the time of turnover¹ to the board of directors elected by the unit owners should serve as the standard to guide the board of directors regarding maintenance and inspection of the various components in the vertical condominium and cooperative buildings. In cases where an association does not have a turnover inspection report (these were first required by the Act in 2008), an alternative source of base information is needed. The Task Force also recognizes that the Act, together with the governing documents of each respective condominium and cooperative association, grant boards of directors broad discretion relative to methods and timing of addressing deferred maintenance and capital replacement of condominium property. Such discretion is one area of inquiry of the Task Force, together with: the scope and timing of inspection, credentials of inspectors; the role of local government building officials; establishment and funding of reserves for deferred maintenance and capital replacement of components of the building; review of the current capital replacement reserve requirements under Section 718.112(2)(f)2.a. of the Act; the need for reporting on a regular basis of the condition of the components of the condominium building to unit owners, and perhaps third parties, such as the local building officials or the Division of Florida Condominiums, Timeshares and Mobile Homes (“Division”) of the Department of Business and Professional Regulation of the State of Florida (“DBPR”); and the role of managers and consultants who provide support to associations in these matters.

The Task Force actively sought input from credentialed experts relative to each of these subject matter areas. In its organizational and early meetings, the Task Force determined to seek advice in the form of presentations from qualified reserve analysts, structural engineers, insurance industry experts with particular experience providing insurance to condominium associations, local government building officials, the largest industry group representing boards of directors of condominium associations, the largest industry representative of Florida licensed community association managers (“CAM’s”), Florida

¹ Such alternative source of base information is in the form of an inspection report later addressed in the Task Force's recommendation.

Association of Realtors, resiliency engineering experts, certified public accountants and the Division as interested parties.

Appendix A to this Report contains the chronology of meetings of the Task Force and identifies those groups and individuals who presented at Task Force meetings.

The Task Force permitted 23 public officials and staff members of the Florida Senate, the Florida House, the Florida League of Cities and the Department of Business and Professional Regulation, among others, to observe during presentations by invited guests. A list of those invited observers is attached as Appendix B to this Report. Biographies of the Task Force members, Task Force Reporter and Technical Advisor are attached as Appendix C to the Report.

Each member of the Task Force was invited to ask questions of each presenter. Copies of the presentation outlines, materials, exhibits and biographical information of each presenter are contained in Appendix D to this Report. The Task Force also requested and received comments and suggestions from the Committee and the public through both a web-portal and by email. The comments received from the web-portal are summarized in Appendix E.

In total, the Task Force met 19 times, generally in sessions of 2 hours or longer, commencing on July 9, 2021 at its organizational meeting and concluding with its approval and adoption of the Task Force report and recommendations on October 8, 2021 for presentation to the Governor, President of the Senate and Speaker of the House of Representatives for the state of Florida with copies to the Chair of the Real Property, Probate and Trust Law Section of The Florida Bar and President of The Florida Bar. Experts made their presentations during 7 of the Task Force meetings. The remainder of the meetings through and including its final session, were utilized for debate, analysis, discussion and deliberations of the Task Force and consideration of recommendations to the Florida Legislature and Governor for Florida law and policy changes with the goal of addressing issues of life safety in condominium buildings in the State of Florida.

Based upon information provided by DBPR, there exist approximately 912,376 condominium units in the State of Florida at least 30 years in age, as determined either from their certificate of occupancy or initial filing of the statutorily mandated annual report with the Division. Based upon information received from DBPR, the following breakdown exists as of July 19, 2021.

There are 1,529,764 residential condominium units in the State of Florida operated by 27,588 associations. Of those units, 105,404 are 50 years old or older, 479,435 are 40-50 years old, 327,537 are 30-40 years old, 141,773 are 20-30 years old, 428,657 are 10-20 years old, and 46,958 are 0-10 years old. It is estimated that there are over 2,000,000 residents occupying condominiums 30 years or older in the State of Florida, based upon census data of approximately 2.2 persons living in an average condominium unit.

Cooperative Housing – Chapter 719 of the Florida Statutes. The Task Force recognizes the existence of cooperative residential housing, pursuant to Chapter 719 of the Florida

Statutes. According to data provided by the Division, there are 778 cooperative projects registered with the Division in Florida. Vertical (multi-story) residential development under the cooperative regime was somewhat common in the 1960's and 1970's but subsequently fell into disfavor due to financing limitations and title issues. Most cooperatives created since that time are mobile home communities who have "bought out" a park owner and set up the cooperative form of ownership for their "resident owned community" to avoid extensive and expensive surveying that would be required to create the condominium. The Division's records do not distinguish between vertical cooperatives and mobile home cooperatives. The Task Force recommends that all provisions of this Report be equally applicable to all vertical cooperatives (living units of 2 stories or more) and that appropriate changes to the Florida Cooperative Act, Chapter 719 of the Florida Statutes, also be made.

All statutory citations contained in this Report are from 2021, unless otherwise noted.

HISTORY OF CONDOMINIUMS AND CONDOMINIUM GOVERNANCE

The condominium form of ownership of real property in Florida has been in statutory existence since 1963, when the Florida Legislature enacted then Chapter 711 of the Florida Statutes (Laws of Florida, Chapter 63-35). The unique and defining characteristics of a condominium unit is that each unit owner owns a unit in fee simple and co-owns with all other unit owners an undivided interest in those portions of the condominium outside of the units, known as common elements. Governing this system of common ownership is the condominium association, the entity responsible for the operation of the condominium. Membership in the association is an unalienable right and a required condition of unit ownership.

A condominium is created by recording a declaration of the condominium in the Public Records of the county where the condominium is located. The declaration describes the property submitted to condominium ownership and defines the units and common elements identifying the boundaries of each. The condominium declaration governs the relationships among the condominium unit owners and the condominium association. Pursuant to the declaration, a board of directors or administration of the condominium association is granted broad authority to adopt rules for the benefit of the community and operate the community in accordance with the declaration of condominium and the documents forming the condominium association, namely the articles of incorporation, and bylaws governing the association's administration. The power of the association to maintain the common elements of the condominium has continuously existed from the inception of Florida's Condominium Act (F.S. 711.12(6)) through the present (F.S. 718.113(1)). Condominium associations are creatures of statute and subject to private contract rights created by the governing documents. Associations must be incorporated in Florida as a not-for-profit corporation or for profit corporation (pre-1977 associations could be unincorporated).

As a member of the association, a unit owner lacks the authority to act on behalf of the association. Instead, the condominium association's board of directors, sometimes also referred to as a "board of administration", manages the community's affairs and represents the interests of the association. The board of directors is comprised of individuals who are unpaid volunteers elected by the members of the association (unit owners), after the developer has transferred control of the board to the non-developer unit owners ("transition" or "turnover"). In addition to the power to elect, unit owners have the power to remove directors without cause by majority vote. Association board members are duty bound to enforce the condominium's governing documents and are responsible for maintaining a condominium's common elements, which are owned in undivided shares by the unit owners. F.S. 718.113(1). The association's board of directors, its officers, both collectively and individually, owe a fiduciary duty pursuant to section 718.111(1)(a) of the Act to all unit owners who are members of the association. The interpretation of how such a fiduciary duty is implemented in the context of a condominium association's operations typically includes the duty to maintain, duty to protect against foreseeable dangers, duty to insure, duty to abide by the governing documents and law, and, to generally act in the best interests of the members of the

association.

The ability, power and duty to maintain the common elements and a condominium building generally, are generally established in the Act, and are typically defined with greater specificity in the governing documents, especially in the declaration of condominium and bylaws of the condominium association.

ISSUES AND RECOMMENDATIONS

The Task Force finds that the area of inquiry identified below are critical to the preservation of property values, building safety and financial stability of Florida's aging residential condominiums. Indeed, no one factor itself is determinative, but taken together, these factors form the interwoven physical and financial stability of condominium buildings and associations.

Presentations regarding these areas of inquiry were solicited and received from the Florida Association of Structural Engineers, representatives of reputable reserve study analysts, the Florida Association of Building Officials, two insurance industry subject matter experts, a resiliency structural engineer, the Florida Association of Realtors, Community Associations Institute representing governing bodies of condominium associations, CEOMC representing community association managers, and the Secretary of the Department of Business and Professional Regulation.

The Task Force was made keenly aware by most presenters of the inherent conflict existing between the economic realities of operation of a condominium, the need for investment for deferred and long term maintenance and structural repair, and the desires of the unit owners in their election of and direction to boards of directors of condominium associations to manage and operate their condominiums in a cost effective manner, be market-sensitive, avoid special assessments, and avoid excessive or unaffordable charges to unit owners.

To be clear the Task Force is not suggesting that any significant percentage of the over 912,000 30+ year aging condominium units is not well maintained or well managed. No empirical data exists that could be used to reach such a conclusion. However, the Task Force finds the lack of uniform maintenance standards or protocols, and the broad discretion given to boards to determine when, how, and if life safety inspections and necessary repairs should be performed, requires legislative intervention. A determination of what acts or omissions of a director, officer or other person constitute a breach of fiduciary duty is currently left to the courts on a case by case basis. Based upon the significant experience of the members of the Task Force, including those that represent multiple condominium associations, it is believed that the vast majority of residential condominium associations are operated and maintained in a reasonably safe manner, consistent with protecting the life safety of all the residents of each condominium building. That said, the absence of specific requirements for inspection, reporting the results of inspections, and the contents of inspections, should not be left to chance.

It is with these precepts in mind, that the Condominium Law and Policy Life Safety Advisory Task Force makes the following observations and recommendations related to the areas of inquiry studied by the Task Force:

1. **Board of Directors Obligation for Maintenance, Repair and Replacement:**

- a. **Task Force General Findings:** Decision making and authority over the maintenance, repair and replacement of the condominium property including the condominium building generally lies with the board of directors of the association acting on behalf of the unit owners who are members of the association. Directors typically are elected for one or two year terms and may serve up to 8 consecutive years before being required to take a hiatus from board service. Issues of life safety and building condition should be addressed by professionals engaged by the board of directors or community association managers acting at the direction and authority of the board of directors. Standardized maintenance and repair protocols will better protect the health, safety and welfare of residents. The board should not be hindered in performing necessary maintenance, repairs or replacements because of potential exposure or liability of the association for alternative housing and other expenses from unit owners if they need to vacate the building.
- b. **Current Law:**
 - i. Section 718.113(1) of the Act provides that maintenance of the common elements of a condominium is the responsibility of the association.
 - ii. Section 718.111(1)(a) of the Act provides that the officers and directors of the association have a fiduciary relationship to the unit owners.
 - iii. Section 718.111(1)(d) of the Act provides that an officer, director, or agent of the association shall discharge his or her duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the interests of the association.
- c. **Relevant Considerations:** A board of directors may maintain, repair and replace the common elements in its reasonable business judgement per relevant Florida case law. There are no express maintenance, repair or replacement standards for boards of directors to follow in the Act or in most governing documents. While the board has the duty and authority to maintain the common elements, it has no statutory obligation to inform the unit owners of the building condition. This gap between the information known by the board and that disseminated to the members can undermine the unit owners' understanding of the significance of and need for assessments to fund deferred maintenance. Unit owners and boards may also resist such maintenance because of the cost, lack of reserves, disruption and inconvenience. Boards and unit owners could benefit from widely available guidelines setting forth requirements for such long term, deferred, and where appropriate, structural maintenance to be undertaken relative to improvements to the condominium property. In certain instances,

declarations of condominium will contain “incidental damage” language potentially requiring the association to fund the costs of alternative housing or other expenses if a resident is required to vacate the building.

d. Task Force Recommendations:

- i. The Task Force recommends clarifying and expanding the Act to require timely maintenance, repair and replacement of structural and life safety systems in vertical construction of both condominium and cooperative buildings consistent with and keyed to Section 718.301(4)(p) of the Act. Waterproofing should be added to that section of the statute as a required maintenance component/line item.
- ii. The Task Force recommends amendments to the Act to preclude association liability for alternative housing costs, lost rent or other expenses where residents must vacate for necessary maintenance, repairs or replacements to the condominium property.
- iii. The Task Force recommends that the Act codify, in line with the appellate case decisions cited above, that necessary maintenance of the condominium property not be considered a “material alteration or substantial addition” which might otherwise trigger a unit owner voting requirement.

e. Other Notes from Task Force: The Task Force recognizes and encourages the need for transparency by associations in communications by their boards of directors and managers to unit owners and prospective purchasers, and the recommendations in this Report reflect the need for such transparency in the form of disclosure of inspection reports, the condition of the condominium building and status of maintenance of the condominium property.

2. Special Assessments and Borrowing:

- a. **Task Force General Findings:** Boards of directors must be able to fund maintenance, repairs and replacements to the condominium property if the boards are to have the tools to fulfill their duties. The Act does not provide clear authority for boards to levy special assessments or borrow money on behalf of the association for maintenance, repairs or replacements. In fact, many governing documents require prior unit owner approval to do so, or may flatly prohibit borrowing. Boards should not be unreasonably hindered in carrying out maintenance, repairs and replacements. Rather, they should be specifically empowered to make assessments and borrow money as appropriate for the specific maintenance, repair and replacement needs of the association.
- b. **Current Law- Special Assessments:** Although the Act addresses notice requirements related to the adoption of a special assessment by a board of directors, the Act does not clearly authorize boards to levy special assessments.
 - i. Section 718.103(24) of the Act defines special assessment as any assessment levied against a unit owner other than the assessment required by a budget adopted annually.
 - ii. Section 718.1265(1)(l) of the Act provides that “to the extent allowed by law, unless specifically prohibited by the declaration of condominium, the articles, or the bylaws of an association, and consistent with s. 617.0830, the board of administration, in response to damage or injury caused by or anticipated in connection with an emergency, as defined in s. 252.34(4), for which a state of emergency is declared pursuant to s. 252.36 in the locale in which the condominium is located”, may, “regardless of any provision to the contrary and even if such authority does not specifically appear in the declaration of condominium, articles, or bylaws of the association, levy special assessments without a vote of the owners.”
- c. **Current Law- Borrowing:** The Act does not clearly address an association's authority to borrow money.
 - i. A corporation not for profit may borrow money at such rates of interest as the corporation may determine, and secure its obligation by pledge of all or any of its income under the Florida Not For Profit Corporations Act, Section 617.0302(7).
 - ii. Section 718.111(7)(a) of the Act provides that the association has the power to acquire title to property or otherwise hold, convey, lease, and mortgage association property for the use and benefit of

its members².

- iii. Section 718.1265(1)(m) of the Act provides that “to the extent allowed by law, unless specifically prohibited by the declaration of condominium, the articles, or the bylaws of an association, and consistent with s. 617.0830, the board of administration, in response to damage or injury caused by or anticipated in connection with an emergency, as defined in s. 252.34(4), for which a state of emergency is declared pursuant to s. 252.36 in the locale in which the condominium is located”, may, “without unit owners’ approval, borrow money and pledge association assets as collateral to fund emergency repairs and carry out the duties of the association when operating funds are insufficient. This paragraph does not limit the general authority of the association to borrow money, subject to such restrictions as are contained in the declaration of condominium, articles, or bylaws of the association.”
- d. **Relevant Considerations:** The Act does not clearly address the authority of a board to levy a special assessment or borrow money for the association. It is typically addressed in the association’s declaration of condominium, articles of incorporations or bylaws. However, declarations of condominium, articles of incorporation or bylaws will often times limit an association’s authority to borrow money and/or specially assess, or require a certain percentage of the membership to approve borrowing and/or special assessments. Monetary limits on the amount an association can borrow or specially assess can impede the association’s ability to finance or charge for major critical repairs without the approval of a majority or super-majority of the unit owners. This unnecessarily and adversely affects an association’s ability to maintain, repair and replace the condominium property. The relevant Florida case law indicates that an association should not be precluded from performing maintenance, repairs and replacements, which are necessary for the health, safety and welfare of the residents. This has also been emphasized by many of the presenters who provided input to the Task Force. Otherwise, volunteer directors are caught between two competing irreconcilable requirements, limits on funding sources and the duty to maintain, repair and replace.
- e. **Task Force Recommendations:** The Task Force recommends amendments to the Act to provide that prohibitions or limitations on a board’s authority to adopt special assessments or borrow money on behalf of the association for the necessary maintenance, repair or replacement of the condominium property, including any requirements for unit owner voting or approval, are void as against public policy, and that any such provision in existing governing documents be deemed void. This recommendation is

² No association may convey or mortgage association real property except in the manner provided in the declaration and, if the declaration does not specify the procedures, 75% of the total voting interests is required.

intended to apply retroactively to existing associations.

3. Inspection Reports; Transparency:

a. **Task Force General Findings:** Requirements for tracking and reporting condominium building maintenance and condition do not exist in Florida law. Indeed, the Task Force was not presented with any requirements for specific maintenance, repair, deferred maintenance or similar protocols or requirements in the Act or the Florida Building Code, even after consultation with building officials and structural engineers. The engagement of an inspector is left to the discretion of the board of directors. The qualifications and credentials of inspectors are not regulated. The commencement of inspections and interval between such inspections are not addressed in the State law. With the exceptions of recertification requirements in Miami-Dade and Broward Counties, local governments do not receive nor provide associations with copies of inspections reports and are not required to issue recommendations to the association. If an association commissions an inspection report, it has no statutory obligation to share the findings with the local government or the unit owners. It was also found that greater access to building inspection reports by unit owners is needed.

b. **Current Law- Required Inspections and Inspection Reports:**

i. **Building Recertifications:** Only in Miami-Dade County and in Broward County, does there exist what is known as the 40-Year Recertification, pursuant to each of those two counties' respective local codes and ordinances, requiring a detailed inspection report by a licensed engineer (threshold engineer) or architect to be performed 40 years after completion of the condominium building or other residential property. Beyond Miami-Dade and Broward Counties, there is no requirement in any other county, city or local government in the State of Florida for such certification, inspections, reporting or determination of the structural soundness or integrity of a residential condominium building³.

ii. **Developer Turnover Inspection Report:** As of July 1, 2008, Section 718.301(4)(p) of the Act has required a developer to provide, at turnover of control of the association to the non-developer unit owners, an inspection report under seal of an architect or engineer, attesting to the required maintenance, useful life, and replacement costs of the following:

i. Roof,

³ In August 2021, the City of Boca Raton enacted a similar certification ordinance requiring 30-year recertifications for buildings greater than 50 feet or 3 stories in height. Other local governments are reported to be now considering requirements on an individual basis.

- ii. Structure,
- iii. Fireproofing and fire protection systems,
- iv. Elevators,
- v. Heating and cooling systems,
- vi. Plumbing,
- vii. Electrical systems,
- viii. Swimming pool or spa and equipment,
- ix. Seawalls,
- x. Pavement and parking areas,
- xi. Drainage systems,
- xii. Painting, and
- xiii. Irrigation systems.

iii. **Association Website Requirement:** An association managing a condominium with 150 or more units which does not contain timeshare units must have a website and is required to post digital copies of certain documents on its website or make such documents available through an application that can be downloaded on a mobile device. Building inspection reports are not required to be posted on these websites.

c. **Relevant Considerations:** According to presenters, cost considerations or lack of understanding observable physical conditions has caused some boards to defer, delay and perhaps ignore potentially significant building deterioration issues such as concrete spalling and deterioration, rebar and other metal element failures, structural cracking, lack of appropriate weather or waterproofing. These factors can lead to deterioration of condominium buildings and improvements, and can present potential significant life safety concerns. In 2008, the Florida Legislature adopted a requirement that every building greater than three stories in height to be inspected every five years as part of Section 718.113 of the Act. This law required that condominium buildings over 3 stories be inspected under seal of an architect or engineer attesting to required maintenance, useful life, and replacement costs of the common elements. In 2010, this law was repealed for what was stated in the Senate Staff Report as “cost-savings measures”.⁴ With the exceptions of Miami-Dade and Broward Counties recertification requirements, local governments do not require inspections of buildings, recommendations of local governments are minimal, and certain reports are not readily available to associations.

d. **Task Force Recommendations:**

i. **Developer Turnover Inspection Report:**

1. The Task Force recommends that waterproofing be added to the list of items required to be addressed in the developer

⁴ Fla. Staff An. H.B. 663, April 21, 2010.

turnover inspection report pursuant to Section 718.301(4)(p) of the Act.

2. The Task Force recommends that the developer turnover inspection report required by Section 718.301(4)(p) of the Act be required to also attest to the condition of the required items.
3. The Task Force recommends that the developer's turnover condition inspection report required by Section 718.301(4)(p) of the Act include a detailed maintenance protocol for each component of the building in the turnover inspection report and that Section 718.113 of the Act be amended to require associations to comply with the maintenance protocols provided by the developer until such time as the association obtains a new maintenance protocol from a licensed professional engineer.

ii. Association Inspection Report:

1. The Task Force recommends requiring periodic structural and life safety inspections of all condominiums and cooperatives with vertical construction of 3 stories or greater after transition of control to unit owners.
2. The Task Force recommends a standardized template for required association building inspection reports after turnover and uniform qualifications for professionals providing association inspection reports. Guidelines/requirements for such reports should include, without limitation, requirements/credentials for the preparer of the inspection report.
3. The Task Force recommends that by December 31, 2024, any residential condominium building 3 stories or greater in height, be inspected and the association obtain a report under seal of a licensed Florida architect or engineer, attesting to current and deferred maintenance standards, useful life, and replacement costs of the common elements and other condominium property that is the maintenance responsibility of the association. An updated report shall also be required every five years thereafter. A report shall not be required for an association that received the developer turnover report required by F. S. 718.301(4)(p) provided that an association must update such report every five years.

iii. Local Government Inspection Reports:

1. If building inspection reports are required or performed by a local government, the local government shall provide the association a copy of the report and the recommendations concerning the necessary repairs to the building structure.

iv. Disclosure of Inspection Reports:

1. The Task Force recommends that by December 31, 2023, associations operating 100 units or more, or having annual revenues in excess of \$500,000 be required to have a website in compliance with Section 718.111(12)(g) of the Act. The Task Force further recommends that an association be required to update the website no less frequently than quarterly, except as noted below. Final building inspection reports must be posted on the website no more than 10 days after receipt. Directing a unit owner or his/her representative to any website that contains a requested record(s) accessible to the unit owner shall be deemed to satisfy a request for access to records under Section 718.111(12)(c) of the Act. Failure to post records to a website or update a website as required shall not invalidate any action of the association.
2. The Task Force recommends requiring association inspection reports to be distributed to all unit owners which distribution may be done electronically. The Task Force recommends revisions to the Condominium Frequently Asked Questions forms to include a disclosure of the existence and date of the most recent building inspection report.
3. The Task Force also recommends that the building inspection report be added to the list of documents which must be provided for buyer review before the 3-day rescission period in unit resales commences, pursuant to Section 718.503 of the Act.

e. Other Notes from Task Force: While the Task Force made no specific recommendation considering it best addressed by experts, the Task Force acknowledges the benefit of the certification of a sub-specialty license for professional structural engineers.

4. **Association Compliance with Inspection Report Requirements and Remedies of Unit Owners:**

- a. **Task Force General Findings:** Unit owners should have defined remedies in the event an association fails to obtain a required inspection report or in the event an association fails to commence work required by an inspection report. However, to avoid premature, costly litigation, a reasonable notice and an opportunity to cure the failure should be provided to an association by a unit owner before legal action is commenced by the owner, other than in emergency situations.
- b. **Current Law:** There is no requirement for an association to obtain a building inspection report.⁵ Section 718.111(1)(c) of the Act provides that a unit owner does not have any authority to act for the association by reason of being a unit owner. Section 718.303 of the Act provides that a unit owner may bring an action at law or in equity in connection with an association's failure to comply with the Act or the association's declaration or other governing documents, and the prevailing party is entitled to recover attorneys' fees and costs from the non-prevailing party. A unit owner may also bring claims for negligence and breach of fiduciary duty.
- c. **Relevant Considerations:** The presenters repeatedly emphasized to the Task Force that associations, administered by boards of directors, are responsible for the maintenance, repair and replacement of various components of the buildings. Unit owners are not empowered to independently act for associations and, therefore, they must have reasonable and cost effective options to pursue in the event of an association's failure to perform required inspections and/or maintain, repair or replace the condominium property.
- d. **Task Force Recommendations:**
 - i. The Task Force recommends establishing a private cause of action of a unit owner if an association fails to obtain a required inspection report or perform work required by an inspection report, including, without limitation, options for a unit owner to seek the appointment of a receiver. Such private cause of action should not be subject to the arbitration or pre-suit mediation requirements of the Act.
 - ii. The Task Force recommends that absent emergency situations of imminent life safety, a unit owner be required to provide an association with notice, and then opportunity to cure, prior to proceeding with an action for failure to obtain a required inspection report. A unit owner's private cause of action for an association's

⁵ Other than in Miami-Dade and Broward Counties, and in the City of Boca Raton in connection with required recertification programs

failure to timely obtain an inspection report should not be a "dispute" subject to arbitration or pre-suit mediation under Section 718.1255 of the Act.

- iii. The Task Force recommends granting unit owners the right to request that the Division of Florida Condominiums, Timeshares and Mobile Homes issue a notice, which is admissible in court, of alleged noncompliance with the association's duty to obtain a required inspection report or maintain the condominium property. The Division should be authorized to adopt rules to implement such for cause notice procedure.

5. Reserve Studies; Reserve Waivers; Funding Reserves:

- a. Task Force General Findings:** Associations should fund reserves in adequate amounts to ensure the maintenance, repair and replacement of structural and life safety components of a building. The failure to maintain cash reserve funds on-hand is often detrimental to associations, although owners in some communities are able to afford to “pay when it’s needed”. Many associations are not in the position or are reluctant to fund necessary deferred maintenance or capital projects when the need arises because of the lack of reserve funds as a result of waiving reserves , sometimes for decades. Many necessary repairs or maintenance may be sidestepped for this reason. However, reasonable alternative methods of funding may be appropriate for some associations.
- b. Current Law:**
- i. There is no requirement for an association to obtain a reserve study.
 - ii. Section 718.112(2)(f) of the Act requires boards to annually budget for fully funded reserves for building painting, pavement resurfacing and roof replacement, and any other item for which the deferred maintenance or replacement cost exceeds \$10,000.
 - iii. Section 718.112(2)(f) of the Act authorizes a reduction or waiver of the required reserve funding, which must be approved by a majority of the members of the association at a meeting at which a quorum of the unit owners is present.
 - iv. Section 718.112(2)(f) of the Act authorizes developers to vote to waive or reduce reserves for the association during the first two fiscal years of the association’s existence.
 - v. There is no limit to the number of years an association may waive or reduce reserve contributions. Reserves may be waived by the unit owners every year.
 - vi. There is no specific disclosure requirement in the Act for an association’s year-end annual financial statement as to reserve funding waiver or reduction decisions.
 - vii. Section 718.112(2)(f) of the Act provides that reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and may be used only for authorized reserve expenditures unless their use for other purposes is approved by a majority of the membership present at a duly called meeting. Before turnover of control of an association by a developer to unit owners, the developer-controlled association may not vote to use reserves for purposes other than those for which they were intended without the approval of a majority of the nondeveloper voting interests.
 - viii. Funding formulas for reserves required by Section 718.112(2)(f) of the Act must be based on either a separate analysis of each of

the required assets ("straight line" or "component") or a "pooled" (or "cash flow") analysis of two or more of the required assets under Rule 61B-22.005(3) of the Florida Administrative Code ("FAC").

ix. Regarding pooled reserves, Rule 61B-22.005(3)(b) of the FAC provides that:

1. If the association maintains a pooled account of two or more of the required reserve assets, the amount of the contribution to the pooled reserve account as disclosed on the proposed budget shall be not less than that required to ensure that the balance on hand at the beginning of the period for which the budget will go into effect plus the projected annual cash inflows over the remaining estimated useful lives of all of the assets that make up the reserve pool are equal to or greater than the projected annual cash outflows over the remaining estimated useful lives of all of the assets that make up the reserve pool, based on the current reserve analysis. The projected annual cash inflows may include estimated earnings from investment of principal. The reserve funding formula shall not include any type of balloon payments.

c. **Relevant Considerations:** Recommendations for enhanced reserve funding requirements were repeatedly made to the Task Force. The failure to maintain reserves for critical building components was viewed as a major contributor to the lack of maintenance, repairs and replacements in many condominiums. Although many presenters advised against waiving reserves on a continuous year to year basis, it is not atypical for associations to waive reserves every year and rely on special assessments or lines of credit for funding on an as needed basis. These alternative funding mechanisms may only be appropriate for certain associations.

d. **Task Force Recommendations:**

- i. **Reserve Studies:** The Task Force recommends amendments to the Act to require periodic reserve studies for residential condominiums with 3 stories or greater. As stated elsewhere in these recommendations, the content of such reserve studies should be made through a uniform prescribed template by licensed architects or engineers as described in Article 3(d)(ii)(3) of this Report regarding association inspection reports, or licensed general contractors who serve as cost estimators with at least ten years of licensure and ten years of experience in vertical construction. The Task Force recommends that the Legislature consider combining the content of the reserve report recommended in this Article 5 and the inspection report recommended in Article 3 to avoid duplication of services and unnecessary costs to

associations.

- ii. **Reserve Components:** The Task Force recommends that commencing with the first association budget year and each year thereafter, the association shall be required to maintain capital replacements/deferred maintenance budget reserves for each component item stated in Section 718.301(4)(p) of the Act and waterproofing ("mandatory reserves"). Prior to the issuance of a turnover report, the developer budget projections will serve as a basis for determination of the useful life and replacement costs of each stated common element component item. The turnover inspection report required by Section 718.301(4)(p) of the Act will serve as a basis for such useful life and replacement costs. Where there is no developer turnover report, the required association inspection report would serve as a basis for replacement costs until a reserve study is done in accordance with Subsection (i) of this Section 5. The association may also collect reserves for non-mandatory components or expenses, as determined by the board of directors or as otherwise required by the governing documents, such as landscaping, redecorating, funding insurance deductibles, and replacing furniture, fixtures and equipment ("non-mandatory reserves").
- iii. **Pooled Reserves:** The Task Force recommends eliminating the option for condominiums to maintain pooled reserves for mandatory reserve components under Section 718.301(4)(p) of the Act, and waterproofing. Pooled reserves initially set aside for building structural and other essential components of the condominium building cannot be diverted to non-life safety expenditures and other discretionary uses of funds which reduce, diminish, or even eliminate necessary resources for life safety repairs and maintenance. Non-mandatory reserves may be pooled.
- iv. **Reserve Disclosures:** The Task Force recommends required specific disclosures to unit owners in annual financial statements as to any waivers or reductions of required reserve funding.
- v. **Reserve Funding:** As to deferred maintenance and repair and replacement of the components listed in Section 718.301(4)(p) of the Act, the Task Force recommends that by December 31, 2026, an association be required to establish a fund for each component in an amount equal to not less than 50% of the replacement costs based on the estimated remaining useful life. For those building components that have a useful life of more than 30 years, such as structural, fire protection, elevators, plumbing, electrical and

drainage systems and seawalls, the Task Force recommends an association establish a reserve fund for these components using a 40-year original useful life, with a remaining useful life based upon the most recent building inspection report. The Task Force recognizes that certain building components such as heating and cooling systems may have a useful life less than 30 years and such useful life determination should be pursuant to the most recent building inspection report. If an association does not achieve the required funding by December 31, 2026, it shall be obligated to secure an alternative funding mechanism(s), which must be disclosed to the unit owners, and to prospective purchasers in the FAQ and in the estoppel form. Non-mandatory reserves shall be funded at the levels recommend by the board of directors.

vi. Developer Waiver of Reserves: The Task Force recommends that the authority of a developer to waive statutory mandated reserves under Section 718.112(2)(f) of the Act be repealed.

vii. Association Waiver of Reserves: The Task Force recommends that the authority to annually waive or reduce mandatory reserves be amended to require the approval of no less than 75 percent of the voting interests present and voting at a meeting at which a quorum is present. The Task Force further recommends that no association may reduce mandatory reserves below 50 percent of the total statutorily required amounts. For any amounts waived, the association must establish an alternative funding mechanism(s). The waiver and alternative funding mechanism(s) must be disclosed in a conspicuous manner to unit owners, and to prospective purchasers in the FAQ and in the estoppel form.

viii. Use of Reserves: The Task Force recommends that mandatory reserves not be used for non-scheduled purposes other than casualty reconstruction, including deductibles. They may also be used for insurance premiums as long as repaid within 12 months. Both exceptions require the approval of a majority of the voting interests present and voting at a meeting at which a quorum is present.

e. Other Notes from Task Force: The Division currently has broad authority to investigate alleged reserve funding violations.

6. **Developer Warranties and Liability, Design Professional Liability:**

- a. **Task Force General Findings:** Developers and others involved in the construction and sales of new condominiums should be accountable for defects attributable to original construction and for ensuring the association is in a sound financial and operational position at the time of turnover.
- b. **Current Law:**
 - i. Developers are required to provide implied warranties of fitness and merchantability for the condominium building and certain other improvements under Section 718.203(1) of the Act.
 - ii. Contractors, subcontractors and suppliers of the developer provide similar warranties under Section 718.203(2) of the Act.
 - iii. Section 558.0035, Florida Statutes, provides that an individual design professional is not liable for damages from negligence occurring within the course and scope of contract between the design professional's business and a property owner where the contract provides accordingly.
 - iv. Section 95.11(3)(c), Florida Statutes, currently provides for a statute of limitations for actions founded on negligence as well as design, planning, or construction of an improvement to real property, all of which is within 4 years from certain events occurring. However, actions for design, planning or construction must commence within 10 years after the date of actual possession by the owner, the date of the issuance of the certificate of occupancy, the date of abandonment of construction, if not completed, or the date of completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest. This latter limitation is commonly known as a statute of repose.
- c. **Relevant Considerations:** Declarations of condominium often limit and restrict the ability of the association and the unit owners to bring claims against the developer for construction related problems. Some contracts between a developer and unit purchasers include similar limitations and restrictions. These are not in the interest of the long-term viability of the condominium project.
- d. **Task Force Recommendations:**
 - i. **Developer Disclaimers and Liability:** The Task Force recommends amendments to the Act, and other appropriate regulatory changes, to provide that developer non-statutory warranty disclaimers and other waivers of liability by unit owners for construction defects in offerings, prospectuses, declarations, contracts, or otherwise be void against public policy. The Task Force also recommends amendments to the Act to provide that prohibitions and limitations against boards of directors bringing legal action against developers, (including unit owner approval requirements), are void as against public policy.

- ii. **Limitations on Actions for Design/Construction Related Claims:**
The Task Force recommends amendments to Florida law to provide ample opportunity for condominium and cooperative associations to seek redress for defective design and construction under the applicable statute of limitations and repose in Section 95.11(3)(c), Florida Statutes.

7. **Termination of Condominiums for Economic Waste/Obsolescence:**

- a. **Task Force General Findings:** There should be practical options for unit owners to terminate their condominium where the building has become economically obsolete or the cost of necessary maintenance repairs represents a disproportionate cost in relation to the value or increase in value of the property.
- b. **Current Law:**
 - i. Section 718.117(2)(a) of the Act provides that notwithstanding any provision in the declaration, the condominium form of ownership of a property may be terminated by a plan of termination approved by the lesser of the lowest percentage of voting interests necessary to amend the declaration or as otherwise provided in the declaration for approval of termination if:
 - 1. The total estimated cost of construction or repairs necessary to construct the intended improvements or restore the improvements to their former condition or bring them into compliance with applicable laws or regulations exceeds the combined fair market value of the units in the condominium after completion of the construction or repairs; or
 - 2. It becomes impossible to operate or reconstruct a condominium to its prior physical configuration because of land use laws or regulations.
 - ii. Section 718.118 of the Act provides that in the event of substantial damage to or destruction of all or a substantial part of the condominium property, and if the property is not repaired, reconstructed, or rebuilt within a reasonable period of time, any unit owner may petition a court for equitable relief, which may include a termination of the condominium and a partition.
- c. **Relevant Considerations:** Termination thresholds that are impractical result in great economic waste, forcing unit owners to pay for repairs that will not correspondingly increase the value of the condominium, in turn forcing owners who cannot pay to sell their units below value or lose title in a foreclosure. If the association is not able to fund necessary repairs and replacement, the condominium becomes an eyesore and depresses the value of the units within it as well as neighboring property values and correspondingly depresses ad valorem tax revenues. This problem stokes outrage by owners when one or a small number of owners have an effective veto of a termination plan. At the same time, Florida has historically placed a special intrinsic value on real property ownership, especially homesteads, as well as contract rights conferred by a declaration of condominium. Further in the current real estate market it is often impossible to replicate the location and size of a unit with a termination's proceeds. Also, the threshold should not be so low as to encourage the wholesale buying of

groups of the condominium units for termination.

d. Task Force Recommendations:

- i. The Task Force recommends that Section 718.117(2)(a) of the Act be amended to authorize termination for economic waste or obsolescence where the cost of construction/repairs exceeds a disproportionate percentage of the cost of the vertical improvements to the condominium, to be determined by an independent MAI appraisal. The required vote to authorize such termination shall be no greater than 80% of the total voting interests of the condominium, unless the declaration provides for a lower percentage for such termination.
- ii. The Task Force recommends that Section 718.117(2)(a) of the Act be amended to authorize termination for uneconomic capital repairs where the total estimated cost of construction or repairs necessary to construct the vertical improvements included in the condominium property or restore such improvements to their former condition or bring them into compliance with applicable laws or regulations exceeds 15 percent of the then current fair market value of such vertical improvements.
- iii. The Task Force recommends that the required vote to authorize termination for economic waste, impossibility or uneconomical capital repairs as provided in Section 718.117(2)(a) of the Act be the lesser of the lowest percentage of voting interests necessary to amend the declaration, or the percentage of voting interest required in the declaration for approval of termination, or 80 percent of the voting interests in the condominium.

8. **DBPR Division of Florida Condominiums, Timeshares and Mobile Homes Trust Fund:**

- a. **Task Force General Findings:** It is the understanding of the Task Force that the funding of the Division's Education and Compliance Bureau is subject to the appropriations allocations of the Florida Legislature on an annual basis. Such allocations are primarily derived from the Condominium, Timeshare and Mobile Homes Trust Fund, which is funded by a statutory \$4 per residential unit annual fee required to be paid by each condominium association to the Division. Such trust fund, similar to other trust funds, are subject to the reallocation, deduction, or what is commonly referred to as "sweep" by the Legislature in its annual appropriations process to achieve a fully funded budget as constitutionally and statutorily required. Such sweeps have reduced the availability of trained staff to deliver meaningful substantive education of condominium association directors and officers, as well as unit owners, throughout the State. Given that there are over 27,000 condominium associations and what is estimated to be almost 3,500,000 Florida condominium residents, the Task Force believes that the education of directors, officers and unit owners, as to their specific obligations, statutory requirements and issues involved in association and condominium management, operation and maintenance is imperative. Condominium communities need to understand the obligations and consequences of common interest ownership as well as the duties of boards of directors and officers to diligently maintain, repair and make safe such buildings and the role of unit owners in the operation and financial support of their respective condominium associations. The Task Force believes that insufficient funding has hindered the Division's ability to adequately recruit, train and retain staff at the Division's Education and Compliance Bureau to robustly undertake such education programs. Thus, the Task Force believes such impediments to adequate staffing and funding should be removed as part of the annual legislative appropriations process.
- b. **Task Force Recommendations:**
- i. The Task Force recommends that the Florida Condominium Trust Fund shall not be subject to sweep, deduction or use for any purpose other than the operation of the DBPR Division of Condominiums, Timeshares and Mobile Homes. At least 30 percent of the Florida Condominium Trust Fund should be used annually for educational purposes intended to train and educate directors, officers, and unit owners in programs to be administered by the Division.
 - ii. The Task Force supports the implementation of a cause of action to authorize the DBPR to collect delinquent fees/charges.

9. **Unit Owner Financing:**

- a. **Task Force General Findings:** In those instances where condominium associations do not have funds or reserves for repairs or maintenance as they are needed, especially structural repairs, or capital replacement of deteriorated components of the condominium buildings and other improvements, a potentially large special assessment will be required, as elsewhere described in this Report. The magnitude of such special assessments often pose a financial burden on individual unit owners, especially those on fixed incomes or with limited financial resources. While associations may have the means to undertake short-term borrowing or other financing using lines of credit and pledging association assessment revenue streams, the need for viable programs to fund deferred maintenance and structural repairs should be addressed by federal, state and local agencies offering means tested financing alternatives to individual owners to fund special assessments.

In that regard, the Task Force believes that appropriate federal, state and local housing finance and affordable housing administration agencies should undertake an analysis and create programs based upon existing mortgage and other home finance improvement programs to provide those with limited incomes low cost and low interest long-term amortized mortgage financing opportunities to pay the referenced special assessments. An example would be the current PACE program used to allow for hurricane strengthening and energy efficiency improvements to housing to those who qualify. An expansion of the scope of such PACE program is one example of how government could innovatively provide financing for those with limited means and income to support the building infrastructure improvements for aging condominium properties.

Another example of potential funding of deferred maintenance and capital replacement of condominium building structures would be the creation and use of Municipal Benefit Taxing Units or Municipal Service Taxing Units ("MSBU's and MSTU's"). Such special taxing district units could be used to provide long-term low interest financing vehicles to fund the substantial repairs as an alternative to special assessments.

Another alternative funding source for structural repairs and deferred maintenance items of condominium buildings could be the affordable housing trust fund commonly known as the Sadowski Fund. The Task Force recommends that legislation be enacted to enable such affordable housing trust fund be used for condominium structural repair and deferred maintenance use. A portion of the Sadowski Fund can be earmarked for deferred maintenance/structural repairs for those unit owners who satisfy the income/means qualification to otherwise qualify for state affordable housing funds.

Another example, at the federal level, would be to provide FHA or VA government guaranteed long-term amortized mortgages for the specific purpose of funding deferred maintenance and structural repair special assessments based using an income/means test. Additionally, current state and local government bond programs could be expanded in scope and purpose to encompass such necessary condominium deferred maintenance and structural repairs to allow individual unit owners to obtain long-term financing. All of these programs would be secured by first or second mortgages on an individual owner's condominium units, thus creating a security interest providing probability of repayment of such government guaranteed or subsidized mortgage loans.

- b. **Task Force Recommendations:** The Task Force recommends that the Department of Housing and Urban Development ("HUD"), the Federal Housing Finance Agency ("FHFA"), and the Florida Housing Finance Corporation adopt major structural repair financing programs whereby long-term (e.g. 30-year) amortized loans are made available to qualified condominium unit owners on an income/means basis to facilitate the financing of special assessments necessary to address life safety remediation in aging condominium buildings.

10. **Community Association Managers and Consulting Professionals:**

- a. **Task Force General Findings:** Community association managers frequently coordinate and supervise maintenance, repair and replacement projects. Boards of directors and residents should be able to rely on advice of community association managers and other professionals who provide advice to the association. Community association managers should have a duty to provide specific recommendations to and advise boards and residents regarding the status of necessary maintenance, repairs and replacements. It would benefit condominium residents for community association managers to have additional continuing education requirements related to typical deferred maintenance and replacement work in condominiums.
- b. **Current Law:**
 - i. Section 468.431(2), Florida Statutes, defines "community association management" to include, without limitation, negotiating monetary or performance terms of a contract subject to approval by an association, coordinating or performing maintenance for real or personal property and other related routine services involved in the operation of a community association, and complying with the association's governing documents and the requirements of law as necessary to perform such practices.
 - ii. Section 718.111(1)(d) of the Act provides that as required by section 617.0830, an agent of the association shall discharge his or her duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the interests of the association. An agent of the association shall be liable for monetary damages as provided in Section. 617.0834 if such agent breached or failed to perform his or her duties and the breach of, or failure to perform, his or her duties constitutes a violation of criminal law as provided in section 617.0834; or constitutes recklessness or an act or omission that was in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.
 - iii. Section 468.4334(1), Florida Statutes, provides that a community association manager or a community association management firm is deemed to act as agent on behalf of a community association as principal within the scope of authority authorized by a written contract or under chapter 468.
 - iv. Section 468.4334(1), Florida Statutes, provides that a community association manager and a community association management firm must discharge duties performed on behalf of the association as authorized by chapter 468 loyally, skillfully, and diligently; dealing honestly and fairly; in good faith; with care and full disclosure to the community association; accounting for all funds; and not charging

unreasonable or excessive fees.

v. Section 468.4334(2), Florida Statutes, provides that:

1. A contract between a community association and a community association manager or a contract between a community association and a community association management firm may provide that the community association indemnifies and holds harmless the community association manager and the community association management firm for ordinary negligence resulting from the manager or management firm's act or omission that is the result of an instruction or direction of the community association. This paragraph does not preclude any other negotiated indemnity or hold harmless provision.

- a. Indemnification [under paragraph (a)] may not cover any act or omission that violates a criminal law; derives an improper personal benefit, either directly or indirectly; is grossly negligent; or is reckless, is in bad faith, is with malicious purpose, or is in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

vi. Section 468.426(2), Florida Statutes, provides that acts that constitute grounds for which disciplinary actions against managers may be taken include, without limitation:

1. Committing acts of gross misconduct or gross negligence in connection with the profession.
2. Violating any provision of chapter 718, chapter 719, or chapter 720 during the course of performing community association management services pursuant to a contract with a community association.

vii. Section 558.0035, Florida Statutes, provides that an individual design professional is not liable for damages from negligence occurring within the course and scope of contract between the design professional's business and a property owner where the contract provides accordingly.

- c. **Relevant Considerations:** Community association management contracts and professional service contracts frequently contain waivers, limitations of liability and requirements for the community association to indemnify the management company or professional service provider, even for the negligence of the management company or professional service provider. Such waivers, limitations and indemnity requirements are not in the interests of the health, safety and welfare of condominium residents. Further, they are not equitable for community associations, which are governed by volunteer, unpaid boards of directors comprised of unit owners, rather than paid professionals.

d. Task Force Recommendations:

- i. Community association managers should make specific recommendations to and advise the board regarding proper maintenance and communicating the status of maintenance to the unit owners.
- ii. Additional educational requirements for CAMs addressing building maintenance and life safety building components should be implemented.
- iii. Attempts by community association management companies and other consulting professionals to avoid liability for advice they provide or be indemnified for their own negligence or breach of their contractual obligations should be void as against public policy.

11. **Local Government Accountability:**

- a. **Task Force General Findings:** Local governments should have qualified professionals available to make recommendations to associations and to review and approve building inspection reports required for code compliance and permitting purposes. Local governments should have some level of responsibility to associations and unit owners for negligent inspections and improper building approvals.
- b. **Current Law:** In 1985, the Florida Supreme Court in *Trianon Park Condominium v. City of Hialeah*, 468 So.2d 912, held that a building department is not responsible for damages to a condominium association caused by negligent building inspections. The Court held that although a building department may enforce codes, it had no duty to ensure the proper construction of the building under the law of sovereign immunity.
- c. **Relevant Considerations:** The condominium form of ownership is unique and requires additional considerations in the carrying out of codes by local governments. A duty of care is recommended.
- d. **Task Force Recommendations:** Condominium residents should be entitled to rely on the inspections and inspection reports performed by or on behalf of local governments, and local governments should not be able to avoid responsibility for the content and conclusions of building inspection reports under the doctrine of sovereign immunity.

12. **Association Insurance:**

- a. **Task Force General Findings:** Associations need more clarity regarding insurance coverage requirements in order to protect the general health, safety and welfare of the residents of condominiums. The Act should be amended to require casualty insurance coverage for the full insurable replacement cost of the condominium property insured by the association. Additional protections to better assure the availability of funds for deductibles are also needed.
- b. **Current Law:** Section 718.111(11) of the Act provides that a residential condominium must be protected with adequate property insurance.
 - i. Section 718.111(11)(a) of the Act provides that adequate property insurance, regardless of any requirement in the declaration of condominium for coverage by the association for full insurable value, replacement cost, or similar coverage, must be based on the replacement cost of the property to be insured as determined by an independent insurance appraisal or update of a prior appraisal. The replacement cost must be determined at least once every 36 months.
 - ii. Section 718.111(11)(a)(3) of the Act provides that when determining the adequate amount of property insurance coverage, the association may consider deductibles.
 - iii. Section 718.111(11)(c) of the Act provides that policies may include deductibles as determined by the board, and the board may determine the deductible based on factors including, without limitation, the level of available funds.
 - iv. Section 718.111(11)(d) of the Act provides that an association controlled by unit owners operating as a residential condominium shall use its best efforts to obtain and maintain adequate property insurance to protect the association, the association property, the common elements, and the condominium property that must be insured by the association.
- c. **Task Force Recommendations:**
 - i. The Task Force recommends that to the extent of reasonable market availability, associations must obtain casualty coverage in an amount equal to the full replacement cost, with code and ordinance coverage, and that ACV (Actual Cash Value) coverage should not be permitted.
 - ii. The Task Force recommends that to the extent of reasonable market availability, the deductible in condominium casualty insurance policies not exceed prevailing market norms in the locale of the condominium, and not otherwise materially decrease the full replacement cost coverage required to be obtained by the association.
- d. **Other Notes from Task Force:** Deductibles currently range on average from \$5,000-\$10,000 for property damage other than windstorm. Windstorm deductibles are typically 2-5% of the policy limits.

CONCLUSION

The Task Force has determined that the lack of uniform maintenance standards or protocols, and the unguided discretion given to boards of directors to determine when, how, and if life safety inspections should be performed, requires legislative intervention. The need for such maintenance standards and a similar need for standards for credentials, content, and continuity of inspections is compelling. Condominium associations and cooperative boards have the duty to protect the life safety of all residents of each condominium and cooperative building and must be transparent in their operations including the reporting of such inspections and maintenance standards.

Condominium associations and cooperative boards must have the financial tools to fund deferred maintenance and structural repairs which will be necessary as buildings and other improvements age. Such tools must not be hindered or impaired by the unwillingness of some owners to invest in their condominium property. Thus, statutory reserves must be enhanced in their scope and well-funded over a period of time. Additionally and alternatively, other means of financing should readily be available to condominium associations and cooperative boards to fund deferred maintenance and structural repairs.

The Task Force believes that through maintenance protocols, transparency of governance and communication, regular inspections of a meaningful content, and a funding plan, the life safety of the residents of Florida condominiums and cooperatives will be enhanced and protected.

APPENDIX A

Task Force Meeting Dates and Presentations

July 9, 2021, 12:00 p.m. - 1:30 p.m.	Task Force Meeting
July 14, 2021, 12:00 p.m. – 2:00 p.m.	Task Force Meeting
July 22, 2021, 12:00 p.m. – 2:00 p.m.	Task Force Meeting
July 28, 2021, 12:00 p.m. – 2:00 p.m.	Task Force Meeting
August 4, 2021, 12:00 p.m. – 2:00 p.m.	Presentation

Reserve Study/Funding Presentation

Presenters- [Dreux Isaac](#), Architect (President, Dreux Isaac & Associates, Inc.)
[Matt Kuisle](#), Professional Engineer, PRA, RS
(Regional Executive Director, Reserve Advisors)

Materials- [Outline of Issues Analyzed](#)
[PowerPoint Presentation](#)

August 11, 2021, 12:00 p.m. – 2:00 p.m. Presentation

Structural Engineering Presentation

Presenter- [Tom Grogan](#), Committee Chair of Licensure and former President, The Florida Structural Engineers Association

Materials- [PowerPoint Presentation](#)

August 11, 2021, 2:00 p.m. – 3:00 p.m. Task Force Meeting

August 18, 2021, 12:00 p.m. – 2:00 p.m. Presentation

Insurance Presentation

Presenters- [Andrea Northrop](#), Esq.
[David Thompson](#), CPCU, AAI, API, CRIS

Materials- [PowerPoint Presentation](#)

August 25, 2021, 12:00 p.m. – 2:00 p.m.

Presentation

Building Officials Presentation

Presenters- [Building Officials Association of Florida](#)
[Kathy Croteau](#), President
[Sean Flanagan](#), Treasurer (City of Coconut Creek)
[Clay Parker](#), Past President (City of Sunny Isles)

Materials- [PowerPoint](#)

August 25, 2021, 5:00 p.m. – 7:30 p.m.

Task Force Meeting

September 1, 2021, 12:00 p.m. – 2:00 p.m.

Presentations

Community Association Management Presentations; CEOMC and CAI

Presenters- [CEOMC](#) (Chief Executive Officers of Management Companies)
Josh Burkett, Anderson Consulting
[Debbie Reinhardt](#), Resource Property Management, CEO, CFO, CMCA, AMS, PCAM

Materials- [PowerPoint Presentation](#)

Presenters- [CAI Legislative Alliance, Florida](#) (Community Association Institute)
Travis Moore, Moore Relations, Inc.
[Dawn Bauman](#), Senior VP of Governmental and Public Affairs

Materials- [Dominick Scannavino](#), LCAM
[PowerPoint Presentation](#)

September 2, 2021, 5:00 p.m. – 7:30 p.m.

Task Force Meeting

September 8, 2021, 12:00 p.m. – 2:00 p.m.

Presentations

Florida Association of Realtors Presentation

Presenters- Trey Goldman, Esquire,
[Wesley Ulloa](#), Realtor
[Keith Woods](#), Realtor
[Danielle Blake](#), Realtor

Materials- [Outline of Issues](#)

Resiliency and Environmental Engineering Presentation

Presenter- [Roberto Balbis, PE](#)
Materials- [Representative Projects Report](#)

September 8, 2021, 5:00 p.m. – 7:15 p.m. Task Force Meeting
September 15, 2021, 12:00 p.m.- 2:00 p.m. Presentation

Department of Business and Professional Regulation Presentation

Presenters- [Julie I. Brown](#), Secretary, DBPR
[CJ Aulet](#), Director, Division of Condominiums,
Timeshares and Mobile Homes

September 22, 2021, 12:00 p.m. – 2:00 p.m. Task Force Meeting
September 22, 2021, 5:00 p.m. – 7:00 p.m. Task Force Meeting
September 29, 2021, 12:00 p.m. - 2:00 p.m. Task Force Meeting
September 29, 2021, 5:00 p.m. - 7:00 p.m. Task Force Meeting

APPENDIX B

Observers

- Florida Senate, Insurance & Banking Subcommittee
- Florida Senate, Regulatory Reform Subcommittee
- Florida Senate, Committee on Community Affairs
- Florida House, Commerce Committee
- Florida Department of Business and Professional Regulation
- Division of Condominiums, Timeshares and Mobile Homes
- Florida Department of Financial Services
- Miami-Dade Office of Consumer Protection
- Florida League of Cities, Inc.
- Florida Association of Realtors
- The Florida Bar

APPENDIX C

TASK FORCE BIOGRAPHIES

Sklar, William P.
Adams, Joseph E.
Blanch, Ivette Machado
Davies, Christopher N.
Dobrev, Alexander – Technical Advisor
Dunbar, Peter M.
Gelfand, Michael J.
Hertz, Allison - Reporter
Rodriguez, Jose A.
Rolando, Margaret A. ("Peggy")

William P. Sklar, Esq.
Carlton Fields
Tallahassee and West Palm Beach, Florida

Mr. Sklar is Of Counsel to the law firm of Carlton Fields and former Managing Partner of the West Palm Beach office of another national law firm. Mr. Sklar is Board Certified in Real Estate Law and Condominium and Planned Development Law by the Florida Bar. He received his B.B.A. (Magna Cum Laude) and J.D. from the University of Miami. He is admitted to practice in Florida and New York and the Bar of the United States Supreme Court and Eleventh Circuit Court of Appeals.

Mr. Sklar's law practice includes representation of developers and lenders in a broad range of planning, drafting and development of residential, commercial and complex mixed-use condominiums and planned developments. Additionally, Mr. Sklar serves as regulatory counsel to developers and lenders relative to compliance under numerous federal, state and local statutes, regulations and ordinances, including, for example, the Interstate Land Sales Full Disclosure Act (ILSFD), Fair Housing Act, Florida Condominium and Homeowners Association Acts and numerous other laws and regulations affecting real estate development and transactions. Additionally, he has represented parties in a wide variety of real estate transactional and financing matters, as well as land use matters.

Mr. Sklar is an Adjunct Professor of Law at the University of Miami School of Law and a member of the faculty of the LLM graduate law program in real property, teaching courses in condominium and planned development law and a related drafting and litigation workshop since 1980. Mr. Sklar is Director of the University of Miami's Boyer Institute on Condominium and Cluster Developments.

Mr. Sklar is the co-author of a two-volume casebook, "Cases and Materials on Condominium and Cluster Housing"; and former co-editor of Professor Ralph Boyer's treatise, "Florida Real Estate Transactions"; author of "The Wrap Around Mortgage — Its Uses and Consequences"; Lawyer's Title Guaranty Fund Notes, 1979; co-author of "Commercial Condominiums: Planning and Drafting Considerations", October, 1982 Florida Bar Journal; co-author of "Garn-St. Germain Revisited", June 1984 Florida Bar Journal; Author: "1988 Survey of Florida Real Property Law", Nova Law Review, Spring, 1989; author of "Interstate Land Sales", Chapter 29 of The American Law of Real Property, 1993; author of "Concept of Condominium Ownership", Chapter 1 of Florida Condominium and Homeowner Association Law and Practice, 1996; co-author of "The Interstate Land Sales Full Disclosure Act's Two-Year Completion Exemption", February, 1999, Florida-Bar Journal; co-author of "New Condominium Exemption to the Interstate Land Sales Full Disclosure Act", March 2015, Florida Bar Journal; and co-author of "Florida Community Associations vs. AIRBNB and VRBO in Florida", Florida 2017, Florida Bar Journal.

Mr. Sklar is a Supreme Court of Florida Certified Circuit and County Court Mediator. He is a member of both the Florida Bar and American Bar Association Real Property, Probate and Trust (RPPTL) Section's Committee on Condominium and Cooperative Housing; immediate past Chairman of the Condominium and Planned Development Committee of the RPPTL Section of the Florida Bar; former member of the Florida Bar Condominium and Planned Development Law Certification Committee; Former Chairman of the American Bar Association General Practice Section's Sub-Committee on Condominium and Cooperative Housing; Fellow and

member of the Board of Governors and Executive Committee of the American College of Real Estate Lawyers (ACREL), and College of Community Association Lawyers. Mr. Sklar is a member of the Executive Council of the Florida Bar Real Property, Probate and Trust Law Section and served as Co-Editor of the Section's monthly column in the Florida Bar Journal from 2000 to 2012. Mr. Sklar is a frequent lecturer to the Florida Bar Real Property, Probate and Trust Law Section, speaking at its Condominium and Planned Development Law Seminar; Legislative Update; and Real Estate Certification Review Course, as well as being a regular faculty member at the University of Miami Institute. Mr. Sklar is the recipient of the 2017 John Arthur Jones Service Award from the Florida Bar RPPTL Section. Mr. Sklar currently serves as the Chair of the Florida Bar RPPTL Section's Condominium Law and Policy Life Safety Advisory Task Force.

In 2003-2004, Mr. Sklar served as Co-Chair of Governor Bush's Homeowners Association Task Force, responsible for legislative reform of Florida's Homeowners Association Statute (Chapter 720). Mr. Sklar is a recipient of the 2002 Lynford Lardner Community Service Award, recognizing continuing leadership in community service throughout South Florida, serves as President of Genetic Information to Stop Breast and Ovarian Cancer, Inc. a non-profit organization dedicated to educating the public on the benefits of genetic testing, and is a former member of the Board of Directors of Richard Kann Melanoma Foundation dedicated to education and prevention of melanoma and other skin cancers. Mr. Sklar is the recipient of the University of Miami School of Law's 2012 Alumni Achievement Award.

Joseph E. Adams, Esq.

Becker Lawyers

Ft. Myers and Naples, Florida

Mr. Adams has concentrated his legal practice in the area of Condominium and Planned Development Law for nearly 35 years. During his career, Mr. Adams has provided legal counsel to over one thousand community associations, primarily in Southwest Florida, where he serves as the Managing Shareholder of Becker's Naples and Fort Myers offices. Mr. Adams is a Florida Bar Board Certified Specialist in Condominium and Planned Development Law.

RECOGNITIONS

- Martindale-Hubbel, A.V. Rated
- Florida Trend, Legal Elite Hall of Fame
- Fellow, College of Community Association Lawyers

PROFESSIONAL ACTIVITIES

- Co-Chair; Condominium and Planned Unit Development Committee of the Real Property, Probate and Trust Law Section of the Florida Bar
- Former Chair; Florida Bar Condominium and Planned Development Certification Committee
- Former Chair; Florida Advisory Council on Condominiums
- Former Chair; Community Associations Institute, Florida Legislative Alliance
- Former Member; Governor's Task Force on Homeowners' Association Legislation

Mr. Adams is a frequent writer, speaker, and legislative contributor regarding Florida condominium and planned development law. In addition to 3 published law review articles, Mr. Adams has published numerous articles, including "Defending ~~My~~Our Castle (A Look at Gun Regulation by Community Associations)," The Florida Bar Journal (December 2016). His writings have been cited in Florida's appellate courts and in the Florida Statutes Annotated as legal authority. He has also been the author of a weekly newspaper column/blog involving community association law since 1996.

**Ivette Machado Blanch, Esq.
Siegfried Rivera
Miami, Florida**

Ivette Machado Blanch is a shareholder of Siegfried Rivera who specializes in Condominium Law and Community Association Law.

While at the University of Miami School of Law, she served as an Articles and Comments Editor for the University of Miami Business Law Review. Additionally, she participated in the University of Miami Academic Achievement Program, where she served as a Dean's Fellow for Constitutional Criminal Procedure. Ms. Blanch is a member of the Order of Coif. She is admitted to the Florida Bar and is currently a member of the Cuban American Bar Association. In addition, Ms. Blanch co-authored a chapter in the Third Edition of the Florida Condominium and Community Association Law Manual published by The Florida Bar, entitled "The Role of the Association In Condominium Operations."

**Christopher N. Davies, Esq.
Dentons Cohen & Grigsby, PC
Naples, Florida**

Mr. Davies has focused his practice on providing advice to condominium, cooperative and homeowner associations in Southwest Florida for the past three decades. Chris is a Director at Dentons Cohen & Grigsby, PC, and is Chair of the Firm's Florida Real Estate Practice Group. He is the past Chair of The Florida Bar's Board Certification Committee in Condominium and Planned Development Law. He served as former Vice Chair of The Florida Bar Condominium and Planned Development Law Committee for several years.

Chris was appointed to the Florida Condominium Study Commission by Governor Bob Martinez in 1990, and worked on the extensive revisions to the condominium laws at that time. He has been a member of the faculty of the University of Miami Law Center Institute on Condominium and Cluster Developments on numerous occasions.

Alexander Dobrev, Esq.

Lowndes, Drosdick, Doster, Kantor & Reed, P.A.

Orlando, Florida

Alex Dobrev is a Shareholder and chairs the firm's Multifamily & Condominium Group. He also serves as the Vice-Chair of the Condominium & Planned Development Committee of the Florida Bar, as well as its legislative Chair.

Since the recession, Alex has focused a substantial portion of his practice on distressed properties acquisitions, operations and dispositions. In the context of "broken" or "fractured" condominium projects in particular, he often works with lenders, bulk investors, and receivers, in order to evaluate and implement exit strategies, including possible unwinding of the condominium regime, while identifying and minimizing potential successor developer liabilities and related risks.

In addition, Alex counsels clients regarding Interstate Land Sales Full Disclosure Act (ILSA) compliance matters, including full and partial exemptions from the Act and overall offering structure.

RECOGNITION

- Listed in *Best Lawyers in America* 2014-2020
- 2018 Rising Star Award by the Real Property, Probate and Trust Law Section of The Florida Bar
- Recognized as "Florida's Legal Elite," 2017 by Florida Trend Magazine
- Recognized as a Florida Legal Elite "Up & Comer," 2011-2012 by *Florida Trend Magazine*
- Recognized as "Florida Super Lawyers" 2018 by Super Lawyers Magazine
- Recognized as "Florida Rising Stars" 2011 by Super Lawyers Magazine
- *Orlando Business Journal's* 10 Businessmen to Watch 2010
- Highlighted in the *Legal 500*, 2010

PROFESSIONAL CERTIFICATIONS & MEMBERSHIPS

- Vice Chair and Legislative Chair, Condominium & Planned Development Committee of Real Property, Probate and Trust Law Section of the Florida Bar
- Executive Council Member, Real Property, Probate and Trust Law Section of the Florida Bar
- Board of Directors, NAIOP, the Commercial Real Estate Development Association, Central Florida Chapter 2004-2010
- Orange County Bar Association
- The Florida Bar
- American Bar Association
- Meritas Leadership Institute 2011

Admitted

- The Florida Bar, 2001

Education

- Georgetown University Law Center (2001)
- Duke University (*magna cum laude*, 1998)

**Peter M. Dunbar, Esq.
Dean Mead & Dunbar
Tallahassee, Florida**

Peter M. Dunbar is managing shareholder of Dean, Mead & Dunbar's Tallahassee office. Mr. Dunbar's practice focuses on governmental, administrative, and real property law. He began his long career in Florida government in 1967 as staff director in the Florida House of Representatives. Mr. Dunbar later served for five terms as a distinguished member of the Florida House representing Pinellas and Pasco counties in the Florida Legislature. Upon leaving the Legislature, he held the posts of General Counsel and Director of Legislative Affairs under Governor Bob Martinez and as General Counsel at the Department of Financial Services. Mr. Dunbar served as Chief of Staff during the transition from the Martinez administration to the administration of Governor Lawton Chiles, and he is former Chairman and two-term member of the Florida Ethics Commission. Currently, Mr. Dunbar serves on the inaugural committee for the Condominium and Planned Development Law Certification for The Florida Bar.

Mr. Dunbar was admitted to the Florida Bar in 1972. He is a member of the American College of Real Estate Lawyers, an adjunct professor at Florida State University College of Law, and has recently been selected by his peers as a member of Florida Trend's Florida Legal Elite Hall of Fame.

Michael J. Gelfand, Esq. Gelfand & Arpe West Palm Beach, Florida

Michael J. Gelfand, is dual Florida Bar Board Certified, in Real Estate Law and in Condominium and Planned Development Law. He is also a Certified Circuit and County Civil Court Mediator, Homeowners Association Mediator, Arbitrator, and Parliamentarian.

Michael Gelfand, is the senior partner of Gelfand & Arpe, P.A. Located in West Palm Beach, his firm emphasizes a community association law practice, counseling associations and owners how to set legitimate goals and how to effectively achieve those goals.

Mr. Gelfand is a Past Chair of The Florida Bar's Real Property, Probate and Trust Law Section, the Bar's largest section with over 10,000 members. He served as the Section's Real Property Division Director and chaired the Legislative Review Committee and Condominium and Planned Development Committee. He also chaired the Palm Beach County Bar's Community Association Law Continuing Legal Education Committee.

He served many terms as Special Master for the City of Boca Raton after chairing the City's Builders Board of Adjustment and Appeals, receiving a City Proclamation for "interpretation and application, and his overall professionalism and dedication to the City." He received a gubernatorial appointment to the Fifteenth Circuit Judicial Nominating Commission. Mr. Gelfand co-owned ARC Mediation, Palm Beach County's largest mediation and arbitration firm, for over a decade.

Michael Gelfand is a sought-after community association law commentator, including presentations for the American Bar Association, American Legal Institute, American College of Real Estate Lawyers, The Florida Bar, the University of Miami and the Chautauqua Institute, among others.

His acclaimed writings include "The Plaza East Trilogy: Not a Nursery Rhyme, but Scary Warfare", *The Florida Bar Journal*, analyzing the collision between hurricanes and Florida's condominium property insurance legislation. The Florida Bar has published his works including "Alternate Dispute Resolution, Arbitration and Mediation" and "Condominium and Homeowner Association Liens" and many statutory updates.

Mr. Gelfand's national recognition includes induction into the College of Community Association Lawyers, and as a Fellow of the renowned American College of Real Estate Lawyers, including serving as Chair of ACREL's Common Interest Ownership Committee.

Michael Gelfand believes in personal community involvement, encouraging all to become involved in their communities. A recipient of the Palm Beach County *Pro Bono* Child Advocate of the Year Award, his public school volunteer efforts include serving as the real estate/construction appointee on the Palm Beach County School District's Construction Oversight and Review Committee, and as a magistrate for the District's Law Magnet Program. He also chaired the Youth Orchestra of Palm Beach County, Florida.

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**Allison Hertz, Esquire
Kaye, Bender, Rembaum
Palm Beach Gardens, Florida**

Allison L. Hertz is a shareholder at Kaye, Bender Rembaum, and is Board Certified in Condominium and Planned Development Law. Ms. Hertz has exclusively represented community associations and unit owners since being admitted to the Florida Bar in 2007 and is a Palm Beach County native. She graduated from Rollins College in 2004, and Nova Southeastern University Shepard Broad Law Center in 2007. Ms. Hertz enjoys public speaking, including providing Board Certification Courses to volunteer board members, and providing continuing education courses to property managers. Ms. Hertz is an active member of the Florida Bar's Condominium & Planned Development Committee, and she is currently the Co-Vice Chair for the Committee. She is also the Vice Chair of the Condominium & Planned Development Law Certification Review Committee. She was recently the Chair of the Condominium & Planned Development Committee's Hurricane Protection Subcommittee and a member of the Committee's Emergency Powers Task Force. She also serves on the Committee's Legislative and Nonresidential/Mixed Use Condominium Subcommittees. Ms. Hertz prides herself on providing a practical, real-world approach to solving her clients' legal issues.

Jose A. Rodriguez
Rennert Vogel Mandler & Rodriguez
Miami, Florida

Jose A. Rodriguez has a diverse practice focusing primarily on real estate and corporate law. He has extensive experience dealing with the needs of Latin American and international clients and represents several prominent South Florida real estate developers and high net worth entrepreneurs. He has dedicated himself to structuring complex business and real estate ventures, corporate matters, work-outs of distressed real property and coordinating the closings of real estate related financing. Mr. Rodriguez takes a practical, goal-oriented approach to complex business and real estate ventures, which has assisted his clients in accomplishing their unique objectives.

Mr. Rodriguez received his B.S. from Florida State University and J.D. with Honors from Nova Southeastern University.

Margaret A. Rolando Shutts & Bowen, LLP Miami, Florida

Margaret A. ("Peggy") Rolando has been a partner in Shutts & Bowen's real estate department since 1984. She is Board Certified in Real Estate and Condominium and Planned Development Law and is "AV" rated. Ms. Rolando was a Co-Chair of the Board of Governors of the American College of Real Estate Lawyers (ACREL) and past chair (2013-14) of the Real Property, Probate and Trust Law Section of The Florida Bar. She was also a member of The Florida Bar Committee on Condominiums and Planned Developments. She is a member of the Condominium and Planned Development Law Certification Committee and served as Chair during its inaugural term, 2016-2018.

Ms. Rolando has extensive experience in the acquisition, development, sale, financing and operation of large scale real estate projects. She regularly counsels clients on the creation and operation of condominiums, planned developments, mixed use projects, resorts, clubs and hotels, including regulatory matters, development, structuring, restructuring, documentation, termination and management. She has particular expertise in termination of condominiums having chaired or participated in the subcommittees responsible for drafting proposed statutory revisions to the termination provisions in the Florida Condominium Act and represents clients in pursuing efficient and effective termination strategies.

Ms. Rolando was a co-presenter on "Structuring and Operating Phase and Series (Multi-Condominium) Condominium Developments" at the Institute on Condominiums and Cluster Developments, sponsored by University of Miami School of Law in 2018. She has also spoken at the Institute on condominium terminations in 2015 on "Condominium Reversions - The Unspoken Condominium Termination Opportunity - Issues, Policies and Solutions - Recent Statutory Developments," in 2014 on "Condominium Termination: Challenges, Issues and Unique Fact Patterns," in 2008 on "Termination: Effects of New Legislation on Condo Regimes - Natural vs. Developer-Made Disasters and Fixes," and in 2005 on "Termination Issues & Proposed Solutions - Facilitating Reconstruction and Redevelopment."

Peggy has lectured on "Condominium Construction Loans" at the seminar *The Ins and Outs of Community Association Law 2017* sponsored by The Florida Bar, Real Property, Probate and Trust Law Section and the Condominium and Planned Development Committee. She is a respected speaker at the national level on development, workouts and structuring of condominiums and planned developments. She served on the faculty of the advanced seminar "Drafting Documents for Condominiums, Planned Communities and New Urbanism Developments" sponsored by the American Law Institute-American Bar Association (ALI-ABA) in 2005-2009. She planned and presented an ALI-ABA seminar in 2012 on "Bulk Sales and Purchases of Distressed Condominium Units." She also participated in two ALI-ABA seminars in 2009, one on "Condos & Planned Communities: Bulk Sale of Units, Homes and Lots in Today's Shifting Economy" and another on "ILSA [Interstate Land Sales Full Disclosure Act]: The Sword and Shield of Residential Real Estate Contracts." She spoke on "The Condo Glut - A Survival Guide for Condominium Workouts" at the Fall 2007 meeting of ACREL. Ms. Rolando lectured at several seminars on workouts of distressed

condominium projects, including webinars in 2007 and 2008 sponsored by ALI-ABA.

Her publications include articles in *The Practical Real Estate Lawyer* on "Making and Encouraging Pre-Sale Disclosures" (July, 2007) and on "Governing Documents for Mixed Use Developments" (January, 2006). She also co-authored "Planning and Structuring Real Estate Developments Using Condominium and Owners' Associations," Chapter 3 (formerly Chapter 2) of *Florida Condominium and Community Association Law* published by The Florida Bar (2007, revised 2011, 2015 and 2018).

Ms. Rolando graduated *magna cum laude* from Spring Hill College and received her M.A. and J.D. with honors from Florida State University.

APPENDIX D

Presentations and Biographies

Building Officials of Florida

Building Officials Association of Florida – Presentation to Florida Bar Condominium Law & Policy
Taskforce on Safety: 40-Year Recertification of Buildings

Co-Presenters

Kathleen Croteau, BOAF President, CAP Government

Clay Parker, BOAF Past President, City of Sunny Isles Beach (Miami-Dade County)

Sean Flanagan, BOAF Treasurer, City of Coconut Creek (Broward County)

Presentation Outline

1. Recertification of Buildings
2. Notification Process
3. Notification Process Timeline
4. Building Department Process
5. Findings
6. Lack of Compliance

Kathleen Croteau

Kathleen Croteau is a Building Official and Certified Floodplain Manager for CAP Government, Inc. and the current president for the Building Officials Association of Florida (BOAF). Kathleen was the State of Florida Building Official of the year in 2020 and serves on International Code Councils (ICC) Damage Assessment committee and BOAF's Mutual Aid Chair. Previously Kathleen was the president of a structural steel and ornamental iron company for 15 years, Deputy Building Official of the City of Cape Coral and Building Official for Sarasota County.

Sean Flanagan

Deputy Building Official
City of Coconut Creek
4800 W. Copans Road
Coconut Creek, FL 33063
954-973-6750
954-956-1517 fax
www.coconutcreek.net

Sean is the Deputy Building Official in Coconut Creek, FL. where he has spent the last fourteen years of his over twenty year career in building code enforcement. Sean started his tenure at Coconut Creek as an Inspector/ Plans Examiner, advancing to Chief Structural Inspector and then to Deputy Building Official in 2014. In addition to his duties as Deputy Building Official, Sean serves on the City's Development Review Committee, Green Initiative and City Projects Committees. He has developed a career path program for an Apprentice Structural Inspector and serves as a mentor to junior inspectors and plans examiners. Sean started in the construction industry 45 years ago, beginning as a Mason Tender until starting his building code inspector career at the City of Coral Springs, FL.

Outside of his duties at Coconut Creek, he has been an active member of the Broward Chapter (BOIEA) for the past twenty years. He has served on the Board of Directors for ten years; Treasurer for five years; 1st 2nd and 3rd Vice Presidents; President in 2019; Current Past President. He has served on the following Broward Chapter committees – Education; By Laws; Legislative Affairs; Scholarship; Building Safety Month; Annual Picnic/Barbeque. Sean has also served on the Broward County Permitting Action Team, Broward County MOT Accessibility Workshop and Governors Workforce Taskforce Workshop. Currently Sean is the BOAF Executive Board Committee Treasurer and serving on the BOAF Legislative Affairs Committee.

Sean lives in Boca Raton, FL. When not at work he enjoys playing golf and spending time with parents and sister who have recently relocated from New Jersey.

EDUCATION & CREDENTIALS

Florida Standard Inspector License BN 3912

Florida Standard Plans Examiner License PX 2218

Florida Building Code Administrator License BU 2048

Florida Certified General Contractor License CGC 060821

Bachelors of Science Degree in Mathematical Physics 1988

Broward County, FL. Plans Examiner of the Year 2017

Broward Chapter BOIEA Honorary Lifetime Member 2019

International Code Council (ICC) Leadership Award 2019

Clayton Parker

I have been in the Construction industry for over 60 years, starting with my enlistment into the U.S. Army at the age of 18, where I was in the Combat Engineers, building bridges, barracks, airfield runways, etc. Worked as a laborer (union) and eventually became a Journeyman (union) carpenter, doing all phases of construction from single family residence to commercial residential (high-rise) and commercial.

Became Florida Certified General Contractor 46 years ago in 1975 and remain current.

I have been actively employed in local government for the last 38 years with two jobs.

Was Certified as Building Inspector, Plan Examiner and Building Code Administrator during my employment at the City of Fort Lauderdale from 1983 to 2000. My last title before retirement was Assistant Building Official.

I am currently employed by the City of Sunny Isles Beach as their Chief Building Official and have no plans for retirement.

Organizations,

Currently a Technical Advisor to the Executive Board of the (BOAF) Building Officials Association of Florida Previous Five years served every position of the Executive Board, Secretary, Treasurer, Vice President, President and Past President.

Served every position of the (SFBOA) South Florida Building Officials Association, a chapter of the BOAF.

Building Officials Association of Florida

Kathleen Croteau, BOAF President
CAP Government

Clay Parker, BOAF Past President
City of Sunny Isles Beach (Miami-Dade County)



Sean Flanagan, BOAF Treasurer
City of Coconut Creek (Broward County)



40-Year Recertification of Buildings

Text here



Recertification of Buildings Broward and Miami Dade Counties

- 40 year-Structural condition inspection and report
- Inspection to confirm general structural and electrical condition
- Letter of Acceptance issued when safe for continued occupancy



Notification Process

- Annual Notification from property appraiser
- Building Official sends Notice of Required Inspection to property owner(s)
- Property owners 90 Day compliance period to submit signed and sealed inspection report



Notification Process

BROWARD COUNTY BUILDING SAFETY INSPECTION PROGRAM YEARLY SCHEDULE

- **JUNE** (*Preceding the specified calendar year*)
Board of Rules and Appeals obtains building data from Property Appraisers Office and forwards it to each city.
- **JUNE – AUGUST**
Building Officials must notify property owners whose buildings are subject to the Safety Inspection Program for the specified calendar year.
- **SEPTEMBER – OCTOBER – NOVEMBER** (*No later than*)
90 day period for property owners to return structural and electrical check list to the City/County
- **DECEMBER through MAY** (*No later than*)
180 day period of time for those buildings requiring structural or electrical repairs to complete the work.



Building Department Process

- Report received by Building Official's office, file created
- Report evaluated by Building Official's office
- Results of report documented in permit file



Findings

- If compliant, Letter of Acceptance mailed
- If remediation work is outlined in report, permit is obtained
- Permit is tracked until proposed work is completed and a Letter of Acceptance is issued



Lack of Compliance

- Notice of Violation issued to property owner
- Special Magistrate quasi-judicial enforcement process
- Unsafe recommendation building posted
- Imminent Danger building evacuated



Questions



Florida Structural Engineers Association



STRUCTURAL ENGINEERING LICENSURE FOR FLORIDA

Prepared for Florida Bar Association

By Thomas A. Grogan Jr., PE

FSEA Licensure Committee Chair

08.11.2021

**IN THE
BEGINNING...**

..



- **THERE WERE TWO TYPES OF ENGINEERING:**
 - CIVIL
 - MILITARY
- **AS TIME WENT ON AND MORE DISCIPLINES WERE DEVELOPED WE THEN ADDED:**
 - CHEMICAL
 - CONTROL SYSTEMS
 - MECHANICAL
 - ELECTRICAL
 - FIRE PROTECTION
 - NUCLEAR
 - PETROLEUM



**IN THE
BEGINNING...**

..



- **CIVIL AND MILITARY BOTH INCLUDED:**

- **ROADS**
- **BRIDGES**
- **TRAFFIC PLANNING**
- **LAND DEVELOPMENT**
- **SURVEYING**
- **WATER/WASTEWATER**
- **GEOTECHNICAL**
- **ENVIRONMENTAL**
- **STRUCTURAL**



**WHY CREATE A PROFESSIONAL
STRUCTURAL ENGINEERING
LICENSE
IN FLORIDA?**

**TO PROTECT
THE HEALTH,
SAFETY AND
WELFARE OF
OUR PUBLIC**





PROTECT FROM WHAT?



**UNQUALIFIED
PROFESSIONALS**

**INEXPERIENCED
PROFESSIONALS
WITH CURRENT /
NEW CODES**

COSTLY FAILURES





OTHER REASONS

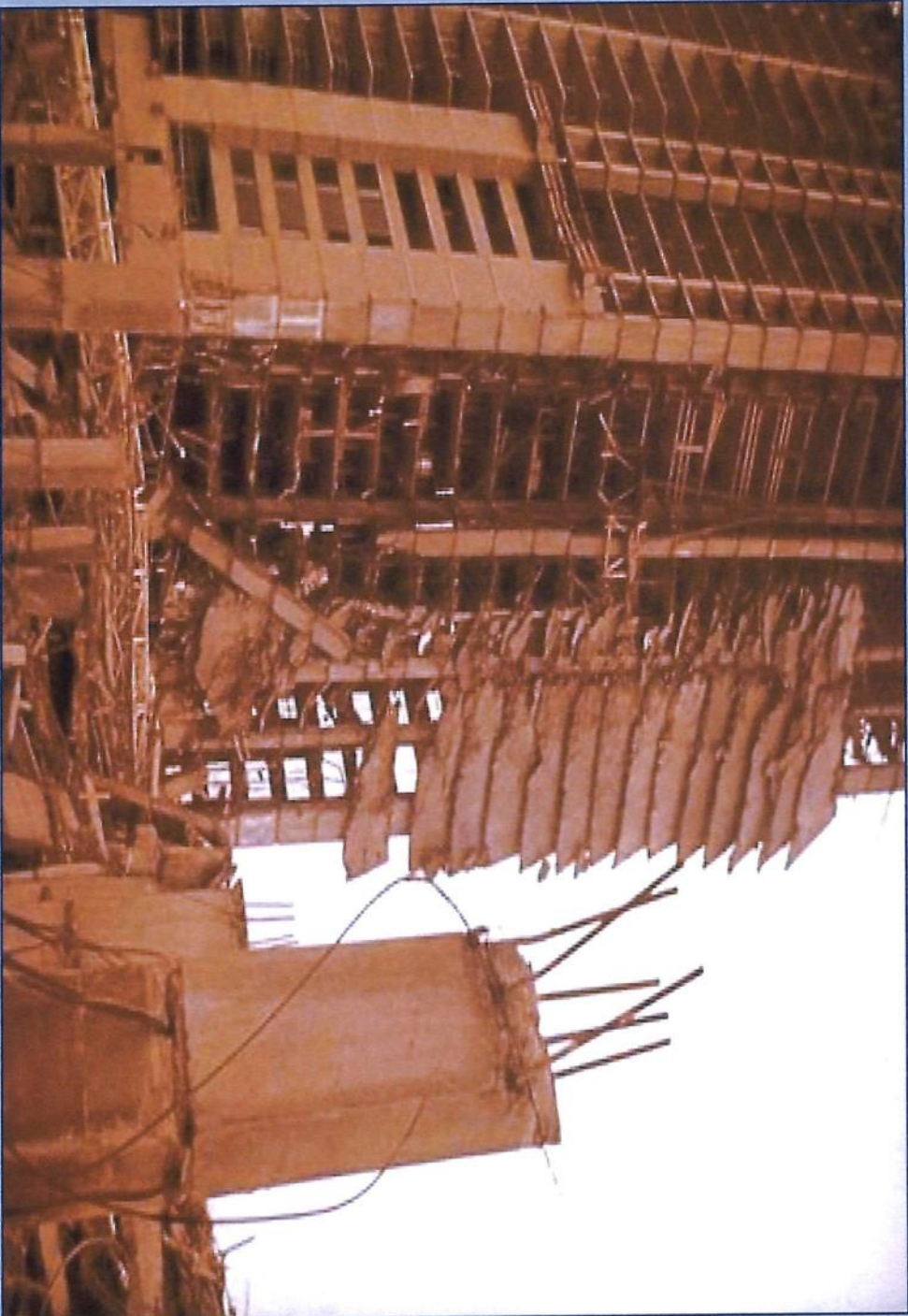
**DECREASE IN
ENGINEERING
EDUCATION
REQUIREMENTS**

**ADVANCED DESIGN
SOFTWARE USED BY
LESS-QUALIFIED
ENGINEERS**

**INADEQUATE
STRUCTURAL PLAN
REVIEWS**



NATIONAL STRUCTURAL FAILURES



SKYLINE PLAZA

BAILEY'S CROSSROADS, VA

MARCH 2, 1973



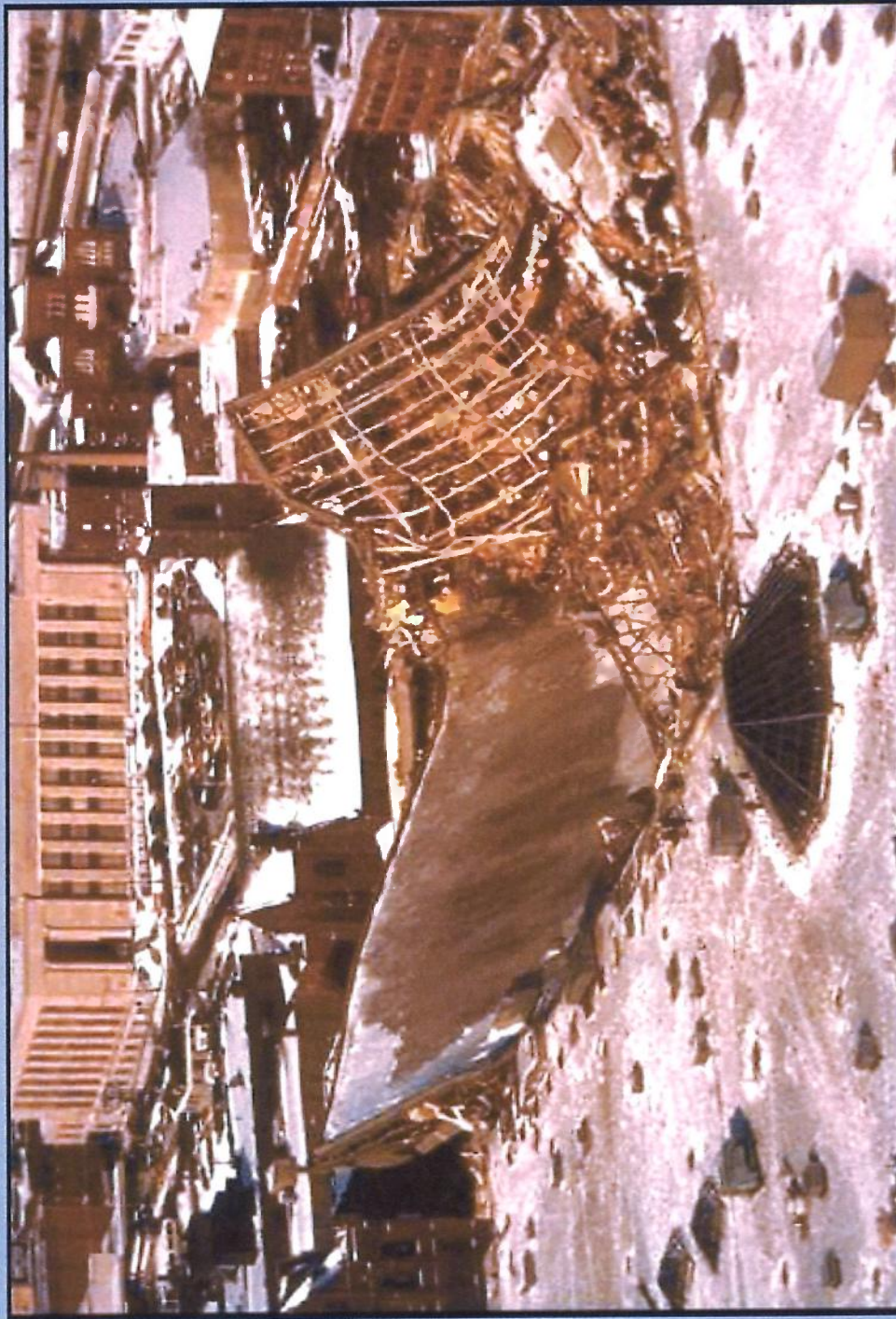
NATIONAL STRUCTURAL FAILURES



HYATT REGENCY HOTEL
KANSAS CITY, MO
JULY 17, 1981



NATIONAL STRUCTURAL FAILURES



CIVIC CENTER COLISEUM
HEARTFORD, CT
JANUARY 18, 1987



NATIONAL STRUCTURAL FAILURES



HARD ROCK HOTEL

NEW ORLEANS, LA

OCTOBER 12, 2019



STRUCTURAL FAILURES IN FLORIDA



SEA BASE BOY SCOUT CAMP
ISLAMORADA, FL
FEBRUARY 2, 1988



STRUCTURAL FAILURES IN FLORIDA



TURNER AGRI-CIVIC CENTER
ARCADIA, FL
AUGUST 12, 2004



STRUCTURAL FAILURES IN FLORIDA



THE HARBOUR CAY CONDO

COCOA BEACH, FL

MARCH 27, 1981



STRUCTURAL FAILURES IN FLORIDA



BERKMAN PLAZA II PARKING GARAGE

**JACKSONVILLE, FL
DECEMBER 6, 2007**



FLORIDA BUILDINGS THAT PERFORMED POORLY



OTHER FLORIDA STRUCTURES RENDERED INOPERABLE BY
VARIOUS HURRICANE WIND EVENTS (ALL OF THESE FACILITIES
NEED TO BE 100% OPERATIONAL AFTER THESE TYPES OF EVENTS)

LEE COUNTY HOSPITAL
6 STORY HOSPITAL

**HENDRY COUNTY SHERIFF'S
OFFICE**
CLEWISTON

- **HURRICANE CHARLEY:** THE WATER INTRUSION FROM THE ROOF, EXTERIOR CLADDING AND WINDOWS CAUSED THE ENTIRE HOSPITAL TO BE EVACUATED.
- THE BUILDING WAS SHUT DOWN DUE TO HURRICANE DAMAGE AND WAS NEVER OCCUPIED AGAIN BY THE SHERIFF'S OFFICE



OTHER FLORIDA STRUCTURES RENDERED INOPERABLE BY
VARIOUS HURRICANE WIND EVENTS (ALL OF THESE FACILITIES
NEED TO BE 100% OPERATIONAL AFTER THESE TYPES OF EVENTS)

**CHARLOTTE COUNTY
EMERGENCY OPERATIONS
CENTER (EOC)**

**CITY OF PANAMA CITY
MUNICIPAL CENTER
INCLUDING THE BUILDING
DEPARTMENT
PANAMA CITY, FL**

**PORT CHARLOTTE MUNICIPAL
CENTER
INCLUDING THE BUILDING
DEPARTMENT**

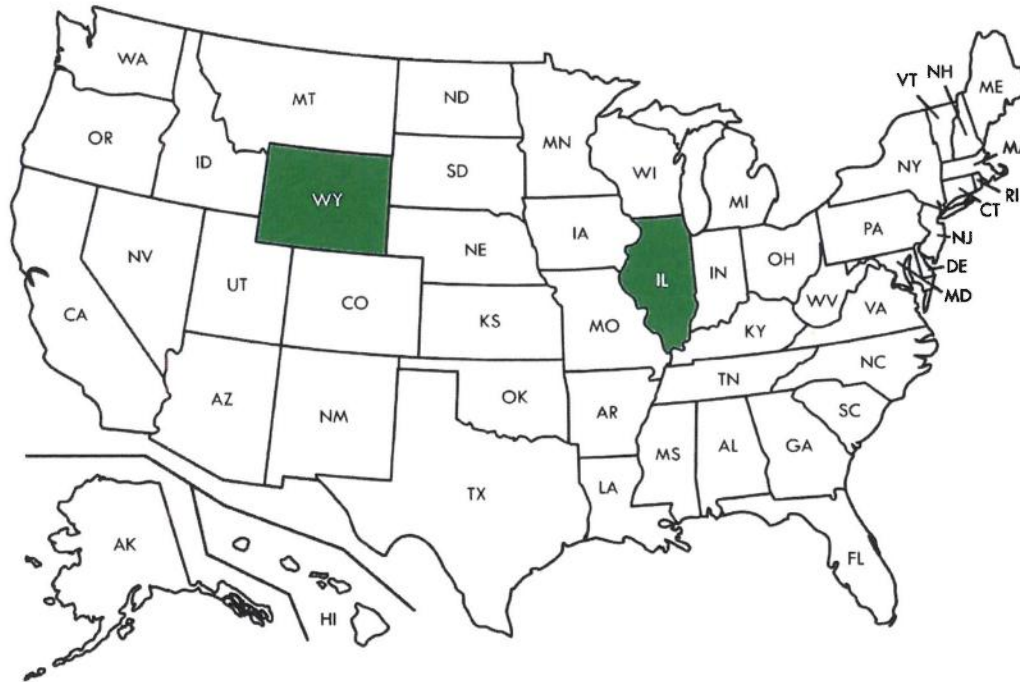


OTHER FLORIDA STRUCTURES RENDERED INOPERABLE BY
VARIOUS HURRICANE WIND EVENTS (ALL OF THESE FACILITIES
NEED TO BE 100% OPERATIONAL AFTER THESE TYPES OF EVENTS)

FIRE STATION
CITY OF PORT CHARLOTTE

**SEVERAL SCHOOLS IN
CHARLOTTE COUNTY, LEE
COUNTY, BAY COUNTY,
HENDRY COUNTY
BEING USED AS EMERGENCY
EVACUATION CENTERS**

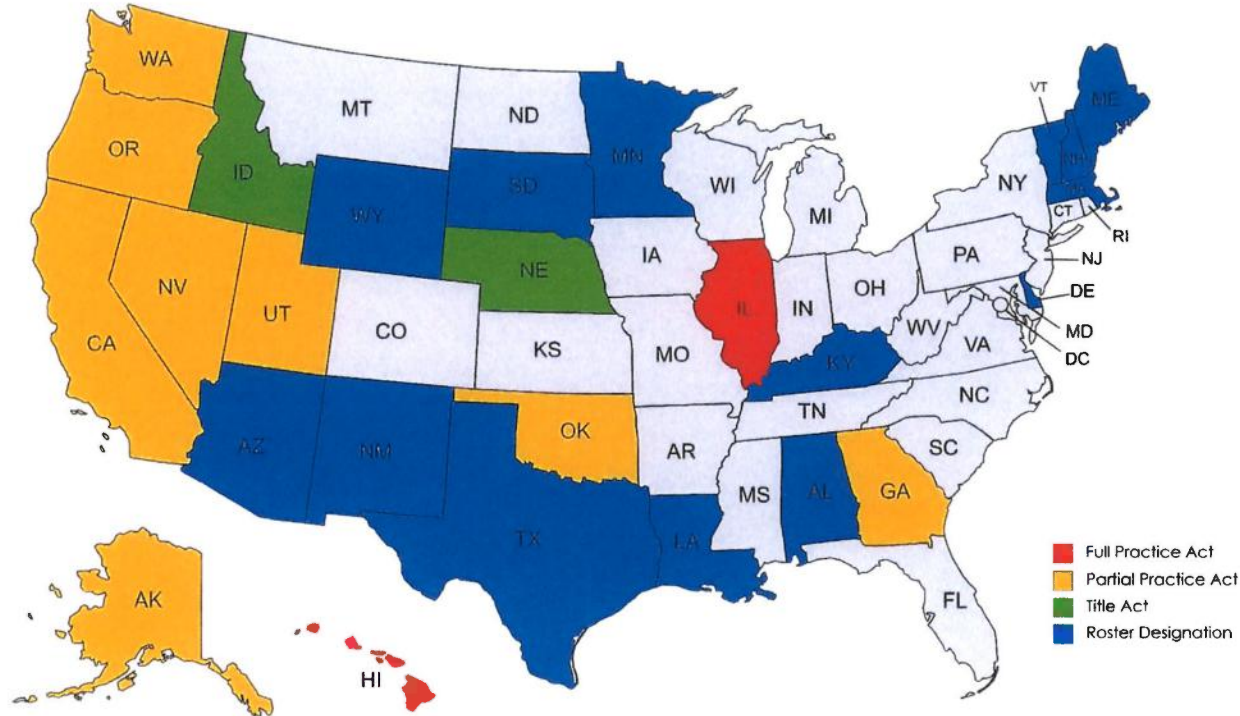


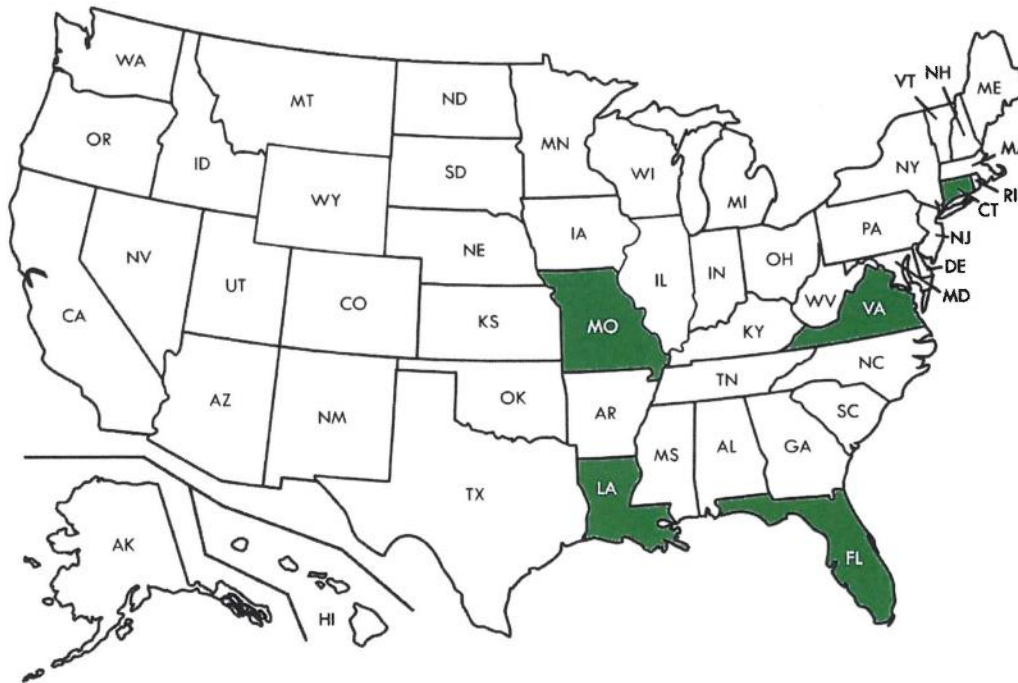


HISTORY OF STRUCTURAL LICENSING



CURRENT STATUS OF OTHER STATES





STATES WORKING INITIATING OR UPDATING SE LICENSE



OTHER INTERESTING FACTS

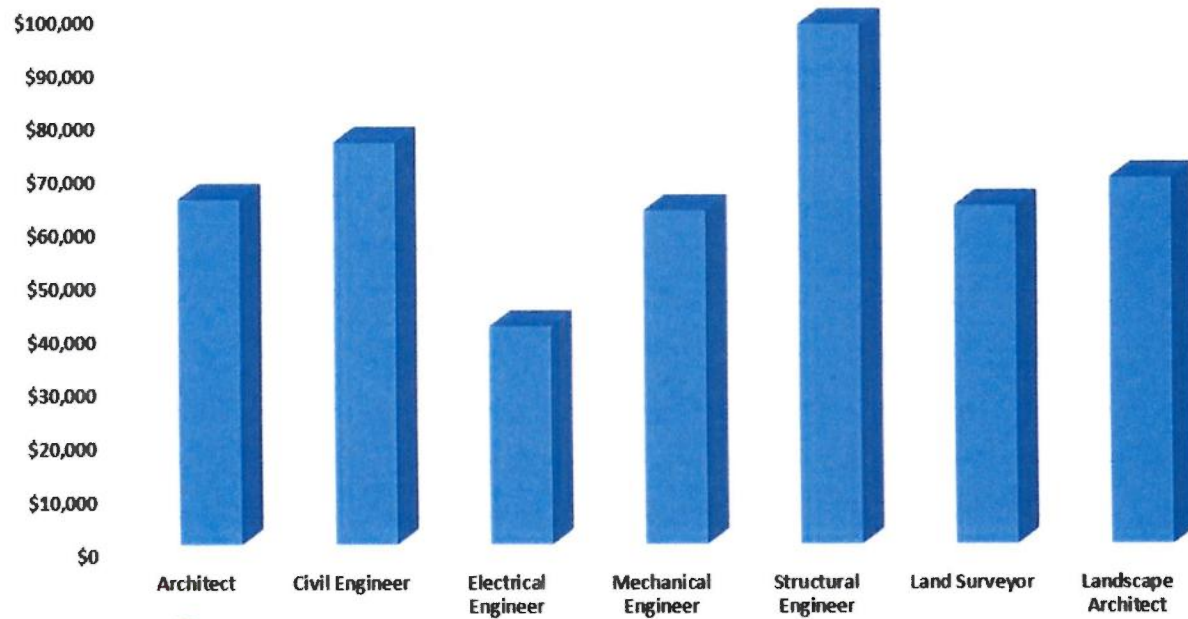
OVER THE PAST 30 YEARS, MORE THAN 275* P.E.s HAVE BEEN DISCIPLINED BY THE FLORIDA BOARD OF PROFESSIONAL ENGINEERS FOR PRACTICING S.E. OUTSIDE THEIR AREA OF COMPETENCY CAUSING A MAJOR PROBLEM FOR THE BOARD.

**THIS LICENSE, SUPPORTED BY THE BOARD,
WILL CORRECT THIS ISSUE**

** A significant percentage of all disciplined engineers*



Average Claim Severity 2011-2017



TRAVELERS 

Source: Travelers DPL Claim Data

OTHER INTERESTING FACTS





SIMPLE



SUBMIT AN AFFIDAVIT
ATTESTING TO STRUCTURAL
ENGINEERING EXPERIENCE /
COMPETENCY TO FBPE.



THERE WILL BE A
ONE-YEAR
GRANDFATHERING
PERIOD.



REGISTRATION PROCESS

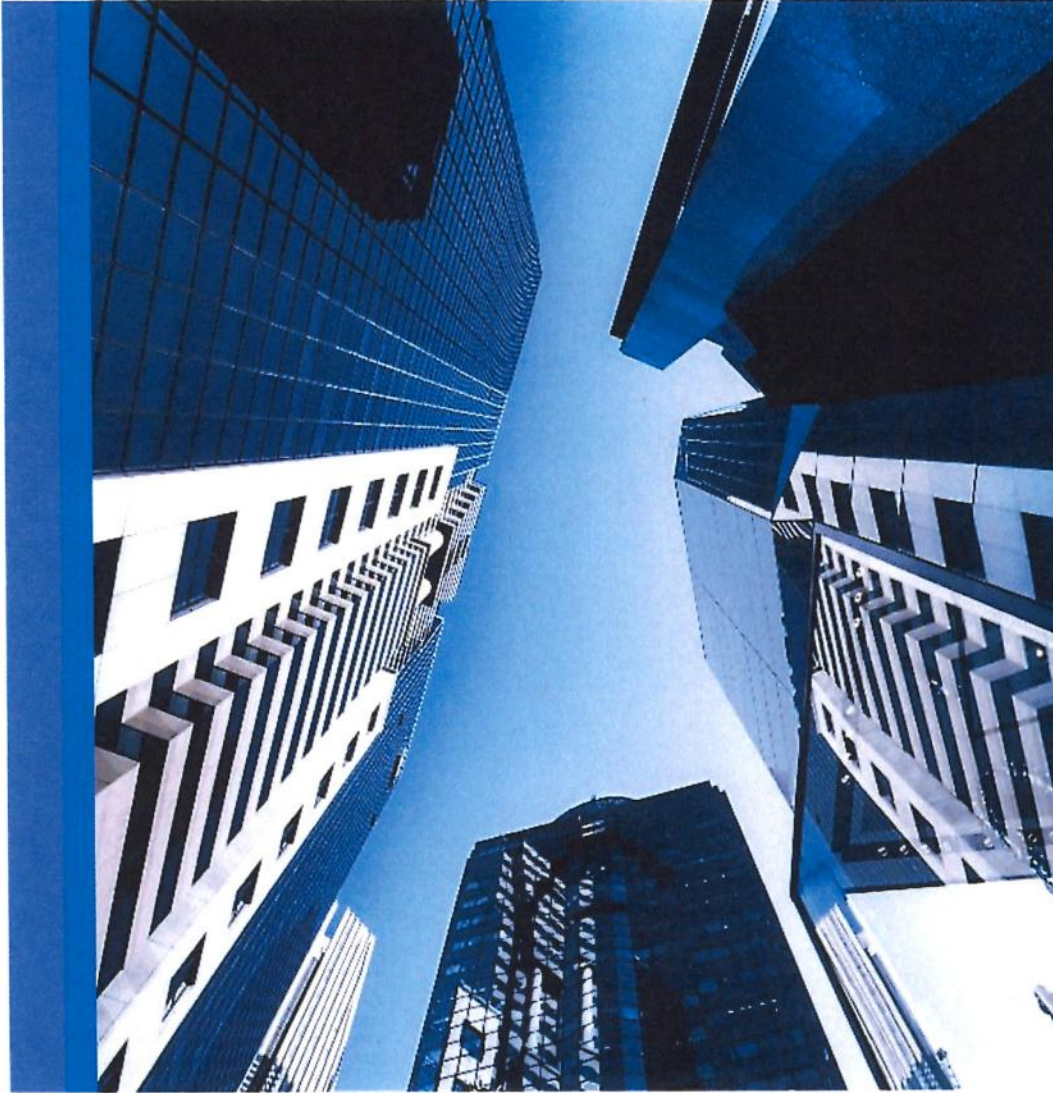




STRUCTURAL ENGINEERING LICENSURE FOR FLORIDA

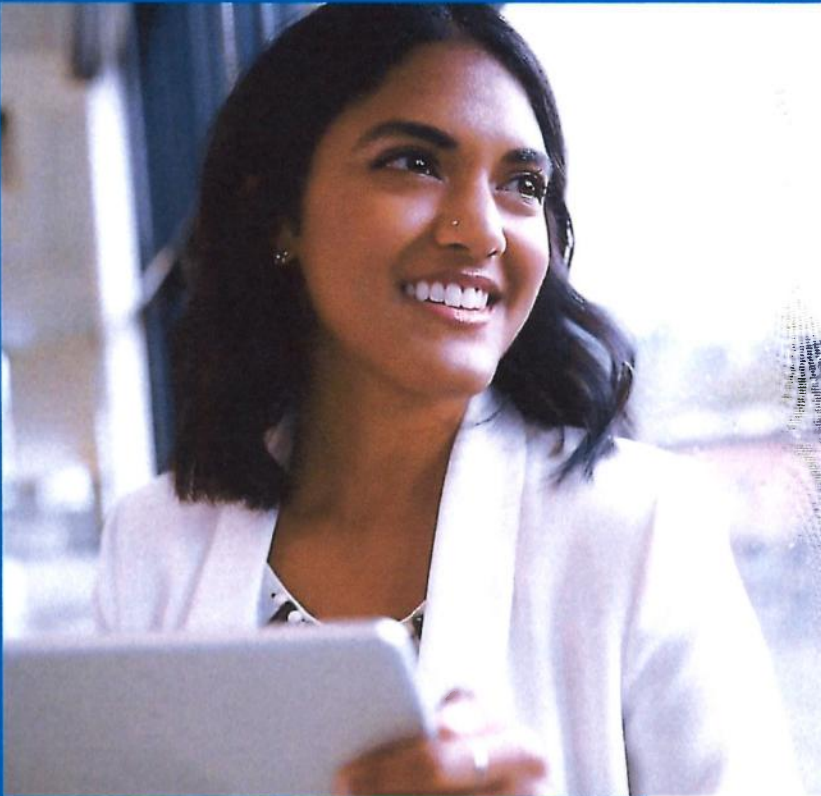
Q & A

Reserves and Reserve Studies



Reserves and Reserve Studies

**A report for the Florida Condominium
Law and Policy Life Safety Advisory
Task Force**



Overview

- The role of a reserve study and how it is prepared
- What can a reserve study can tell us
- Who's qualified to do a reserve study
- Recommended changes to Florida's condominium law on reserves
- Closing



Dreux Isaac

Architect

**32 Years of RS Experience
2,000+ Florida Association Clients**



Matt Kuisle

Civil Engineer

**21 Years of RS Experience
2,000+ Florida Association Clients**

Dreux Isaac

Dreux Isaac is President of Dreux Isaac & Associates, a company started in 1989 that specializes in performing reserve studies and insurance appraisals. Dreux has over 38 years of experience in the construction industry as a reserve study analyst, insurance value appraiser, architect, draftsman, and estimator.

In addition to performing thousands of reserve studies and insurance appraisals over the past 32 years Dreux has been a speaker at industry seminars, continuing education courses, and various organization meetings involved in the resort and community association industry, as well as a guest on local TV shows.



Born and raised in New Orleans, Dreux earned his Bachelor of Architecture degree from LSU. Dreux has been a member of the American Association of Cost Engineers, the American Society of Appraisers, Association of Construction Inspectors, Jaycees International, and the Foundation for Architectural Education at LSU.

Dreux is current president of his homeowners association and was past president at the homeowners association where he previously lived.

Dreux currently resides in Winter Park, Florida with his wife of 25+ years where they have raised their three boys.

Matthew C. Kuisle, P.E., RS, PRA

Matthew C. Kuisle is a Director and Shareholder of Reserve Advisors, Inc. Mr. Kuisle is responsible for the overall management and administration of the firm's Southeast regional office in Tampa, FL. He oversees sales, business development and engineering production staff serving Florida, Georgia, Tennessee and the Carolinas. Mr. Kuisle has conducted hundreds of reserve study assignments throughout the country and frequently conducts reviews of studies conducted by the firm's engineering staff.



Mr. Kuisle is a frequent author for the Florida Community Association Journal and Community Associations Institute (CAI) chapter publications. He regularly speaks on topics such as: What to Look for In A Professional Reserve Study, Planning for Future Capital Projects, and the Cash Flow (Pooling) and Component Methods of Reserve Funding. Mr. Kuisle has conducted seminars for several CAI chapters, the Club Managers Association of America (CMAA), the Florida Institute of Certified Public Accountants (FICPA) and numerous other community association management organizations. He is also a Florida-licensed Continuing Education Provider for Community Association Managers.

Before joining Reserve Advisors, Inc., Mr. Kuisle attended Marquette University in Milwaukee, Wisconsin where he received a bachelor's degree in Civil in Environmental Engineering. Mr. Kuisle is a Professional Engineer, licensed in Florida since 2006 and also holds both the Reserve Specialist (RS) and Professional Reserve Analyst (PRA) Designations.

Mr. Kuisle is the former President of his condominium association in Tampa, where he served on the board for 14 years. He enjoys fishing, camping and spending time with his wife and their two young children.

What is a Reserve Study

- Budget Planning Tool
- Identifies components that will require replacement or maintenance
- Provides a STABLE and EQUITABLE funding plan



- It is NOT an invasive engineering report, safety inspection report, construction deficiency or code violation report
- Independent and inexpensive

What is included in a reserve study?



National Reserve Study Standards

Four Part Test

Association Responsibility

Element must be maintained and the responsibility of the Association

Limited useful life expectancy

A useful life that is limited in nature and requiring replacement in the scope of the study (30 years)

Predictable remaining useful life expectancy

A remaining useful life that can be reliably predicted

Above a minimum threshold cost

Expense must be above a minimum cost threshold, below which it would not have a material effect on the reserve funding

What structural and life safety components are included?



Structural restoration

Balconies, railings, plaza deck membranes, facades, sealants and waterproofing



Plumbing

Domestic water, sanitary, HVAC and drainage



Electrical

Distribution equipment, wiring, emergency generators, elevators, emergency lighting



Life Safety Systems

Fire alarm control panels and equipment, suppression systems, fire pumps, smoke evacuation, security



Cost and Life Valuations

- Bids, historical costs and data - comps
- Consider age, materials and conditions
- Location, access and environment
- Maintenance and repair history

Condition Assessment

- Visual observation of the component
- Review maintenance, use & repair history
- Discuss with building engineer and other personnel
- No material testing is performed (destructive or non-destructive)



What can a Reserve Study tell us?

- An inventory of major components
- A regular physical exam or “checkup” - an early detector
- Projection of reserve income and expenses
- A consistent, stable and continuous plan despite turnover and change



- Documentation of historical conditions
- First line of defense on when to call in the specialists
- A path to better financial health

Who is qualified to do a Reserve Study?



Existing state licenses

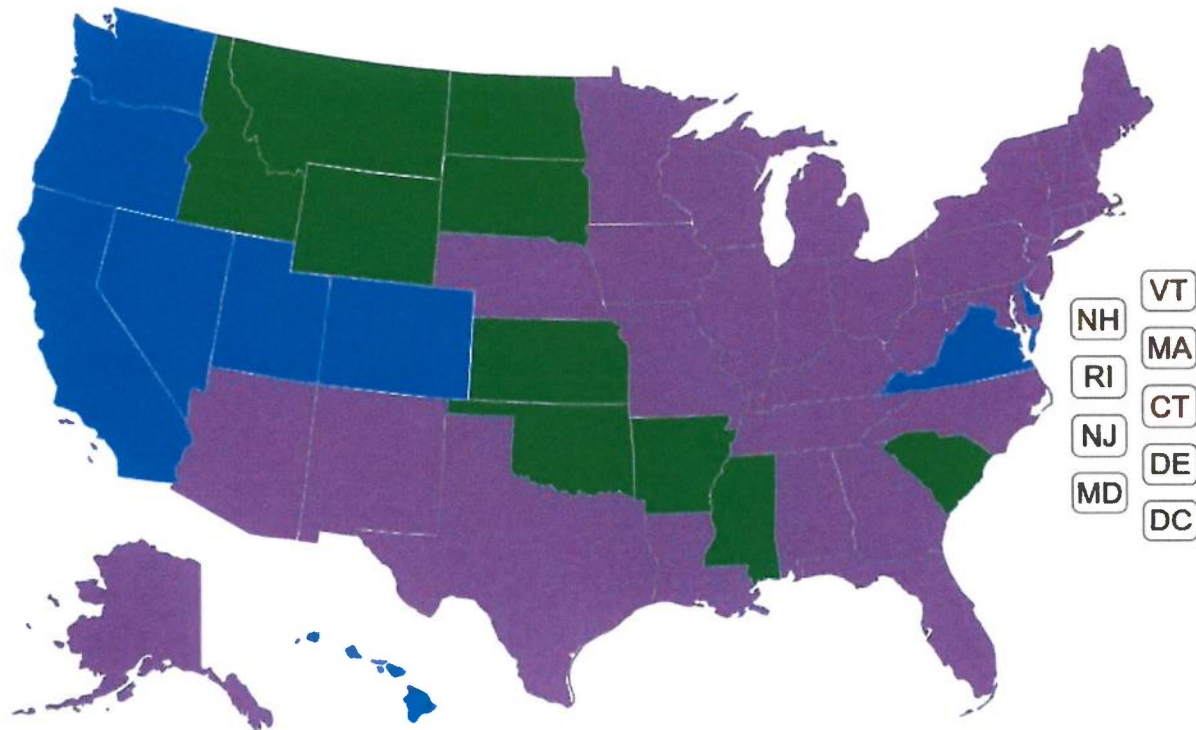
- Professional Engineers
- Architects



Professional Designations

- Community Associations Institute's (CAI's) Reserve Specialist designation (RS)
- Association of Professional Reserve Analysts' (APRAs) Professional Reserve Analyst designation (PRA)

- **Blue states** have a reserve study requirement.
- **Purple states** have statutory guidance for reserves, but do not have a statutory requirement.
- **Green states** do not have statutory guidance or a statutory requirement of a reserve study.



Source:
CAonline.org

Recommended Changes



Make reserve studies
with site visits required
every 36 months

Require preparation by
an licensed Engineer,
Architect, Reserve
Specialist or
Professional Reserve
Analyst



Increase the threshold
to \$25,000 or 10% of
the annual budget -
remove the specific
components that must
be included.

Require communities
to follow professional
advice, remove ability
to waive (phase in over
5 years)



Recommended Changes



Revise Administrative Code section which allows associations to circumvent the threshold amount by dividing assets into smaller dollar amounts – 61B-22.005(1).

Require Developers to fully fund reserves from the beginning.



Clarify balloon payment definition in Florida Administrative Code – Section 61B-22.005(3)(b).

Consider restricted use of existing pooled reserve funds on “non-essential” reserve expenses (i.e. decorating).



Conclusion



- Regular reserve studies can identify physical issues and prepare a board to financially accomplish remediation.
- This ultimately leads to lower costs over the life of the association
- Funding reserves is the most equitable way for all owners to understand and share in the true cost of ownership.
- Professional reserve studies make a volunteer Board's job easier
- Reserves should be viewed as a pay-as-you-go expense

Thank you

Dreux Isaac

Matt Kuisle



Community Associations Institute

Policy Discussion Following Champlain Tower South Condo Collapse

PRELIMINARY CONVERSATION
FINAL RECOMMENDATION

**Community Associations
Institute**

© COMMUNITY ASSOCIATIONS INSTITUTE



Dominick Scannavino

President & CEO, Management Associates
Oldsmar, Florida



Dawn M. Bauman, CAE

SVP, Government & Public Affairs
Executive Director, Foundation for Community
Association Research



Dominick Scannavino, President

Founder and President of Management and Associates, Dominick Scannavino, CMCA, and graduate from St. John's University in New York. He holds office as President for the Council of Neighborhood Associations, is a delegate for CAI-FLA (Community Association Institute Florida Legislative Alliance) and is a Board Certified Instructor. Dominick Scannavino and his team have a plethora of association management experience, having maintained more than 25,000 estates internationally. During his 40 years building Management and Associates, has assembled a team of experts who are educated, licensed and experienced in the services they provide.



Dawn M. Bauman, CAE

**Senior Vice President, Government & Public Affairs
Executive Director, Foundation for Community
Association Research**

dbauman@caionline.org | 703.970.9224

Twitter: @CaiAdvocacy

Facebook: @CAISocial

LinkedIn: <https://www.linkedin.com/in/dawnbauman/>

Dawn M. Bauman, CAI's senior vice president of government and public affairs and the executive director of the Foundation for Community Association Research, has worked for CAI for nearly 20 years at both the international and chapter level. Bauman and her team have produced nearly fifty public policy initiatives impacting the community associations housing model— including policies on Fair Housing, pets and assistance animals, and the removal of racially restrictive covenants.

She is frequently sourced in U.S. and international media outlets, including The Wall Street Journal, U.S. News & World Report, The Washington Post, and Bankrate, on community association housing topics.

Bauman works directly with CAI's 36 state Legislative Action Committees (LACs) and The College of Community Association Lawyers (CCAL) to further CAI's mission—promoting effective leadership and responsible citizenship in homeowners associations and condominium communities. CAI's LACs and CCAL fellows are considered industry experts and are often leaders in providing model language used in current legislation and regulations throughout the U.S. For the past eight years, Bauman has delivered dozens of education programs and presentations pertaining to legislative and legal trends shaping community associations, Fair Housing, and assistance animals during CAI's annual CEO-MC Retreat hosting 300 of the world's leading community association management chief executive officers.

She is an annual presenter at CAI's Annual Conference and Exposition: Community NOW, attended by 2,000 homeowner leaders, community managers, and business partners where she delivers the latest education, resources, and information about legislative and regulatory topics shaping the community associations housing model.

In 2021, as the executive director of the Foundation for Community Association Research, Bauman led the research committee's mission to better understand diversity and inclusion in today's community associations. Following a survey, The Foundation published the exclusive full report, "Creating Harmony in Diverse Communities," detailing the survey findings and recommendations for CAI to create new education and programming for its membership and the public.

For media assistance, contact Amy Repke, CAI's vice president, communications and marketing, at arepke@caionline.org | (703) 624-2179.

Community Associations Institute

- Established in 1973 by the Urban Land Institute, National Association of Homebuilders, and the U.S. Department of Housing and Urban Development
- Dedicated to building better communities
- Nonprofit, international, membership organization with 43,000 members and sixty chapters in the U.S. and around the globe. Members include developers, homeowners, community association managers, attorneys, insurance professionals, reserve professionals, bankers, pool supply, landscape, construction, etc.

Community Associations Institute Florida

Florida Chapters

[Central Florida Chapter](#)

Orlando and vicinity

[Gold Coast Chapter](#)

Central Eastern Florida (Palm Beach, Boca Raton, and vicinity)

[Northeast Florida Chapter](#)

Jacksonville and vicinity

[North Gulf Coast Chapter](#)

Pensacola and the Northern Gulf Coast

[Southeast Florida Chapter](#)

Broward, Dade and Monroe Counties

[South Gulf Coast Chapter](#)

Ft. Myers, Naples, and vicinity

[Suncoast Chapter](#)

St. Petersburg and vicinity

[West Florida Chapter](#)

Sarasota and vicinity

Statewide Florida Legislative Alliance

Florida Community Associations

facts & figures

» Approximately **9,600,000** Floridians live in **3,816,000** homes in **48,500** community associations.

» These residents pay **\$17.3 billion** a year to maintain their communities. These costs would otherwise fall to the local government.



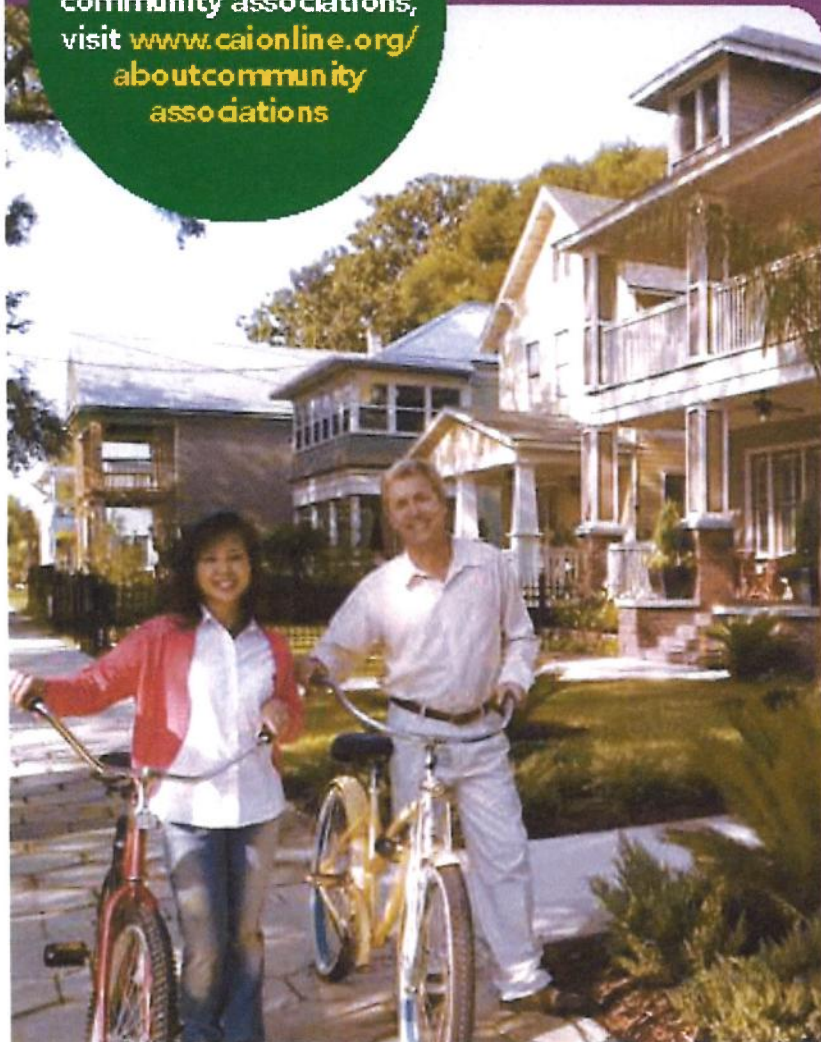
» **323,000** Floridians serve as volunteer leaders in their community associations each year, providing **\$281 million** in service.

» The median home value in Florida is **\$196,800**. Homes in community associations are generally valued at least **4%*** more than other homes.

» By **2040** the community association housing model is expected to become the most common form of housing.



For more information
and data about
community associations,
visit [www.caionline.org/
aboutcommunity
associations](http://www.caionline.org/aboutcommunityassociations)



87% of Florida homeowners rate their overall community association living experience as positive (27%) or neutral (60%).

82% say that their elected governing board absolutely or for the most part strives to serve the best interest of the community as a whole.

77% say they would like to see less government control or no change to community association oversight.

90% say their associations rules protect and enhance property values (64%) or make no difference (26%).

Majority of Florida residents say, “safe neighborhood” and “clean/attractive” are best things about living in a community association.

2018 HOMEOWNER SATISFACTION SURVEY RESULTS

Florida Communities

59% say their community manager provides value and support to residents and the community as a whole.

71% say that when neighbors neglect to pay their assessments, a community association should insist that every homeowner pay the assessments.

Florida community association members spend an average of **\$101–300 per month** for homeowners association assessments or fees.

73% of Florida homeowners living in a community association report voting in national elections and **58%** say they always vote in state and local elections.



Champlain Tower South Condo Collapse Policy Conversations

CAI Process

- CAI's Government & Public Affairs Committee held its first discussion at the end of June.
- Three Task Forces with hundreds of people from throughout the U.S. and Canada serving on the task forces
- Research of laws and ordinances in the U.S. and internationally (Australia, Ontario, Singapore, and Spain)
- Conversations with Condo Safety Coalition; including NIST, NLC, NSPE, NACO, Building Inspectors, ICC, NAHC, etc.
- Vetting through 43,000 member; including six hundred legislative committee members
- Next Step: Final approval by CAI's Board of Trustees

Champlain Tower South Condo Collapse Policy Conversations

Federal Initiatives

- NIST Funding
- Funding/Financing Issues
- Mortgage Underwriting

State Initiatives

- Building Inspections
- Reserve Studies and Funding Plans
- Funding/Financing Issues

1. Public Policy

2. Best Practices

3. Education Initiatives

Champlain Tower South Condo Collapse Policy Conversations

Federal Initiatives

- NIST Funding
- Funding/Financing Issues
- Mortgage Underwriting

Champlain Tower South Condo Collapse Policy Conversations

State Initiatives currently under discussion. Final recommendation pending.

- Building Inspections
- Reserve Studies and Funding Plans
- Funding/Financing Issues

Champlain Tower South Condo Collapse Policy Conversations

Building Inspections(yet to be determined whether these are policy recommendations or best practices)

- Developer Responsibilities
 - Inspection
 - Maintenance manual
 - Disclosure to purchasers
- Periodic inspections by structural engineer or architect based on ASCE Standard SEI/ASCE 11 99 industry standards (timing TBD) Inspections based on building type (multifamily residential buildings of concrete, load bearing, masonry, steel, or hybrid structural systems such as heavy timber including podium decks
- Communication and disclosure to the owners
- Board authority to special assess without owners vote for life safety maintenance, repairs, and/or replacement

Champlain Tower South Condo Collapse Policy Conversations

Reserve Studies and Funding Plans (yet to be determined whether these are policy recommendations or best practices)

- National Reserve Study Standards adoption
- Developer reserve plan and funding requirements
- Reserve studies for condominiums, housing coops, and homeowners associations with shared components (cumulative replacement costs exceed \$10,000)
- Funding of reserves based on reserve plan
- Disclosure during resale with certification by those involved in the sale
- Disclosure to owners during budget process
- Disclosure to owners of life safety circumstances
- Authority of board to special assess for life safety required maintenance, repair, and or replacement

Community Associations Institute

QUESTIONS

**PRELIMINARY CONVERSATIONS NOT
FINAL RECOMMENDATIONS**

Chief Executive Officers of Management Companies



CEOMC presentation to the Florida Bar Task Force

On Condominium Law and Policy on Life Safety (September 1, 2021)

Debbie Reinhardt

CEOMC

President, Board of Directors

Resource Property Management

Founder and CEO

DReinhardt@ResourcePropertyMgmt.com

(727) 581-2622

Mark Anderson

CEOMC

Executive Director

Mark Anderson Governmental Consulting

Founder and CEO

Mark@ConsultAnderson.com

(813) 205-0568



www.ceomcfl.com





Debra Reinhardt, CEO, CFO

CMCA, AMS, PCAM®

Debra has over thirty years' experience in the Community Association Management industry and co-founded Resource Property Management in 1991. She obtained her Community Association Managers License in 1991. She went on to obtain her Certified Manager of Community Associations Designation (CMCA) in 2002, her Association Management Specialist Designation (AMS) in 2007 and earned the coveted Professional Community Association Manager Designation (PCAM) in 2009. Debra has appeared as an Expert Speaker at Resident Owned Communities (ROC) Educational Seminars speaking on matters of budget and financial reporting. Debra is an active member of both the West Florida Chapter and Suncoast Chapter of CAI, is a founding Board Member of the Fresh Start Mentoring Program for non-violent probationers and has received her Life Coach Certification from Coach Net. Debra is also the current and first woman President of C.E.O.M.C. (Chief Executive Officers of Management Companies), an organization that is committed to promoting and protecting community associations throughout Florida, engaging in advocacy, and setting the standard for community association management.

CEOMC represents...

- An industry of more than 20,000 licensed community association managers operating pursuant to FL Statute Chapter 468.
- Managers who pay approximately \$3 to \$4 million per year in licensure and renewal fees to the DBPR.
- More than 14k communities in Florida
- A statewide footprint of some 6 million Florida homeowners living in communities managed by CEOMC member companies.

CEOMC is governed by....

- An elected Board of 7 Members
- 4 Officers
- Executive Director



We are the only voice for Florida's management profession.
We set the standard for community management.





By the numbers...

≈22 million

Approximately 22 million people live in the State of Florida.

≈12 million

Close to 12 million Florida homeowners currently live in a managed community.

≈6 million

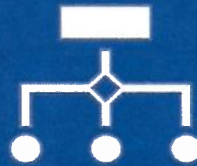
CEOMC represents approximately half of all managed communities in Florida.

≈27%

Over one-fourth of Florida's population is represented through CEOMC.



What do our member companies* do?



We are required to operate solely pursuant to, and under the specific direction of, each Association's Board in accordance with the specific management agreement with each Association.



Additionally, we are required to operate within each Association's governing documents, Florida Statutes, the Florida Administrative Code, and all DBPR rulings.

* While not all Florida community managers and management companies are members of CEOMC, our members represent a statewide coalition of licensed community association management companies and are referred to as "member companies" herein.

Member company services may include, but are not limited to:

Financial Management:

- Collect dues and assessments, which fund the common expenses of the Association
- Record keeping, including accounts receivable, accounts payable and financial statements.



General Property Management:

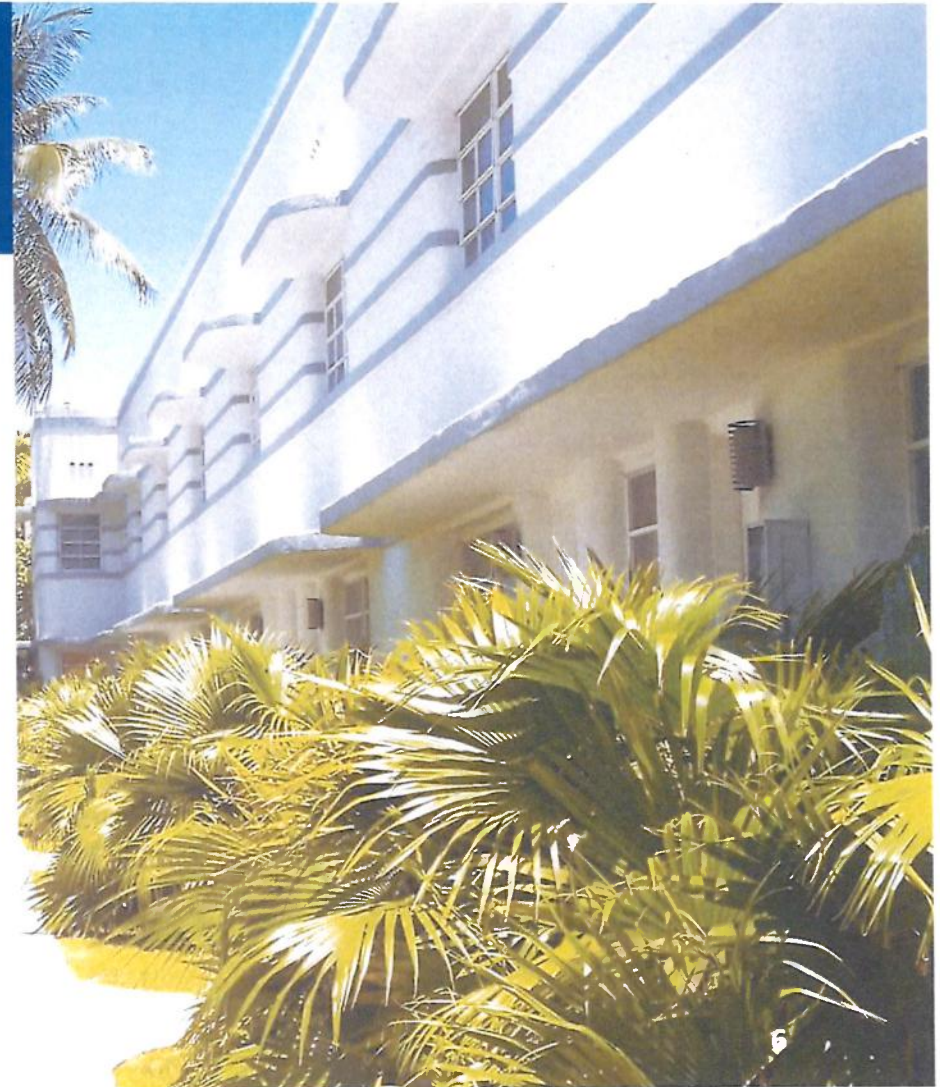
- Coordinate the work of contractors that operate and manage the Association's amenities with day-to-day affairs of the Association
- Facilitate guidance from outside experts to inform and advise the Association's Board on maintenance of various aspects of the property, all as directed by the Board.
- Bring community matters or concerns to the attention of the Board. (See something, say something.)
- Make recommendations to the Board for contracted services, including bids for services.

Administrative Management

- Enforce all covenants and rules of the Association, as directed by the Association.
- Transparently maintain all records of the Association and make them available upon request pursuant to applicable law.
- Manage Board Meetings (provide proper notice of meetings, enforcement of quorum and protocol).
- Provide communication tools to owners and board members (e.g., written, electronically and via websites / portals).

Member companies **CANNOT and DO NOT:**

- Give legal advice.
- Build or design buildings.
- Inspect the structural integrity of buildings.
- Engineer buildings.
- Hire contractors.
- Provide services outside of our contractual obligations.
- Vote as a member of the association.
- Use association funds without Board approval.
- Give advice on building safety, inspection, engineering, insurance, or an Association's legal obligations. That is always the exclusive role of outside experts, as contracted by the Association.



Recent policy impacting our industry and communities.

In just the last 5 years alone, sweeping new legislative reforms have been enacted into law that are already making Florida's communities more transparent, more accountable and safer. Here are a few of those reforms:

A 2021 law (SB 630):

- Requires maximum transparency and access to official records by allowing any owner to access any record for any reason or for no reason.
- Expands access to official records by authorizing them to be available on mobile apps.
- Updates emergency powers of Boards to include virtual meetings and public health emergency protocols.

A 2018 law (HB 841):

- Increased compliance of website requirement through more clearly defined responsibilities for Associations and definitions of official records.
- Clearly directed what records should be posted online.

A 2017 law (HB 1237):

- Imposed historic, new term Limits for Board Members.
- Enacted new website requirements to ensure transparency of, and access to, official Association records.
- Created new civil and criminal penalties for bad actors.



Professional Recommendations

What more can/should be done...

- Consider limitations on the ability to waive reserves entirely. Perhaps a phased-in approach for currently underfunded buildings, taking into account any loans currently in place to fund prior deferred maintenance projects.
- Require periodic reserve studies by licensed individuals. Develop proper licenses and defined standards for these reserve studies.
- Licensed Engineers who perform structural building inspections should make reports available to local building departments. (In the same manner as sprinkler and fire inspectors do currently.)
- Required building recertification, which acts as a “floor” to any local city or county recertification requirements.
- Allow Capital Contribution options on re-sale of units for reserve funding purposes.
- Better lending options from banks and financial institutions when loans are requested for inspections, reserve studies, and building maintenance.





Thank you | Questions | Learn more:



Insurance Presentation



Life Safety Task Force Insurance Presentation

By David Thompson, CPCU, AAI, API

Andrea Northrop, Esq.

Andrea Northrop, Esq.

Andrea.Northrop@ioausa.com



David Thompson, CPCU, AAI, API

DavidThompsonInsurance@gmail.com



ANDREA C. NORTHROP

Commercial Insurance Advisor

LICENSURE

- Florida General Lines Insurance Agent 2-20
- Florida Bar
- Missouri Bar
- US District Court for Southern Florida
- Florida DBPR Continuing Education Provider

AFFILIATIONS & HONORS

- Seacoast Bank Community Board of Directors
- Florida Bar - Vice Chair Real Insurance Committee, 2010-2011
- Florida Bar - Member Real Property, Liability and Surety Committee
- Florida Bar - Member Real Property, Probate, Trust Law Section - Condominium and Planned Unit Development Committee
- Missouri Bar Associations
- US District Court for Southern Florida
- Florida DBPR Continuing Education Provider

EDUCATION

U. MISSOURI-KANSAS CITY
SCHOOL OF LAW
Juris Doctor | 2004

UNIVERSITY OF FLORIDA
BA Political Science | 2001
Cum Laude

PROFILE

Strategic and creative commercial insurance advisor with a strong legal orientation and focused expertise in compliance and risk mitigation.

Core focus on large property risks, complex liability projects and employee benefits.

EXPERIENCE

VICE PRESIDENT AND PARTNER 2008-Present
COMMERCIAL INSURANCE CONSULTANT
Insurance Office of America

- Practice Leader for IOA's West Palm Beach Real Estate division, specializing in large property markets, both domestic and international
- Insurance Risk Management design specialist, solving complex problems and creating tailored solutions
- In-depth analysis of clients' insurance mechanisms, working holistically to manage and mitigate risk

ASSOCIATE ATTORNEY 2004-2007
Jupiter Law Center

- Estate Planning, Real Estate, Marital, Probate and General Litigation
- Deposition, Mediation and Trial experience
- Draft contracts, petitions, motions and orders
- Successfully conducted litigation in a variety of cases
- Responsible for marketing and networking to expand client base

David A. Thompson, CPCU, AAI, API, CRIS

After receiving his college degree from Mercer University in Macon, Georgia and serving eight years as a commissioned officer in the U.S. Army and U.S. Coast Guard, David began his insurance career in a family-owned independent agency in Vero Beach, Florida where he was a licensed agent selling all types of insurance.

In 1996 David accepted a training & education position with the Florida Association of Insurance Agents in Tallahassee, Florida (FAIA) where he presented continuing education seminars throughout the country on a variety of insurance subjects. He has presented hundreds of seminars dealing with insurance agent Errors and Omission issues and uses a creative approach of involving defense attorneys and plaintiff attorneys on panel discussions. He most enjoys personal lines issues, flood insurance, business auto, and commercial property issues.

In 2020 David retired as a full-time employee of FAIA. He currently does insurance education and consulting for a variety of entities around the country.

In addition to being a full-time insurance nerd, David is an avid runner and biker and smokes the best ribs, chicken, and pork in the country.

David can be reached at:

DavidThompsonInsurance@gmail.com

Current Market Conditions

1. Uncertainty is the top feedback from all our carriers
2. Almost all Non-Admitted/Excess & Surplus carriers in the space
3. Proof of 40 year re-certification as part of underwriting submissions now for Broward & Miami-Dade condominiums
 - A. Copies of inspections/reports
 - B. Evidence of documented repairs
 - C. 12 months of board meeting minutes
4. Fewer carriers writing older buildings, even excluding wind within 2-5 miles of the beach
5. Capacity is limited
6. Terms issued are more restrictive, less coverage and higher premiums

“Adequate Property Insurance” FS 718.111(11)

- (a) Adequate property insurance, regardless of any requirement in the declaration of condominium for coverage by the association for full insurable value, replacement cost, or similar coverage, must be **based on the replacement cost** of the property to be insured as determined by an independent insurance appraisal or update of a prior appraisal. The replacement cost must be determined at least once every 36 months.
- (d) An association controlled by unit owners operating as a residential condominium shall **use its best efforts to obtain and maintain adequate property insurance** to protect the association, the association property, the common elements, and the condominium property that must be insured by the association pursuant to this subsection.

“Adequate Property Insurance”

Without a requirement for insurance coverage to be 100% full replacement cost, “adequate” is subjective.

But it is important to remember that appraisals are to the current building condition, at that time (existing materials and grandfathered building status).

A current appraisal is not “Guaranteed Replacement Cost” or “Ordinance or Law”

Ordinance or Law Coverage

Not included in the standard commercial property policy

Coverage A – Undamaged Portion of the Building

Coverage B – Demolition Cost (Of the undamaged portion)

Coverage C – Increased Cost of Construction

Ordinance or Law Coverage

What's available in the marketplace

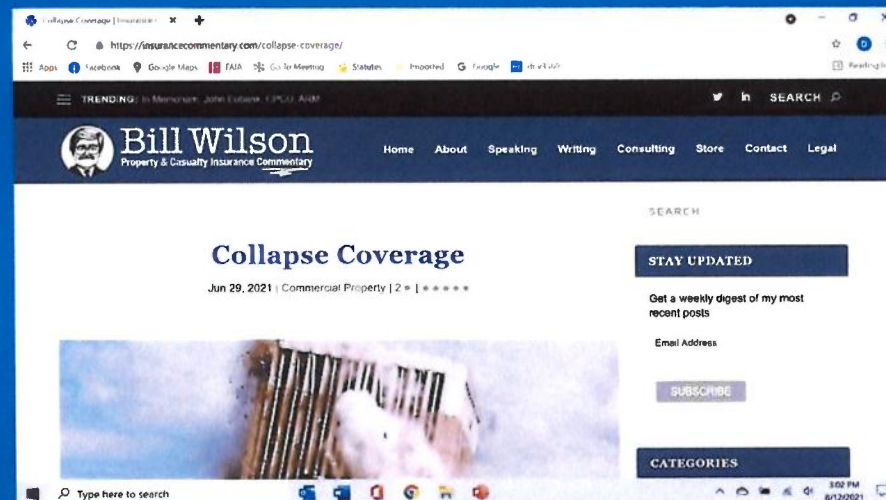
Coverage A – Usually Full A, so the scheduled replacement cost value of the building

Coverage B – normally a small percentage of the building's value (either 2.5%, 5% or perhaps 10%) but often a sublimit of the Building's Total Replacement Limit

Coverage C – normally a small percentage of the building's value (either 2.5%, 5% or perhaps 10%) but often a sublimit of the Building's Total Replacement Limit

Collapse

www.insurancecommentary.com



Collapse

First of all, the CP 10 30 form **EXCLUDES** collapse of property or any part of the property, including:

- (1) An abrupt falling down or caving in;

Collapse

The Give Back

- a. Building decay that is hidden from view, unless the presence of such decay is *known* to an insured prior to collapse;
- b. Insect or vermin damage that is hidden from view, unless the presence of such damage is known to an insured prior to collapse;
- c. Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs during the course of the construction, remodeling or renovation;
- d. Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs *after* the course of the construction, remodeling or renovation, but only if the collapse is caused in part by...a cause of loss listed in a. or b., a “specified causes of loss,” breakage of building glass, weight of people or personal property, or weight of rain that collects on a roof.

Collapse

- 1. Very narrow application of coverage in Florida**
- 2. The ultimate cause of loss is an important determination for a true covered cause of loss analysis**

Debris Removal

(b) Subject to (a) above, the amount we will pay for debris removal expense is limited to 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage.

(4) We will pay up to an additional \$25,000 for debris removal expense, for each location, in any one occurrence of physical loss or damage to Covered Property, if one or both of the following circumstances apply

Debris Removal

CAUTION

If there is a total loss, only \$25,000 is available

Debris Removal

www.wired.com

NEW YORK -- Cleaning up the estimated 1.2 million tons of rubble left by the destruction of the World Trade Center could take up to a year and cost \$7 billion, officials said Friday.

Debris Removal

ISO pdf CP 04 15 10 00.pdf

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Read aloud Draw Highlight Erase

POLICY NUMBER

COMMERCIAL PROPERTY
CP 04 15 10 00

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**DEBRIS REMOVAL ADDITIONAL
INSURANCE**

This endorsement modifies insurance provided under the following

BUILDERS' RISK COVERAGE FORM
BUILDING AND PERSONAL PROPERTY COVERAGE FORM
CONDOMINIUM ASSOCIATION COVERAGE FORM
CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM
STANDARD PROPERTY POLICY
TOBACCO SALES WAREHOUSES COVERAGE FORM

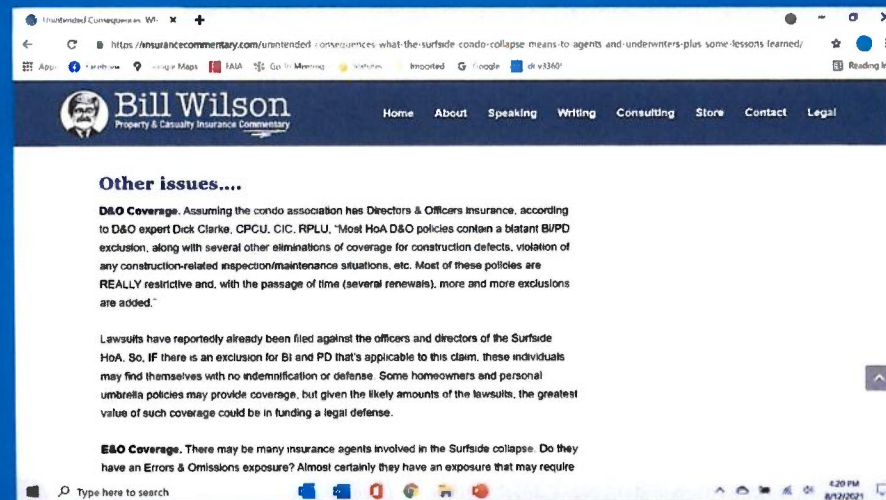
SCHEDULE*

Prem. No.	Bldg. No.	Debris Removal Amount	Additional Premium

Type here to search

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8/12/2021

Directors & Officers Coverage



Directors & Officers Coverage

Even if the legislature were to mandate Directors' and Officers' policies to be in place, and mandatory limits, the policies themselves may be insufficient to provide coverage for such a loss as CTS.

Many include exclusionary language “based upon directly or indirectly, arising out of, or in any way involving any”

Bodily injury, illness, disease, emotional distress, mental anguish or death of any person..., construction defect..., damage to tangible property, loss of use or view or destruction or deterioration of any tangible property.

Unit Owner Policies

1. This market has been worsening in the last 12 months, even prior to CTS
2. Significant reduction in capacity between carriers and/or underwriting restrictions
3. Older buildings, age of roofs, wiring, plumbing, heating and A/C units
4. Hot water heaters – 10 year age limit for eligibility

Unit Owner Policies

1. However, without mandating Unit Owner individual HO-6 policies, unit owners are self-insuring the risk of the interiors' replacement cost; loss of use; and loss assessment
2. Liability exposure for unit owners with no insurance
3. Personal experience has shown unit owners without insurance are far more likely to file claims against the association than those with their own insurance policies

Resiliency Engineering Presentation

ROBERTO E. BALBIS MSCE, PE

EDUCATION

Bachelor of Science in Civil Engineering, University of Florida (1969).
Master of Engineering, University of Florida (1974).
Numerous short courses and attendance to conferences on technical developments.
Florida Engineering Society Continuing Education Program.

PROFESSIONAL HISTORY

2015-Present: Senior Consultant - Ardaman & Associates, Inc. West Palm Beach, Florida

Principal Engineer in charge of special geotechnical, environmental engineering projects. Threshold Building Inspector.

Principal Engineer in charge of limited projects of varied nature similar to those described below.

1982-2015: Branch Manager/Principal Engineer - Ardaman & Associates, Inc. West Palm Beach, Florida

Established the Ardaman and Associates regional engineering office and construction material/testing laboratory in July 1982. Branch office management responsibilities included determining required scope of project services; internal quality control; office and personnel management; and client development in Southeastern Florida and the Caribbean. In charge of supervision of all engineering work more than 15,000 projects since 1982.

Principal Engineer in charge of planning and supervision of field and laboratory geotechnical exploration programs. Engineer of record for the development of recommendations for site preparation and foundation design for numerous low and high-rise structures, bridges, piers, buried structures, transmission towers, silos, roadways, etc. Engineer of record for the design of seawalls, retaining walls, anchoring systems, excavation bracings, underpinning measures, etc. Specialist in the use of innovative site preparation measures and foundation design for structures including embankments over weak deposits and debris throughout Florida. Engineer in charge of monitoring the installation of pile foundation and conducting pile load tests, monitoring implementation of site improvement techniques such as Dynamic Compaction, Vibrocompaction and Vibroreplacement, Soil Exchange, Jet Grouting, Chemical Grouting, etc.

Engineer in charge of vibration monitoring programs and forensic studies for projects where ground vibrations were produced, including roadway construction; demolition work; pile and sheetpile installation; blasting; implementation of Dynamic Compaction, Vibrocompaction and Vibroreplacement; compaction of building pads; etc.

Special "Threshold Building" Inspector for the construction of various high-rise structures in Palm Beach County. Engineer of Record in charge of the supervision/monitoring of the preparation of foundation soils, and of the installation of foundations for numerous low-rise and high-rise structures.

Senior Project Engineer in charge of laboratory and field testing of building and pavement construction materials, including forensic structural investigations using destructive and non-destructive testing techniques. Responsible for expert research and testimony for litigations involving defective construction materials or techniques. Engineer in charge of investigations on the effect of construction on nearby structures.

Senior Project Engineer in charge of earthen dam projects to hold water or mining wastes. Responsibilities included determining the scope of and the supervision of geohydrological and geotechnical subsurface exploration programs; establishing the properties of optimum borrow materials; selecting and analyzing embankment cross-sections; designing leachate prevention and collection systems; design of spillways; etc. Engineer in charge of inspecting the construction of earthen dams. Engineer in charge of safety inspections of existing dams.

Senior Project Engineer in charge of Environmental Engineering projects. Projects have included: design of earthen dams and ponds to hold contaminated wastes; design of landfill liner and cover systems; foundation studies for waste disposal facilities; landfill closure studies; landfill reuse projects for residential and commercial projects; recycling of

ROBERTO BALBIS, P.E.
Vice President / Principal Engineer
Ardaman & Associates, Inc., West Palm Beach

landfill materials; groundwater quality monitoring programs; geohydrological studies for the large scale land application of municipal wastewaters; field explorations for septic drainfield disposal units; removal and replacement of underground storage tanks; Phase I and II environmental assessments for real estate transactions; groundwater and soil contamination assessment reports; management of contamination remediation measures; etc.

Senior Consultant for investigations regarding construction defects, geotechnical conditions, etc. Services included the presentation of formal expert reports, depositions and testimony as needed.

Neutral Evaluator for assessment of sinkhole damage claims throughout Florida.

1975-1982: Project Engineer - Ardaman & Associates, Inc. Orlando, Florida

Geotechnical and Foundation Engineer of record for numerous structures throughout Florida, the Bahamas, the Caribbean and Saudi Arabia. Responsible for geotechnical and geophysical site investigations for sinkhole development potential, reduction of sinkhole development potential, and correction of sinkhole effects in earthen dams and building structures.

Geotechnical Engineer for numerous earth dams through Florida and Iowa, and in Brazil, Panama, and Mexico. Site investigations and engineering analyses and design of embankment cross-sections. Preparation of specifications for construction of earthen dams or ponds to contain clear or contaminated water, municipal wastes, etc. Hydrological studies of dam watersheds and design of spillways. Development of site-specific measures needed to minimize environment pollution effects for mine waste holding facilities. Study, design, and construction supervision of impervious liner systems for waste ponds. Inspection or construction control of construction of earthen dams or ponds. Inspection of operational dams to ascertain their safety and environmental effects.

Specialized laboratory testing of strength and other properties of construction materials such as epoxy bonding agents, grouts, etc. In-place destructive and non-destructive testing of reinforced concrete members. Specialized laboratory testing of strength, consolidation characteristics, permeability, chemical properties, etc., of soils and rocks. In-situ testing of strength, compressibility and permeability properties of soil and rock formations.

1972-1975: Assistant Project Engineer - Ardaman & Associates, Inc., Orlando, Florida

Responsible for the planning and supervision of field and laboratory investigation of foundation or embankment soils, with experience gained in site investigations using geophysical tools and the Dutch Cone and Piezocone penetration equipment; evaluation of the obtained data with regards to bearing capacity; settlement, slope stability, etc.; formulation of optimum embankment cross sections or foundation schemes in accordance with the site conditions and available soils or materials; inspection of construction of zoned earthen embankments; inspection of site preparation procedures, installation of shallow and deep foundation piles, etc.; preparation of construction plans and specifications, reports of investigations and recommendations, and proposals for review by a Senior Engineer for submission to the client.

1971: Resident Engineer - Rader & Associates, Miami, Florida

Responsible for investigations and emergency repair work for Mingo County Airport in Williamson, West Virginia.

1970: Research Assistant - University of Florida, Gainesville, Florida

1970: Staff Engineer - Wingerter Laboratories, Inc., Miami, Florida

PROFESSIONAL REGISTRATIONS

Professional Engineer, State of Florida Registration No. 15832
Professional Engineer, State of Iowa Registration No. 9387 (Inactive)
Professional Engineer, State of Maine Registration No. 9653 (Inactive)
Special Inspector (Threshold Buildings), State of Florida Certification No. 0013

OTHER REGISTRATIONS



Licensed General Contractor, State of Florida (Inactive)
State of Florida Neutral Evaluator

PROFESSIONAL AFFILIATIONS:

Florida Engineering Society
Cuban-American Association of Civil Engineers
American Society of Civil Engineers
National Society of Professional Engineers
Association of Soil and Foundation Engineers
Florida Institute of Consulting Engineers

FOREIGN LANGUAGES:

Spanish and Portuguese

PUBLICATIONS AND PRESENTATIONS

Moore, Peter J. and Balbis, Roberto E. "Head Losses in Packer Tests", Journal of Geotechnical Engineering Division, ASCE, Vol. 105, No. GT9, Technical Note, September 1979, pp. 1108-1112.

"Non-standard Uses and Application of the Dynamic Precompression Technique", 1984 Annual Meeting, Engineering Laboratory Forum, Orlando, Florida.

"Techniques for the Improvement of Loose Sands to Support High-rise and Low-rise Buildings on Shallow Foundations in Palm Beach County", Meeting of Palm Beach County Building Officials, Jan. 1985.

Balbis, R.E. and Leon, F.J. "Applying Dynamic Precompression Treatment in Built-up or Downtown Areas in South Florida". 1985 Ohio River Valley Soils Seminar on Applied Soil Dynamics. University of Kentucky, Lexington, Kentucky. October 1985.

Balbis, R.E. "Dynamic Precompression Treatment on Poor Soils". Third National Geotechnical Seminar. Costa Rican Society of Soil Mechanics and Foundation Engineering. San Jose, Costa Rica. November 1985.

FLORIDA BAR ADVISORY TASK FORCE QUESTIONS

Definition of Threshold Building. A Threshold Building is one that has more than three floor levels or more than 50 feet in height, or a building that has an assembly occupancy area in excess of 5,000 square feet and an occupant content greater than 500 persons.

Proximity to water and corrosion. I am not aware of objective standards with regards to proximity to water bodies. Nevertheless, proximity to salt water bodies is a standard concern. At this time, it should be recognized that reinforcement in exposed areas such as balconies should be galvanized, should have a minimum concrete cover of two inches and should be designed in the case of balconies so that the slab does not bend and crack along the wall joint which would provide an avenue for corrosive water to be in contact with the reinforcing steel.

In the case of foundations (footings or pile caps), a concrete cover is easily provided to the reinforcing steel. In the case of augered, cast in place concrete piles the reinforcing is usually centered in a 14-inch plus diameter pile, so that there is ample concrete cover for the steel in a brackish water environment.

Seawalls are subject to deterioration regardless of type (cantilevered, with batter piles or with anchor blocks). Buildings and swimming pools should not be so close to seawalls that makes it difficult if not impossible to replace the seawall.

Difference in type of water bodies near the building. It appears that corrosion is generally limited to areas near the Ocean. It would be prudent to provide extra protection in areas next to the Ocean and on both sides of the Lake Worth lagoon since they are reached by sea breezes.

Post Construction Environmental Factors.

A.- **Sea level rise.** Frankly, there are unknowns with regards to the true sea level rise over the last century and more important, the rise to be expected over the next fifty years (man-made or sun-made). The projected rise over the next 20 years (NOAA) is 2 to 3 inches which is not significant. The projected rise to 2100 is one foot, assuming there is no change in the rate of sea level rise. I am sure most seawalls in P B County can prevent waves from overtopping them. Note that Flagler Drive in West Palm Beach was built too low and the City's storm sewer lines draining into Lake Worth lagoon will back up and flood Flagler Drive in response to very high tide levels as it has been common for a long time. A sea level rise of a few inches to a foot should not affect buildings.

B.- **Plate shifts.** I presume this refers to tectonic plates. Florida enjoys a great geological stability thanks to the thousands of feet of sedimentary deposits that form it. No significant earthquakes are anticipated.

Sinkholes, which are the result of the dropping of overburden soils into cavities in underlying limestone are not likely, if ever, to develop along the coast because of the lack of cavities in the coastal rock formations and the short height of the groundwater above sea level with minimal soil raveling potential. There is an exception in Delray Beach where a coquina formation along the A1A Highway alignment was exposed and eroded in prehistoric times, creating a buried arch that supports the road. Sinkholes are not likely if ever to develop in Palm Beach County.

C.- **Erosion.** Beach erosion is a recurrent problem which is mitigated by restoring beaches by dredging. The U.S. Corps of Engineers is in charge of that costly task. Buildings near the ocean are protected by seawalls. They are also supported on deep piles that would still support the

buildings even if sand is eroded from under the buildings. There is a Coastal Construction Line (FDEP) is set so that buildings east of that line have to be supported on piles regardless of the presence of a seawall.

D.- Accretion. Accretion would always be welcome.

Action in nearby properties

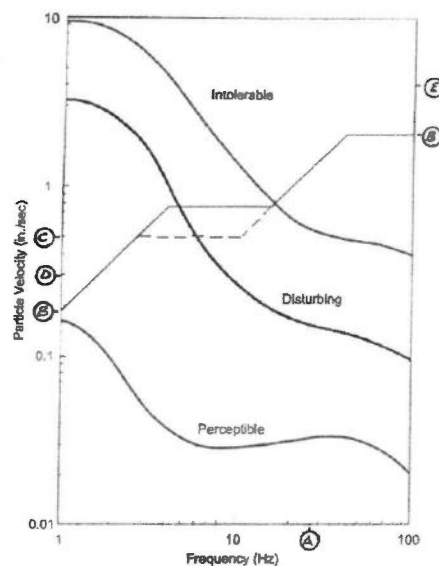
A.- Vibrations. Ground vibrations are produced when:

a.- the ground in adjacent property is vibrated with a vibratory roller or tamper to compact a building site or pavement area.

b.- deep sands in adjacent property are treated with the Vibrocompaction or Dynamic Compaction method to improve their bearing capacity.

c.- sheetpiles are installed in adjacent property to build a basement level or to install deep pile caps, footings or pipelines.

d.- rock is blasted to allow its mining or to remove an excavation obstacle.



Safe Continuous Vibration Limits (U. S. Bureau of Mines RI 8507) and Human Perception (Rathbone, T. C. "Human Sensitivity to Product Vibration" 1963)

- A = Typical frequency for vibratory hammers and rollers
- B = Structural Damage Threshold - Sensitive materials
- C = Typical FDOT guideline
- D = Typical City of WPB guideline (sporadic conditions)
- E = Typical Damage Threshold - Structural Members

OFFSITE VIBRATIONS GUIDELINES

The US Bureau of Mines conducted seminal studies that determined that ground Peak Particle Velocities (PPV) developed during the vibration phenomenon was the best indicator of the potential for damage effects. Thus, it was recognized that peak particle velocities greater than 1.0 inches per second were needed to damage plaster, the weakest structural component. Peak particle velocities in excess of 5 inches per second are required to damage concrete. This was confirmed when measuring the effects of earthquakes. Fragile, old stucco/plaster can suffer cracking at 0.7 inches per second. The Florida DOT adopted a conservative threshold level of 0.5 inches per second in offsite structures when building their roadways and bridges. It is apparent that municipalities later adopted a threshold level of 0.2 inches per second to minimize the number of complaints produced by citizens near the blast or compaction effort. This is the level of vibration produced by a 150-pound individual jumping 12 inches above a floor.

In short, offsite vibrations are controlled by regulations imposed by local building departments. The allowed level of offsite vibrations is not sufficient to damage any structure. Vibration monitoring devices are used to measure and control ground vibrations.

B.- Excavation. Excavation of a site can produce a slope stability failure that could undermine the foundations of a nearby building. As discussed before, if a sheetpile wall is installed to protect the sides of the excavation, vibrations produced during its installation could densify sands under an adjacent building and cause adverse settlement effects.

If an excavation reaches below the groundwater table it will have to be dewatered to install a basement, a foundation or a pipeline. If the dewatering effort is long or intensive enough it will cause the lowering of the groundwater around the excavation. This will increase the overburden stresses on soils around the excavation and induce their compression, particularly if they are very weak such as organic soils found in parts of Palm Beach and elsewhere.

Coastal Construction. The main geotechnical concern for coastal construction in Palm Beach County is that of erosion of sand deposits above the underlying limestone. Buildings are consequently supported on pile foundations embedded into the rock even if the property is protected with a seawall. There is a Coastal Construction line that defines the area where buildings need such protection. The tension or uplift reinforcement inside the piles normally has more than three inches of concrete cover.

Note that the possibility of the presence of underground caves and the development of sinkholes is a consideration when performing subsurface investigations in certain parts of Florida.

Maintenance Protocol. There is no official maintenance protocol for private residences. There is a periodic inspection requirement for railings in hotel buildings.

There should be an inspection requirement for railings in balconies of all buildings near the Ocean. Theoretically there is a maintenance supervisor in condominium high rises that checks on the condition of balconies and moisture intrusion effects. Spalling of concrete, cracking of surfaces, rust stains, looseness of railings and pickets, mildew signs, water intrusion, ponding of water, etc. are signs of deterioration or penetration of the building envelope, structural distress or equipment malfunction or insufficiency.

Existing Florida Building Code. The Florida Building Code asks for a "Design Professional" to conduct a subsurface investigation for significant structures which is proper. The Code covers wind and earthquake loadings, different types of soils, different types of foundations and different

types of site preparation. These edicts, pronouncements or laws should help the Design Professional keep solutions within reasonable boundaries.

State-wide Recertification Standard. I don't see why there should be "local" recertification protocols. Design and construction errors as well as natural deterioration occur everywhere. Moisture intrusion and pipe leaks occur everywhere. The recertification protocol can be made strict with regards to corrosion regardless of distance to the Gulf or the Ocean. A problem is determining which buildings to inspect: height of building, nature of occupancy, private ownership are some of the factors to take into account. The "official" reinspection should start 10 years after the Certificate of Occupancy is issued but signs of structural problems, settlements and moisture intrusion may appear within the first year.

I do not see a difference between a high rise condominium and a high rise hotel with regards to the purposes of this conversation.

Periodic Structural Inspections. It may be feasible to have tenants self-inspect for signs of cracks and moisture intrusion on a yearly basis and submit such report to a State Agency together with a description of action taken. However, tenants may find too many cosmetic defects and too few real defects. An outsider inspection may be more practical but there would have to be access to all units. I would think that a five-year inspection cycle by an outside "expert" would suffice.

Certification of Structural Engineers. Structural Engineers should be certified as Structural Engineers and not just as Civil Engineers.

Certificate Collection. The Certificate should be collected by the local Building Official who should have a list of all buildings requiring certification. Tenants should be made aware via advertisements of the need to inspect the buildings.

Question.- Who is the individual that will do the actual building certification inspection? It appears that there will be hundreds of buildings that will need inspection and the number of Structural Engineers or Threshold Inspectors is limited. Are they going to hire inspectors that have no professional license to do that work? Is there a certification for "Special Inspector" based on the individual's construction experience?

Roberto Balbis P.E.

August, 2021

Florida Association of Realtors Presentation



Florida Bar Condominium Law & Policy Life Safety Advisory Task Force

Wednesday, September 8, 2021

- 1. Inspections**
- 2. Reserve Study**
- 3. Reserves**
- 4. Uniform Budget**
- 5. Insurance**
- 6. Fire Safety**
- 7. Frequently Asked Q&A Sheet**
- 8. Governing Documents, Q&A Sheet, Financials**
- 9. Hallandale Condo/HOA Registration Ordinance - [2020-013](#)**

Danielle Blake

Chief of Public Policy
MIAMI Association of REALTORS®

Danielle joined MIAMI REALTORS® 16 years ago to spearhead advocacy initiatives and shape public policy. Since the Surfside tragedy, Miami-Dade Mayor Daniella Levine Cava and the Board of County Commissioners asked her to provide reports on condominium transparency and post-disaster market updates.

Her prior roles with the county include Vice Chair of Education for Mayor Carlos Alvarez's Mortgage Fraud Task Force, Member of the Affordable Housing Advisory Board and Infill Housing Developer with Public Housing and Community Development.

Danielle attended Florida State University, receiving a Bachelor of Arts in Classical Archaeology. Upon graduating, she began lobbying with Robert M. Levy & Associates. Later, she worked in the International Affairs office under the Secretary of the State and served as a legislative assistant in the Florida Senate and House of Representatives.

Web Portal Comments

APPENDIX E

Web Portal Comments

Commenter Name	Comment/Suggestion	Commenter County	Commenter City
Christina Schwinn	Chapter 718 should be amended to remove the ability for members to waive reserves. Personally, I learned this fact the hard way. I bought a condominium unit on Lido Key in SRQ in 1997. I was naïve at the time about condo living and reserves. The condo is on Lido Beach. There were no reserves. I learned shortly after purchasing the unit that there were major rebar and concrete problems. Eventually, the board realized that major work had to be done, i.e. tearing out all of the lanais and walkways, etc. to replace concrete and rebar. The building was originally constructed in 1971. The special assessments ended being about \$40,000 per unit in a 42 unit condominium 20 years ago. I also learned that prior boards were only interested in keeping assessments low and cut every corner possible, including using non commercial grade water sealants on the open-air walk ways.	Lee County	North Fort Myers
Sue Robin	All too often, I encounter boards that recommend to members to waive or only partially fund reserves. A practice that I recommend against. Include in form of association estoppel required by statute, an item which says: For high-rise buildings within ____ miles of the ocean, date of most recent engineering structural report and person to contact to obtain copy. There never seems to be enough reserves to keep up with the major repairs and replacements. Owners want to keep assessments low and gamble they will not be an owner when it time to pay for those big ticket items. The ability of the owners to vote to waive reserves is an issue. Property managers either encourage the waivers, trying to stay on everyone's good side or they are not educated enough to know when and how critical repairs need to be done. Add to the mix board members who may have taken office and no one told them their association was responsible for the drainage system under roads or other big ticket items. There needs to be legislation that requires the reserve calculation formula for each asset each year with some type of oversight requiring the association to submit their data to an agency to insure they are complying. There needs to be legislation that stops allowing owners to waive reserves. Good discussion today. Thank you to the committee members for taking on this arduous task.	Miami-Dade County	Miami & Miami Beach & Ft. Lauderdale
Barbara Billiot Stage	Florida has developed a body of law that lets most of the parties potentially responsible for a disaster like Surfside off the hook. 1. A statute of repose of 10 years, that incredibly was recently almost shortened to 7 years. The developer, contractors, architect, engineer, all released from liability prematurely. There is no such relief for attorneys and most other professions. What is the public policy here? If this can't be changed, mandate a comprehensive report by 8 years so there is enough time for the association to pursue those responsible. The 718.301 turnover reports are worthless. 2. Trianonon [sic], an unfortunate 5-4 decision of the SC should be legislatively overruled. The first line of defense should be thorough inspections by paid public servants who are held accountable for their negligence. 3. An insurance industry that is allowed to exclude collapse claims, mold and mildew claims, and even the duty to defend under E & O policies when claims are based on property loss. 4. Engineers who no longer have individual professional liability. Big claim, no problem, just form another LLC.	Orange County	Orlando
Chad M. McClenathen	5. The Division of Condos which developed a policy of mandating reserves only for the 3 items enumerated in the statute and a few other favorites. Never made sense that the really big ticket items, like replacing cast iron waste lines, copper water pipes, barely adequate electrical service, and structural issues could be ignored with impunity. 6. And finally, the unit owners. Someone said it today, no fiduciary duty. They can and do vote like idiots with no accountability yet still retain the right to hire the PI attorney and sue everyone for their problems. (If you vote no on the funding of reserves, or the levy of the special assessment, perhaps a statutory waiver of the right to complain and sue of the result?) Business judgment rule/principle should be legislatively extended to authorize a board to levy special assessments, borrow money, use reserves, and perform work deemed necessary by an engineer. No membership approval required and association bound by good faith contracts no matter if board is recalled or new board elected. 7. As to reserves, the obvious solution is to mandate funding, but the real issue is the required categories and the application of those categories to a specific condominium. Perhaps we need to rethink the types of condominiums. A subcategory of the fee simple condominium could be a condominium labeled, marketed, and sold as a 40-year condominium (pick a year). It will be terminated after 40 years. No vote required. No need to reserve for the big ticket items like structural, windows etc. Should last 1. Condominium Boards should be required to hire a Manager and the Manager should have ultimate power in decision making. This has been a long-standing problem as Board members are emotionally invested and tend to let this position cloud their judgement in performing the tasks vital to the health and wellbeing of the Association. In the opposite extreme, Board members can be knowledgeable but in a different area and be overzealous in their decisions. This promotes undue stress and complications within the Association unit Owners when making decisions. A licensed manager has been trained and certified to make unbiased decisions and hired to act on the best interest in the association's welfare, shifting the power to them would clarify the responsibility and the Board would act simply as a deliverance mechanism. Having this system would also reduce the risk of misappropriation of funds by Board members and bonding and insuring the Manager would add confidence to the position.	Sarasota County	Sarasota
Anastasia Kolodzik	2. Mandatory State Statute Reserve Study Requirements. As of today, the State of Florida does not require Reserve Studies to be performed. The Statute states there must be a Reserve Account for Condominiums, but there are no requirements for a reserve study or any specific requirements as to how often. Being on the frontline of this issue and experiencing the repercussions of this Statute, a State mandated Reserve Study for all Associations every 3 years and annual updates would reduce the risk of subpar reserves which ultimately have an adverse effect on the health of the Association. States that require a Reserve Study: California, Hawaii, Nevada, Virginia, and Washington. It has been noted that engineers should conduct reserve studies. I have been doing reserve studies for 5 years and having an engineering firm to conduct a reserve studies will not give the complete report as they are only considering the building structure. If they limit reserve studies to engineers then they will not get a full component schedule. Only the building structure would be addressed. Components like pools, elevator and water treatment plants would be excluded by an engineering company. They don't have the budgeting and financial planning experience to conduct a proper study and to assist the Board or CAM in proper funding requirements.	Volusia County	Port Orange
Anastasia Kolodzik	Buildings should also be required to have structural inspections conducted on a regular basis, perhaps every 5-10 years. These should be conducted by a licensed engineering firm, separate but in conjunction with the reserve study. Engineering firms, for the most part, are not familiar with the requirements of a reserve study. They can make their findings known about the structural nature of the building but putting it into an extended financial plan is different and requires a funding methodology only present in a reserve study report. A typical reserve study covers many items beyond the structural repair of a building, such as: roof coverings, exterior paint, common area tile, elevator maintenance, common area furniture, pools, spas, elevators, and other mechanical equipment not included in an engineering study.	Volusia County	Port Orange
Anastasia Kolodzik	Replacement Cost Valuations (Insurance Appraisals). After the destructive hurricanes of 2004 and 2005, it became obvious that most condominium associations were badly under insured. In 2007, the Florida legislature passed a law mandating that condominium associations have an independent replacement cost conducted at a minimum of every 36 months - FS718.111(11)a. The problem is that there is no way to verify that the associations are in compliance with the Statute. Many condominium associations are badly under insured - some as much as 80% or more. We would suggest that insurance carriers in Florida be required (by risk of fine) to have a current replacement cost valuation submitted to them before they can not only write a policy but even to quote rates.	Volusia County	Port Orange

	<p>I'd like to throw in my two cents based on over 40 years of representing Associations, including matters in which many of you were not involved and may not be aware of.</p> <ol style="list-style-type: none"> 1. Of course, the ability of unit owners to waive the full or even funding of reserves must be eliminated. 2. A reserve study by an engineer should be required 2(?) years after turnover, and then every (5, 10,?) years thereafter. 3. If the reserve study, or the reports from a re-certification required by a local government, call for extensive repairs the cost of which would, in the exercise of the board's business judgment, constitute a hardship for some of the unit owners, then the board is empowered to borrow the cost of the repairs under a 20 or 30 year loan. The cost of the loan would be a common expense. The loan may be secured by an assignment of the association's lien on the individual units for the payment of common expenses. A unit owner would be able to pre-pay his or her common expense share of the principal balance of the loan at any time, thereby releasing the unit from the association's assignment of the assessment for common expenses as to that unit. <p>The above described scenario is what we used in the old days for recreation lease buy-outs. From the unit owners' perspective as long as the monthly loan payments were less than the then-current rent payments, they were happy. At least the loan payments were fixed.</p> <p>I make this suggestion because by being in the statute, it would alert boards to something I don't think they've been aware of: the ability to borrow the multi-million dollar repair costs without severely impacting their unit owners. It's been over 30 years since the last of the rec lease buyouts I'm aware of, and I'm afraid some institutional knowledge has been lost.</p> <p>For more background on the specifics of the process, feel free to contact Jeff Streitfeld, 954-303-0535, jstreitfeldlaw@gmail.com, and Ken Direktor, KDirektor@bplegal.com.</p>		
Mark B. Schorr, Esq.		Broward County	
	<p>Looking back at my last message (and please forgive all the font changes, I don't know where they came from) I realize there's something that I need to add regarding my previous suggestions.</p> <p>While a condo association's power to borrow has been in 718.111 figuratively forever, I can see where the ability to assign the right to collect and lien for unpaid assessments for common expenses may not fly in light of the modern theory of textualism, or in the words of the Supreme Court in the infamous Tower House case, "expressio unius est exclusio alterius."</p> <p>So, spelling out in the Act, in 718.11(?), the ability to structure long-term loans in the manner I've outlined, would be necessary.</p> <p>Surfside could have been avoided if there was a mechanism to ensure adequate reserve funding. As I understand it, both the deterioration in the building and the \$9 million cost of repair was known. However, at that point, the cost to each unit owner became prohibitive.</p> <p>Had reserve funds been collected over time, and funds were available, pulling the trigger on the repair would have been much easier. A possible mechanism to ensure reserve funds are collected could be a reserve true-up on the sale or transfer of a unit. If a reserve analysis has been performed to determine adequate reserve amounts, then each unit's annual reserve contribution is capable of being determined. Reserves no longer should be waived, but collection can be "suspended" for only limited reasons which the statute must identify. If reserves are suspended during a persons period of ownership, then there must be true-up on the sale or transfer of the unit in the amount of the suspended reserves attributable to the unit plus statutory interest. There certainly are other considerations that would have to be addressed, such as the effect on mortgagees, etc., but these should not be insurmountable.</p> <p>If it is felt that this idea is worthwhile, I would be happy to participate in developing it further.</p>		
Mark B. Schorr, Esq.		Broward County	
David Felice		Hillsborough County	Tampa
	D		

**THE FLORIDA BAR CONDOMINIUM &
PLANNED DEVELOPMENT COMMITTEE
THURSDAY, JULY 22, 2021, 12:30 P.M. TO 1:45 P.M.
THE BREAKERS, PALM BEACH,
AND VIA ZOOM**

**MEMBER/ATTENDEE COMMENTS AND SUGGESTIONS FOR
CONDOMINIUM LAW & POLICY LIFE SAFETY ADVISORY TASK FORCE**

- Limit board discretion for maintenance and repairs of safety/health/welfare items; limit business judgment.
- Eliminate prohibition on subrogation by unit owner insurer against association; associations should be liable for negligence.
- Amend termination statute to provide for different options.
- Duty to disclose by seller (Johnson v. Davis) must be kept in mind; association should be able to assist.
- Reconsider sovereign immunity for building officials.
- Reconsider authorized limitations of liability for design professionals.
- Engineering reports should be more uniform for associations and have standards scope.
- Address adjacent construction effect on existing buildings (piling driving).
- Consider if there is an end of life for buildings in general.
- Consider issues that may affect financing for unit owners and developers, including additional potential building inspection requirements in connection with financing.
- Amend statutes to specifically authorize borrowing and pledging assessments as collateral and provide that it shall not require owner approval.
- Consider whether geographic location should affect building inspection requirements.
- Reconsider statute of repose; warranties.
- Consider less onerous termination options.

- Consider amendments to statute to address Kaufman conundrums.
- Consider reserve studies every 5 years by architect or engineer.
- Consider eliminating waiver of reserves.
- Require reserves for buildings of certain sizes.
- Require more than one-year terms of directors.
- Require directors to become certified through education.
- Do not allow developers to waive or reduce reserves.



The Florida Bar

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Executive Director

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VOLUNTARY BAR GROUP LEGISLATIVE OR POLITICAL ACTIVITY WORKSHEET

- This worksheet is for voluntary bar groups (VBGs) to gather and share information before submitting an [official request](#) for approval of legislative or political activity, whether new or rollover.
- Political activity is defined in SBP 9.11 as “activity by The Florida Bar or a bar group including, but not limited to, filing a comment in a federal administrative law case, taking a position on an action by an elected or appointed governmental official, appearing before a government entity, submitting comments to a regulatory entity on a regulatory matter, or any type of public commentary on an issue of significant public interest or debate.”
- VBGs must advise TFB of proposed legislative or political activity and identify all groups the proposal has been submitted to. If comments have been received, they should be attached; if they have not been received, the proposal may still be submitted to the Legislation Committee. *See* SBP 9.50(d).
 - The Legislation Committee and Board will review the proposal unless an expedited decision is required.
 - If expedited review is requested, the Executive Committee may review the proposal.
 - The Bar President, President-Elect, and chair of the Legislation Committee may review the proposal if the legislature is in session or the Executive Committee cannot act because of an emergency.

General Information

Submitted by: *(name of VBG or individual)* Trust Law Committee of the Real Property, Probate and Trust Law Section

Address: *(address and phone #)* c/o Matt Triggs, 2244 Glades Road, Suite 421 Atrium, Boca Raton, FL 33431, Ph. 561-995-4736

Position Level: *(name of VBG)* RPPTL Section, Trust Law Committee

Proposed Advocacy

Complete #1 below if the issue is legislative, #2 if the issue is political; #3 must be completed.

1. Proposed Wording of Legislative Position for Official Publication

Proposed amendments to § 736.0705, Fla. Stat. to clarify that a trust instrument may, subject to minimum notice requirements, provide an additional method by which a trustee may resign.

2. Political Proposal

NA

3. Reasons For Proposed Advocacy

a. Is the proposal consistent with *Keller v. State Bar of California*, 496 US 1 (1990), and *The Florida Bar v. Schwarz*, 552 So. 2d 1094 (Fla. 1989)? YES

b. Which goal or objective of the Bar's strategic plan is advanced by the proposal?
Objective II -- Enhance the Legal Profession and the Public's Trust and Confidence in Attorneys and the Justice System

c. The proposal: (*see SBP 9.50(a) - check all that apply*)

 X is within the group's subject matter jurisdiction as described in the group's bylaws;

 is beyond the scope of the bar's permissible legislative or political activity, or
within the bar's permissible scope of legislative or political activity and
consistent with an official bar position on that issue; and

 does not have the potential for deep philosophical or emotional division among a substantial segment of the bar's membership.

d. Additional Information: _____

Referrals to Other Voluntary Bar Groups

The VBG must provide copies of the proposed legislative or political action to all bar divisions, sections, and committees that may be interested in the issue. *See* SBP 9.50(d). List all divisions, sections, and committees to which the proposal has been provided pursuant to this requirement. Include all comments received as part of your submission. The submission may be made before receiving comments but only after the proposal has been provided to other bar divisions, sections, or committees.

NA

Contacts

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

Lawrence J. Miller, Legislative Co-Chair of the RPPTL Section, Gutter Chaves Josepher Rubin Forman Fleisher Miller, P.A., Suite 107, 2101 NW. Corporate Blvd., Boca Raton, FL 33431, Ph. 561-998-7847

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

Peter M. Dunbar & Martha Edenfield, Dean, Mead and Dunbar, P.A., 215 S. Monroe St., Suite 815, Tallahassee, FL 32301, Ph. 850-999-4100

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

Peter M. Dunbar & Martha Edenfield, Dean, Mead and Dunbar, P.A., 215 S. Monroe St., Suite 815, Tallahassee, FL 32301, Ph. 850-999-4100

1 A bill to be entitled

2 An act relating to clarification that a trust
3 instrument may, subject to minimum notice
4 requirements, provide an additional method by which a
5 trustee may resign and establishing an effective date.

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

8 Section 1. Section 736.0705(1), Florida Statutes, is
9 amended to read:

10 **736.0705 Resignation of trustee.**

11 (1) A trustee may resign in accordance with the
12 procedure set forth in the trust instrument and upon
13 notice to the cotrustees or, if none, the successor
14 trustee who has accepted the appointment, or, if none,
15 to the person or persons who have the authority to
16 appoint a successor trustee. Notwithstanding any
17 provision of the terms of the trust, a trustee may
18 also resign: (a) Upon at least 30 days' notice to the
19 qualified beneficiaries, the settlor, if living, and
20 all the cotrustees; or (b) With the approval of the
21 court.

22 Section 2. This act shall take effect July 1, 2022.
23

RPPTL WHITE PAPER
PROPOSE AMENDMENTS TO §736.0705(1)(a) - TRUSTEE RESIGNATION
(last updated 7/2/2021)

I. SUMMARY

This legislation clarifies that a trust instrument may, subject to minimum notice requirements, provide an additional method by which a trustee may resign. The bill does not have a fiscal impact on state funds.

II. CURRENT SITUATION

Florida law provides (i) that a trustee has a right to resign upon 30 days' notice and (ii) that the trustee's right to resign is a mandatory rule that can't be altered by the terms of the trust.

736.0705. Resignation of trustee. (1) a trustee may resign: (a) Upon at least 30 days' notice to the qualified beneficiaries, the settlor, if living, and all the cotrustees; or (b) with the approval of the court.
(2) ...

736.0105. Default and mandatory rules.... (2) The terms of a trust prevail over any provision of this code except ... (o) ... the right of a trustee under s.736.0705 to resign a trusteeship.

The legislative history provides that the "trustee's right to resign is a mandatory provision and may not be denied or curtailed in the trust instrument." *See* Fla. Staff Analysis, S.B. 1170, 3/21/2006. This suggests that the trust instrument can't reduce the resignation rights set forth in the statute, but enhancing the resignation rights (by, for example, eliminating the advance notice requirement) might be permissible.

Section 736.0705 is identical to Uniform Trust Code ("UTC") §705. The comments to §705 provide that this rule "rejects the common law rule that a trustee may resign only with permission of the court, and goes further than the Restatements, which allow a trustee to resign with the consent of the beneficiaries." The comments indicate that the "default rule" should "approximate standard drafting practice" and conclude that the trustee should be able to resign by giving notice to the qualified beneficiaries, a living settlor, and any co-trustee, or by court approval. Unlike Florida, however, the resignation rule in UTC §705 is not mandatory, per UTC §105.

Whether a trustee's resignation is effective immediately or after 30 days, the sole trustee who resigns continues to have fiduciary duties until a successor trustee accepts the trusteeship.

736.0707. Delivery of property by former trustee. (1) Unless a cotrustee remains in office or the court otherwise orders and until the trust property is delivered to a successor trustee or other person entitled to the property, a trustee who has resigned or has been removed has the duties of a trustee and the powers necessary to

protect the trust property. (2) ...

As such, beneficiaries arguably don't need a 30-day notice period to be protected because fiduciary duties continue to be owed by the resigning trustee until another trustee (whether a cotrustee or a successor is in place) is in place.

III. EFFECT OF PROPOSED CHANGES

The proposed changes clarify that a trust instrument can, subject to certain notice requirements, make it easier for a trustee to resign under §736.0705(1)(a). However, the 30-day notice period should continue to apply when the trust instrument is silent or if the trust instrument attempts to impose a longer notice period (or notice to a more extensive group of people). Because the (a), (b), (c) options in §736.0705(1) are alternatives, each option would operate exclusive of the other option such that a trustee could resign according to any of the three options.

IV. FISCAL IMACT ON STATE AND LOCAL GOVERNMENTS

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

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

Members of the private sector – specifically trustees and trust beneficiaries – may benefit from reduced trustee fees and related transaction costs due to simplified trustee resignation procedures allowed by trust instruments. No additional costs are likely to be incurred as a result of the proposal.

VI. CONSTITUTIONAL ISSUES

There are no constitutional issues.

VII. OTHER INTERSTED PARTIES

Florida Bankers Association

1 A bill to be entitled

2 An act relating to clarification that a trust

3
4 This is the version presented at the July 2021 Breakers Executive Council
5 Meeting. It was revised following comments received after that meeting.
6

7 Florida:

8 Section 1. Section 736.0705(1), Florida Statutes, is
9 amended to read:

10 **736.0705 Resignation of trustee.**

11 (1) A trustee may resign in any of the following ways:

12 (a) In accordance with the procedure set forth in the
13 trust instrument and upon notice to the cotrustees or,
14 if none, the successor trustee who has accepted the
15 appointment, or, if none, to the person or persons who
16 have the authority to appoint a successor trustee; or

17 (b) Upon at least 30 days' notice to the qualified
18 beneficiaries, the settlor, if living, and all the
19 cotrustees; or ~~(b)~~

20 (c) With the approval of the court.

21 Section 2. This act shall take effect July 1, 2022.
22
23



The Florida Bar

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Executive Director

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VOLUNTARY BAR GROUP LEGISLATIVE OR POLITICAL ACTIVITY WORKSHEET

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- VBGs must advise TFB of proposed legislative or political activity and identify all groups the proposal has been submitted to. If comments have been received, they should be attached; if they have not been received, the proposal may still be submitted to the Legislation Committee. *See* SBP 9.50(d).
 - The Legislation Committee and Board will review the proposal unless an expedited decision is required.
 - If expedited review is requested, the Executive Committee may review the proposal.
 - The Bar President, President-Elect, and chair of the Legislation Committee may review the proposal if the legislature is in session or the Executive Committee cannot act because of an emergency.

General Information

Submitted by: *(name of VBG or individual)* Ad Hoc Committee on Electronic Wills of the Real Property, Probate, & Trust Law Section of The Florida Bar

Address: *(address and phone #)* c/o Angela M. Adams, Chair, 540 Fourth Street North, St. Petersburg, Florida 33701, (727) 821-1249

Position Level: *(name of VBG)* RPPTL Section/Ad Hoc Committee on Electronic Wills

Proposed Advocacy

Complete #1 below if the issue is legislative, #2 if the issue is political; #3 must be completed.

1. Proposed Wording of Legislative Position for Official Publication

Support proposed legislation which would amend § 117.201, Florida Statutes, to create a definition of "witness" (when used as a noun) for purposes of remote online notarization and witnessing of electronic documents.

2. Political Proposal

3. Reasons For Proposed Advocacy

- a. Is the proposal consistent with *Keller v. State Bar of California*, 496 US 1 (1990), and *The Florida Bar v. Schwarz*, 552 So. 2d 1094 (Fla. 1989)? Yes
-
- b. Which goal or objective of the Bar's strategic plan is advanced by the proposal?
Objective II: Enhance the Legal Profession and the Public's Trust and Confidence in Attorneys and the Justice System (Protect the public by educating and assisting lawyers)
Objective IV: Enhance and improve the value of Florida Bar membership and the Bar's relationship with its members
-
- c. The proposal: (*see SBP 9.50(a) - check all that apply*)
- X is within the group's subject matter jurisdiction as described in the group's bylaws;
- _____ is beyond the scope of the bar's permissible legislative or political activity, or within the bar's permissible scope of legislative or political activity and consistent with an official bar position on that issue; and
- X does not have the potential for deep philosophical or emotional division among a substantial segment of the bar's membership.
- d. Additional Information:

Referrals to Other Voluntary Bar Groups

The VBG must provide copies of the proposed legislative or political action to all bar divisions, sections, and committees that may be interested in the issue. *See* SBP 9.50(d). List all divisions, sections, and committees to which the proposal has been provided pursuant to this requirement. Include all comments received as part of your submission. The submission may be made before receiving comments but only after the proposal has been provided to other bar divisions, sections, or committees.

Elder Law Section of The Florida Bar

Contacts

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

Lawrence J. Miller, Gutter Chaves Josepher Rubin Forman Fleisher Miller, P.A., Suite 107, 2101 N.W. Corporate Blvd., Boca Raton, Florida 33431, Telephone (561) 998-7847,

Email: lmiller@floridatax.com (Legislation Co-Chair of the RPPTL Section)

John C. Moran, Gunster, 777 South Flagler Drive, Suite 500 East, West Palm Beach, Florida 33401; Telephone: 561-650-0515, Email: jmoran@gunster.com

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

Peter M. Dunbar and Martha J. Edenfield, Dean Mead, P.O. Box 10095, Tallahassee, Florida 32302 Telephone (850) 222-3533, Emails: pdunbar@deanmead.com; medenfield@deanmead.com

Lawrence J. Miller, Gutter Chaves Josepher Rubin Forman Fleisher Miller, P.A., Suite 107, 2101 N.W. Corporate Blvd., Boca Raton, Florida 33431, Telephone (561) 998-7847,

Email: lmiller@floridatax.com (Legislation Co-Chair of the RPPTL Section)

John C. Moran, Gunster, 777 South Flagler Drive, Suite 500 East, West Palm Beach, Florida 33401; Telephone: 561-650-0515, Email: jmoran@gunster.com

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

Same as above, i.e., Peter M. Dunbar, Martha J. Edenfield, Lawrence J. Miller, and John C. Moran

1 A bill to be entitled

2 An act relating to electronic legal documents; amending s. 117.201, F.S.; adding a
3 definition; providing an effective date.

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

5 Section 1. Section 117.201, Florida Statutes, is amended to add:

6 (16) "Witness," when used as a noun, means an individual whose electronic
7 signature is affixed to an electronic document or record as an attesting or subscribing
8 witness.

9 Section 2. The amendment made by this act is remedial in nature and shall apply
10 retroactively to January 1, 2020.

11 Section 3. This act shall take effect upon becoming law.

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

WHITE PAPER

AMENDMENT TO SECTION 117.201, FLORIDA STATUTES, CLARIFYING WHO IS A “WITNESS” FOR PURPOSES OF ELECTRONIC ESTATE PLANNING DOCUMENTS.

I. SUMMARY

Chapter 117 of the Florida Statutes includes provisions authorizing the remote, online notarization and witnessing of electronic documents through the use of specified audio-video communication technology. Section 117.285(5) specifically permits remote, online witnesses to be used for electronic wills and other estate planning documents such as revocable trusts with testamentary aspects, living wills, healthcare surrogate designations, and powers of attorney, provided that all the requirements of that subsection are met. The requirements of s. 117.285(5) are intended to apply when two witnesses are not physically present with the principal at the time of execution; however, it is unclear whether the “witnesses” refers to those persons affixing their signature to a document or to a bystander who may simply see the principal affix his or her electronic signature. The Real Property, Probate, and Trust Law Section’s proposed legislation addresses and fixes this lack of clarity.

II. CURRENT SITUATION

Section 117.285 authorizes an online notary public to supervise the witnessing of electronic documents and sets forth the procedures and requirements the online notary public is to follow when doing so. Subsection (5) of 117.285 enumerates several types of electronic estate planning documents for which an online notary public may supervise the witnessing (i.e., wills; revocable trusts with testamentary aspects; healthcare advance directives, which includes living wills and designations of healthcare surrogate; agreements concerning succession under s. 732.701; waivers of spousal rights under s. 732.702; and powers of attorney authorizing banking or investment transactions described in s. 709.2208). Most of the enumerated estate planning documents are not required to be notarized, but all of them are required to be witnessed by either two attesting or two subscribing witnesses. Florida Statute s. 117.285(5) also sets forth additional procedures and requirements applicable to the execution and witnessing of those enumerated estate planning documents when remote, online witnesses are used. Specifically, s. 117.285(5) and s. 117.285(5)(k) state:

117.285(5) Notwithstanding subsections (2) and (3), if an electronic record to be signed is a will under chapter 732, a revocable trust with testamentary aspects as described in s. 736.0403(2)(b), a health care advance directive, an agreement concerning succession or a waiver of spousal rights under s. 732.701 or s. 732.702, respectively, or a power of attorney authorizing any of the transactions enumerated in s. 709.2208, *all of the following apply when fewer than two witnesses are in the physical presence of the principal: . . .* [Emphasis added.]

117.285(5)(k) The requirements of this subsection do not apply if there are at least two witnesses in the physical presence of the principal at the time of the notarial act.

While it should be clear that the “witnesses” referred to in s. 117.285(5) and (5)(k) are the individuals signing the electronic document or record, at least one practitioner has raised the question whether

the procedures and requirements of s. 117.285(5) are applicable if other individuals are present with the person executing the electronic document but do not actually sign the document as a witness. In other words, could the presence of other people with the person signing the electronic document eliminate the protective requirements of s. 117.285(5)? Certainly that is not the intent of the statute.

III. EFFECT OF PROPOSED CHANGES

The proposed amendment would amend s. 117.201 to add a definition of “witness” so when that term is used as a noun in connection with remote online notarization or witnessing it means “an individual whose electronic signature is affixed to an electronic document or record as an attesting or subscribing witness.” The definitions in s. 117.201 are applicable to Part II (Online Notarizations) of Chapter 117 of the Florida Statutes. Therefore, as amended, s. 117.201(16) would read:

“As used in this part, the term:

* * * *

(16) “Witness,” when used as a noun, means an individual whose electronic signature is affixed to an electronic document or record as an attesting or subscribing witness.

The proposed amendment should be retroactive to the date upon which most of Chap. 2019-17 became effective, i.e., January 1, 2020; and effective upon becoming law.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

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

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

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

VI. CONSTITUTIONAL ISSUES

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

VII. OTHER INTERESTED PARTIES

Elder Law Section of The Florida Bar

The Guardianship Code – Chapter 745

October 2021

Background and Overview

The Ad Hoc Guardianship Law Task Force of the Real Property, Probate and Trust Law Section of the Florida Bar was established in 2012 and continued work through the year 2021. The proposed Florida Guardianship Code (the “Code”) is the work product of that Task Force.

With the goal of familiarity and uniformity, the proposed new Chapter 745 Florida Guardianship Code borrows its structure from Florida Statutes Chapter 744, the Florida Guardianship Law. This Code consists of thirteen parts, separated into sections by subject matter in an effort to make one consistent, cohesive statutory structure. In addition, the Code contains two additional parts relating to Florida’s Office of Public and Professional Guardians (Part XIV) and to Veterans’ Guardianship (Part XV). Parts XIV and XV remain unchanged from the Florida Guardianship Law.

In addition to important substantive changes, there are technical fixes throughout the new Code. These fixes range from replacing archaic statutory terminology and outdated references to combining repetitive provisions and reorganizing the order of the statutes to more align with the functional process of incapacity and guardianship proceedings. There have also been a number of commonly used terms added to the definitions section and other terms that have refined definitions.

The Florida Guardianship Code does the following to improve current guardianship law in Florida:

- Reorganizes and modernizes Florida’s disjointed Florida Guardianship Law, which has evolved as a result of decades of piecemeal legislation, into a comprehensive Florida Guardianship Code.
- Provides more protections for wards.
- Lowers guardianship costs by reducing litigation, providing uniformity in filings, and giving procedural directions to participants to clarify and expedite proceedings.
- Reduces the number of guardianships. For example, the threshold for minor guardianships is increased and a requirement to consider alternatives to guardianships is required.
- Strengthens the right to privacy for wards and those persons alleged to be incapacitated in Florida

Highlights

Following are a few highlights of some of the important proposed changes made in the proposed Florida Guardianship Code to existing Florida Guardianship Law:

- **Protecting the Alleged Incapacitated Person (“AIP”).**

- The Code creates a clear process for appointment of private attorneys for a ward or AIP, ensuring that attorneys for AIPs are knowledgeable and qualified to serve.
 - Provisions relating to the examinations of an AIP have been expanded and better defined, requiring all examination reports to be signed under penalties of perjury.
 - Emergency Temporary Guardians (“ETGs”) continue to maintain authority until Letters are issued to another guardian, the death of the ward, or there is an order entered otherwise (ie: as to existence of alternatives to guardianship). Time limits for the service of an ETG have been removed. This provides more protections for AIPs in the event access to the courts is limited, for example during a pandemic or natural disaster.
 - The Code requires an examination of all available alternatives to guardianship, requiring disclosure of known alternatives in the initial petition and providing a procedure for the consideration of alternatives to guardianship after a guardian has already been appointed.
 - The Code expands on the Court’s authority to determine the viability as an alternative to guardianship of a ward’s power of attorney, health care surrogate or trust document within the guardianship proceeding. In addition, the Code grants the Court the ability to authorize a guardian to file an action to definitively determine the validity of these documents.
- **Natural Guardians.** The authority of a natural guardian over the assets of their minor child is increased from \$15,000 to \$25,000 in order to avoid uneconomical guardianship proceedings. Additional protections for a minor child are also created.
 - **Resignation and Discharge of Guardians.** The proposed provisions and procedures for resignation and discharge have been revised to make the statutes more expedited, more economical, and provide more protections to the ward.
 - **Powers of Guardians.** Guardians’ duties and powers have been more specifically defined in the Code, both as to powers requiring court authority and those that do not.
 - A guardian is required to obtain court authority prior to seeking a Do Not Resuscitate Order (“DNR”) on behalf of a ward. Exceptions are provided for circumstances when the ward’s preferences are known.
 - **Protecting the Ward.** The Code provides additional reasons for the removal of guardians and eliminates the rebuttable presumption that guardians related by blood or marriage are acting in the best interest of the ward.
 - Stronger provisions relating to Guardianship Monitors (no longer “court monitors”) have been added. These include procedures designed to ensure

due process is provided to all parties, provisions authorizing the payment of reasonable fees for monitors, and provisions eliminating internal investigations conducted by court employees. These are all new protections not previously provided by current Florida Guardianship law in ch. 744.

- **Restoration of Rights.** Provisions have also been added to allow for the re-appointment of counsel for the ward at the time of a guardian's discharge and when seeking restoration of the rights of a ward in order to ensure the ward has qualified legal representation if needed and desired.
- **Preserving the Ward's Right to Privacy.** While existing Florida Guardianship Law and the Florida Rules of Judicial Administration identify and provide procedures for determining certain guardianship filings confidential, the proposed Code expands these protections to all of the ward's private information.

RPPTL AD HOC GUARDIANSHIP LAW REVISION COMMITTEE

TO: RPPTL EC Agenda
FROM: Nicklaus Curley
IN RE: Proposed Chapter 745 Guardianship Code - “Draft 11 – 2021/07/01”
DATE: July 1, 2021

The following is an updated draft of proposed Chapter 745 (the “Guardianship Code”) prepared by the RPPTL Ad Hoc Guardianship Law Revision Committee. As the EC will recall, in July 2020 the EC voted to approve the Committee’s proposed legislative position, bill, and white paper.

Since the 2020 Breakers approval, the Committee received extensive additional comment from the Elder Law Section of the Florida Bar prepared by a committee created by ELS to review the proposal and give further comment. In addition, the proposal was submitted to, and returned by, Legislative bill drafting with substantial non-substantive comment in order to prepare it for submission in the future. The Committee has spent several months reviewing these comments, discussing their inclusion in the Guardianship Code, and incorporating where appropriate.

The enclosed bill titled in its header as “Draft 11 – 2021/07/01” is a revised bill based on this work and feedback.

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A bill to be entitled

~~An act relating to the Florida Guardianship Code;
creating parts I, II, III, IV, V, VI, VII, VIII, IX, X,
XI, XII, XIII, XIV, and XV of chapter 745, F.S.;
providing a short title; providing general provisions and
definitions; providing for venue; providing for
proceedings to determine incapacity; providing for
proceeding to restore the rights of an individual no
longer incapacitated; providing for the qualifications of
a guardian; providing for the appointment of a guardian;
providing provisions relating to different types of
guardians; providing provisions relating to the duties of
guardians; providing provisions relating to the powers of
guardians; providing oversight and monitoring of wards
and guardians; providing provisions relating to the
resignation and discharge of guardians; providing for the
removal of guardians; providing for miscellaneous
provisions relating to a guardian's authorities, the
authority of multiple guardians; the effect of a
guardianship proceeding on a power of attorney or trust,
and prohibitions on abuse by a guardian; provisions
relating to the Office of Public and Professional
Guardians; provisions relating to Veteran Guardianships;
repealing ch 744; providing an effective date.~~

An act relating to the Florida Guardianship Code;
creating ch. 745, F.S., entitled "Florida Guardianship
Code," consisting of part I relating to general
provisions, part II relating to venue, part III
relating to incapacity, part IV relating to

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restoration to capacity, part V relating to
qualifications of guardians, part VI relating to
appointment of guardians, part VII relating to types
of guardianship, part VIII relating to duties of
guardians, part IX relating to guardian powers, part X
relating to oversight and monitoring, part XI relating
to resignation and discharge, part XII relating to
removal of guardians, part XIII relating to
miscellaneous provisions, part XIV relating to public
and professional guardians, and part XV relating to
veterans' guardianship; amending ss. 20.415, 27.511,
27.5304, 28.2401, 39.013, 39.5085, 39.6221, 39.6251,
39.701, 39.811, 61.052, 90.5021, 117.107, 121.091,
121.4501, 192.123, 316.193, 322.2505, 393.063, 393.11,
393.12, 393.13, 394.455, 394.4598, 397.6978, 401.45,
415.102, 415.1051, 415.1102, 493.6105, 493.6106,
493.6108, 501.0051, 549.09, 660.25, 694.14, 709.2109,
717.124, 717.138, 736.0602, 739.104, 740.04, 741.403,
743.08, 743.09, 743.095, 747.034, 747.035, 765.101,
765.1103, 765.2035, 765.2038, 765.205, 765.511,
766.104, 790.06, 790.065, 817.5685, 825.103, 825.1035,
943.0585, 943.059, and 947.16, F.S.; conforming cross-
references and provisions to changes made by the act;
providing legislative purpose; repealing ch. 744,
F.S., relating to the Florida Guardianship Law;
providing an exception; providing duties of the
Division of Statutory Revision; providing for
retroactive application; providing an effective date.

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

Section 1. Chapter 745, Florida Statutes, shall be entitled "Florida Guardianship Code" and shall consist of ss. 745.101-745.1528.

Section 2. ~~Part I of chapter 745, Florida Statutes, consisting of sections 745.101, 745.102, 745.103,~~ shall be entitled "General Provisions" and shall consist of ss. 745.104, 101-745.115.

Section 3. Section~~105, 745.106, 745.107, 745.108, 745.109, 745.110, 745.111, 745.112, 745.113, and 745.114~~101, Florida Statutes, is created to read:

~~PART I~~

~~GENERAL PROVISIONS~~

745.101 Short title.

.—This chapter may be cited as the "Florida Guardianship Code" and, for purposes of this chapter, is referred to as the "code."

~~".~~

Section 4. Section 745.102, Florida Statutes, is created to read:

745.102 Legislative intent.

findings.—The Legislature recognizes the importance of protecting adults and minors in ~~the~~this state of Florida; and also. The Legislature finds that:

(1~~—~~) Adjudicating an adult partially or totally incapacitated deprives ~~such~~that person of important legal rights.

(2~~—~~) By recognizing that every person has unique needs and differing abilities, it is the purpose of this code to promote

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the public welfare by establishing a legal system that permits incapacitated persons to participate as fully as possible in decisions affecting them, assists them in meeting the essential requirements for their physical health and safety, protects their rights and dignity, manages their assets and financial resources, provides a mechanism for them to regain their rights and abilities to the maximum extent possible, and provides personal and financial care and protection while preserving their right to privacy ~~off~~for their personal, financial, medical, and mental health information to the same extent as persons who are not incapacitated.

(3~~)-~~) It is the intent of this code to recognize appropriate~~-lesser~~, less restrictive means of ~~assistance~~ ~~to~~assisting incapacitated persons and alternatives to guardianship and to ~~utilize~~use the least restrictive means of assistance.

(4~~)-~~) This code shall be liberally construed to effectively carry out the purpose of this section.

~~accomplish these purposes.~~

Section 5. Section 745.103, Florida Statutes, is created to read:
745.103 Applicability-

.-This code shall take effect on _____. January 1, 2023. The procedures for enforcement of substantive rights and the administration of this code shall be as provided in the Florida Probate Rules.

Section 6. Section 745.104, Florida Statutes, is created to read:
745.104 Rules of evidence-

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.—The Florida Evidence Code is applicable in incapacity and guardianship proceedings unless otherwise provided by this code.

Section 7. Section 745.105, Florida Statutes, is created to read:

745.105 Construction against implied repeal—

.—This code is intended as unified coverage of its subject matter. No part of it shall be impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

Section 8. Section 745.106, Florida Statutes, is created to read:

745.106 Definitions—

.—As used in this ~~code~~ chapter, the term:

(1)—“) “Accounting” means ~~that~~the verified document filed by a guardian of property pursuant to s. 745.805 or s. 745.806.

(2)—“) “Attorney for the alleged incapacitated person”— means an attorney authorized by court order to represent a person in proceedings for determination of the person’s incapacity, the existence of less restrictive alternatives, the appointment of a guardian, and as otherwise authorized in this code—~~. The attorney advocates the preferences expressed by the alleged incapacitated person, to the extent consistent with the rules regulating The Florida Bar.—.~~

(3)—“) “Audit”— means a systematic review of inventories, accountings, plans, guardianship reports, and substantiating documents to ensure compliance with this code and the Florida Probate Rules.

(4)—“) “Clerk”— means the clerk or deputy clerk of the court.

(5)—“) “Corporate guardian”— means a corporation authorized

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to exercise fiduciary or guardianship powers in this state~~and~~.
The term includes a nonprofit corporate guardian.

~~(6) " "~~ "Court" means the circuit court division in which
the incapacity or guardianship proceeding is pending.

~~(7) " "~~ "Developmental disability" ~~shall have~~ has the same
meaning ~~specified~~ as in s. 393.063~~—(12)~~.

~~(8) " "~~ "Emergency temporary guardian" means a guardian
appointed in accordance with s. 745.701~~, to serve~~ who serves
until letters of guardianship are issued or until otherwise
ordered by the court.

~~(9) " "~~ "Examiner" means a person qualified in accordance
with s. 745.306 and authorized and directed by the court to
assess available information~~and~~, to conduct an evaluation of a
ward or an alleged incapacitated person, and to render a written
opinion in an incapacity or restoration proceeding as provided
in this code.

~~(10) " "~~ "Financial institution" means a trust company, a
state banking corporation, or a state savings association
authorized and qualified to exercise fiduciary powers in this
state, or a national banking association or a federal savings
and loan association authorized and qualified to exercise
fiduciary powers in this state, which may act as the guardian of
property of ~~the~~ a ward.

~~(11) " "~~ "Foreign guardian" means a guardian appointed by a
court of another state, territory, or country.

~~(12) " "~~ "Guardian" means an individual or entity appointed
by the court to act on behalf of a ~~ward's~~ ward's person~~, or~~
property, or both~~, and~~. The term includes an emergency temporary
guardian.

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(a) ~~—~~ "Limited guardian" means a guardian of person or property, or both, who ~~has been~~ is appointed by the court to exercise some, but not all, delegable rights and powers of a ward.

(b) ~~—~~ "Plenary guardian" means a guardian of person or property, or both, who ~~has been~~ is appointed by the court to exercise all delegable legal rights and powers of a ward.

(13) ~~—~~ "Guardian ad litem" means a person who is appointed by the court having jurisdiction of the guardianship, or a court in which a particular legal matter is pending, to represent a ward in a particular proceeding.

(14) ~~—~~ "Guardian advocate" means a person appointed by the court to represent a person with developmental disabilities under s. 393.12. As used in this chapter, the term does not apply to a guardian advocate appointed for a person determined incompetent to consent to treatment under s. 394.4598.

(15) ~~—~~ "Guardianship monitor" means a person appointed by the court under s. 745.1008 or s. 745.1009 to provide the court with information concerning a ward.

(16) ~~—~~ "Guardianship plan" means the document filed by a guardian of person within 60 days after letters of guardianship are issued ~~that~~ which provides for the initial plan of care to meet the medical, mental health, social, residential, personal care, and other needs of ~~the~~ a ward, in accordance with s. 745.810.

(17) ~~—~~ "Guardianship report" means the document filed annually by a guardian of person ~~that~~ which provides information regarding the treatment, services, and care provided to ~~the~~ a ward during the reporting period and the plan for addressing the

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ongoing or anticipated needs of the ward, in accordance with ~~ss.~~ ss.
745.811, 745.812, and 745.813.

~~(18) "Incapacitated person"~~ "Incapacitated person" means a person who has been
judicially determined to lack the capacity to manage at least
some of ~~the person's~~ this or her property as defined in subsection
(23) or to meet at least some of the requirements for the
person's health or safety as defined in subsection (24).

~~(19) "Information statement"~~ "Information statement" means the verified document
filed by a proposed guardian pursuant to s. 745.601.

~~(20) "Interested person"~~ "Interested person" means any person who may
reasonably be expected to be affected by the outcome of a
guardianship or incapacity proceeding. A guardian is always
deemed an interested person in proceedings that affect ~~the~~ a ward.
A person is not deemed interested solely because of an
anticipated expectancy of personal benefit. A person is not
deemed interested solely because of having filed a request for
copies and notices of proceedings. The meaning may vary from
time to time and must be determined according to the particular
purpose of, and matter involved in, any proceedings.

~~(21) "Inventory"~~ "Inventory" means the verified document filed by a
guardian of property pursuant to s. 745.803.

~~(22) "Letters"~~ "Letters" means authority granted by the court to a
guardian to act on behalf of ~~the~~ a ward.

~~(23) "Manage property"~~ "Manage property" means to make lucid decisions
necessary to secure, safeguard, administer, and dispose of real
and personal property, contractual rights, benefits, and income
of a ward.

~~(24) "Meet requirements for health or safety"~~ "Meet requirements for health or safety" means to
make lucid decisions necessary to provide for a person's health

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care, food, shelter, clothing, personal hygiene, or other care needs of a ward.

(25) ~~"~~ "Minor" means a person under 18 years of age whose disability ~~due to age~~ of nonage has not been removed by marriage or otherwise.

(26) ~~"~~ "Natural guardians." ~~The persons guardian~~ means a person designated under ss. 745.712 (1) are the natural guardians of a minor.).

(27) ~~"~~ "Next of kin" means those persons who would be heirs at law of ~~the~~ a ward or an alleged incapacitated person if that person ~~was~~ were deceased, and the lineal descendants, per stirpes, of the ward or alleged incapacitated person.

(28) ~~"~~ "Nonprofit corporate guardian" means a not-for-profit corporation organized under the laws of this state for religious or charitable purposes and authorized to exercise the powers of a professional guardian.

(29) ~~"~~ "Preneed guardian" means a guardian designated by a competent adult or by the natural guardian of a minor, as specified in ss. 745.705 and 745.706, to serve as guardian in the event of the adult's incapacity or the need for a court-appointed guardian of a ~~the~~ minor. ~~The designation and appointment of a preneed guardian shall be as specified in s. 745.705 and s. 745.706.~~

(30) ~~"~~ "Professional guardian" means a person who has met the requirements of the Office of Public and Professional Guardians to qualify to serve as a guardian for unrelated wards, as specified in this code.

(31) ~~"~~ "Property" means both real and personal property or any interest in it ~~r~~ and anything that may be the subject of

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ownership. ~~It~~The term includes rights of use under contractual arrangements and to digital assets as defined in Chapters.
740.002.

(32)~~—~~" "Public guardian" means a guardian who has been appointed by, or has a contract with, the Office of ~~the~~ Public and Professional Guardians to provide guardianship services.

(33)~~—~~" "Relative~~—of a ward"~~ means, ~~for purposes related to professional guardians,~~ a spouse, an adopted child, anyone related by lineal or collateral consanguinity, or a spouse of any such relative.

(34)~~—~~" "Standby guardian"" means a guardian designated by a currently serving guardian and appointed by the court, as specified in ss. 745.702 and 745.703, to assume the position of guardian if the current guardian ceases to act. ~~The appointment of a standby guardian shall be as specified in s. 745.702 and 745.703.~~

(35)~~—~~" "Surrogate guardian"" means a guardian appointed for temporary service in accordance with s. 745.~~1311.~~1312.

(36)~~—~~" "Totally incapacitated"" means judicially determined to be incapable of exercising any of the rights enumerated in s. 745.303(2) and ~~745.303~~(3).

(37)~~—~~" "Voluntary guardian" ~~is~~means a guardian of property appointed by the court pursuant to s. 745.707.

(38)~~—~~" "Ward"" means a person for whom a guardian has been appointed.

Section 9. Section 745.107, Florida Statutes, is created to read:
745.107 Additional definitions.

.—The definitions contained in the Florida Probate Code and

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the Florida Probate Rules shall be applicable to actions under this code, unless the context requires otherwise, insofar as such definitions do not conflict with definitions contained in this code.

Section 10. Section 745.108, Florida Statutes, is created to read:
745.108 Verification of documents-

.-When verification of a document is required in this code or by rule, the document filed shall include an oath or affirmation or the following statement: "Under penalties of perjury, I declare that I have read the foregoing and that the facts alleged are true to the best of my knowledge and belief-."
Any person who ~~shall~~ willfully ~~include~~ includes a false statement in the document ~~shall be guilty of~~ commits perjury, and upon conviction ~~shall be punished,~~ is subject to punishment as provided by law.

Section 11. Section 745.109, Florida Statutes, is created to read:
745.109 Costs-

.-In all guardianship proceedings, costs may be awarded. When the costs are to be paid out of the ward's property ~~of the ward,~~ the court may direct from what part of the property the costs shall be paid.

~~745.110-~~

Section 12. Section 745.111, Florida Statutes, is created to read:
745.111 Notice and service-

.-The methods of providing notice of proceedings under this

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code are those specified in the Florida Probate Rules, except as provided in s. 745.302. When the ward or alleged incapacitated person has an attorney of record in the guardianship or incapacity proceeding, service on the ward or alleged incapacitated person shall be completed by service on the attorney in compliance with the Rules of Judicial Administration. When a totally incapacitated ward has no attorney of record in the guardianship proceeding, service on the guardian shall be deemed service on the ward.

Section 13. Section 745.111-112, Florida Statutes, is created to read:

745.112 Recording of hearings.-

(1)- All hearings related to appointment or removal of a guardian, adjudication of incapacity, or restoration of capacity must be electronically or stenographically recorded by the court.

(2)- If an appeal is taken from any of these proceedings, a transcript must be furnished to an indigent ward at public expense.

Section 14. Section 745.112-113, Florida Statutes, is created to read:

745.113 Confidentiality of guardianship records.-

(1)- Unless otherwise ordered by the court, all records relating to incapacity, guardianship, or the settlement of a minor's claim if a guardianship has not yet been established, are confidential and exempt from ~~the provisions of s.s. 119.07(1) and s. 24(a), Art. I of the State Constitution.~~ The following persons shall have access to the records without court order:

(a)- The court;

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(b~~—~~) The clerk;

(c~~—~~) The guardian;

(d~~—~~) The guardian's attorney;

(e~~—~~) The ward's attorney;

(f~~—~~) A guardian ad litem appointed on behalf of a ward;

(g~~—~~) The Office of Public and Professional Guardians or its designee pursuant to s. 745.~~1414~~1415; and

(h~~—~~) A ward who is an adult and has not been adjudicated totally incapacitated.

(2~~—~~) The court may order release of all or part of the record for good cause shown. Unless waived by court order, the confidential status of the court record ~~shall~~may not be deemed lost by either authorized or unauthorized disclosure to any person, organization, or agency.

(3) If the court finds the petition to determine incapacity was filed in bad faith as set forth in s. 745. , the court must, upon motion by the alleged incapacitated person, expunge the incapacity file.

(4) Notwithstanding the ~~provision of~~exemption under subsection (1), letters of guardianship shall be recorded by the clerk.

(5) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

~~745.113 Guardian and professional's fees and expenses.~~

Section 15. Section 745.114, Florida Statutes, is created to read:

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745.114 Fees and expenses of guardians and professionals.—

(1) A guardian, an attorney, an accountant, an appraiser, a financial advisor, or any other professional who has rendered services to the ward or to the guardian to assist the guardian in providing services to the ward and ~~complying~~who complies with this code, is entitled to a reasonable fee for services rendered and to reimbursement for costs incurred on behalf of the ward.

(2) Fees, costs, and administration expenses may be paid as incurred and must be itemized on the guardian's annual accounting. Itemized statements of guardian and attorney fees must provide the detail specified in subsection (9). For other professional services, the accounting must include statements demonstrating the fee arrangement and method of charging for the services rendered.

(3) ~~On~~ Upon audit of the guardian's accounting pursuant to s. 745.1001, the court may require the guardian to justify the fees paid.

(4) The court may, on a case-by-case basis, require a petition for approval of a guardian's ~~and~~or a professional's fees in advance of before payment. The court may not unreasonably limit the frequency of such petitions and must hear ~~such petitions~~them on an expedited basis.

(5) When fees for a guardian or an attorney are submitted to the court for determination, the court may consider the following criteria:

(a) The time and labor required;

(b) The novelty and difficulty of the questions involved and the skill required to perform the services properly;

(c) The likelihood that the acceptance of the particular

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employment will preclude other employment of the person;

(d) The fee customarily charged in the locality for similar services;

(e) The nature and value of the incapacitated ~~person's~~ person's property, the amount of income earned by the estate, and the responsibilities and potential liabilities assumed by the person;

(f) The results obtained;

(g) The time limits imposed by the circumstances;

(h) The nature and length of the relationship with the incapacitated person; and

(i) The experience, reputation, diligence, and ability of the person performing the service.

(6) When an attorney is serving as both guardian and attorney for the guardian, in awarding fees to that attorney ~~guardians,~~ the court must clearly distinguish between fees, costs, and expenses for legal services and fees, costs, and expenses for guardian services and must determine that no conflict of interest exists.

(7) Fees for legal services may include customary and reasonable charges for work performed by paralegals and legal assistants employed by and working under the direction of the attorney. Fees may not include general clerical and office administrative services and services that are unrelated to the guardianship. A petition for fees may not be approved without prior notice to the guardian and to the ward, unless the ward is a minor or is totally incapacitated.

(8) Fees for a professional guardian's services may include customary and reasonable charges for work performed by

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employees of a guardian for the benefit of the ward. A petition for fees may not be approved without prior notice to the ward, unless the ward is a minor or is totally incapacitated.

~~(9)~~ Unless otherwise ordered by the court, all petitions for ~~guardian's and~~ guardian's fees or attorney's fees must be accompanied by an itemized statement of the services performed for the fees sought ~~to be recovered.~~ The itemized statement must specify the name and title of the person providing the ~~service~~ services, the nature of services, the date of performance, the time spent on each task, and the fees for each entry.

~~(10)~~ When court proceedings are instituted to review or determine a guardian's fees or ~~an attorney's~~ attorney's fees, such proceedings are part of the guardianship administration process and the costs, including fees and costs for the guardian and guardian's attorney, an attorney appointed under s. 745.305, or an attorney who has rendered services to the ward, must be determined by the court and paid from the assets of the guardianship unless the court finds the requested compensation to be substantially unreasonable.

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

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subsection (5).

Section 16. Section 745.114-115, Florida Statutes, is created to read:
745.115 Jurisdiction of the court-

.-The circuit court has jurisdiction to adjudicate all matters in incapacity and guardianship proceedings.

Section 2.-17. Part II of chapter 745, Florida Statutes, consisting shall be entitled "Venue" and shall consist of sections ss. 745.201, 745.202, 745.203, and -745.204.

Section 18. Section 745.201, Florida Statutes, is created to read:

~~PART II~~

~~VENUE~~

745.201 Venue.-.-

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

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

(a)-) If the incapacitated person or minor is a resident of this state, the county in which the incapacitated person or minor resides-provided,; however, -that if the adjudication of incapacity occurs in a county other than the county of residence pursuant to subsection (1), venue for appointment of a guardian must be the county in which the adjudication occurred.

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

(c)-) If the incapacitated person or minor is under the

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jurisdiction of a dependency court, venue may also be in the county having jurisdiction of the dependency case.

Section 19. Section 745.202, Florida Statutes, is created to read:

745.202 Residence of ward-

.—The residence of a ~~Florida~~-resident ward of this state is the county in which the ward resides. Residence or domicile ~~shall~~may not be deemed to be changed when a ward is moved to another county for medical care or rehabilitation.

Section 20. Section 745.203, Florida Statutes, is created to read:

745.203 Change of venue-

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

Section 21. Section 745.204, Florida Statutes, is created to read:

745.204 Change of ~~ward's~~ward's residence-.-

(1~~-~~) A guardian who has power pursuant to this code to determine the residence of a ward may not, without court approval, change the residence of the ward from this state to another, or from one county of this state to another, unless such county is adjacent to the county of the ~~ward's~~ward's current residence. A guardian who seeks to change the residence of a ward from the ~~ward's~~ward's current county of residence to another county ~~which~~that is not adjacent to the ~~ward's~~ward's current county of residence must obtain court approval ~~prior to~~before such change. In considering the petition, the court ~~shall~~must

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determine ~~that such~~whether the relocation serves the best interest of the ward.

~~(2)~~(3) A guardian who changes the residence of a ward from the ~~ward's~~ward's current county of residence to another county adjacent to the ~~ward's~~ward's county of residence shall notify the court having jurisdiction of the guardianship and next of kin whose addresses are known to the guardian within 15 days after relocation of the ward. Such notice shall state the reasons for the change of the ward's residence. Venue need not be changed unless otherwise ordered by the court.

~~(3)~~(4) When the residence of a resident ward has changed to another state, in accordance with this section, and the foreign court having jurisdiction over the ward at the ward's new residence has appointed a guardian ~~and that guardian~~who has qualified and posted a bond in an amount required by the foreign court, the guardian in this state may file the final report and ~~close~~petition to terminate the guardianship in this state, pursuant to s. 745.1105.

Section ~~3.~~22. Part III of chapter 745, Florida Statutes, ~~consisting~~shall be entitled "Incapacity" and shall consist of ~~sections~~ss. 745.301, 745.313.

Section 23. ~~Section 302,~~ 745.~~303, 745.304, 745.305, 745.306,~~ ~~745.307, 745.308, 745.309, 745.310, 745.311, and 745.312~~301, Florida Statutes, is created to read:

~~PART III~~

~~INCAPACITY~~

745.301 Petition to determine incapacity.~~.-~~

~~(1)~~(2) A petition to determine incapacity of a person may be executed by an adult with personal knowledge of the information

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specified in the petition.

(2~~7~~) The petition must be verified and must, to the best of petitioner's knowledge and belief~~,:~~:

(a~~7~~) State the name, the residence address of the petitioner, and the petitioner's relationship to the alleged incapacitated person;

(b~~7~~) State the name, age, county of residence, residence address, and current location of the alleged incapacitated person;

(c~~7~~) Specify the primary language spoken by the alleged incapacitated person~~,~~ and if~~whether~~ the person speaks English;

(d~~7~~) Allege that the petitioner believes the alleged incapacitated person to be incapacitated and specify the factual information on which such belief is based;

(e~~7~~) State the name and address of the alleged incapacitated ~~person's~~person's attending or primary care physician and other medical and mental health professionals regularly treating the alleged incapacitated person, if known;

(f~~7~~) State which rights enumerated in s. 745.303 the alleged incapacitated person is incapable of exercising, to the best of ~~petitioner's~~petitioner's knowledge. If the petitioner has insufficient experience to make such judgment, the petition must so state; and

(g~~7~~) State the names, relationships, and addresses of the next of kin of the alleged incapacitated person, specifying the ages of any next of kin who are minors.

Section 24. Section 745.302, Florida Statutes, is created to read:

745.302 Notice of petition to determine incapacity and for

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581 appointment of guardian~~-.-~~

582 (1~~-~~) Notice of filing a petition to determine incapacity
583 and a petition for the appointment of a guardian, if any, and
584 copies of the petitions must be personally served on the alleged
585 incapacitated person. The notice and copies of the petitions
586 must be served by the clerk on the attorney for the alleged
587 incapacitated person within 5 days ~~of~~after filing the petitions,
588 and by the petitioner on all next of kin identified in the
589 ~~petition~~petitions. The notice must state the time and place of
590 the hearing on the petitions; that an attorney has been
591 appointed to represent the alleged incapacitated person; and
592 that, if the person is determined to be incapable of exercising
593 certain rights, a guardian may be appointed to exercise those
594 rights on the person's behalf.

595 (2~~-~~) The attorney for the alleged incapacitated person
596 shall serve the notice and ~~petition~~petitions on the alleged
597 incapacitated person within 5 days ~~of~~after the attorney's
598 appointment.

599 Section 25. Section 745.303, Florida Statutes, is created
600 to read:

601 745.303 Rights of persons determined incapacitated~~-.-~~

602 (1~~-~~) A person who has been determined to be incapacitated
603 retains the right:

604 (a~~-~~) To have an annual review of guardianship accountings
605 and plans;

606 (b~~-~~) To have continuing review of the need for restriction
607 of his or her rights;

608 (c~~-~~) To be restored to capacity at the earliest possible
609 time;

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(d) To be treated humanely, with dignity and respect, and to be protected against abuse, neglect, and exploitation;

(e) To have a qualified guardian;

(f) To remain as independent as possible, including having his or her preference as to place and standard of living honored, either as expressed or demonstrated ~~prior to~~ before the determination of incapacity or as he or she currently expresses such preference, insofar as such request is reasonable and financially feasible;

(g) To be properly educated;

(h) To receive prudent financial management for his or her property and to be informed how his or her property is being managed to the extent feasible, if he or she has lost the right to manage property;

(i) To receive services and rehabilitation necessary to maximize his or her quality of life;

(j) To be free from discrimination because of his or her incapacity;

(k) To have access to the courts;

(l) To counsel;

(m) To receive visitors and communicate with others;

(n) To notice of all proceedings related to determination of capacity and appointment of a guardian; and

(o) To privacy, including privacy of incapacity and guardianship proceedings.

(2) Rights that may be removed from a person by an order determining incapacity, but not delegated to a guardian, include the right:

(a) To marry. If the right to enter into a contract has

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been removed, the right to marry is subject to court approval;

~~(b)~~ To vote;

~~(c)~~ To have a ~~driver's~~ driver license and operate motor vehicles;

~~(d)~~ To travel; and

~~(e)~~ To seek or retain employment.

~~(3)~~ Rights that may be removed from a person by an order determining incapacity and ~~which~~ that may be delegated to a guardian include the right:

~~(a)~~ To contract;

~~(b)~~ To sue and defend lawsuits;

~~(c)~~ To apply for government benefits and deal with all government entities, including taxing authorities;

~~(d)~~ To exercise all rights with regard to ownership and management of property, including, among others, firearm rights under chapter 790;

~~(e)~~ To make any gift or disposition of property;

~~(f)~~ To determine his or her residence;

~~(g)~~ To consent to medical and mental health treatment and rehabilitation services;

~~(h)~~ To make decisions about his or her social environment or other social aspects of his or her life; and

~~(i)~~ To make decisions about travel and visitation.

~~(4)~~ A person who has been found to be totally incapacitated shall be deemed to have lost all rights other ~~than~~ than those specified in subsection ~~(1)~~ (1), and the guardian shall be deemed to have succeeded to all delegable rights, unless otherwise limited by this code or determined by the court.

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Section 26. Section 745.304, Florida Statutes, is created to read:
745.304 Conduct of hearing-

.-At any hearing under this code, the alleged incapacitated person or the ward has the right to:

(1-) Testify;

(2-) Remain silent and refuse to testify. The person may not be held in contempt of court or otherwise penalized for refusing to testify. Refusal to testify may not be used as evidence of incapacity;

(3-) Present evidence;

(4-) Call witnesses;

(5-) Confront and cross-examine all witnesses; and

(6-) Have the hearing open to the public or closed to the public as the alleged incapacitated person or ward may choose. After a person has been determined to be incapacitated, this decision shall be made by the person's guardian, unless otherwise determined by the court.

Section 27. Section 745.305, Florida Statutes, is created to read:

745.305 Attorney for the alleged incapacitated person-.-

(1-) The court must appoint a qualified attorney to represent each alleged incapacitated person in all proceedings on petitions for determination of incapacity and appointment of guardian within 5 days ~~of~~after filing the petitions. The alleged incapacitated person may substitute an attorney of his or her choice for the court-appointed counsel with court approval. At any time ~~prior to~~before entry of an order allowing substitution, the court may hold a hearing to determine if the proposed

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attorney is qualified under this code and if ~~such attorney~~he or she is the choice of the alleged incapacitated person. The court may allow the court-appointed counsel and the private counsel chosen by the alleged incapacitated person to serve as co-counsel.

~~(2)-~~ When a court appoints an attorney for ~~an~~the alleged incapacitated person, the court must appoint the office of criminal conflict and civil regional counsel or a private attorney as prescribed in s. 27.511(6). A private attorney must be one who is included in the attorney registry compiled pursuant to s. 27.40. Appointments of private attorneys must be made on a rotating basis, taking into consideration conflicts arising under this code.

~~(3)-~~ An attorney ~~representing an~~for the alleged incapacitated person may not serve as guardian of the alleged incapacitated person or as counsel for the guardian of the alleged incapacitated person or the petitioner.

~~(4)-~~ An attorney ~~representing an~~for the alleged incapacitated person under this section must have completed a minimum of 8 hours of education in guardianship. A court may waive the initial training requirement.

~~(5)-~~ (5) An attorney for the alleged incapacitated person under this section must advocate the preferences expressed by the alleged incapacitated person, to the extent consistent with the rules regulating The Florida Bar.

(6) An attorney for the alleged incapacitated person must be entitled to examine all medical and mental health records of the alleged incapacitated person and consult with the alleged incapacitated person's physicians.

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726 ~~(6)~~ 7) Unless extended by the court, the attorney for the
727 alleged incapacitated ~~person's duties end~~ person shall be deemed
728 discharged without further proceedings upon:

729 ~~(a)~~) The court's determination that there is no need for
730 appointment of a guardian; or

731 ~~(b)~~) The issuance of letters of guardianship, other than
732 letters of emergency temporary guardianship. ~~The attorney shall~~
733 ~~be deemed discharged without further proceedings.~~

734
735
736 Section 28. Section 745.306, Florida Statutes, is created
737 to read:

738 745.306 Appointment and qualification of examiners.~~.-~~

739 ~~(1)~~) Within 5 days after a petition for determination of
740 incapacity has been filed, the court must appoint three ~~(3)~~
741 qualified persons to examine the alleged incapacitated person.
742 One qualified person must be a psychiatrist or other physician.
743 The remaining examiners must be ~~either~~ a psychologist, another
744 psychiatrist or other physician, a registered nurse, a nurse
745 practitioner, a licensed social worker, an attorney, a person
746 with an advanced degree in gerontology from an accredited
747 institution of higher education, or ~~other~~ another person in the
748 court's discretion. Examiners must have knowledge, skill,
749 experience, training, or education ~~which~~ that, in the
750 ~~court's~~ court's discretion, qualifies them to render an opinion in
751 an incapacity proceeding. Unless good cause is shown, the
752 alleged incapacitated person's attending or primary care
753 physician may not be appointed as an examiner. Any physician for
754 the alleged incapacitated person must provide records and

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information, verbal and written, to an examiner upon the
examiner's written request.

(2) Examiners may not be related to or associated with
one another, with the petitioner, with counsel for the
petitioner or the proposed guardian, or with the person alleged
to be totally or partially incapacitated. A petitioner may not
serve as an examiner.

(3) Examiners must be able to communicate, either
directly or through an independent interpreter, in the language
that the alleged incapacitated person speaks or in a medium
understandable to the alleged incapacitated person if the
alleged incapacitated person is able to communicate.

(4) The examiners shall be appointed from a roster of
qualified persons maintained by the clerk of the court and may
not be chosen or recommended by the petitioner, the attorney for
the alleged incapacitated person, or any interested person.

(5) A person who has been appointed to serve as an
examiner may not thereafter be appointed as a guardian for the
person who was the subject of the examination.

(6) An examiner must complete a minimum of 4 hours of
initial ~~training~~ education. The examiner must complete 2 hours of
continuing education during each 2-year period after the initial
education. The initial and continuing education programs must be
approved by or developed under the supervision of the Office of
Public and Professional Guardians ~~in consultation with the Florida
Conference of Circuit Court Judges, the Elder Law and the Real
Property, Probate and Trust Law sections of The Florida Bar and the
Florida State Guardianship Association.~~ The court may waive the
initial education requirement for a person who has served for

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not less than 5 years as an examiner. ~~An examiner who wishes to obtain continuing education on the Internet or by video course, must first obtain the approval of the chief judge in the county of the examiner's residence.~~

(7)- Each person appointed for the first time as an examiner must file an affidavit with the court stating that ~~the examiner~~he or she has completed the required courses or will do so no later than 4 months after his or her initial appointment unless waived by the court. Each year, the chief judge of the circuit must prepare a list of persons qualified to be examiners.

(8)- The clerk shall serve notice of the appointment to each examiner no later than 3 days after appointment.

Section 29. Section 745.307, Florida Statutes, is created to read:

745.307 Examination of alleged incapacitated person.-

(1)- Each examiner, independent from the other examiners, must interview the alleged incapacitated person and must determine the alleged incapacitated ~~person's~~person's ability to exercise those rights specified in s. 745.303. In addition to the examination, each examiner must have access to, and may consider, previous medical and mental health examinations of the person, including, but not limited to, habilitation plans, school records, psychological and psychosocial reports, and other related information voluntarily offered for use by the alleged incapacitated person or the petitioner. The examiners may communicate among themselves as well as with the attorney for the alleged incapacitated person and the petitioner's counsel. In addition, the examiners shall be provided a copy of

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the petition to determine incapacity.

(2) The examiner may exclude all persons, other than the alleged incapacitated person and the alleged incapacitated person's attorney, from being present at the time of the examination, unless otherwise ordered by the court.

(3) Each examiner must, within 15 days after appointment, prepare and file with the clerk a report ~~which~~that describes the manner of conducting the examination and the methodology employed by the examiner. The examination must include:

(a) If deemed relevant to the examinations and allowed by the alleged incapacitated person, a physical examination ~~which shall only~~may be conducted ~~only~~ by an examiner who is a ~~physician, a registered nurse, or a nurse practitioner, or physician.~~ physician, a registered nurse, or a nurse practitioner. An examiner who is not a physician, a registered nurse, or a nurse practitioner may conduct a non-contact, visual examinationevaluation of the alleged incapacitated person's physical appearance to determine if there are any visible signs of abuse, injury, or illness;

(b) A mental health examination, which may consist of, but ~~need~~not be limited to, questions related to orientation, current events, and personal identification; and

(c) A functional assessment to evaluate the alleged incapacitated person's ability to perform activities of daily living~~which include: preparing food, eating, bathing, dressing, ambulation, toileting and mobility.~~

If any of these aspects of the examination is not reported or cannot be accomplished for any reason, the written report must explain the reasons for its omission.

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§42 Section 30. Section 745.308, Florida Statutes, is created
§43 to read:

§44 745.308 Examination reports~~-. -~~

§45 (1)~~-~~ Each examiner's written report must be verified and
§46 include, to the extent of the examiner's skill and experience~~-. ,~~
§47 all of the following:

§48 (a)~~-~~ A diagnosis, prognosis, and recommended level of
§49 care.

§50 (b)~~-~~ An evaluation of the ~~ward or alleged incapacitated~~
§51 ~~person's~~ person's ability to retain his or her ~~or his~~ rights,
§52 including, without limitation, the ~~those~~ rights to marry; vote;
§53 ~~contract; manage or dispose of property; have a driver's license;~~
§54 ~~determine her or his residence; consent to medical~~
§55 ~~treatment;~~ identified at 745.303(2) and ~~make decisions affecting~~
§56 ~~her or his social environment.~~ (3).

§57 (c)~~-~~ The results of the examination and the examiner's
§58 assessment of information provided by the attending or primary
§59 care physician, if any, and of any other reports or written
§60 material provided to the examiner. The examiner must consult the
§61 ~~alleged incapacitated~~ person's primary care physician or explain
§62 the reason why such consultation was not held.

§63 (d)~~-~~ A description of any functional areas in which the
§64 person lacks the capacity to exercise rights, the extent of that
§65 incapacity, and the factual basis for the determination that the
§66 person lacks that capacity.

§67 (e)~~-~~ The names of all persons present during the time the
§68 examiner conducted his or her examination. If ~~a person~~ anyone
§69 other than the ~~person who is the~~ subject of the examination
§70 supplies ~~answers posed to the alleged incapacitated~~

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~~person~~information, the report must include the
~~response~~information and the name of the person supplying the
~~answer.~~information to the extent material to the examiner's
determinations.

~~(f)~~(f) The date, place, and time the examiner conducted his
or her examination.

~~(2)~~(2) The clerk ~~must~~shall serve each examiner's report on
the petitioner and on the attorney for the alleged incapacitated
person within 3 days after the report is filed and at least 10
days before the hearing on the petition, and shall file a
certificate of service in the incapacity proceeding.

~~(3)~~(3) If any examiners' reports are not completed and
served timely, the petitioner and attorney for the alleged
incapacitated person may waive the 10-day service requirement
and consent to the consideration of the report by the court at
the adjudicatory hearing or may seek a continuance of the
hearing.

Section 31. Section 745.309, Florida Statutes, is created
to read:

745.309 Consideration of examination reports.~~.-~~

~~(1)~~(1) Unless there is objection by the alleged
incapacitated person or petitioner, the court must consider the
written examination reports without requiring testimony ~~of~~from
the examiners.

~~(2)~~(2) The petitioner and the alleged incapacitated person
may object to the introduction into evidence of all or any
portion of the examination reports by filing and serving a
written objection on the other party no later than 5 days before
the adjudicatory hearing. The objection must state the basis

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upon which the challenge to admissibility is made. If an objection is timely filed and served, the court must apply the rules of evidence in determining the reports' admissibility. For good cause shown, the court may extend the time to file and serve the written objection.

~~(3)-~~ If all examiners conclude that the alleged incapacitated person is not incapacitated in any respect, the court must dismiss the petition unless a verified motion challenging the examiners' conclusions is filed by the petitioner within 10 days after the last examination report is served. The verified motion must make a reasonable showing, by evidence in the record or proffered, that a hearing on the petition to determine incapacity is necessary. The court must rule on the verified motion as soon as practicable. The court may hold a hearing to consider evidence concerning the propriety of dismissal or the need for further examination of the alleged incapacitated person. If the court finds that the verified motion is filed in bad faith, the court may impose sanctions under s. 745.~~312~~313 (3).

Section 32. Section 745.~~310~~-311, Florida Statutes, is created to read:

745.311 Adjudicatory hearing~~.-~~.

~~(1)-~~ Upon appointment of the examiners, the court must set the date for hearing of the petition and the clerk must serve notice of hearing on the petitioner, the alleged incapacitated person, and next of kin identified in the petition for determination of incapacity. The date for the adjudicatory hearing must be set no more than 20 days after the required date for filing the reports of the examiners, unless good cause is

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shown. The adjudicatory hearing must be conducted in a manner consistent with due process and the requirements of ~~part III of this code.~~ part.

~~(2)~~ The alleged incapacitated person has the right to be present at the adjudicatory hearing and may waive that right.

~~(3)~~ In the adjudicatory hearing on a petition to determine incapacity, a finding of limited or total incapacity of the person must be established by clear and convincing evidence.

Section 33. Section 745.311—312, Florida Statutes, is created to read:

745.312 Order determining incapacity.—

~~(1)~~ If the court finds that a person is incapacitated, the court must enter an order specifying the extent of incapacity. The order must specify the rights described in s. 745.303(2) and (3) ~~that~~ which the person is incapable of exercising.

~~(2)~~ In determining that a person is totally incapacitated, the court must ensure that the order ~~must contain~~ contains findings of fact demonstrating that the individual is totally without capacity to meet essential requirements for ~~the person's~~ this or her health and safety and to manage property.

~~(3)~~ An order adjudicating a person to be incapacitated constitutes proof of ~~such~~ that incapacity until further order of the court. To the extent the order finds that a person is incapacitated to make any gift or disposition of property, ~~it~~ the order shall constitute a rebuttable presumption that the person is incapacitated to execute documents having testamentary

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aspects. For purposes of this subsection, the term "testamentary aspects" means those provisions of a document ~~that~~which dispose of property on or after the death of the incapacitated person other than to the incapacitated person's estate.

~~(4)~~(5) After the order determining incapacity has been filed, the clerk must serve the order on the incapacitated person.

~~(5)~~(6) If the order determining incapacity removes the right to have a ~~driver's~~driver license and operate motor vehicles, the clerk must serve the order on the ~~Florida~~ Department of Highway Safety and Motor Vehicles.

~~(6)~~(7) Orders determining incapacity shall be recorded by the clerk in the public records in the county in which the order was entered. The recording of the order is notice of the incapacity.

Section 34. Section 745.312-313, Florida Statutes, is created to read:

745.313 Fees in incapacity proceedings~~-. -~~

~~(1)~~(1) The examiners and attorney appointed under this part are entitled to reasonable fees to be determined by the court.

~~(2)~~(2) If a guardian is appointed, the fees awarded under ~~paragraph~~subsection (1) ~~shall~~must be paid by the guardian from the ward's property ~~of the ward or~~, if the ward is indigent, by the state. The state shall have a ~~creditor's~~creditor's claim against the ward's property for any amounts paid under this section. The state may file its claim within 90 days after the entry of an order awarding attorney and examiner fees. If the state does not file its claim within the 90-day period, the state is thereafter barred from asserting the claim. Upon

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petition by the state for payment of the claim, the court shall enter an order authorizing payment by the guardian from the ward's property ~~of the ward~~ in the amount determined by the court, if any. The state shall keep a record of the payments.

~~(3)~~ (4) If the petition to determine incapacity is dismissed, costs and ~~attorney's~~ attorney fees of the proceeding may be assessed against the petitioner if the court finds the petition to have been filed in bad faith. The petitioner shall also reimburse the state courts system for any amounts paid under ~~subparagraph 4~~ (paragraph (4) (b)) upon a finding of bad faith.

~~(4) (a)~~ (4) If the petition to determine incapacity is dismissed without a finding of bad faith on the part of the petitioner, the court ~~appointed~~ appointed attorney shall be paid a reasonable fee in the same manner as the payment made to private court-appointed counsel set forth in s. 27.5304. The fees of the examiners shall be paid upon court order as expert witness fees under s. 29.004(6).

~~(b)~~ (b) When there is a finding of incapacity but no guardian is appointed, the court ~~appointed~~ appointed attorney shall be paid a reasonable fee under s. 745. ~~113~~ 114 or, if the incapacitated person is indigent, the fee may be paid in the same manner as the payment made to private court-appointed counsel set forth in s. 27.5304. The fees of the examiners shall be paid upon court order as expert witness fees under s. 29.004(6).

Section ~~4.~~ 35. Part IV of chapter 745, Florida Statutes, ~~consisting~~ shall be entitled "Restoration to Capacity" and shall consist of ~~sections~~ ss. 745.401, ~~745.402, 745.403, 745.404, and~~ 745.405.

Section 36. Section 745.401, Florida Statutes, is created

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to read:

~~PART IV~~

~~RESTORATION TO CAPACITY~~

745.401 Suggestion of capacity. .-

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

~~(2) Suggestion of Capacity. --~~

(2) SUGGESTION OF CAPACITY. —

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

~~(b) —~~ Within 5 days after a suggestion of capacity is filed, the clerk shall serve notice of the filing of the suggestion of capacity and a copy of the suggestion of capacity on the ward, the guardian, the attorney for the ward, if any, the ward's known next of kin, and any other interested persons designated by the court. Notice of the suggestion of capacity need not be served on the person who filed the suggestion of capacity.

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

Section 37. Section 745.402, Florida Statutes, is created to read:

745.402 Examination of ward. .-

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

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

Section 38. Section 745.403, Florida Statutes, is created to read:

745.403 Objection and hearing~~-. -~~

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

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

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

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

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1074 (5~~+~~) The court shall give priority to a hearing on
1075 suggestion of capacity and shall advance the cause on the
1076 calendar.

1077 Section 39. Section 745.404, Florida Statutes, is created
1078 to read:

1079 745.404 Consideration of examination report~~-. -~~

1080 (1~~+~~) Unless an objection is timely filed by the person who
1081 filed the suggestion of capacity, the guardian, any person who
1082 has filed an objection to the suggestion of capacity, or the
1083 incapacitated person, the court may consider the examination
1084 report without requiring testimony ~~of~~from the examiner. Any
1085 objection must be filed and served on all other interested
1086 persons at least 5 days ~~prior to~~before any hearing at which the
1087 report is to be considered.

1088 (2~~+~~) The person who filed the suggestion of capacity, the
1089 guardian, any person who has filed an objection to the
1090 suggestion of capacity, and the incapacitated person may object
1091 to the introduction into evidence of all or any portion of the
1092 examination report by filing and serving a written objection on
1093 the other party no later than 5 days before the adjudicatory
1094 hearing. The objection must state the basis upon which the
1095 challenge to admissibility is made. If an objection is timely
1096 filed and served, the court shall apply the rules of evidence in
1097 determining the report's admissibility. For good cause shown,
1098 the court may extend the time to file and serve the written
1099 objection.

1100 Section 40. Section 745.405, Florida Statutes, is created
1101 to read:

1102 745.405 Order restoring capacity~~-. -~~

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(1~~1~~) If the examination report concludes that the ward should be restored to full capacity, there are no objections timely filed, and the court is satisfied that the examination report establishes by a preponderance of the evidence that restoration of all of the ward's rights is appropriate, the court must enter an order restoring all of the rights ~~which~~that were removed from the ward without hearing. The order must be entered within 10 days after expiration of the time for objection.

(2~~2~~) At the conclusion of any hearing to consider restoration of capacity, the court shall make specific findings of fact~~7~~ and, based on a preponderance of the evidence, enter an order denying the suggestion of capacity or restoring all or some of the rights of the ward.

(3~~3~~) If only some rights are restored to the ward, the order must state which rights are restored, and amended letters ~~shall~~must be issued to reflect the ~~changed~~changes in the guardian's authority~~of the guardian.~~ A guardian of person shall prepare a new guardianship plan ~~which~~that addresses only the remaining rights retained by the guardian. The guardian must file a copy of the new plan with the court within 60 days after issuance of amended letters.

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

Section ~~5.~~41. Part V of chapter 745, Florida Statutes, ~~consisting~~shall be entitled "Qualifications of sections Guardians" and shall consist of ss. 745.501,~~745.505.~~

Section 42. Section~~502,~~ 745.~~503,~~ 745.~~504,~~ and 745.~~504~~501, Florida Statutes, is created to read:

~~PART V~~

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~~QUALIFICATIONS OF GUARDIANS~~

~~745.501 Who may be appointed~~ Appointment of guardian of a resident ward~~.-.~~

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

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

~~(b)-~~ A nonresident of ~~the~~this state may serve as guardian of a ~~resident~~ ward if the ~~non-resident~~nonresident is:

1.-. Related by lineal consanguinity to the ward;

2.-. A legally adopted child or adoptive parent of the ward;

3.-. A spouse, a brother, sister, uncle, aunt, ~~niece, or~~ nephew, or niece of the ward, or someone related by lineal consanguinity to any such person; or

4.-. The spouse of a person otherwise qualified under this section.

~~(2)-No)~~ A judge ~~shall~~may not act as guardian, except when he or she is related to the ward by blood, marriage, or adoption, or has maintained a close relationship with the ward or the ~~ward's~~ward's family, and serves without compensation.

Section 43. Section 745.502, Florida Statutes, is created to read:
745.502 Nonprofit corporate guardian-

.-A nonprofit corporation organized for religious or charitable purposes and existing under the laws of this state may be appointed guardian for a ward. The corporation must employ at least one professional guardian.

Section 44. Section 745.503, Florida Statutes, is created to read:

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745.503 Disqualified persons~~-. -~~

~~(1) No~~ A person who has been convicted of a felony or who, due to incapacity or illness, is incapable of discharging guardianship duties shall~~may not~~ be appointed to act as guardian. Further, no~~a~~ person who has been judicially determined to have committed abuse, abandonment, or neglect against a child as defined in s. 39.01 or s. 984.03(1), (2), and (37), or who has been found guilty of, or entered a plea of nolo contendere or guilty to, any offense prohibited under s. 435.03, chapter 825, or under any similar statutes of another jurisdiction, shall~~may not~~ be appointed to act as a~~guardian.~~

~~(2) -~~ Except as provided in subsection (3) or subsection (4), a person providing substantial services or products to the proposed ward in a professional or business capacity may not be appointed guardian and retain that previous professional or business relationship.

~~(3) -~~ A creditor or provider of health care services to the ward, whether direct or indirect, may not be appointed the guardian of the ward, unless the court finds that there is no conflict of interest with the ward.

~~(4) -~~ A person may not be appointed a~~guardian~~ if he or she is in the employ of any person, agency, government, or corporation that~~provides~~ providing services to the proposed ward in a professional or business capacity, except that a person so employed may be appointed if he or she is the spouse, adult child, parent, or sibling of the proposed ward or the court determines that any potential conflict of interest is insubstantial and that the appointment would be in the proposed~~ward's~~ ward's best interest.

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(5~~)-~~) The court may not appoint a guardian in any other circumstance in which the proposed guardian has a conflict of interest with the ward.

(6~~)-~~) If at any time a guardian is ~~at any time~~ unqualified to serve under subsections (1)-(5), the guardian shall file a resignation and notice of disqualification within 20 days ~~of~~after learning that ~~the guardian~~he or she is unqualified~~-. .~~. A guardian who fails to comply with this ~~section~~subsection may be personally liable for costs, including attorney fees, incurred in any removal proceeding if ~~the guardian~~he or she is removed. This liability extends to a guardian who does not know, but should have known, of the facts that would have required the guardian to resign or to file and serve notice as required ~~herein~~under this subsection. This liability shall be cumulative to any other provided by law.

(7~~)-~~) Unless a person is a professional guardian, a person may not be appointed as guardian if ~~they~~, at the time of appointment, ~~serve~~the guardian serves as guardian of another ward who is not a relative of the guardian.

Section 45. Section 745.504, Florida Statutes, is created to read:

745.504 Credit history and criminal record investigation.
.-

(1~~)-~~) Within 3 days ~~of~~after filing a petition for appointment of a nonprofessional guardian, the proposed guardian shall submit to an investigation of ~~the guardian's~~this or her credit history and a level 2 background screening as required under s. 435.04. The court must consider the credit history and background screening reports before appointing a guardian.

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(2~~+~~) For nonprofessional guardians, the court may require the satisfactory completion of a criminal history record check as described in this subsection. A nonprofessional guardian satisfies the requirements of this section by undergoing a state and national criminal history record check using fingerprints. A nonprofessional guardian required to submit fingerprints shall have fingerprints taken and forwarded, along with the necessary fee, to the Department of Law Enforcement for processing. The results of the fingerprint criminal history record check shall be transmitted to the clerk, who shall maintain the results in the ~~court file of the nonprofessional guardian's case.~~ guardianship case file.

(3~~+~~) For professional and public guardians, the court and Office of Public and Professional Guardians shall accept the satisfactory completion of a criminal history record check by any method described in this subsection. A professional guardian satisfies the requirements of this section by undergoing an electronic fingerprint criminal history record check. A professional guardian may use any electronic fingerprinting equipment used for criminal history record checks. The Office of Public and Professional Guardians shall adopt a rule detailing the acceptable methods for completing an electronic fingerprint criminal history record check under this ~~section~~ subsection. The professional guardian shall pay the actual costs incurred by the Federal Bureau of Investigation and the Department of Law Enforcement for the criminal history record check. The entity ~~completing~~ conducting the record check must immediately transmit the results of the criminal history record check to the clerk and the Office of Public and Professional Guardians. The clerk

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shall maintain the results in the ~~court file of the~~ professional guardian's ~~case.~~ court file.

(4) (a) ~~)~~ A professional guardian, and each employee of a professional guardian, must complete, at the professional guardian's expense, a level 2 background screening as set forth in s. 435.04 before ~~and at least once every 5 years after~~ the date the guardian is registered with the Office of Public and Professional Guardians ~~and at least once every 5 years thereafter.~~ A professional guardian, and each employee of a professional guardian who has direct contact with the ward, or access to the ward's assets, must complete, at his or her own expense, a level 1 background screening as set forth in s. 435.03 at least once every 2 years after the date the guardian is registered. However, a professional guardian is not required to resubmit fingerprints for a criminal history record check if the professional guardian has been screened using electronic fingerprinting equipment and the fingerprints are retained by the Department of Law Enforcement in order to notify the clerk of any crime charged against the person in this state or elsewhere. Each employee required to ~~submit to~~ complete a level 2 background ~~check~~ screening must submit to the background ~~check~~ screening within 30 days ~~of~~ after initial employment. Each employee required to submit to a level 1 background ~~check~~ screening must submit to the background ~~check~~ screening within 30 days ~~of meeting the~~ after becoming subject to the screening requirement ~~for a level 1 background check.~~

(b) ~~)~~ All fingerprints electronically submitted to the Department of Law Enforcement under this section shall be retained by the department in a manner provided by rule, and

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~~entered~~the department shall enter them in the statewide automated biometric identification system authorized by s. 943.05(2)(b). The fingerprints shall thereafter be available for all purposes and uses authorized for arrest fingerprints entered in the Criminal Justice Information Program under s. 943.051.

~~(c)~~(a) The Department of Law Enforcement shall ~~search~~compare all arrest fingerprints received under s. 943.051 against the fingerprints retained in the statewide automated biometric identification system under paragraph (b). Any arrest record that is identified with the fingerprints of a person described in this paragraph must be reported to the clerk. The clerk must forward any arrest record received for a professional guardian to the Office of Public and Professional Guardians within 5 days ~~of~~after receipt. Each professional guardian who elects to submit fingerprint information electronically shall participate in this search process by paying an annual fee to the Office of ~~the~~ Public and Professional Guardians. The Department of Law Enforcement shall establish by rule the amount of the annual fee to be imposed for performing these searches and the procedures for the retention of professional guardian fingerprints and the dissemination of search results ~~shall be established by rule of the Department of Law Enforcement.~~ At least once every 5 years, the Office of Public and Professional Guardians must request that the Department of Law Enforcement forward the fingerprints maintained under this section to the Federal Bureau of Investigation.

~~(5)(a)~~(5)(a) A professional guardian, and each employee of a professional guardian who has direct contact with the ward or access to the ward's assets, must allow, at his or her own

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expense, an investigation of his or her credit history before ~~and~~
~~at least once every 2 years after~~ the date of the
~~guardian's~~ guardian's registration with the Office of Public and
Professional Guardians. ~~and at least once every 2 years~~
thereafter.

(~~6~~) The Office of Public and Professional Guardians shall
adopt a rule detailing the acceptable methods for completing a
credit history investigation under this section. If appropriate,
the office may administer credit history investigations. If the
office chooses to administer the ~~credit~~
~~investigation~~ investigations, it may adopt a rule setting a fee,
not to exceed \$25, to reimburse the costs associated with the
administration of a credit history investigation.

(~~6~~) The Office of Public and Professional Guardians may
inspect, ~~at any time,~~ the results of any credit or criminal
history record check of a public or professional guardian
conducted under this section. The office shall maintain copies
of the credit or criminal history record check results in the
~~guardian's~~ guardian's registration file. If the results of a
credit or criminal history investigation of a public or
professional guardian have not been forwarded to the Office of
Public and Professional Guardians by the investigating agency,
the clerk of the court shall forward copies of the results of
the investigations to the office upon receiving them.

(~~7~~) The requirements of this section do not apply to a
trust company, a state banking corporation, or a state savings
association authorized and qualified to exercise fiduciary
powers in this state, or a national banking association or
federal savings and loan association authorized and qualified to

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exercise fiduciary powers in this state.

(8) At any time, the court may require a guardian or the
guardian's ~~guardian's~~ employees to submit to an investigation of
~~the person's~~ their credit history and complete a level 1
background screening as set forth in s. 435.03. The court may
consider the results of any such investigation when considering
removal of a guardian.

(9) The clerk shall maintain a file on each professional
guardian appointed by the court and retain in the file
documentation of the result of any investigation conducted under
this section. A professional guardian must pay the clerk of the
court a fee of up to \$7.50 for handling and processing
professional guardian files. Such documentation for a
nonprofessional guardian shall be maintained as a confidential
record in the case file for such guardianship.

Section 46. Section 745.505, Florida Statutes, is created
to read:

745.505 Education requirements for nonprofessional
guardians. ~~.-.~~

(1) Each ward is entitled to a guardian competent to
perform the duties of a guardian which are necessary to protect
the interests of the ward.

(2) Each person appointed by the court to be a guardian,
other than a ~~parent who is the~~ person appointed to serve as
guardian of the property of ~~his or her~~ minor child, must receive
a minimum of 8 hours of instruction and training ~~which~~ that
covers:

(a) The legal duties and responsibilities of the
guardian;

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(b) The rights of the ward;

(c) The use of guardianship assets;

(d) The availability of local resources to aid the ward;

and

(e) The preparation of guardianship plans, reports, inventories, and accountings.

(3) Each person appointed by the court to be the guardian of ~~the~~ property of his or her minor child must receive a minimum of 4 hours of instruction and training that covers:

(a) The legal duties and responsibilities of a guardian of property;

(b) The preparation of an initial inventory and guardianship accountings; and

(c) Use of guardianship assets.

(4) Each person appointed by the court to be a guardian must complete the required number of hours of instruction and education within 4 months after appointment. The instruction and education must be completed through a course approved by the chief judge of the circuit court and taught by a court-approved person or organization. Court-approved organizations may include, but are not limited to, community or junior colleges, guardianship organizations, and local bar associations or The Florida Bar.

(5) Expenses incurred by the guardian to satisfy the education requirement may be paid from the ~~ward's estate~~ ward's property, unless the court directs that such expenses be paid by the guardian individually.

(6) The court may waive some or all of the requirements of this section or impose additional requirements. The court

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shall make its decision on a case-by-case basis and, in making its decision, shall consider the experience and education of the guardian, the duties assigned to the guardian, and the needs of the ward.

~~(7) The provisions of~~ This section ~~do~~ does not apply to professional guardians.

Section ~~6.~~ 47. Part VI of chapter 745, Florida Statutes, ~~consisting~~ shall be entitled "Appointment of Guardians" and shall consist of sections ss. 745.601, ~~745.602, 745.603, 745.604, 745.605, 745.606, 745.607, 745.608, 745.609, 745.610, and~~ 745.611.

Section 48. Section 745.601, Florida Statutes, is created to read:

~~PART VI~~

~~APPOINTMENT OF GUARDIANS~~

745.601 Proposed guardian's information statement.~~.-~~

~~(1)-~~ At the time of filing a petition for appointment of guardian, every proposed guardian must file a verified information statement ~~which~~ that provides all of the following:

~~(a)-~~ Details sufficient to demonstrate that the person is qualified to be a guardian pursuant to s. 745.501~~;-~~.

~~(b)-~~ The names of all wards for whom the person is currently acting as guardian or has acted as guardian in the previous ~~five~~ 5 years, identifying each ward by court file number and circuit court in which the case is or was pending, and stating whether the person is or was acting as limited or plenary guardian of person or property, or both~~;-~~.

~~(c)-~~ Any special experience, education, or other skills that would be of benefit in serving as guardian~~;-~~.

~~(d)-~~ The proposed guardian's relation to the ward,

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including whether the person is providing any services to the ward, holds any joint assets with the ward, or, if known, is beneficiary of any part of the ward's estate.

(e) All existing interests set forth in s. 745.1309(3).

(2~~+~~) Subsection (1) does not apply to nonprofit corporate guardians and public guardians.

(3~~+~~) Nonprofit corporate guardians and public guardians must file quarterly with the clerk statements that contain the information required under subsection (1), rather than filing an information statement with each petition to be appointed guardian.

Section 49. Section 745.602, Florida Statutes, is created to read:

745.602 Considerations in appointment of guardian~~+~~.

(1) If the person designated to be guardian is qualified to serve pursuant to s. 745.501, the court shall appoint ~~any~~that person to serve as standby guardian or preneed guardian, unless the court determines that appointing such person is contrary to the best interest of the ward.

(2) If a guardian cannot be appointed under subsection (1), the court may appoint any person who is fit and proper and qualified to act as guardian, whether related to the ward or not. The court shall give preference to the appointment of a person who:

(a) Is related by blood or marriage to the ward;

(b) Has educational, professional, or business experience relevant to the nature of the services ~~sought~~ to be provided;

(c) Has the capacity to manage the assets involved; or

(d) Has the ability to meet the requirements of the law and

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the unique needs of the ward.

(3) The court shall also do all of the following:

(a) Consider the wishes expressed by an incapacitated person as to who shall be appointed guardian.

(b) Consider the preference of a minor who is 14 years of age ~~14~~ or over ~~older~~ as to who should be appointed guardian.

(c) Consider any person designated as guardian in any will in which the ward is a beneficiary.

(d) Consider the wishes of the ward's next of kin, when the ward cannot express a preference.

~~(e)~~ (f) Inquire into and consider potential disqualifications under s. 745.503 and potential conflicts of interest under s. 745.1309.

(4) When a guardian is appointed, the court must make findings of fact to support why the person was selected as guardian. Except when a guardian is appointed under subsection (1), the court must consider the factors specified in subsections (2) and (3).

~~(5)~~ (6) The court may hear testimony on the question of who is qualified and entitled to preference in the appointment of a guardian.

(6) The court may not give preference to the appointment of a person under subsection (2) based solely on the fact that ~~such person~~ he or she was appointed to serve as ~~an~~ emergency temporary guardian.

Section 50. Section 745.603, Florida Statutes, is created to read:

745.603 Petition for appointment of guardian; contents. ~~.-.~~

~~(1)~~ (1) A petition to appoint a guardian must be verified by

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an adult with personal knowledge of the information in the
petition alleging:

(a) The name, age, residence address, and mailing address
of the alleged incapacitated person or minor and the nature of
the incapacity, if any;

(b) The extent of guardianship proposed, either plenary
or limited;

(c) The residence address and mailing address of the
petitioner;

(d) The names and mailing addresses of the next of kin of
the alleged incapacitated person or minor, if known to the
petitioner;

(e) The name of the proposed guardian and relationship of
the proposed guardian to the alleged incapacitated person or
minor;

(f) The reasons why the proposed guardian should be
appointed;

(g) Whether the proposed guardian is a professional
guardian;

(h) Any other guardianship under part VII of this chapter
~~that~~which the alleged incapacitated person or minor is in
currently or has been in previously;

(i) The nature and value of property subject to the
guardianship, if any;

(j) ~~the identity~~ The existence of any ~~pre-need~~preneed
guardian designation, ~~healthcare~~health care surrogate
designation, ~~and~~or power of attorney, purportedly executed by the
alleged incapacitated person, the identity and county of
residence of any person designated to act under such documents,

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and the efforts to locate such documents or persons designated to act; and

~~(k)~~ The reasons why a guardian advocate ~~under s. 745.711~~ or other alternatives to guardianship are insufficient to meet the needs of the alleged incapacitated person.

~~(2)~~ The petition must state whether a willing and qualified guardian cannot be located.

~~(3)~~ The petition for appointment of a professional guardian must comply with ~~the provisions of~~ subsection ~~(1)~~ and must state that the ~~nominated~~ proposed guardian is a professional guardian.

~~(4)~~ If the petitioner is a professional guardian, the petitioner may not petition for ~~their~~ the professional guardian's own appointment unless ~~they are~~ the professional guardian is a relative of the alleged incapacitated person or of the minor. For purposes of this subsection, the term "relative" means an individual who would qualify to serve as a nonresident guardian under s. 745.501. This subsection does not apply to a public guardian appointed under s. 745.1406 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~~ by the Office of Public and Professional Guardians or any local government.

Section 51. Section 745.604, Florida Statutes, is created to read:

745.604 Notice of petition for appointment of guardian and hearing ~~.-~~ .

~~(1)~~ When a petition for appointment of guardian for an incapacitated person is heard at the conclusion of the hearing

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in which the person is determined to be incapacitated, the court shall hear the petition without further notice, provided that notice of hearing ~~of~~ on the petition ~~to appoint~~ for appointment of guardian was timely served. If the petition is heard on a later date, reasonable notice of the hearing must be served on the incapacitated person, any guardian then serving, the ~~person's~~ person's next of kin, and such other interested persons as the court may direct.

(2)- When a petition for appointment of guardian of a minor is filed, formal notice must be served on the ~~minor's~~ minor's parents. When a parent petitions for appointment as guardian for the parent's minor child, formal notice shall be served on the other parent, unless the other parent consents to the appointment. If the proposed guardian has custody of the minor and the petition alleges that, after diligent search, a parent cannot be found, the parent may be served by informal notice, ~~r~~ delivered to the parent's last known address.

Section 52. Section 745.605, Florida Statutes, is created to read:

745.605 Order on petition for appointment of guardian.-.-

(1)- At the hearing on a petition for appointment of guardian, the court must consider and find whether there is an alternative to guardianship ~~that~~ which will sufficiently address the needs of the incapacitated person.

(2)- The order appointing a guardian must state the nature of the guardianship as either plenary or limited. If limited, the order must state that the guardian may exercise only those delegable rights ~~which~~ that have been removed from the incapacitated person and delegated to the guardian. The order

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~~shall~~must specify the powers and duties of the guardian.

(3~~)-~~) A plenary guardian of person shall exercise all delegable rights and powers of the incapacitated person as ~~it relates~~they relate to person and a plenary guardian of property shall exercise all delegable rights and powers of the incapacitated person as ~~it relates~~they relate to property.

(4~~)-~~) A ward for whom a limited guardian has been appointed retains all legal rights except those that have been specifically delegated to the guardian in the ~~court's~~court's written order.

(5~~)-~~) The order appointing a guardian must contain a finding that guardianship is the least restrictive alternative that is appropriate for the ward, and must reserve to the incapacitated person the right to make decisions in all matters commensurate with the ~~person's~~person's ability to do so.

(6~~)-~~) If a petition for appointment of guardian has been filed, the court shall rule on the petition contemporaneously with the order adjudicating a person to be incapacitated unless good cause is shown to defer ruling. If a guardian is not appointed contemporaneously with the order adjudicating the person to be incapacitated, the court may appoint an emergency temporary guardian in the manner and for the purposes specified in s. 745.701.

(7~~)-~~) The order appointing a guardian must specify the amount of bond ~~to be given by the guardian~~ is to provide, if any, and must state whether the guardian must place all, or part, of the ward's property ~~of the ward~~ in a restricted account in a financial institution designated pursuant to s. 69.031.

Section 53. Section 745.606, Florida Statutes, is created

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to read:

745.606 Oath of guardian~~—~~

.—Before exercising authority as guardian, every guardian shall take an oath that he or she will faithfully perform the duties as guardian. This oath is not jurisdictional.

Section 54. Section 745.607, Florida Statutes, is created to read:

745.607 Bond of guardian~~—~~—

(1)~~—~~) Before exercising authority as guardian, a guardian of property of a ward shall file a bond with surety as prescribed in s. 45.011 to be approved by the clerk or by the court. The bond shall be payable to the Governor ~~of the state~~ and the ~~Governor's~~Governor's successors in office, conditioned on the faithful performance of all duties by the guardian. In form the bond shall be joint and several. For good cause shown, the court may waive bond.

(2)~~—~~) When the sureties on a bond are natural persons, the guardian ~~shall be required to~~must file, with the annual guardianship report, proof satisfactory to the court that the sureties are alive and solvent.

(3)~~—~~) All bonds required by this part shall be in the sum that the court deems sufficient after considering the value and nature of the assets subject to guardianship.

(4)~~—~~) For good cause shown, the court may require, or increase or reduce, the amount of bond or change or release the surety.

(5)~~—~~) When considering bond of professional guardians, the court may take into account the blanket bond provided by ~~such~~the professional guardian, provided that proof of insurance and

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effectiveness of the bond is on file with the clerk. Additional bond may be required.

~~(6)~~ Financial institutions and public guardians authorized by law to be guardians ~~shall~~are not ~~be~~ required to file bonds.

~~(7)~~ The premium of a guardian's required bond shall be paid as an expense of the guardianship.

~~(8)~~ When it is expedient in the judgment of the court having jurisdiction ~~of~~over any guardianship property, because the size of the ~~bond~~guardian's required ~~of the guardian bond~~ is burdensome, or for other cause shown, the court may order, in lieu of a bond or in addition to a lesser bond, that the guardian place all or part of the ward's property ~~of the ward~~ in a designated financial institution under the same conditions and limitations as are contained in s. 69.031. A designated financial institution shall also include a dealer, as defined in s. 517.021(6), if the dealer is a member of the Security Investment Protection Corporation and is doing business in ~~the~~this state.

Section 55. Section 745.608, Florida Statutes, is created to read:
745.608 Validity of bond~~.~~

~~No.~~A bond executed by any guardian ~~shall~~may not be deemed invalid because of an informality in it or because of an informality or illegality in the appointment of the guardian. The bond shall have the same force and effect as if the bond had been executed in proper form and the appointment had been legally made.

Section 56. Section 745.609, Florida Statutes, is created

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to read:

745.609 Liability of surety-

~~No.~~-A surety for a guardian ~~shall~~may not be charged beyond the property of the ward.

~~745.610~~

Section 57. Section 745.611, Florida Statutes, is created to read:

745.611 Alternatives to guardianship-.-

~~(1)-~~ In each proceeding in which a guardian is appointed under this chapter, the court shall make a finding as to whether the ward, ~~prior to~~before adjudication of incapacity, has executed an advance directive under chapter 765 or durable power of attorney under chapter 709. If any advance directive or durable power of attorney is identified, the court must consider and find whether there is an alternative to guardianship ~~that~~which will sufficiently address the needs of the incapacitated person ~~and~~. The court must specify in the order appointing the guardian and letters what authority, if any, the guardian shall exercise over the ward or the ward's assets and what authority, if any, the surrogate or agent shall continue to exercise over the ward or the ward's assets.

~~(2)-~~ Upon verified petition by an interested person or if requested in a petition for appointment of guardian with notice to the surrogate, agent, and interested persons, the court may suspend, modify, or revoke the authority of the surrogate or agent to make health care or financial decisions for the ward. Any order suspending, modifying, or revoking the authority of an agent or surrogate must be supported by written findings of

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fact.

(3) If a durable power of attorney, a health care surrogate designation, a trust, or any other relevant financial or personal care document is discovered after issuance of letters of guardianship, any interested person may file a verified petition seeking a determination of the effect of any such document and what changes, if any, changes should be made to the powers of the guardian. Any order suspending, modifying, or revoking the authority of an agent or surrogate must be supported by written findings of fact.

Section 58. Section 745.611, Florida Statutes, is created to read:

745.612 Letters of guardianship.—

(1) Letters of guardianship must be issued to the guardian and must specify whether the guardianship pertains to the ward's person, or property, or both.

(2) The letters must state whether the guardianship is plenary or limited. If limited, the letters must specify the powers and duties of the guardian.

(3) The letters must state whether or not, and to what extent, the guardian is authorized to act on behalf of the ward with regard to any advance directive under chapter 765 or durable power of attorney under chapter 709 previously executed by the ward.

(4) The duties and powers of the guardian accrue on the date letters are issued and not the date the order appointing a guardian is entered.

Section 7.59. Part VII of chapter 745, Florida Statutes, consisting shall be entitled "Types of sections Guardianship" and

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shall consist of ss. 745.701, 745.702, 745.703, 745.704, 745.705,
745.706, 745.707, 745.708, 745.709, 745.710, 745.711, 745.712,
745.713, and 745.714.

Section 60. Section 745.701, Florida Statutes, is created
to read:

~~PART VII~~

~~TYPES OF GUARDIANSHIP~~

745.701 Emergency temporary guardianship.~~.-~~

(1~~)-~~) A court, ~~prior to~~before appointment of a guardian but
after a petition for determination of incapacity has been filed
or as otherwise provided in this code, may appoint an emergency
temporary guardian for the person, or property, or both, of an
alleged incapacitated person. The court must find that there
appears to be imminent danger that the physical or mental health
or safety of the person will be seriously impaired or that the
~~person's~~person's property is in danger of being wasted,
misappropriated, or lost unless immediate action is taken. The
alleged incapacitated person or an interested person may apply
to the court in which the proceeding is pending for appointment
of an emergency temporary guardian. The powers and duties
granted must be described in the order appointing the emergency
temporary guardian consistent with s. 745.605(2).

(2~~)-~~) The court shall appoint counsel to represent the
alleged incapacitated person during any such proceedings. An
emergency temporary guardian may be appointed only after hearing
with at least 3 days' notice to the alleged incapacitated
person, unless the petitioner demonstrates that substantial harm
to the alleged incapacitated person would occur if the 3 days'
notice is given and that reasonable notice, if any, has been

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provided.

(3) If no guardian is appointed at the time an order determining incapacity is entered, the court may appoint an emergency temporary guardian on its own motion after hearing with notice to the incapacitated person, ~~and~~ the person's next of kin, and such interested persons as the court may direct.

(4) Upon a filing of notice of resignation by a guardian or upon the guardian's suspension or removal, if no petition to appoint a successor has been filed by the time of the resignation, suspension, or removal, the court may appoint an emergency temporary guardian on its own motion or motion of any interested person, after hearing with notice to the ward, the resigning or suspended guardian, and such other interested persons as the court may direct.

(5) The authority of an emergency temporary guardian expires upon the issuance of letters to a succeeding guardian, upon a determination that the ward is not incapacitated as to the rights and abilities specified in the order appointing emergency temporary guardian, or upon the death of the ward, whichever occurs first.

(6) An emergency temporary guardian of property whose authority has expired shall distribute assets only with a prior court order approving distribution.

(7) The emergency temporary guardian shall be discharged and relieved of further responsibility upon approval of the final accounting or report as specified in subsection (12) and distribution of assets, if any, as directed by the court.

(8) The court may issue an injunction, a restraining order, or any other appropriate writ to protect the physical or

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1771 mental health or safety or property of the person who is the
1772 ward of an emergency temporary guardianship.

1773 (9~~+~~) The emergency temporary guardian shall take an oath
1774 to faithfully perform the duties of a guardian before letters of
1775 emergency temporary guardianship are issued.

1776 (10~~+~~) Before exercising authority as guardian, the
1777 emergency temporary guardian of property may be required to file
1778 a bond in accordance with s. 745.607.

1779 (11~~+~~) An emergency temporary ~~guardian's~~ guardian's
1780 authority and responsibility begins upon issuance of letters of
1781 emergency temporary guardianship in accordance with s. 745.611.

1782 (12) (a~~+~~) An emergency temporary guardian of property shall
1783 file a petition for distribution and discharge and final
1784 accounting no later than 45 days after the issuance of letters
1785 to the succeeding guardian, death of the ward, or entry of an
1786 order denying the petition to appoint a guardian. The provisions
1787 of s. 745.1102 shall apply. The final accounting must consist of
1788 a verified inventory of the property, as provided in s. 745.803,
1789 as of the date letters of emergency temporary guardianship were
1790 issued and an accounting that complies with the requirements of
1791 the Florida Probate Rules.

1792 (b~~+~~) An emergency temporary guardian of person shall file
1793 a petition for discharge and a final report no later than 45
1794 days after the issuance of letters to the succeeding guardian,
1795 death of the ward, or entry of an order denying the petition to
1796 appoint a guardian. The provisions of s. 745.1106 shall apply.
1797 The final report shall summarize the activities of the emergency
1798 temporary guardian with regard to residential placement, medical
1799 care, mental health and rehabilitative services, and the social

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condition of the ward to the extent of the authority granted to the temporary guardian in the letters of emergency temporary guardianship. Upon the death of the ward, s. 745.1107(5) shall apply.

(c) A copy of the final accounting or report of the emergency temporary guardian shall be served on the succeeding guardian, the ward if no guardian is appointed, ~~or~~ the personal representative of the ward's estate, and such other interested persons as the court may direct.

Section 61. Section 745.702, Florida Statutes, is created to read:
745.702 Standby guardian of minor~~-~~

~~-.~~ Upon petition by the natural guardians or a guardian appointed under s. 745.713, the court may appoint a standby guardian of person or property of a minor. The court may also appoint an alternate to the guardian to act if the standby guardian does not serve or ceases to serve after appointment. Notice of hearing on the petition must be served on the natural guardians and on any guardian currently serving unless they waive the notice ~~is waived in writing by them or it is waived by~~ the court for good cause shown.

Section 62. Section 745.703, Florida Statutes, is created to read:
745.703 Standby guardian of adult~~-~~

~~-.~~ Upon petition by a currently serving guardian, the court may appoint a standby guardian of person or property of an incapacitated person ~~may be appointed by the court~~. The court may also appoint an alternate to act if the standby guardian does

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not serve or ceases to serve after appointment. Notice of hearing must be served on the ~~ward's~~ward's next of kin.

Section 63. Section 745.704, Florida Statutes, is created to read:

745.704 Appointment and powers of standby guardian.—

~~(1—)~~ Upon filing a guardian's oath and designation of resident agent and acceptance, a standby guardian or alternate may assume the duties of guardianship immediately ~~on~~upon the death, removal, or resignation of an appointed guardian of a minor, or ~~on~~upon the death or adjudication of incapacity of the last surviving natural guardian of a minor, or upon the death, removal, or resignation of the guardian for an adult. A standby guardian of property may only safeguard the ward's property before issuance of letters.

~~(2—)~~ A standby guardian shall petition for confirmation of appointment and shall file an oath, designation of resident agent, and acceptance. Each proposed guardian shall post bond as set forth in s. 745.607 and shall submit to ~~a~~a credit and ~~a~~ criminal history record ~~check~~checks as set forth in s. 745.504. If the court finds the standby guardian to be qualified to serve as guardian under s. 745.501, the standby guardian shall be entitled to confirmation of appointment as guardian. Letters must then be issued in the manner provided in s. 745.611.

~~(3—)~~ After the assumption of duties by a standby guardian, the court shall have jurisdiction over the standby guardian and the ward.

Section 64. Section 745.705, Florida Statutes, is created to read:

745.705 Preneed guardian for adult.—

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(1~~+~~) A competent adult may name a preneed guardian by executing a written declaration that names a guardian to serve in the event of the ~~declarant's~~ declarant's incapacity.

(2~~+~~) The declaration must be signed by the declarant in the presence of two subscribing witnesses as defined in s. 732.504. A declarant unable to sign the instrument may, in the presence of witnesses, direct that another person sign the declarant's name as required herein. The person designated as preneed guardian shall not act as witness to the execution of the declaration. At least one person who acts as a witness shall be neither the declarant's spouse nor blood relative.

(3~~+~~) The declarant may file the declaration with the clerk in the declarant's county of residence at any time. When a petition for appointment of guardian is filed, the clerk shall produce the declaration and serve a copy on the proposed ward and the petitioner.

(4~~+~~) Production of the declaration in a proceeding for appointment of guardian shall constitute a rebuttable presumption that the preneed guardian is entitled to serve as guardian. The court ~~shall~~ is not ~~be~~ bound to appoint the preneed guardian if the person is found to be disqualified to serve as guardian.

(5~~+~~) If the preneed guardian is unwilling or unable to serve, a written declaration appointing an alternate preneed guardian constitutes a rebuttable presumption that the alternate is entitled to serve as guardian. The court is not bound to appoint the alternate preneed guardian if the person is found to be disqualified to serve as guardian.

Section 65. Section 745.706, Florida Statutes, is created

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to read:

745.706 Preneed guardian for minor~~.-.~~

(1~~)-~~) Natural guardians may nominate a preneed guardian of person or property, or both, of their minor child by executing a written declaration that names such guardian to serve if the ~~minor's~~minor's last surviving natural guardian becomes incapacitated or dies or if the natural guardian is disqualified. The declarant may also name an alternate to the guardian to act if the designated preneed guardian is unwilling or unable to serve.

(2~~)-~~) The declaration must specify the child's full legal name and date of birth, the relationship of the declarant to the child, and the proposed preneed guardian.

(3~~)-~~) The declaration must be signed at the end by all of the natural guardians, or the ~~name~~names of the natural guardians must be subscribed at the end by another person in the natural guardians' presence and at the natural guardians' direction. The natural guardians' signing, or ~~acknowledgement~~acknowledgment that another person has subscribed his or her name to the declaration, must be in the presence of all natural guardians and in the presence of two subscribing witnesses as defined in s. 732.504. The person designated as preneed guardian shall not act as witness to the execution of the declaration. At least one person who acts as a witness shall be neither ~~of the natural guardians'~~guardian's spouse nor blood relative.

(4~~)-~~) The declarant may file the declaration at any time with the clerk in the county of the ~~child's~~minor's residence, ~~at any time~~. When a petition for appointment of guardian for the minor is filed, the clerk shall produce the declaration and

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serve a copy on the minor and petitioner.

(5~~7~~) The declaration constitutes a rebuttable presumption that the designated preneed guardian is entitled to serve as guardian. The court is~~must~~ not ~~bound to~~ appoint the designated preneed guardian if the person is found to be disqualified or declines to serve as guardian.

(6~~7~~) If the preneed guardian is unwilling or unable to serve, a written declaration appointing an alternate preneed guardian constitutes a rebuttable presumption that the alternate is entitled to serve as guardian. The court is~~must~~ not ~~bound to~~ appoint the person if the alternate is found to be disqualified or declines to serve as guardian.

(7~~7~~) The clerk shall maintain all declarations filed pursuant to this section until the minor child named in the declaration has reached the age of majority. The clerk may dispose of such written declarations in accordance with law.

Section 66. Section 745.707, Florida Statutes, is created to read:

745.707 Voluntary guardianship of property.~~.-~~

(1~~7~~) Upon petition by the proposed ward, the court must appoint a guardian of property of a resident or nonresident person who, though of sufficient mental capacity, chooses to have a guardian manage all or part of his or her property. The petition must be accompanied by a written statement from a licensed physician specifying that the physician has examined the petitioner and that the petitioner has capacity to understand the nature of the guardianship and the delegation of authority. The examination must have been conducted within 60 days ~~prior to~~before filing the petition. Notice of hearing on any

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petition for appointment must be served on the petitioner and on any person to whom the petitioner requests that notice be given. Such request may be made in the petition for appointment of guardian or in a subsequent written request for notice signed by the petitioner.

(2~~+~~) If requested in the petition for appointment of a guardian brought under this section, the court may direct the guardian to take possession of less than all of the ~~ward's~~ward's property and of the rents, income, issues, and profits from it. In such case, the court shall specify in its order the property to be included in the guardianship. The duties and responsibilities of the guardian appointed under this section will extend only to ~~such~~the specified property.

(3~~+~~) Unless the voluntary guardianship is limited pursuant to subsection (2), any guardian appointed under this section has the same duties and responsibilities as are provided by law for plenary guardians of ~~the~~the property.

(4~~+~~) The guardian's accounting, any petition for authority to act, and notice of hearing must be served on the ward and on any person to whom the ward has requested that notice be given, in a notice filed with the court.

(5~~+~~) A guardian must include in the annual accounting filed with the court a written statement from a licensed physician who examined the ward not more than 60 days before the accounting is filed with the court. The written statement must specify whether the ward has capacity to understand the nature of the guardianship and the delegation of authority.

(6~~+~~) If the physician's written statement specifies that the ward no longer has the capacity to understand the nature of

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the guardianship or the ward's delegation of authority, the guardian must file a petition to determine incapacity and must continue to serve as guardian pending further order of the court.

(7) A ward with capacity may terminate a voluntary guardianship by filing a notice with the court that the voluntary guardianship is terminated. The notice must be accompanied by a written statement from a licensed physician specifying that the ward has the capacity to understand the nature of the guardianship and the ward's delegation of authority. A copy of the notice must be served on the guardian and such other persons as the ward may specify.

(8) Upon a filing of notice of termination by the ward, the guardian must ~~account~~ file a final accounting, unless waived by the ward, and file a petition for discharge as specified in s. 745.1102.

Section 67. Section 745.708, Florida Statutes, is created to read:

745.708 Relocation of ward to Florida.—

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

(2) Within 60 days ~~of~~ after a foreign guardian moves the residence of a minor ward ~~of a foreign guardian being relocated~~ to this state, the foreign guardian shall file a petition for

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2003 appointment of guardian and a certified copy of the guardian's
 2004 letters of guardianship, or equivalent, with the clerk in the
 2005 county in which the ward resides.

2006 (3~~+~~) Until a guardian is appointed in this state for the
 2007 ward or the ward is determined ~~to~~ not to require a guardian, the
 2008 foreign guardian's authority shall be recognized and given full
 2009 faith and credit in the courts of this state, provided the
 2010 foreign guardian is qualified to serve as guardian of a resident
 2011 ward. A foreign guardian who fails to comply with the
 2012 requirements of this section shall have no authority to act on
 2013 behalf of the ward in this state.

2014 (4~~+~~) This section does not foreclose the filing of a
 2015 petition for determination of incapacity or petition for
 2016 appointment of guardian by persons other than a foreign
 2017 guardian.

2018 Section 68. Section 745.709, Florida Statutes, is created
 2019 to read:

2020 745.709 Foreign guardian of nonresident ward~~-. -~~

2021 (1~~+~~) A foreign guardian of property of a nonresident ward~~,~~
 2022 is not required to file a petition under this section in order
 2023 to manage or secure intangible personal property.

2024 (2~~+~~) A foreign guardian of property of a nonresident ward~~,~~
 2025 ~~duly appointed by a court of another state, territory, or country,~~
 2026 who desires to manage ~~or serve~~ any part or all of the real or
 2027 tangible personal property of the ward located in this state~~,~~ ~~may~~
 2028 shall be governed by this code and must file a petition showing
 2029 his or her appointment, describing the property, stating its
 2030 estimated value, ~~and~~ showing the indebtedness, if any, existing
 2031 against the ward in this state, to the best of the

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~~guardian's~~guardian's knowledge and belief~~.-~~, and requesting the court to recognize the authority of the foreign guardian.

~~(3)-~~ A foreign guardian required to petition under subsection (2) shall designate a resident agent, as required by the Florida Probate Rules, file certified copies of letters of guardianship or other authority, and furnish proof of the guardian's~~required~~ bond or other security, if any. The court shall determine if the foreign bond or other security is sufficient to guarantee the faithful management of the ward's~~ward's~~ property in this state. The court may require a guardian's~~guardian's~~ bond in this state in the amount it deems necessary and conditioned on the proper management of the ward's property of the ward~~coming into the custody of the guardian in this state.~~

~~(4)-~~ If recognized, the authority of the foreign guardian of a nonresident ward shall be~~recognized and~~ given full faith and credit in the courts of this state. A guardian appointed in another state, territory, or country may maintain or defend any action in this state as a representative of the ward unless a guardian has been appointed in this state.

~~(5)- Thereafter, the guardianship)~~ A foreign guardian required to petition under subsection (2), shall be governed by this code.

Section 69. Section 745.710-711, Florida Statutes, is created to read:

745.711 Resident guardian of property of nonresident ward~~.-~~

~~(1)-~~ The court may appoint a person qualified under s. 745.501 as guardian of a nonresident~~ward's~~ ward's Florida

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property upon the petition of a foreign guardian, next of kin, or creditor of the ward, regardless of whether the ward has a foreign guardian.

(2) The petition for appointment of a guardian of property of a nonresident ward ~~shall comply with~~ must conform to the requirements of s. 745.603. The petition must state the ward's residence and the name and residence of any guardian, conservator, or other fiduciary appointed for the ward.

(3) If it is alleged that the ~~person~~ nonresident ward has been adjudicated to be incapacitated, the petition ~~shall~~ must be accompanied by a certified copy of the adjudication of incapacity from the court having jurisdiction in the state, territory, or country in which the incapacitated person resides ~~and shall state the incapacitated person's residence and the name and residence of any guardian, conservator or other fiduciary appointed for the ward.~~

(4) If a nonresident is temporarily residing in this state and is not under an adjudication of incapacity made in some other state, territory, or country, the procedure for determination of incapacity and appointment of a guardian of the ~~nonresident's~~ nonresident's property shall be the same as for a resident of this state.

(5) When the ground for the appointment of a guardian is incapacity for which the ~~person~~ ward has been adjudicated in another state, territory, or country, formal notice of the petition and notice of hearing on the petition shall be served on the foreign guardian or other fiduciary appointed for the ward, if any, and on the ward.

(6) In the appointment of the guardian, the court shall

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be governed by s. 745.602.

~~(7)~~ The duties, powers, and liabilities of the guardian shall be governed by this code.

Section 70. Section 745.711-712, Florida Statutes, is created to read:
745.712 Guardian advocates.

.—The court may appoint a guardian advocate, without adjudication of incapacity, for a person with developmental disabilities if the person is only partially incapacitated. Unless otherwise specified, the proceeding shall be governed by the Florida Probate Rules. In accordance with the legislative intent of this code, courts are encouraged to consider appointing a guardian advocate, when appropriate, as a less restrictive alternative to guardianship.

Section 71. Section 745.712-713, Florida Statutes, is created to read:
745.713 Natural guardians.

~~(1)~~ Parents jointly are natural guardians of their minor children, including their adopted children, unless the parents' parental rights have been terminated pursuant to chapter 39. If a child is the subject of any proceeding under chapter 39, the parents may act as natural guardians under this section unless the court division with jurisdiction over guardianship proceedings or the court division with jurisdiction over the chapter 39 proceeding finds that it is not in the child's best interest. If one parent dies, the surviving parent remains the sole natural guardian even if the parent remarries. If the marriage between the parents is dissolved, both parents remain natural guardians with shared parental responsibility unless the

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2119 court awards sole parental responsibility to one parent, in
 2120 which case the parent awarded parental responsibility shall be
 2121 the sole natural guardian. If the marriage is dissolved and
 2122 neither parent is awarded parental responsibility of the child,
 2123 neither shall act as natural guardian of the child. The mother
 2124 of a child born out of wedlock is the natural guardian of the
 2125 child and is entitled to primary residential care and parental
 2126 responsibility ~~of~~ for the child unless the parents marry or until
 2127 an order determining paternity is entered by a court of
 2128 competent jurisdiction. In such event, the father shall also be
 2129 deemed a natural guardian.

2130 (~~2~~) Natural guardians are authorized, on behalf of their
 2131 minor child if the total net amounts received do not exceed
 2132 \$25,000~~-00~~, to:

2133 (~~a~~) Settle and consummate a settlement of any claim or
 2134 cause of action accruing to the minor child for damages to the
 2135 person or property of the minor child;

2136 (~~b~~) Collect, receive, manage, and dispose of the proceeds
 2137 of any such settlement;

2138 (~~c~~) Collect, receive, manage, and dispose of any real or
 2139 personal property distributed from an estate or trust;

2140 (~~d~~) Collect, receive, manage, dispose of, and make
 2141 elections regarding the proceeds from a life insurance policy or
 2142 an annuity contract payable to, or otherwise accruing to the

2143 benefit of, the ~~child~~ minor; and

2144 (~~e~~) Collect, receive, manage, dispose of, and make
 2145 elections regarding the proceeds of any benefit plan as defined
 2146 ~~by~~ in s. 710.102, of which the minor is a beneficiary,
 2147 participant, or owner, without appointment, authority, or bond.

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2148 (3~~—~~) A guardianship shall be required when the total net
2149 amounts received by, or on behalf of, the minor exceed
2150 \$50,000.~~00~~. When the total net amounts received by, or on behalf
2151 of, the minor exceed \$25,000.~~00~~ but ~~does~~do not exceed \$50,000.~~00~~,
2152 the court has the discretion to determine whether the natural
2153 guardians are authorized to take any actions enumerated in
2154 subsection (2) ~~of this statute~~ or whether a guardianship is
2155 required.

2156 (4~~—~~) All instruments executed by a natural guardian for
2157 the benefit of the ward under the powers specified in subsection
2158 (2) shall be binding on the ward. The natural guardian may not,
2159 without court order, use the ward's property ~~of the ward~~ for the
2160 ~~guardian's~~guardian's benefit or to satisfy the
2161 ~~guardian's~~guardian's support obligation to the ward.

2162 (5~~—~~ Prior to) Before taking possession of any funds or
2163 other property as authorized by subsection (2), a natural
2164 guardian must file with the clerk in the county of the ward's
2165 residence a verified statement identifying the ~~child,~~minor, the
2166 nature and value of the property, and the name, relationship,
2167 and current residence address of the natural guardian.

2168 (6~~—~~) Any funds or other property collected by or ~~put~~
2169 ~~into~~placed in the possession of a natural guardian on behalf of a
2170 minor, remain the property of the minor and, unless otherwise
2171 authorized by the court, are not to be used by a natural
2172 guardian to fulfill ~~the natural guardian's~~ this or her parental
2173 obligations.

2174 (7~~—~~) In addition to the authority granted in subsection
2175 (2), natural guardians are authorized, on behalf of any of their
2176 minor children, to waive and release, in advance, any claim or

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cause of action against a commercial activity provider, or its owners, affiliates, employees, or agents, which would accrue to a minor ~~child~~ for personal injury, including death, and property damage resulting from an inherent risk in the activity.

(a) — As used in this subsection, the term "inherent risk" means those dangers or conditions, known or unknown, which are characteristic of, intrinsic to, or an integral part of the activity and which are not eliminated even if the activity provider acts with due care in a reasonably prudent manner. The term includes, but is not limited to:

1. — The failure by the activity provider to warn the natural guardian or minor ~~child~~ of an inherent risk; and

2. — The risk that the minor ~~child~~ or another participant in the activity may act in a negligent or intentional manner and contribute to the injury or death of the minor ~~child~~. A participant does not include the activity provider or its owners, affiliates, employees, or agents.

(b) — To be enforceable, a waiver or release executed under this subsection must, at a minimum, include the following statement in uppercase type that is at least 5 points larger than, and clearly distinguishable from, the rest of the text of the waiver or release:

NOTICE TO THE MINOR CHILD'S
NATURAL GUARDIAN

READ THIS FORM COMPLETELY AND CAREFULLY. YOU ARE
AGREEING TO LET YOUR MINOR CHILD ENGAGE IN A
POTENTIALLY DANGEROUS ACTIVITY. YOU ARE AGREEING THAT,

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EVEN IF (name of released party or parties) USES
REASONABLE CARE IN PROVIDING THIS ACTIVITY, THERE IS A
CHANCE YOUR CHILD MAY BE SERIOUSLY INJURED OR KILLED
BY PARTICIPATING IN THIS ACTIVITY BECAUSE THERE ARE
CERTAIN DANGERS INHERENT IN THE ACTIVITY WHICH CANNOT
BE AVOIDED OR ELIMINATED. BY SIGNING THIS FORM YOU ARE
GIVING UP YOUR CHILD'S RIGHT AND YOUR RIGHT TO RECOVER
FROM (name of released party or parties) IN A LAWSUIT
FOR ANY PERSONAL INJURY, INCLUDING DEATH, TO YOUR
CHILD OR ANY PROPERTY DAMAGE THAT RESULTS FROM THE
RISKS THAT ARE A NATURAL PART OF THE ACTIVITY. YOU
HAVE THE RIGHT TO REFUSE TO SIGN THIS FORM, AND (name
of released party or parties) HAS THE RIGHT TO REFUSE
TO LET YOUR CHILD PARTICIPATE IF YOU DO NOT SIGN THIS
FORM.

(c) — If a waiver or release complies with paragraph (b)
and waives no more than is allowed under this subsection, there
is a rebuttable presumption that the waiver or release is valid
and that any injury or damage to the minor ~~child~~ arose from the
inherent risk involved in the activity.

1. — To rebut the presumption that the waiver or release
is valid, a claimant must demonstrate by a preponderance of the
evidence that the waiver or release does not comply with this
subsection.

2. — To rebut the presumption that the injury or damage to
the minor ~~child~~ arose from an inherent risk involved in the
activity, a claimant must demonstrate by clear and convincing
evidence that the conduct, condition, or other cause resulting

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in the injury or damage was not an inherent risk of the activity.

3. If a presumption under this paragraph is rebutted, liability and compensatory damages must be established by a preponderance of the evidence.

(d) ~~Nothing in~~ This subsection ~~limits~~does not limit the ability of natural guardians, on behalf of any of their minor children, to waive and release, in advance, any claim or cause of action against a noncommercial activity provider, or its owners, affiliates, employees, or agents, to the extent authorized by common law.

Section 72. Section 745.713-714, Florida Statutes, is created to read:

745.714 Guardians of minors.

(1) Upon petition of a parent, brother, sister, next of kin, or other person interested in the welfare of a minor, a guardian for a minor may be appointed by the court without the necessity of adjudication of incapacity pursuant to ~~chapter 745~~ part III of this chapter.

(2) Upon petition, the court may determine if the appointment of a guardian of property of a minor is necessary as provided in s. 745.712(3).

(3) A minor is not required to attend the hearing on the petition for appointment of a guardian, unless otherwise directed by the court.

~~(4) In its discretion,~~ (4) The court may appoint an attorney qualified under s. 745.305(4) to represent the interests of a minor at the hearing on the petition for appointment of a guardian.

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(5~~+~~) A petition to appoint a guardian may be filed and a proceeding to determine incapacity under ~~chapter 745~~ part III of this chapter may be commenced for a minor who is at least 17 years and 6 months of age at the time of filing. The alleged incapacitated minor under this subsection shall be provided all the due process rights conferred upon an alleged incapacitated adult pursuant to this chapter and applicable court rules. The order determining incapacity, the order appointing a guardian, and the letters of guardianship may take effect on or after the minor's 18th birthday.

Section 73. Section 745.714-715, Florida Statutes, is created to read:

745.715 Claims of minors~~-. -~~

(1) (a~~+~~) If ~~no~~ a guardian has not been appointed pursuant to this code, the court having jurisdiction over a claim may appoint a guardian ad litem to represent the ~~minor's~~ minor's interest before approving a settlement of the ~~minor's~~ minor's portion of the claim in any case in which a minor has a claim for personal injury, property damage, wrongful death, or other cause of action in which the proposed gross settlement of the claim for all claimants, including immediate and deferred benefits, exceeds \$25,000.

(b~~+~~) The court shall appoint a guardian ad litem to represent the ~~minor's~~ minor's interest before approving a settlement of the ~~minor's~~ minor's claim in any case in which the proposed gross settlement of the claim, for all claimants, including immediate and deferred benefits, exceeds \$50,000.

(2~~+~~) No bond shall be required of the guardian ad litem.

(3~~+~~) The duty of a guardian ad litem is to protect the

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~~minor's~~minor's interests as described in this code.

(4)~~—~~ A court ~~shall~~may not appoint a guardian ad litem for the minor if a guardian of the minor has previously been appointed and the guardian has no potential adverse interest to the minor.

(5)~~—~~ The court shall award reasonable fees and costs to the guardian ad litem to be paid out of the gross proceeds of the settlement.

(6)~~—~~ All records relating to settlement of a claim pursuant to this section ~~is~~are subject to the confidentiality provisions of s. 745.113.

~~112.~~

Section ~~8.~~74. Part VIII of chapter 745, Florida Statutes, ~~consisting~~shall be entitled "Duties of sectionsGuardians" and shall consist of ss. 745.801, ~~745.802, 745.803, 745.804, 745.805, 745.806, 745.807, 745.808, 745.809, 745.810, 745.811, 745.812, 745.813, and ~~745.814.~~~~

Section 75. Section 745.801, Florida Statutes, is created to read:

~~PART VIII~~

~~DUTIES OF GUARDIAN~~

745.801 Liability of guardian~~—~~

.—A guardian is not personally liable for the debts, contracts, or torts of the ward. A guardian may be personally liable to the ward for failure to protect the ward within the scope of the guardian's authority.

Section 76. Section 745.802, Florida Statutes, is created to read:

745.802 Duties of guardian of property~~—~~.

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(1~~+~~) A guardian of property is a fiduciary and may exercise only those rights that have been removed from the ward and delegated to the guardian. The guardian of a minor's property must exercise the powers of a plenary guardian of property.

(2~~+~~) A guardian of property of the ward must ~~do~~ do all of the following:

(a~~+~~) Protect and preserve the property and invest it prudently as provided in chapter 518.

(b~~+~~) Apply the property as provided in s. 745.1304.

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

(d~~+~~) Perform all other duties required of a guardian of property by law.

(e~~+~~At) Upon the termination of the guardianship, deliver the ward's property ~~of the ward~~ to the person lawfully entitled to it.

(3~~+~~) A guardian ~~is~~, as a fiduciary ~~who~~, must observe the standards in dealing with guardianship property ~~that~~ which would be observed by a prudent person dealing with the property of another, ~~and~~. If the guardian has special skills or is appointed guardian on the basis of representations of special skills or expertise, the guardian is under a duty to use those skills.

(4~~+~~) A guardian of property, if authorized by the court, must secure the ~~ward's~~ ward's property and ~~of~~ the income from it, whether accruing before or after the ~~guardian's~~ guardian's appointment, and ~~of~~ the proceeds arising from the sale, lease, or mortgage of the property. All of the property and the income from it are assets in the hands of the guardian for the payment

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of debts, taxes, claims, charges, and expenses of the guardianship and for the care, support, maintenance, and education of the ward or the ~~ward's~~ward's dependents, as provided by law.

(5~~7~~) A guardian of property must file a verified inventory of the ward's property as required by s. 745.803 and annual accountings in accordance with s. 745.805. This requirement also applies to a guardian who previously served as emergency temporary guardian for the ward.

(6~~7~~) A guardian must act within the scope of the authority granted by the court and as provided by law.

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

(8~~7~~) When making decisions on behalf of a ward, a guardian of property shall exercise reasonable care, diligence, and prudence. The guardian of property shall base all decisions on substituted judgment if there is competent, substantial evidence of what the ward would have wanted and the decision promotes the ward's best interest. If there is no competent, substantial evidence to support substituted judgment or the decision does not promote the ward's best interest, then the decision shall be made based on the ward's best interest.

(9~~7~~) When two or more guardians have been appointed, the guardians shall consult with each other on matters of mutual responsibility.

Section 77. Section 745.803, Florida Statutes, is created to read:

745.803 Verified inventory~~-. -~~

(1~~7~~) A guardian of property shall file a verified inventory of the ~~ward's~~ward's property within 60 days ~~of~~after

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issuance of letters.

(2) The verified inventory must specify and describe all of the following:

(a) All property of the ward, ~~real and personal, that~~ which has come into the ~~guardian's~~ guardian's control or knowledge, including a statement of all encumbrances, liens, and other claims on any item, including any cause of action accruing to the ward, ~~and any trusts of which the ward is a beneficiary.~~

(b) The location of the real and personal property in sufficient detail so that it may be identified and located.

(c) A description of all sources of income, including, without limitation, social security benefits and pensions.

(d) The location of any safe-deposit boxes held by the ward individually or jointly with any other person.

(e) The identification by name, address, and occupation, of witnesses present, if any, during the initial examination of the ~~ward's~~ ward's tangible personal property.

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

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

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

(6) If a guardian of property learns of any property that is not included in the inventory, the guardian ~~shall~~ must file an

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2409 amended or supplemental inventory to report such property within
2410 60 days after the discovery.

2411 Section 78. Section 745.804, Florida Statutes, is created
2412 to read:

2413 745.804 Audit fee for inventory~~-. -~~

2414 (1~~-~~) When the value of the ~~ward's~~ward's property,
2415 excluding real property, equals or exceeds \$25,000, a guardian
2416 shall pay from the ~~ward's~~ward's property to the clerk an audit
2417 fee of up to \$75~~7~~ at the time of filing the verified inventory.
2418 Upon petition by the guardian, the court may waive the audit fee
2419 upon a showing of insufficient cash assets ~~in of~~ the ~~ward's~~
2420 ~~estate~~ward or other good cause.

2421 (2~~-~~) An audit fee may not be charged to any ward whose
2422 property, excluding real property, has a value of less than
2423 \$25,000.

2424 Section 79. Section 745.805, Florida Statutes, is created
2425 to read:

2426 745.805 Annual accounting~~-. -~~

2427 (1~~-~~) A guardian of property must file an annual accounting
2428 with the court.

2429 (2~~-~~~~An~~) The annual accounting must include~~:-~~ all of the
2430 following:

2431 (a~~-~~) A full and correct itemization of the receipts and
2432 disbursements of all of the ~~ward's~~ward's property in the
2433 guardian's control or knowledge ~~at the end of~~during the
2434 accounting period and a statement of the ~~ward's~~ward's property in
2435 the guardian's control or knowledge at the end of the accounting
2436 period. If the guardian does not have control of an asset, the
2437 accounting must describe the asset and the reason it is not in

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the guardian's control. If the ward is a beneficiary of a trust, the accounting must identify the trust and the trustee, but ~~they~~the guardian need not list the receipts~~and,~~ disbursements or assets of the trust.

~~(b)~~(3) A copy of statements demonstrating all receipts and disbursements for each of the ~~ward's~~ward's cash accounts from each of the institutions in which cash is deposited.

~~(c)~~(3) 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.

~~(3)~~(3) A guardian must obtain a receipt, canceled check, or other proof of payment for all expenditures and disbursements made on behalf of the ward. A guardian must preserve all evidence of payment, along with other substantiating papers, for a period of 7 years after the end of the accounting year. The receipts, proofs of payment, and substantiating papers need not be filed with the court but shall be made available for inspection at such time and place and before such persons as the court may order for cause, after hearing with notice to the guardian.

~~(4)~~(4) Unless otherwise directed by the court, a guardian of property may file the first annual accounting on either a ~~fiscal-year~~fiscal-year or ~~calendar-year~~calendar-year basis. The guardian must notify the court as to the ~~guardian's~~guardian's filing intention on the guardian's inventory. All subsequent annual accountings must be filed for the same accounting period as the first annual accounting. The first accounting period must end ~~within~~no later

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2467 than 1 year after the end of the month in which the letters were
2468 issued to the guardian of property.

2469 (5~~7~~) The annual accounting must be filed on or before the
2470 first day of the fourth month after the end of the accounting
2471 year.

2472 (6~~7~~) Unless the guardian is a plenary guardian of property
2473 or the requirement is otherwise waived by the court, the annual
2474 accounting must be served on the ward. The guardian shall serve
2475 a copy of the annual accounting on interested persons as the
2476 court may authorize or require.

2477 (7~~7~~) The court may waive the filing of an accounting if it
2478 determines the ward receives income only from social security
2479 benefits and the guardian is the ward's representative payee for
2480 the benefits.

2481 Section 80. Section 745.806, Florida Statutes, is created
2482 to read:

2483 745.806 Simplified accounting~~-. -~~

2484 (1~~7~~) In a guardianship of property, when all assets of the
2485 ward are in designated depositories under s. 69.031 and the only
2486 transactions ~~that occur~~ occurring in ~~that account~~ those accounts
2487 are interest accrual, deposits from a settlement, financial
2488 institution service charges, and court-authorized expenditures,
2489 the guardian may elect to file an accounting consisting of:

2490 (a~~7~~) Statements demonstrating all receipts and
2491 disbursements of the ~~ward's~~ ward's accounts from the financial
2492 institution; and

2493 (b~~7~~) A statement made by the guardian under penalty of
2494 perjury that the guardian has custody and control of the
2495 ~~ward's~~ ward's property as shown in the attached statements.

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2496 (2~~+~~) The accounting allowed by subsection (1) is in lieu
2497 of the accounting and auditing procedures under s. 745.805.
2498 However, any interested party may seek judicial review as
2499 provided in s. 745.1002.

2500 Section 81. Section 745.807, Florida Statutes, is created
2501 to read:

2502 745.807 Audit fee for accounting~~-. -~~

2503 (1~~+~~) A guardian shall pay, from the ~~ward's~~ward's property,
2504 to the clerk an audit fee based upon the following graduated fee
2505 schedule at the time of filing the annual accounting:

2506 (a~~+~~) For property having a total value of \$25,000 or less,
2507 there shall be no audit fee.

2508 (b~~+~~) For property ~~with~~having a total value of more than
2509 \$25,000 up to and including \$100,000, the clerk may charge a fee
2510 of up to \$100.

2511 (c~~+~~) For property ~~with~~having a total value of more than
2512 \$100,000 up to and including \$500,000, the clerk may charge a
2513 fee of up to \$200.

2514 (d~~+~~) For property ~~with~~having a total value in excess of
2515 \$500,000, the clerk may charge a fee of up to \$400.

2516 (2~~+~~) Upon petition by the guardian, the court may waive
2517 the auditing fee upon a showing of insufficient cash assets ~~in~~of
2518 the ward.

2519 ~~ward's estate.~~

2520 Section 82. Section 745.808, Florida Statutes, is created
2521 to read:

2522 745.808 Safe-deposit box~~-. -~~

2523 (1~~+~~) A guardian's initial access to any safe-deposit box
2524 leased or co-leased by the ward must be conducted in the

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presence of an employee of the institution where the box is located. A written inventory of the contents of the safe-deposit box also must be compiled in the presence of the employee. The employee and guardian must then confirm the contents of the safe-deposit box by executing the safe-deposit box inventory in accordance with Florida Probate Rule 5.020. The contents must then be replaced in the safe-deposit box and the guardian must file the verified safe-deposit box inventory within 10 days after the box is opened.

~~(2)~~ A guardian of property must provide any co-lessee a copy of each signed safe-deposit box inventory. A copy of each verified safe-deposit box inventory must also be provided to the ward unless the guardian is a plenary guardian of property or unless otherwise directed by the court.

~~(3)~~ Nothing may be removed from the ~~ward's~~ ward's safe-deposit box by the guardian of property without court order.

Section 83. Section 745.809, Florida Statutes, is created to read:

745.809 Duties of guardian of person.

~~(1)~~ A guardian of person is a fiduciary and may exercise only those rights that have been removed from the ward and delegated to the guardian. A guardian of a minor shall exercise the powers of a plenary guardian.

~~(2)~~ A guardian of person shall make decisions necessary to provide medical, mental health, social, personal and residential care for the ward ~~to~~ to the extent of the guardian's authority.

~~(3)~~ A guardian of person ~~must~~ shall ensure that each of the ~~guardian's~~ guardian's wards is personally visited by the

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guardian or, in the case of a professional guardian, by one of the ~~guardian's~~guardian's professional staff at least once each calendar quarter. During the personal visit, the guardian or the ~~guardian's~~guardian's professional staff person shall assess ~~all~~ of the following:

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

(b~~)-~~) The appropriateness of the ~~ward's~~ward's current residence.

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

(d~~)-~~) The nature and extent of visitation and communication with the ward's family and others.

(4~~)-~~) A guardian of person shall file an initial guardianship plan as required by s. 745.81~~0~~81 and annual plans as required by s. 745.813.

(5~~)-~~) A guardian shall act within the scope of the authority granted by the court and as provided by law.

(6~~)-~~) A guardian shall act in good faith.

(7~~)-~~) When making decisions on behalf of a ward, a guardian of person shall act in a manner consistent with the ward's constitutional rights of privacy and self-determination, making decisions based on substituted judgment if there is competent, substantial evidence of what the ward would have wanted. If there is no competent, substantial evidence of what the ward would have wanted, decisions ~~shall~~must be based on the ward's best interest.

(8~~)-~~) A guardian of person ~~is,~~ as a fiduciary ~~who,~~ must

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observe the standards that would be observed by a prudent person making decisions on behalf of another~~, and,~~. If the guardian has special skills or expertise, or is appointed in reliance upon the guardian's representation that ~~the guardian~~he or she has special skills or expertise, the guardian is under a duty to use those special skills or expertise when acting on behalf of the ward.

(9~~+~~) A guardian of person shall implement the guardianship plan.

(10~~+~~) When two or more guardians have been appointed, the guardians shall consult with each other on matters of mutual responsibility.

(11~~+~~) Recognizing that every individual has unique needs and abilities, a guardian who is given authority over a ward's person shall, as appropriate under the circumstances:

(a) Consider the expressed desires of the ward as known by the guardian when making decisions that affect the ward.

(b) Allow the ward to maintain contact with family and friends unless the guardian believes that such contact may cause harm to the ward.

(c) Not restrict the physical liberty of the ward more than is reasonably necessary to protect the ward or another person from serious physical injury, illness, or disease.

(d) Assist the ward in developing or regaining capacity.

(e) Notify the court if the guardian believes that the ward has regained capacity and that one or more of the rights ~~that~~which have been removed should be restored to the ward.

(f) To the extent applicable, make provision for the medical, mental, rehabilitative, or personal care services for

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the welfare of the ward.

(g) To the extent applicable, acquire a clear understanding of the risks and benefits of a recommended course of health care treatment before making a health care decision on the ward's behalf.

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

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

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

Section 84. Section 745.81, Florida Statutes, is created to read:

745.810 Guardianship plan~~.-.~~

(1~~)-~~) Each guardian of person, other than an emergency temporary guardian, shall file a guardianship plan within 60 days after letters of guardianship are issued.

(2~~)-~~) The guardianship plan shall include all of the following:

(a~~)-~~) The needed medical, mental health, rehabilitative, and personal care services for the ward.

(b~~)-~~) The social and personal services to be provided for the ward.

(c~~)-~~) The kind of residential setting best suited for the

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needs of the ward.

(d) The ward's residence at the time of issuance of the letters of guardianship, any anticipated change of residence, and the reason therefor.

(e) The 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 other services provided to the ward.

(f) Any physical and mental examinations necessary to determine the ~~ward's~~ ward's medical and mental health treatment needs.

(g) 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 a 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.

(h) A declaration of all remuneration received by the guardian from any source for services rendered to or on behalf of the ~~minor.~~ 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.

(3) The guardianship plan for an incapacitated person must consider any recommendations specified in the court-appointed examiners' written reports or testimony.

(4) Unless the ward has been found to be totally incapacitated or is a minor, the guardianship plan must contain

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an attestation that the guardian has consulted with the ward and, to the extent reasonable, has honored the ~~ward's~~ward's wishes consistent with the rights retained by the ward.

~~(5)-~~ The guardianship plan may not contain requirements which~~that~~ restrict the physical liberty of the ward more than reasonably necessary to protect the ward from decline in medical and mental health, physical injury, illness, or disease and to protect others from injury, illness, or disease.

~~(6)-~~ A guardianship plan continues in effect until it is amended or replaced by an annual guardianship report, until the restoration of capacity or death of the ward, or until the ward, if a minor, reaches the age of 18 years, whichever ~~first~~first~~occurs~~. If there are significant changes in the capacity of the ward to meet the essential requirements for the ward's health or safety, the guardian may modify the guardianship plan and shall serve the amended plan on all persons who must be served with the plan.

Section 85. Section 745.811, Florida Statutes, is created to read:

745.811 Annual guardianship report for minor- ward.-

~~(1)-~~ An annual guardianship report for a minor ward shall~~must~~ provide current information about ~~ward~~the minor. The report must specify the current needs of the ~~ward~~minor and how those needs are proposed to be met in the coming year.

~~(2)-~~ Each report filed by the guardian of person of a minor must include:- all of the following:

~~(a)-~~ Information concerning the residence of the ward~~minor~~, including the ~~ward's~~minor's address at the time of filing the plan, the name and address of each location where the

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ward~~minor~~ resided during the preceding year, and the length of stay of the ward~~minor~~ at each location.

(b~~-~~) A statement of whether the present residential setting is best suited for the current needs of the ward~~minor~~.

(c~~-~~) Plans for ensuring that the ward~~minor~~ is in the best residential setting to meet the ward~~'s~~minor's needs.

(d~~-~~) Information concerning the medical and mental health condition and the treatment and rehabilitation needs of the minor, including:

1~~-~~. A description of any professional medical treatment given to the minor during the preceding year, including names of health care providers, types of care, and dates of service~~-~~; and

2~~-~~. A report from the~~a~~ physician who examined the minor no more than 180 days before the beginning of the applicable reporting period ~~that~~which contains an evaluation of the minor~~'s~~minor's physical and medical conditions.

(e~~-~~) Anticipated medical care needs and the plan for providing medical services in the coming year.

(f~~-~~) Information concerning education of the minor, including:

1~~-~~. A summary of the minor's educational progress report~~-~~; and

2~~-~~. The social development of the minor, including a statement of how well the minor communicates and maintains interpersonal relationships.

(g~~-~~) A declaration of all remuneration received by the guardian from any source for services rendered to or on behalf of the minor. As used in this paragraph, the term "remuneration" means any payment or other benefit made directly or indirectly,

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2728 ~~evertly or covertly,~~ or in cash or in kind to the guardian.

2729 Section 86. Section 745.812, Florida Statutes, is created
2730 to read:

2731 745.812 Annual guardianship report for ~~adults~~ adult ward.—

2732 (1~~—~~) An annual guardianship report for an adult ward
2733 ~~shall~~ must provide current information about the condition of the
2734 ward. The report must specify the current needs of the ward and
2735 how those needs are proposed to be met in the coming year.

2736 (2~~—~~) Each report for an adult ward must, if applicable,
2737 include~~—~~ all of the following:

2738 (a~~—~~) Information concerning the residence of the ward,
2739 including the ~~ward's~~ ward's address at the time of filing the
2740 plan, ~~the~~ name and address of each location where the ward
2741 resided during the preceding year, and the length of stay of the
2742 ward at each location.

2743 (b~~—~~) A statement of whether the present residential
2744 setting is best suited for the current needs of the ward.

2745 (c~~—~~) Plans for ensuring that the ward is in the best
2746 residential setting to meet the ward's needs.

2747 (d~~—~~) Information concerning the medical and mental health
2748 condition and ~~the~~ treatment and rehabilitation needs of the
2749 ward, including:

2750 1~~—~~. A description of any professional medical and mental
2751 health treatment given to the ward during the preceding year,
2752 including names of health care providers, types of care, and
2753 dates of service~~—~~; and

2754 2~~—~~. The report of a physician who examined the ward no
2755 more than 120 days before the beginning of the applicable
2756 reporting period. The report must contain an evaluation of the

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~~ward's~~ward's condition and a statement of the current level of capacity of the ward. If the guardian makes a statement in the report that a physician was not reasonably available to examine the ward, the examination may be performed by and the report may be prepared and signed by a physician's assistant acting pursuant to s. 458.347(4) or s. 459.022(4) or an advanced practice registered nurse acting pursuant to s. 464.012(3).

~~(e)~~(e) The plan for providing medical, mental health, and rehabilitative services for the ward in the coming year.

~~(f)~~(f) Information concerning the social activities of the ward, including:

~~1.~~1. The social and personal services currently used by the ward~~;~~; and

~~2.~~2. The social skills of the ward, including a statement of the ward's ability to communicate and maintain interpersonal relationships.

~~(g)~~(g) 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 a 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.

~~(h)~~(h) 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.

~~(i)~~(i) Each report for an adult ward must address the issue

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of restoration of rights to the ward and include:

1. A summary of activities during the preceding year
~~that~~which were designed to improve the abilities of the ward~~;~~;

2. A statement of whether the ward can have any rights
restored; and

3. A statement of whether restoration of any rights will
be sought.

(j) The court, ~~in its discretion,~~ may require
reexamination of the ward by an appointed examiner at any time.

Section 87. Section 745.813, Florida Statutes, is created
to read:

745.813 Annual guardianship report ~~—filing—~~

.—Unless the court requires filing on a calendar-year
basis, each guardian of person shall file an annual guardianship
report on or before the first day of the fourth month after the
last day of the anniversary month ~~that~~ the letters of
guardianship were issued, and the report must cover the coming
plan year, ending on the last day in such anniversary month. If
the court requires calendar-year filing, the guardianship report
must be filed on or before April 1 of each year.

Section 88. Section 745.814, Florida Statutes, is created
to read:

745.814 Records retention. —

(1) A guardian of property shall maintain documents and
records sufficient to demonstrate the accuracy of the initial
inventory for a period of 7 years after ~~filing~~ court approval of
the inventory. The documents need not be filed but must be
available for inspection at such time and place and before such
persons as the court may order for cause, after hearing with

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notice to the guardian. The guardian of property shall also maintain documents and records sufficient to demonstrate the accuracy of the annual accounting for a period of 7 years after ~~filing~~court approval of the accounting.

~~(2)~~(1) A guardian of person shall maintain documents and records sufficient to demonstrate the accuracy of the annual report for a period of 4 years after ~~the filing~~court approval of the respective annual report.

Section ~~9.~~89. Part IX of chapter 745, Florida Statutes, ~~consisting~~shall be entitled "Guardian Powers" and shall consist of sections ss. 745.901, 745.902, 745.903, 745.904, 745.905, 745.906, 745.907, and ~~745.908.~~

Section 90. Section 745.901, Florida Statutes, is created to read:

~~PART IX~~

~~GUARDIAN POWERS~~

745.901 Powers and duties of guardian.

.—The guardian of an incapacitated person may exercise only those rights that have been removed from the ward and delegated to the guardian. A guardian of a minor shall exercise the powers of a plenary guardian.

Section 91. Section 745.902—Power, Florida Statutes, is created to read:
745.902 Powers of guardian of property without court approval.

.—Without obtaining court approval, a plenary guardian of property, or a limited guardian of property within the powers granted by the letters of guardianship, may~~—~~do any of the following:

~~(1)~~(1) Take possession or control of property owned by the

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ward~~;~~.

(2~~)-~~) Obtain the ward's legal and financial documents and tax records from persons, financial institutions, and other entities~~;~~.

(3~~)-~~) Obtain a copy of any trust or any other instrument in which the ward has a beneficial interest, obtain benefits due the ward as a beneficiary of any trust or other instruments, and bind the ward with regard to any trust ~~consistent with Florida Statutes chapter~~pursuant to s. 736.0303;~~;~~.

(4~~)-~~) Vote stocks or other securities in person or by general or limited proxy or not vote stocks or other securities~~;~~.

(5~~)-~~) Insure the assets of the estate against damage, loss, and liability and insure himself or herself against liability as to third persons~~;~~.

(6~~)-~~) Execute and deliver in the guardian's name, as guardian, any instrument necessary or proper to carry out and give effect to this section~~;~~.

(7~~)-~~) Pay taxes and assessments on the ~~ward's~~ward's property~~;~~.

(8~~)-~~) Pay valid encumbrances against the ~~ward's~~ward's property in accordance with their terms, but no prepayment may be made without prior court approval~~;~~.

(9~~)-~~) Pay reasonable living expenses for the ward, taking into consideration the accustomed standard of living, age, health, and financial resources of the ward. This subsection does not authorize the guardian of a minor to expend funds for the ~~ward's~~ward's living expenses if one or both of the ~~ward's~~ward's parents are alive~~;~~.

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2873 (10~~+~~) Exercise the ward's right to an elective share. The
2874 guardian must comply with the requirements of s. 732.2125(2).
2875 The guardian may assert any other right or choice available to a
2876 surviving spouse in the administration of a ~~decedent's~~decedent's
2877 estate~~+~~.

2878 (11~~+~~) Deposit or invest liquid assets of the estate,
2879 including money received from the sale of other assets, in
2880 federally insured interest-bearing accounts, readily marketable
2881 secured loan arrangements, money market mutual funds, or other
2882 prudent investments. The guardian may redeem or sell such
2883 deposits or investments to pay the reasonable living expenses of
2884 the ward as provided herein~~+~~.

2885 (12~~+~~) When reasonably necessary, employ attorneys,
2886 accountants, property managers, auditors, investment advisers,
2887 care managers, agents, and other persons and entities to advise
2888 or assist the guardian in the performance of guardianship
2889 duties~~+~~.

2890 (13~~+~~) Sell or exercise stock subscription or conversion
2891 rights and consent, directly or through a committee or other
2892 agent, to the reorganization, consolidation, merger,
2893 dissolution, or liquidation of a corporation or other business
2894 enterprise~~+~~.

2895 (14~~+~~) Execute and deliver any instrument that is necessary
2896 or proper to carry out the orders of the court~~+~~.

2897 (15~~+~~) Hold a security in the name of a nominee or in other
2898 form without disclosure of the interest of the ward, but the
2899 guardian is liable for any act of the nominee in connection with
2900 the security so held~~+~~.

2901 (16~~+~~) Pay and reimburse incidental expenses in the

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administration of the guardianship and for provision of services to the ward, including reasonable compensation to persons employed by the guardian pursuant to subsection (12+), from the assets of the ward. These payments shall be reported on the guardian's annual accounting, accompanied by itemized statements describing services rendered and the method of charging for such services+.

(17+) Provide confidential information about a ward ~~that~~ which is related to an investigation arising under s. 745.1001 to the clerk, part XIV of this chapter to an Office of Public and Professional Guardians investigator, or part I of chapter 400 to a local or state ombudsman council member conducting that investigation. Any such clerk, Office of Public and Professional Guardians investigator, or ombudsman shall have a duty to maintain the confidentiality of the information provided+.

(18+) Fulfill financial obligations under the ward's contracts that predate the guardianship+.

(19+) Maintain and repair the ward's property and purchase furnishings, clothing, appliances, and furniture for the ward+.

(20+) Pay calls, assessments, and other sums chargeable against securities owned by the ward ~~that~~ which are obligations predating the guardianship+.

(21+) Contract for residential care and placement for the ward and for services pursuant to subsection (12+; and).

(22+) Receive payment and satisfy judgments in favor of the ward.

Section 92. Section 745.903, Florida Statutes, is created to read:

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745.903 Powers of guardian of property requiring court approval.

After obtaining approval of the court pursuant to a petition for authorization to act:

~~(1)~~, a plenary guardian of property, or a limited guardian of property within the powers granted by the letters of guardianship, may ~~do any of the following~~:

~~(a)~~ 1) Compromise, or refuse performance of a ~~ward's~~ ward's contracts that predate the guardianship, as the guardian may determine under the circumstances.

~~(b)~~ 2) Execute, exercise, or release any ~~non~~ nonfiduciary powers 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 extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing walls, 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 of the ward's property 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

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a pooling or unitization agreement~~;~~.

~~(g)~~7) Abandon property when it is valueless or is so encumbered or in such condition that it is of no benefit to the ward~~;~~.

~~(h)~~8) Borrow money, with or without security, and advance money for the protection of the ward~~;~~.

~~(i)~~9) Effect a fair and reasonable compromise or settlement with any debtor or obligor or extend, renew, or in any manner modify the terms of any obligation owing to the ward~~;~~.

~~(j)~~10) Prosecute or defend claims or proceedings in any jurisdiction for the protection of the ward and of a guardian in the performance of guardianship duties, including the filing of a petition for dissolution of marriage. Before authorizing a guardian to bring an action described in s. 736.0207, the court shallmust first find that the action appears to be in the ward's~~ward's~~ best interest 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 post-death distribution. This paragraph does not preclude a challenge after the ward's death. Any judicial proceeding specified in s. 736.0201 must be brought as an independent proceeding and is not a part of the guardianship action~~;~~.

~~(k)~~11) Sell, mortgage, or lease any real or personal property of the ward, 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~~;~~.

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2989 (1) 12) Continue any unincorporated business or venture in
 2990 which the ward was engaged;.

2991 (m) 13) Purchase, in the name of the ward, real property in
 2992 this state in which the guardian has no interest;.

2993 ~~(n) If the ward is married with property owned by the ward and~~
 2994 ~~spouse as an estate by the entirety and the property is sold, the~~
 2995 ~~proceeds shall retain the same entirety character as the original~~
 2996 ~~asset, unless otherwise determined by the court;~~

2997 ~~(o) 14) Exercise any option contained in any policy of~~
 2998 ~~insurance payable to, or inuring to the benefit of, the ward;.~~

2999 (p) 15) Prepay reasonable funeral, interment, and grave
 3000 marker expenses for the ward from the ward'sward's property;.

3001 (q) 16) Make gifts of the ward'sward's property to members
 3002 of the ward'sward's family for estate and income tax planning
 3003 purposes or to continue the ward's prior pattern of gifting;.

3004 (r) 17) When the ward'sward's will evinces an objective to
 3005 obtain a United States estate tax charitable deduction by use of
 3006 a split interest trust, as that term is defined in s.
 3007 736.1201, but the maximum charitable deduction otherwise
 3008 allowable will not be achieved in whole or in part, execute a
 3009 codicil on the ward'sward's behalf amending the will to obtain
 3010 the maximum charitable deduction allowable without diminishing
 3011 the aggregate value of the benefits of any beneficiary under the
 3012 will;.

3013 (s) 18) Create or amend revocable trusts or create
 3014 irrevocable trusts of property of the ward thatwhich may extend
 3015 beyond the disability or life of the ward in connection with
 3016 estate, gift, income, or other tax planning or to carry out
 3017 other estate planning purposes. The court shall retain oversight

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of the assets transferred to a trust, unless otherwise ordered by the court. Before entering an order authorizing creation or amendment of a trust, the court shall appoint counsel to represent the ward in that proceeding. To the extent this provision conflicts with the provisions of chapter 736, ~~Chapter 736~~the latter shall prevail~~.~~.

~~(19)~~ (19) Renounce or disclaim any interest of the ward received by testate or intestate succession, insurance benefit, annuity, survivorship, or inter vivos transfer~~.~~.

~~(20)~~ (20) Enter into contracts that are appropriate for, and in the best interest of, the ward~~.~~and.

~~(21)~~ (21) Pay for a minor ~~ward's~~ward's support, health, maintenance, and education, if one or both of the ~~ward's~~ward's parents~~, or either of them,~~ are alive.

~~(2) A guardian of person may sign a Do Not Resuscitate Order as provided in s. 401.45(3) only with prior court approval. When a guardian of person seeks to obtain approval of the court to sign a Do Not Resuscitate Order 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 93. Section 745.904, Florida Statutes, is created to read:

745.904 Petition for authority to act~~.~~.

~~(1)~~ (1) Requests by a guardian for authority to perform, or

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confirmation of, any acts under s. ~~745.903 or s.~~ 745.1309 or s. 745.903 shall be by petition stating facts showing the expediency or necessity for the action; a description of any property involved; and the price and terms of a sale, mortgage, or other contract. The petition must state whether ~~or not~~ the ward has been adjudicated incapacitated to act with respect to the rights to be exercised.

~~(2) No~~ Notice of a petition to authorize sale or repair of perishable or deteriorating property ~~shall be~~ is not required. Notice of a petition to perform any other acts under s. ~~745.903 or s.~~ 745.1309 or s. 745.903 must be given to the ward, to the next of kin, if any, and to those interested persons whom the court has found to be entitled to notice, as provided in the Florida Probate Rules, unless waived by the court for good cause. Notice need not be given to a ward who is a minor or who has been determined to be totally incapacitated.

Section 94. Section 745.905, Florida Statutes, is created to read:

745.905 Order authorizing action.~~.-~~

~~(1)~~ If a sale or mortgage is authorized, the order ~~shall:~~ (a) must describe the property;

~~(b).~~ If the property is authorized for sale at private sale, the order must include the price and the terms of sale; ~~and~~

~~(c).~~ If the sale is to be by public auction, the order ~~shall~~ must state that the sale shall be made to the highest bidder, but that the guardian reserves the right to reject all bids.

~~(2)~~ An order for any other act permitted under s. ~~745.903 or s.~~ 745.1309 shall or s. 745.903 must describe the permitted act

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and authorize the guardian to perform it.

Section 95. Section 745.906, Florida Statutes, is created to read:

745.906 Conveyance of various property rights by guardians of property.—

(1) (a) All legal or equitable interests in property owned as an estate by the entirety by an incapacitated person for whom a guardian of ~~the~~ property has been appointed may be sold, transferred, conveyed, or mortgaged in accordance with s. 745.903, if the spouse who is not incapacitated joins in the sale, transfer, conveyance, or mortgage. When both spouses are incapacitated, the sale, transfer, conveyance, or mortgage shall be by the guardians only. The sale, transfer, conveyance, or mortgage may be accomplished by one instrument or by separate instruments.

(b) In authorizing or confirming the sale and conveyance of real or personal property owned by the ward and the ~~ward's~~ spouse as an estate by the entirety or as joint tenants with right of survivorship, the court may provide that one-half of the net proceeds of the sale shall go to the guardian of the ward and the other one-half to the ~~ward's~~ spouse, or the court may provide for the proceeds of the sale to retain the same character as to survivorship as the original asset.

(c) A guardian of property shall collect all payments coming due on intangible property, such as notes and mortgages and other securities owned by the ward and the ward's spouse as an estate by the entirety or as joint tenants with right of survivorship, and shall retain one-half of all principal and

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interest payments so collected and shall pay the other one-half of the collections to the spouse who is not incapacitated. If both spouses are incapacitated, the guardian of either shall collect the payments, retain one-half of the principal and interest payments, and pay the other one-half to the guardian of the other spouse. The court may direct that such payments retain their status as to survivorship or specify that such receipts be allocated in a manner other than equal division.

~~(d)~~ The guardian of an incapacitated person shall collect all payments of rents on real estate held as an estate by the entireties and, after paying all charges against the property, such as taxes, insurance, maintenance, and repairs, shall retain one-half of the net rents so collected and pay the other one-half to the spouse who is not incapacitated. If both spouses are incapacitated, the guardian of property of either may collect the rent, pay the charges, retain one-half of the net rent, and pay the other one-half to the guardian of the other spouse. The court may direct that such payments retain their status as to survivorship or specify that such receipts be allocated in a manner other than equal division.

~~(2)~~ In determining the value of life estates or remainder interests, the American Experience Mortality Tables may be used.

~~(3) Nothing in~~ This section ~~shall~~ does not prohibit the court in its discretion from appointing a sole guardian to serve as guardian for both spouses.

~~(4)~~ Any contingent or expectant interest in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entireties, may be conveyed or released in accordance with s. 745.903.

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Section 96. Section 745.907, Florida Statutes, is created to read:

745.907 Settlement of claims.—

(1~~+~~) Except as provided in subsection (3), when a
settlement of any claim by or against ~~an adult~~a ward, ~~whether~~
~~arising as a result of personal injury or otherwise, and whether~~
~~arising before or after appointment of a guardian, is~~ is proposed,
~~but before an action to enforce it is begun, on~~upon petition by
the guardian of property to the Court stating the facts of the
claim or dispute and the proposed settlement, and on evidence
that is introduced, the court may enter an order authorizing the
guardian to enter into the settlement if satisfied that ~~the~~
~~settlement will be~~it is in the best interest of the ward. The
order ~~shall~~must relieve the guardian from any further
responsibility in connection with the claim or dispute when the
settlement has been made in accordance with the order. The order
authorizing the settlement may also determine whether an
additional bond is required~~and, if so, shall fix the amount of~~
~~it.~~. This section does not affect the ability of a guardian, or
other party, to seek approval of the court overseeing the civil
action in addition to the process noted above.

(2) ~~In the same manner as provided in~~ A settlement after an
action has been commenced by or on behalf of a ward is not
binding on the ward unless approved by the Court under
subsection (1) ~~or as authorized by s. 745.713,~~).

(3) The natural guardians or guardian of a minor may settle
any claim by or on behalf of ~~a~~the minor ~~that~~which does not exceed
\$25,000~~.00~~ without bond. A guardianship shall be required when
the amount of the net settlement to the ~~ward~~minor exceeds

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\$50,000.~~00~~. When the amount of the net settlement to the ward~~minor~~ exceeds \$25,000.~~00~~ but does not exceed \$50,000.~~00~~, the court has the discretion to determine whether the natural guardians may settle the claim, whether a guardian ad litem is required under s. 745.714, or whether a guardianship ~~shall be~~ is required. ~~No~~A guardianship of the minor is not required when the amount of the net settlement is less than \$25,000.~~00~~.
~~(3) No settlement after an action has been commenced by or on behalf of a ward shall be effective unless approved by the court having jurisdiction of the guardianship.~~

~~(4)~~ (4) In making a settlement under court order as provided in this section, the guardian is authorized to execute any instrument that may be necessary to effect the settlement. When executed, the instrument ~~shall~~ must be a complete release of the guardian.

Section 97. Section 745.908, Florida Statutes, is created to read:

745.908 Authority for extraordinary actions~~.-~~

~~(1)~~ (1) Without first obtaining authority from the court, as described in this section, a guardian ~~shall~~ may not:

~~(a)~~ (a) Commit a ward with developmental disabilities to a facility, an institution, or a licensed service provider without a formal placement proceeding, pursuant to chapters 393.

~~(b)~~ (b) Consent on behalf of the ward to ~~the performance on the ward of~~ any experimental biomedical or behavioral procedure being performed on the ward or to the ~~participation by the ward~~ participating in any biomedical or behavioral experiment. The court may permit such performance or participation only if:

1~~.~~ . It is of direct benefit to, and is intended to

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3192 preserve the life of or prevent serious impairment to the mental
3193 or physical health~~7~~ of, the ward; or

3194 2~~—~~. It is intended to assist the ward ~~to develop~~in
3195 ~~developing~~ or ~~regain the ward's~~regaining his or her abilities.

3196 (c~~—~~) Consent on behalf of the ward to termination of ~~the~~
3197 ~~ward's~~this or her parental rights.

3198 (d~~—~~) Consent on behalf of the ward to the performance of a
3199 sterilization or abortion procedure on the ward.

3200 (2~~—~~) Before the court may grant authority to a guardian to
3201 exercise any of the powers specified in this section, the court
3202 must:

3203 (a~~—~~) Appoint an attorney to represent the ward. The
3204 attorney must have the opportunity to meet with the ward and to
3205 present evidence and cross-examine witnesses at any hearing on
3206 the petition for authority to act;

3207 (b~~—~~) Consider independent medical, psychological, and
3208 social evaluations ~~with respect to~~of the ward, presented by
3209 competent professionals. The court may appoint experts to assist
3210 in the evaluations. Unless an objection is filed by the ward or
3211 petitioner, the court may consider at the hearing written
3212 evaluation reports without requiring testimony. Any objection to
3213 such consideration must be filed and served on interested
3214 persons at least 3 days ~~prior to~~before the hearing;

3215 (c~~—~~) Find by clear and convincing evidence that the ward
3216 lacks the capacity to make a decision about the issues before
3217 the court and that the ward's capacity is not likely to change
3218 in the foreseeable future; and

3219 (d~~—~~) Find by clear and convincing evidence that the
3220 authority being requested is consistent with the ward's

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intentions expressed ~~prior to~~before incapacity or, in the absence of evidence of the ward's intentions, is in the best interests of the ward.

Section XX. Section 745.909, Florida Statutes, is created to read:

After obtaining prior court approval pursuant to a petition for authorization to act, a guardian of person may sign a Do Not Resuscitate Order as provided in s. 401.45(3). When a guardian of person seeks to obtain approval of the court to sign an order not to resuscitate, 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 98. ~~10.~~ Part X of chapter 745, Florida Statutes, consisting of sections shall be entitled "Oversight and Monitoring" and shall consist of ss. 745.1001, ~~745.1002, 745.1003, 745.1004, 745.1005, 745.1006, 745.1007, 745.1008, and~~ 745.1009.

~~, is created to read:~~

~~PART X~~

~~OVERSIGHT AND MONITORING~~

Section 99. Section 745.1001, Florida Statutes, is created to read:

745.1001 Duties of the clerk~~—General.~~

; general.—In addition to the duty to serve as custodian of guardianship files, the clerk shall have the duties specified

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below:

(1~~)-~~) Within 30 days after the date a guardian of
filing person files an initial guardianship plan or annual report
~~of a guardian of person~~, the clerk shall examine the initial
guardianship plan or annual report to assess whether it provides
the information required by this code and the Florida Probate
Rules. Within such time, the clerk shall provide the court and
the guardian a written statement of the clerk's findings.

(2~~)-~~) Within 60 days after ~~the filing of a~~ guardian of
property files an inventory or annual accounting ~~by a guardian of~~
~~property~~, the clerk shall audit the inventory or accounting to
assess whether it provides the information required by this code
and the Florida Probate Rules. Within such time, the clerk shall
provide the court and the guardian a written audit report of the
clerk's findings.

(3~~)-~~) The clerk shall provide written notice to the court
and guardian when an inventory, an accounting, a plan, or a
report is not timely filed.

(4~~)-~~) If the clerk has reason to believe further review is
appropriate, the clerk may request and review records and
documents that reasonably impact guardianship assets, including,
but not limited to, the beginning inventory balance and any fees
charged to the guardianship. As a part of this review, the clerk
may conduct audits and may cause the plan and annual
guardianship report and accounting to be audited. The clerk
shall notify ~~in writing~~ the court and the guardian in writing of
the results of any such audit. Any fee or cost incurred by the
guardian in responding to the review or audit may not be paid or
reimbursed by the ward's assets if there is a finding of

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wrongdoing by the guardian.

(5) If a guardian fails to produce records and documents
~~to the clerk upon the clerk's request, the clerk may request that~~
~~the court enter an order pursuant to s. 745.1004 by filing~~ file ~~an~~
affidavit ~~that~~ with the court which identifies the records and
documents requested and shows good cause as to why the documents
and records requested are needed to complete the audit, and
request that the court enter an order pursuant to s. 745.1004.

(6) Upon application to the court pursuant to subsection
(5), the clerk may issue subpoenas to nonparties to compel their
production of books, papers, and other documentary evidence.
Before issuance of a subpoena, the clerk must serve notice on
the guardian and the ward, unless the ward is a minor or totally
incapacitated, of the intent to serve subpoenas to nonparties.

(a) The clerk must attach the affidavit and the proposed
subpoena to the notice, and the subpoena must:

1. State the time, place, and method for ~~production~~
~~of~~ producing the documents or items, and the name and address of
the person who is to produce the documents or items, if known,
or, if not known, a general description sufficient to identify
the person or the particular class or group to which the person
belongs;

2. Include a description of the items to be produced; and

3. State that the person who will be asked to produce the
documents or items has the right to object to the production
under this section and that if an objection is filed, the person
is not required to surrender the documents or items.

(b) A copy of the notice and proposed subpoena may not be
furnished to the person upon whom the subpoena is to be served.

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(c~~—~~) If the guardian or ward serves an objection to production under this subsection within 10 days after service of the notice, the subpoena may not be served on the nonparty until resolution of the objection. If an objection is not made within 10 days after service of the notice, the clerk may issue the subpoena to the nonparty. The court may shorten the period within which a guardian or ward is required to file an objection upon a showing by the clerk by affidavit that the ward's property is in imminent danger of being wasted, misappropriated, or lost unless immediate action is taken.

Section 100. Section 745.1002, Florida Statutes, is created to read:

745.1002 Judicial review of guardianship inventories and accountings~~—~~.

(1~~—~~) Within 45 days after the filing of the clerk's audit report as required under s. 745.1001, the court shall review guardianship inventories and accountings to ensure that ~~they~~ comply with it provides the requirements of law. information required by this code and the Florida Probate Rules. The court may appoint a general or special magistrate to assist the court in its review function. Upon examining a guardianship inventory or accounting, the court shall enter an order approving or disapproving ~~such~~ the reviewed document or requiring the guardian to provide more information or cure deficiencies found in the inventory or accounting.

(2~~—~~) If the court finds, upon review of the inventory or accounting and the clerk's audit report, that the document ~~complies with the requirements of law~~ provides the information required by this code and the Florida Probate Rules, the court

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must approve the inventory or accounting. If the audit report indicates that there are deficiencies in the inventory or accounting, the court shall notify the guardian, in writing, of the deficiencies determined by the clerk and provide a reasonable time within which the guardian must correct ~~such~~the deficiencies or otherwise respond ~~by written response~~in writing to the court. If the guardian does not respond within the time specified by the court, or if the guardian's response indicates a need for further action, the court may conduct a hearing, with notice to the guardian, to determine if a revised inventory or accounting must be filed or if the guardian should provide proof of any matter specified therein.

~~(3)~~ After a guardian has cured any deficiencies in the inventory or accounting to the satisfaction of the court, the guardian's inventory or accounting must be approved.

~~(4)~~ If an interested person files an objection to an inventory or accounting ~~is filed by an interested person~~, the objection may be set for hearing with reasonable notice. If a notice of hearing on the objection is not served within 30 days ~~or~~after filing of the objection, the objection is deemed abandoned. At the conclusion of the hearing, the court shall enter an order either approving the inventory or accounting or ordering modifications to it. If an objection is found to have been filed in bad faith, the court may award taxable costs, including reasonable ~~attorney's~~attorney fees.

Section 101. Section 745.1003, Florida Statutes, is created to read:

745.1003 Judicial review of guardianship plans and reports~~.-~~

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(1) Within 45 days after the filing of the clerk's audit, the court must review guardianship plans and reports to ensure that they ~~comply with the requirements of law~~, provide the information required by this code and the Florida Probate Rules. The court may appoint a general or special magistrate to assist the court in its review function. Upon examining a guardianship plan or report, the court must enter an order approving or disapproving ~~such~~ the reviewed document or requiring the guardian to provide more information or cure deficiencies found in the plan or report.

(2) If the court finds, upon review of the plan or report and the clerk's audit, that the document ~~complies with~~ provides the ~~requirements of law~~ information required by this code and the Florida Probate Rules, the court ~~may~~ must approve the plan or report. If the clerk's audit indicates that there are deficiencies in the plan or report, the court shall notify the guardian in writing of the deficiencies determined by the clerk and provide a reasonable time within which the guardian must correct ~~such~~ the deficiencies or otherwise ~~respond by~~ provide a written response to the court. If the guardian does not respond within the time specified by the court, or if the guardian's response indicates a need for further action, the court may conduct a hearing, with notice to the guardian, to determine if a revised plan or report must be filed or if the guardian should provide proof of any matter specified therein.

(3) After a guardian has cured any deficiencies in the plan or report to the satisfaction of the court, the guardian's plan or report must be approved.

(4) If an interested person files an objection to a plan

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or report ~~is filed by an interested person~~, the objection may be set for hearing with reasonable notice. If a notice of hearing on the objection is not served within 30 days ~~of~~ after ~~filing of~~ the objection, the objection is deemed abandoned. At the conclusion of the hearing, the court shall enter an order either approving the plan or report or ordering modifications to it. If an objection is found to have been filed in bad faith, the court may award taxable costs, including reasonable ~~attorney's~~ attorney fees.

Section 102. Section 745.1004, Florida Statutes, is created to read:

745.1004 Order requiring guardianship documents; contempt-

.-When a guardian fails to file a plan, a report, an inventory, or an accounting, the court shall order the guardian to file such document within 15 days after the service of the order on the guardian or show cause, in writing, why the guardian should not be compelled to do so. A copy of the order shall be served on the guardian. If the guardian fails to file the document within the time specified by the order without good cause, the court shall order the guardian to show cause why the guardian should not be held in contempt of court. At the conclusion of the hearing, the court may sanction the guardian if good cause is not demonstrated. ~~No~~ A fine may not be paid from property of the ward.

Section 103. Section 745.1005, Florida Statutes, is created to read:

745.1005 Action on review of guardianship report-

.-If it appears from the annual guardianship report that:
(1) ~~—~~ The condition of the ward requires further

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examination;

(2) Any change in the proposed care, maintenance, or treatment of the ward is needed;

(3) The ward is qualified for restoration of some or all of his or her rights;

(4) The condition or maintenance of the ward requires ~~the performance or doing of~~ any other ~~thing for~~ action be taken in the best interest of the ward which is not indicated in the plan; or

(5) There is any other action necessary to protect the interests of the ward,

the court may direct the guardian to appear at a hearing, with appropriate notice to the guardian, to address such issues. The court may enter such order as it finds appropriate to protect the ward.

Section 104. Section 745.1006, Florida Statutes, is created to read:

745.1006 Petition for interim judicial review.—

(1) At any time, any interested person may petition the court for review, alleging that the guardian is not complying with a guardianship plan or report, is exceeding the guardian's authority under such document, or is acting in a manner contrary to s. 745.802 or s. 745.809. The petition for review must state the interest of the petitioner, the nature of the objection to the ~~guardian's~~ guardian's action or proposed action, and the facts in support of the petition. Upon hearing, the court may prohibit or enjoin any action that is contrary to the guardian's obligations under s. 745.809.

(2) The court may award taxable costs and

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~~attorney's~~attorney fees if the petition is found to have been filed in bad faith.

Section 105. Section 745.1007, Florida Statutes, is created to read:

745.1007 Production of property-

~~On.~~Upon the petition of an interested person, the court may require a guardian of property to produce satisfactory evidence that the property of the ward for which the guardian is responsible is in the ~~guardian's~~guardian's possession or under the guardian's control. The court may order the guardian to produce the property for inspection by the court or under the court's direction.

Section 106. Section 745.1008, Florida Statutes, is created to read:

745.1008 Guardianship monitors-.-

~~(1)-~~(1) The court may, upon petition by an interested person or upon its own motion, appoint a monitor after hearing with notice to the petitioner, the guardian, and the ward. The court must not appoint as a monitor an employee of the court, the clerk, a family member of the ward, or any person with a personal interest in the proceedings.

~~(2)-~~(2) The order of appointment must be served on the guardian, the ward, and such interested persons as the court may direct.

~~(3)-~~(3) The order of appointment must specify the facts supporting the order, the scope of the investigation, the powers and duties of the monitor, and ~~time-frame~~the timeframe within which the investigation must be completed.

~~(4)-~~(4) The monitor is deemed an interested person until

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discharged and may not have ex parte communications with the court.

~~(5)~~ The monitor may investigate, seek information, examine documents, and interview the ward and guardian and shall file a written report of the ~~monitor's~~ monitor's findings and recommendations. The monitor's report shall be verified and may be supported by documents or other evidence. Copies of the report and all documents shall be served on the guardian, the ward, unless the ward is a minor or is totally incapacitated, and such other interested persons as the court may determine. The guardian and the ward may seek information from the monitor using discovery methods authorized in the Florida Probate Rules.

~~(6)~~ If it appears from the monitor's report that further action is necessary to protect the interests of the ward ~~is necessary~~, the court shall, after a hearing with notice, enter any order necessary to protect the ward or the ~~ward's~~ ward's property, including requiring the guardian to amend a plan or report, requiring an accounting or amended accounting, ordering production of assets, freezing assets, suspending ~~at~~ the guardian, or initiating proceedings to remove ~~at~~ the guardian.

~~(7)~~ Unless otherwise prohibited by law, a monitor may be allowed a reasonable fee as determined by the court and paid from the ward's property ~~of the ward. No.~~ A full-time state, county, or municipal employee or officer ~~shall~~ may not be paid a fee for such investigation and report. If the court finds a petition to appoint a monitor or a written communication ~~by a third party which~~ results in appointment of a monitor to have been ~~filed~~ initiated in bad faith, the costs of the proceeding and ~~attorney's~~ attorney fees shall be awarded ~~after hearing with notice~~

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~~to~~ against the petitioner or writer after notice and hearing..
~~third party.~~

Section 107. Section 745.1009, Florida Statutes, is created
to read:

745.1009 Emergency guardianship monitor ~~.-~~ .

~~(1)~~ (1) The court may, upon petition by an interested person or upon its own motion, appoint a guardianship monitor qualified under s. 745.1008(1) on an emergency basis without notice. The court must find that there appears to be imminent danger that the physical or mental health or safety of the ward will be seriously impaired or that the ~~ward's~~ ward's property is in danger of being wasted, misappropriated, or lost unless immediate action is taken.

~~(2)~~ (2) The order appointing an emergency guardianship monitor ~~shall~~ must specify the facts supporting the order, the scope of the investigation, the powers and duties of the monitor, and the ~~time frame~~ timeframe within which the investigation must be completed. The order appointing an emergency guardianship monitor shall be served on the guardian, the ward, and such interested persons as the court may direct.

~~(3)~~ (3) The monitor shall file a report of ~~the monitor's~~ his or her findings and recommendations. The monitor's report shall be verified and may be supported by documents or other evidence.

Copies of the report and all documents shall be served on ~~+~~

~~(a)~~ the guardian,

~~(b)~~ the ward, and

~~(c)~~ such other interested persons as the court may determine appropriate after the court has made a determination under subsection (4).

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(4~~—~~) Upon review of the report, the court shall determine whether further action is necessary to protect the person or property of the ward.

(5)(a~~—~~) If it appears from the monitor's report that further action to protect the interests of the ward is necessary, the court shall, after a hearing with notice, enter any order necessary to protect the ward or the ~~ward's~~ward's property, including requiring the guardian to amend a plan or report, requiring an accounting or amended accounting, ordering production of assets, freezing assets, suspending ~~at~~the guardian, or initiating proceedings to remove ~~at~~the guardian.

(b~~—~~) At any time ~~prior to~~before the hearing, the court may issue a temporary injunction, a restraining order, or an order freezing assets; may suspend the guardian; may appoint a guardian ad litem; or may issue any other appropriate order to protect the health, safety, or property of the ward. A copy of all such orders or injunctions shall be transmitted by the court or under its direction to all parties at the time of entry of the order or injunction.

~~Nothing in~~ Subsection (5) ~~shall~~may not be construed to preclude the mandatory reporting requirements of chapter 39.

(6~~—~~) Unless otherwise prohibited by law, a monitor may be allowed a reasonable fee as determined by the court and paid from the ward's property ~~of the ward. No.~~ A full-time state, county, or municipal employee or officer ~~shall~~may not be paid a fee for such investigation and report. After a hearing with notice, if the court finds the petition to appoint a ~~court~~ monitor or a written communication by a third party ~~which~~ results

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in appointment of a monitor to have been filed in bad faith, the costs of the proceeding and ~~attorney's~~attorney fees, shall be ~~awarded after hearing with notice to~~assessed against the petitioner ~~or third party.~~

~~(7)~~(7) The monitor shall be deemed an interested person until discharged and may not have ex parte communications with the court.

Section ~~11.~~108. Part XI of chapter 745, Florida Statutes, ~~consisting~~shall be entitled "Resignation and Discharge" and shall consist of ~~sections~~ss. 745.1101, ~~745.1111.~~

Section 109. Section~~1102,~~ 745.~~1103,~~ ~~745.1104,~~ ~~745.1105,~~ ~~745.1106,~~ ~~745.1107,~~ ~~745.1108,~~ ~~745.1109,~~ and ~~745.1110~~1101, Florida Statutes, is created to read:

~~PART XI~~

~~RESIGNATION AND DISCHARGE~~

745.1101 Resignation of guardian.~~.-~~

~~(1)~~(1) A guardian may resign at any time.

~~(2)~~(2) A resigning guardian shall retain the duties and responsibilities of a guardian until discharged by the court as specified in this part.

~~(3)~~(3) A resigning guardian shall file a resignation with the court and, unless it is waived, serve a notice of resignation on all of the following:

~~(a)~~(a) The next of kin of the ward~~;~~.

~~(b)~~(b) The ward, unless the ward has been found to be totally incapacitated or is a minor~~;~~ ~~and.~~

~~(c)~~(c) A successor or proposed successor guardian, if any.

Section 110. Section 745.1102, Florida Statutes, is created to read:

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745.1102 Resignation and discharge of guardian of property.

(1) A successor guardian of property must be appointed if a guardian dies, becomes incapacitated, resigns, or is removed.

(2) A resigning guardian of property must file

~~(a)~~ a petition for distribution and discharge,

~~(b)~~ a final accounting, and

~~(c)~~ a notice of filing petition for distribution and discharge and final accounting and must serve copies of such documents, petitions, final accounting, and notice on any successor guardian and such interested persons as the court may direct.

(3) The guardian's final accounting is subject to audit by the clerk in the manner and within the time specified in s. 745.1001, unless waived by the successor guardian.

(4) The petition for distribution and discharge must include a schedule of unpaid expenses of the ward and administration expenses to be paid prior to before discharge.

(5) The notice of filing petition for distribution and discharge and final accounting must specify that interested persons have 30 days from the date of receipt of the notice to file any objections with the court. If no objections are timely filed, the court may enter an order authorizing distribution of assets without further notice or hearing. If objections are timely filed, the objections must be resolved as provided in the Florida Probate Rules.

(6) Upon approval of a resigned guardian's final accounting and petition for distribution and discharge, the guardian is entitled to distribute remaining assets and, upon

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proof of distribution, to be discharged regardless of whether a successor guardian has been appointed.

~~(7)~~ (8) If no successor guardian is appointed at the time the petition for distribution and discharge is filed, the court may appoint an emergency temporary guardian.

~~(8) Prior to~~ Before discharge, a resigning guardian shall deliver all assets of the ward and copies of all asset records to a successor guardian, an emergency temporary guardian, or as otherwise directed by the court.

~~(9)~~ (10) Upon petition by an interested person or on the court's own motion, an attorney may be appointed to represent the ward in the discharge proceedings. When a court appoints an attorney for the ward, the court must appoint the office of criminal conflict and civil regional counsel or a private attorney as prescribed in s. 27.511(6). A private attorney must be one who is included in the attorney registry compiled pursuant to s. 27.40. Appointments of private attorneys must be made on a rotating basis, taking into consideration conflicts arising under this code. The attorney for the ward ~~represents~~ shall represent the preferences expressed by the ward, to the extent consistent with the rules regulating The Florida Bar. The attorney for the ward may assist in locating a successor guardian.

~~(10)~~ (11) A successor guardian may be appointed and have letters issued after a guardian has resigned and before an order of discharge of the resigned guardian has been entered. The successor guardian ~~succeeds to~~ has the powers specified in the letters of guardianship and ~~such guardian's~~ this or her authority ~~shall inure~~ inures as of the date of issuance of letters.

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Section 111. Section 745.1103, Florida Statutes, is created to read:

745.1103 Termination of guardianship of property.—

(1~~—~~) When a ward becomes sui juris, has been restored to capacity as to all rights related to the ward's property, the guardianship has terminated as a result of ~~the~~ relocation of the ward's residence to an out-of-state jurisdiction, or the guardianship is otherwise terminated, the guardian must file a final accounting and petition for discharge. The accounting and petition, together with a notice of filing the final accounting and petition for discharge, must be served on the ward. The ward may waive audit of the guardian's final accounting.

(2~~—~~) When the ward's property has been exhausted except for clothing and minimal personal effects and the guardian receives no income on behalf of the ward, the guardian may file a final accounting and petition for discharge. The final accounting and petition for discharge, together with a notice of filing the final accounting and petition for discharge, must be served on the ward and such interested persons as the court may direct.

(3~~—~~) When a ward dies, the guardian must file a final accounting and a petition for distribution and discharge within 45 days after the guardian has been served with letters of administration or letters of curatorship of the ward's estate. The petition for distribution and discharge ~~and~~, the final accounting, and the notice of filing shall be served on the personal representative or curator. The personal representative or curator may waive preparation or audit of the guardian's final accounting, subject to ~~the provisions of~~ s. 745.1104.

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3685 (4~~—~~) If no objections are timely filed by the ward, in
3686 the case of a ward who has become sui juris or has been restored
3687 to capacity, or by the personal representative or curator, in
3688 the case of a deceased ward, the guardian may distribute the
3689 ward's assets as directed by the court and, upon proof of such
3690 distribution, shall be entitled to discharge.

3691 (5~~—~~) If objections to the final accounting or petition for
3692 discharge are timely filed, the objections shall be resolved as
3693 provided in the Florida Probate Rules.

3694 (6~~—~~) The guardian applying for discharge may retain from
3695 the funds in the guardian's possession a sufficient amount to
3696 pay the final costs of administration, including guardian and
3697 ~~attorney's~~attorney fees.

3698 (7~~—~~) The court retains jurisdiction over the guardian
3699 until the guardian is discharged.

3700 Section 112. Section 745.1104, Florida Statutes, is created
3701 to read:

3702 745.1104 Discharge of guardian of property named as
3703 personal representative~~—~~.

3704 (1~~—~~) A guardian of property who is subsequently appointed
3705 sole personal representative of a deceased ward's estate must
3706 serve a copy of the ~~guardian's~~guardian's final accounting and
3707 petition for distribution and discharge, together with a notice
3708 of filing the final accounting and petition for distribution and
3709 discharge, on the beneficiaries of the ~~ward's~~ward's estate who
3710 will be affected by the report. If the beneficiary of the estate
3711 is a trust of which the guardian is sole trustee, the final
3712 accounting must be served on qualified beneficiaries of the
3713 trust as defined in s. 736.0103. The beneficiaries of the estate

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or qualified beneficiaries of the trust may waive preparation or audit of the guardian's final accounting.

~~(2)~~ All such beneficiaries shall have 30 days from receipt of the final accounting and petition for distribution and discharge to file objections thereto. If objections are timely filed, ~~the objections shall~~ they must be resolved as provided in the Florida Probate Rules.

~~(3)~~ The guardian may not be discharged until:

~~(a)~~ All objections have been resolved;

~~(b)~~ The final accounting of the guardian is approved by the court or waived by the persons entitled to notice under subsection (1); and

~~(c)~~ All property has been distributed to the ~~ward's~~ ward's estate or the persons entitled to it.

Section 113. Section 745.1105, Florida Statutes, is created to read:

745.1105 Termination of guardianship of property ~~on~~ upon ward's change of residence ~~of ward to~~ foreign jurisdiction.

~~(1)~~ When the residence of a ward has changed to another state or country, and the foreign court having jurisdiction over the ward at ~~the ward's~~ this or her new residence has issued letters or the equivalent, the guardian of property in this state may file a final accounting and petition for discharge.

~~(2)~~ The guardian shall serve the final accounting and the petition for discharge ~~and final accounting~~ on the new guardian, the ward's next of kin, and all known creditors of the ward, with a notice directing that any objections must be filed within 30 days. If an objection is timely filed, any interested person may set the objection for hearing. If no notice of hearing is

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served within 60 days after filing the objection, the objection is deemed abandoned.

~~(3)~~ Upon disposition of all objections, or if no objection is filed, distribution shall be made by the Florida guardian. On proof that the remaining property in the guardianship has been received by the foreign guardian, the Florida guardian of property shall be discharged.

~~(4)~~ The Florida guardian's final accounting shall not be subject to audit.

Section 114. Section 745.1106, Florida Statutes, is created to read:

745.1106 Disposition of unclaimed funds held by guardian.
.-

~~(1)~~ When a ward dies and the guardian cannot distribute the ward's property because no estate proceeding has been instituted, the guardian of property shall be considered an interested person pursuant to s. 733.202 and may, after a reasonable time, petition for appointment of a personal representative or curator. ~~In the alternative~~ Alternatively, the guardian may follow the procedures set forth in subsection (3).

~~(2)~~ When a guardian is unable to locate the ward after diligent search, the guardian may file a petition pursuant to s. 731.103(3) and, upon a determination of death, may proceed under subsections (1) or (3).

~~(3)~~ The court may order the guardian of property to sell the ward's property ~~of the ward~~ and deposit the proceeds and cash on hand after retaining the amounts provided for in paragraph ~~(4)~~ (d) with the clerk. The clerk shall acknowledge receipt of the funds and deposit them in the registry of the court, to be

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disposed of as follows:

(a) ~~—~~ If the value of the funds is \$500 or less, the clerk ~~shall~~must post a notice for 30 days at the courthouse specifying the amount, the name of the ward, the guardianship court file number, the name and mailing address of the guardian, and other pertinent information that will put interested persons on notice.

(b) ~~—~~ If the value of the funds is ~~over~~more than \$500, the clerk ~~shall~~must publish the notice once a month for 2 consecutive months in a newspaper of general circulation in the county.

(4) ~~—~~ Pursuant to subsection (3), after ~~the expiration of 6~~ months from the date of posting or first publication, the clerk shall deposit the funds with the Chief Financial Officer after deducting the clerk's fees and the costs of publication.

(a) ~~—~~ Upon receipt of the funds, the Chief Financial Officer shall deposit them in a separate fund devoted to ~~the provision of~~providing guardianship services to indigent wards. All interest and all income that may accrue from the money while so deposited shall belong to the fund. The funds so deposited shall constitute and be a permanent appropriation for payments by the Chief Financial Officer as required by court orders entered as provided by paragraph (b).

(b) ~~On~~ Upon petition to the court that directed deposit of the funds and informal notice to the Department of Legal Affairs and the ward's next of kin, any person claiming entitlement to the funds may petition for a court order directing the payment of the funds to the petitioner. Such petition must be filed within 5 years after deposit of the funds with the Chief Financial Officer. All funds deposited with the

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Chief Financial Officer and not claimed within 5 years from the date of deposit shall escheat to the state to be deposited in the Department of Elderly Affairs Administrative Trust Fund to be used solely for ~~the provision of~~ providing guardianship services for indigent wards as determined by the Secretary of the Department of Elderly Affairs.

~~(c)~~ (c) Upon depositing the funds with the clerk, a guardian of property may file a final accounting and petition for discharge under s. 745.1103.

~~(d)~~ (d) A guardian depositing assets with the clerk is permitted to retain from the assets in the guardian's possession a sufficient amount to pay the final costs of administration, including guardian and ~~attorney's~~ attorney fees accruing ~~prior to~~ before the order of discharge. Any surplus funds so retained must be deposited with the clerk ~~prior to~~ before discharge of the guardian of property.

Section 115. Section 745.1107, Florida Statutes, is created to read:

745.1107 Resignation and discharge of guardian of person.—

~~(1)~~ (1) A successor guardian of person must be appointed if a guardian dies, becomes incapacitated, resigns, or is removed.

~~(2)~~ (2) A resigning guardian of person must file a resignation and a petition for discharge and must serve ~~such~~ these documents on any successor guardian and such interested persons as the court may direct. The guardian is entitled to discharge upon proof that ~~the guardian~~ he or she has fully ~~discharged~~ executed the guardian's duties and has obtained proof of delivery to a successor guardian or emergency temporary guardian of copies of all records of medical, personal, and

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residential care for the ward.

~~(3)~~ (3) Upon petition by an interested person or on the court's own motion, an attorney may be appointed to represent the ward in the discharge proceedings. When a court appoints an attorney for a ward, the court must appoint the office of criminal conflict and civil regional counsel or a private attorney as prescribed in s. 27.511(6). A private attorney must be one who is included in the attorney registry compiled pursuant to s. 27.40. Appointments of private attorneys must be made on a rotating basis, taking into consideration conflicts arising under this code. The attorney for the ward ~~represents~~ shall represent the preferences expressed by the ward, to the extent consistent with the rules regulating The Florida Bar. The attorney for the ward may assist in locating a successor guardian.

~~(4)~~ (4) A successor guardian of person may be appointed and have letters issued after a guardian has resigned and before an order of discharge of the resigned guardian has been entered. The successor guardian shall exercise the powers specified in the letters of guardianship and ~~such guardian's~~ this or her authority inures as of the date of issuance of letters.

~~(5)~~ (5) If no successor guardian is appointed at the time the petition for discharge is filed, the court may appoint an emergency temporary guardian.

Section 116. Section 745.1108, Florida Statutes, is created to read:

745.1108 Termination of guardianship of person ~~.-~~

~~(1)~~ (1) When a ward becomes sui juris, has been restored to capacity as to all rights related to the ward's person, the

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guardianship has terminated as a result of the ~~relocation of the~~
ward's residence being relocated to an out-of-state
jurisdiction, or the guardianship is otherwise terminated,
except as provided in subsection (5), a guardian of person must
file a petition for discharge, specifying the grounds therefor.
The petition for discharge must be served on the ward.

(2) — When the guardian has been unable to locate the ward
after diligent search, a guardian of person may file a petition
for discharge, specifying the guardian's attempts to locate the
ward.

(3) — In the case of a ward who has become sui juris or has
been restored to capacity, a copy of the petition for discharge
and a notice of hearing on ~~said~~ that petition shall be served on
the ward, unless waived.

(4) — If a guardian has been unable to locate the ward,
the guardian shall serve the petition for discharge and a notice
of hearing on the ward's next of kin and such other persons as
the court may ~~in its discretion~~, direct.

(5) — A guardian of person is discharged without further
proceedings upon filing a certified copy of the ward's death
certificate, together with a notice of discharge.

(6) — The court retains jurisdiction over the guardian
until ~~the guardian~~ he or she is discharged.

Section 117. Section 745.1109, Florida Statutes, is created
to read:

745.1109 Termination of guardianship of person ~~on~~ upon
ward's change of residence ~~of ward~~ to foreign jurisdiction. —

(1) — When the residence of a ward has changed to another
state or country and the foreign court having jurisdiction of

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the ward at the ward's new place of residence has issued letters or the equivalent, the guardian of person in this state may file a petition for discharge and serve it on the new foreign guardian and the ward's next of kin with a notice directing that any objections must be filed within 30 days.

(2~~3~~) If an objection is timely filed, any interested person may set the objection for hearing. If no notice of hearing is served within 60 days after ~~filing~~ the objection is filed, the objection is deemed abandoned.

(3~~2~~) Upon disposition of all objections, or if no objection is filed, the guardian of person shall be discharged.

Section 118. Section 745.1110-1111, Florida Statutes, is created to read:

745.1111 Order of discharge~~-. -~~

(1~~2~~) If the court is satisfied that the guardian has faithfully discharged ~~the guardian's~~ this or her duties and, in the case of a guardian of property, has delivered the ward's property ~~of the ward~~ to the person entitled to it, and that the ward's interests ~~of the ward~~ are protected, the court must enter an order discharging the guardian from any further duties and liabilities as guardian. The discharge shall also act as a bar to any action against the guardian, as such and individually, or the ~~guardian's~~ guardian's surety, as to matters adequately disclosed to interested persons.

(2~~3~~) As to matters not adequately disclosed to interested persons, any action against the guardian, as such and individually, shall be barred unless commenced within 2 years ~~of~~ after entry of the order of discharge.

Section ~~12. -~~ 119. Part XII of chapter 745, Florida Statutes,

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~~consisting~~ shall be entitled "Removal of sections Guardians" and shall consist of ss. 745.1201, ~~745.1202, 745.1203, 745.1204, 745.1205, and 745.1206.~~

Section 120. Section 745.1201, Florida Statutes, is created to read:

~~PART XII~~

~~REMOVAL OF GUARDIANS~~

745.1201 Reasons for removal of guardian-

.-A guardian may be removed for any of the following reasons, and the removal shall be in addition to any other penalties prescribed by law:

(1)-) Fraud in obtaining appointment.

(2)-) Failure to discharge guardianship duties.

(3)-) Abuse of guardianship powers.

(4)-) An incapacity or illness, including substance abuse, which renders the guardian incapable of discharging ~~the~~ guardian's this or her duties.

(5)-) Willful failure to comply with any order of the court.

(6)-) Failure to account for property sold or to produce the ~~ward's~~ sward's property when so required.

(7)-) Waste, embezzlement, or other mismanagement of the ~~ward's~~ sward's property.

(8)-) Failure to give bond or security when required by the court or failure to file with the annual guardianship plan the evidence required by s. 745.607 that the sureties on the guardian's bond are alive and solvent.

(9)-) Conviction of a felony.

(10)-) Appointment of a receiver, trustee in bankruptcy,

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or liquidator for any corporate guardian.

(11) ~~—~~ Development of a conflict of interest between the ward and the guardian.

(12) ~~—~~ Having been found guilty of, regardless of adjudication, or having entered a plea of nolo contendere or guilty to, any offense described in s. 435.04(2), s. 741.28, or under any similar statute of another jurisdiction.

(13) ~~A~~ Failure to fulfill the guardianship education requirements.

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

(15) ~~—~~ After appointment, the guardian becomes a disqualified person as specified in s. 745.503.

(16) ~~—~~ Upon a showing that removal of the current guardian is in the best interest of the ward.

Section 121. Section 745.1202, Florida Statutes, is created to read:

745.1202 Proceedings for removal of a guardian—

.—A petition to remove a guardian may be filed by any surety ~~or~~ or interested person ~~or~~ or by the ward. Formal notice shall be served on the guardian. After hearing, the court may enter an order that is proper considering the pleadings and the evidence.

Section 122. Section 745.1203, Florida Statutes, is created to read:

745.1203 Accounting upon removal—

.—A removed guardian of property shall file with the court a true, complete, and final accounting of the ward's property

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within 30 days after removal and shall serve a copy on the successor guardian, if any; the attorney for the ward, if any; and the ward, unless the ward is a minor or has been determined to be totally incapacitated and thus unable to manage or dispose of property.

Section 123. Section 745.1204, Florida Statutes, is created to read:

745.1204 Appointment of successor guardian upon removal~~.-~~
(1)~~—~~ If, upon a guardian's removal, there ~~is still~~remains the need for a guardian of the ward, the court must appoint a successor guardian as permitted under s. 745.501.

(2)~~—~~ If no successor guardian has been appointed when a guardian is removed, the court shall appoint an attorney to represent the ward and the accounting shall be served on the ward. The ward may propose a successor guardian, and the court may appoint an emergency temporary guardian to serve until letters are issued to a successor guardian.

Section 124. Section 745.1205, Florida Statutes, is created to read:

745.1205 Surrender of property upon removal~~.-~~

.-A removed guardian of property shall deliver to the successor guardian or emergency temporary guardian all property of the ward and copies of all records under the removed guardian's control within 30 days after notice of issuance of letters to the successor guardian or emergency temporary guardian, unless otherwise ordered by the court.

Section 125. Section 745.1206, Florida Statutes, is created to read:

745.1206 Proceedings for contempt~~.-~~

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.-If a removed guardian of property fails to file a true, complete, and final accounting or turn over to the successor guardian or emergency temporary guardian the ward's property of the ward and copies of all guardianship records that are in the removed guardian's control, the court shall issue an order requiring the removed guardian to show cause for such failure. If the removed guardian shows reasonable cause is shown by the guardian, the court shall must set a reasonable time within which to comply, and, on failure to comply with this or any subsequent order, the removed guardian may be held in contempt. Proceedings for contempt may be instituted by the court, by any interested person, including the ward, or by a successor guardian or an emergency temporary guardian.

Section ~~13.~~ 126. Part XIII of chapter 745, Florida Statutes, ~~consisting~~ shall be entitled "Miscellaneous" and shall consist of sections ss. 745.1301, 745.1316.

Section 127. Section 1302, 745.1303, 745.1304, 745.1305, 745.1306, 745.1307, 745.1308, 745.1309, 745.1310, 745.1311, 745.1312, 745.1313, 745.1314, and 745.1315 1301, Florida Statutes, is created to read:

~~PART XIII~~

~~MISCELLANEOUS~~

745.1301 Suspension of statutes of limitation in favor of guardian-

.-If a person entitled to bring an action is declared incapacitated before expiration of the time limited for the commencement of the action and the cause of the action survives, the action may be commenced by a guardian of property may commence the action after such expiration and within 1 year from the date

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of the issuance of letters or the time otherwise limited by law,
whichever is longer.

Section 128. Section 745.1302, Florida Statutes, is created
to read:
745.1302 Appraisals.

~~On.~~ Upon petition by an interested person, the court may
appoint appraisers to appraise property of the ward ~~that~~which is
subject to the guardianship. This section does not limit the
power of a guardian of property to employ appraisers without
court order pursuant to s. 745.902(12).

Section 129. Section 745.1303, Florida Statutes, is created
to read:

745.1303 Determination regarding alternatives to
guardianship.

~~(1)~~ (1) Any judicial determination concerning the validity or
effect of the ~~ward's~~ward's power of attorney, durable power of
attorney, trust, or trust amendment shall be promptly reported
in the guardianship proceeding by the guardian of property.

~~(2)~~ (2) Any judicial determination concerning the validity
or effect of the ward's health care surrogate designation shall
be promptly reported in the guardianship proceeding by the
guardian of person.

~~(3)~~ (3) During the guardianship, an interested person may
file a petition alleging that, due to a change in circumstances
or the discovery of an alternative not previously considered by
the court, there is an alternative to guardianship which will
sufficiently address the ~~problems~~needs of the ward ~~and.~~ In
response to such petition, the court shall consider the
continued need for a guardian and the extent of the continued

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need for delegation of the ~~ward's~~ward's rights, if any.

Section 130. Section 745.1304, Florida Statutes, is created to read:

745.1304 Support of ward's dependents.-

(1~~)-~~) A guardian of property shall first apply the ~~ward's~~ward's income to the ~~ward's~~ward's health care, support, education, maintenance, ~~health care~~ and prepaid cost of funeral and burial or cremation. The guardian ~~shall~~may not use the ward's property for support of the ward's dependents unless approved by the court. The court may ~~approve~~authorize the guardian to use the ward's income for the health care, support, education, maintenance, ~~cost of final illness~~, and cost of funeral and burial or cremation of the ward's dependents ~~of the ward~~, to the extent funds are available for such ~~use~~uses, without jeopardizing the needs of the ward, taking into consideration the resources of the dependents. If the income is not sufficient for these purposes, the court may approve the expenditure of principal for such purposes.

(2~~)-~~) The ~~word "term~~ "dependents," as used in subsection (1~~)-~~), means, in addition to those persons who are legal dependents of a ward under existing law, the ward's spouse, the ward's parents, and persons to whom the ward was providing support ~~prior to~~before the ward's incapacity.

Section 131. Section 745.1305, Florida Statutes, is created to read:

745.1305 Petition for support of ward's dependents.-

(1~~)-~~) A spouse or dependent of the ward, as defined in s. 745.1304, may petition for an order directing the guardian of property to contribute to the support of the person from the

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ward's income or property ~~of the ward~~. The court may enter an order for support of the spouse or dependent out of the ~~ward's~~ward's income and property ~~that is~~which are subject to the guardianship. The grant or denial of an order for support ~~shall~~may not preclude a further petition for support or for increase, decrease, modification, or termination of allowance for support by either the petitioner or the guardian. Delivery of the court order to the recipient shall be a release of the guardian for payments made pursuant to the order.

~~(2)-~~ If the ward's property ~~of the ward~~ is derived in whole or in part from payments of compensation, adjusted compensation, pension, insurance, or other benefits made directly to the guardian by the United States Department of Veterans Affairs, the petitioner must give notice of the petition for support ~~shall be given by the petitioner~~ to the office of the United States Department of Veterans Affairs having jurisdiction over the area in which the court is located and the chief attorney for the Department of ~~Veterans'~~Veterans' Affairs in this state at least 15 days before the hearing on the petition.

~~(3)-~~ The court may not authorize payments from an incapacitated ~~ward's~~ward's income or property unless the ward has been adjudicated incapacitated to manage such income or property in accordance with s. 745.~~311~~312.

~~(4)-~~ In a voluntary guardianship, a petition for support may be granted only upon the written consent of the ward.

Section 132. Section 745.1306, Florida Statutes, is created to read:
745.1306 Payments to guardian of person-

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.-If there is more than one guardian, either guardian may petition for an order directing the guardian of property to pay to the guardian of person periodic amounts for the support, care, maintenance, education, and other needs of the ward. The amount may be increased or decreased from time to time. If an order is entered, proof of ~~delivery~~ payments made to the guardian of person ~~for payments made shall be a sufficient release of the guardian who makes the~~ making payments pursuant to the order. The guardian of property ~~shall~~ may not be bound to see to the application of the payments and the guardian of person ~~shall~~ may not be required to file an accounting for the funds received, unless otherwise ordered to do so by the court.

Section 133. Section 745.1307, Florida Statutes, is created to read:
745.1307 Actions by and against guardian or ward-

.-If an action is brought by a guardian against the ward, by a ward against the guardian, or in which the interest of the guardian is adverse to that of the ward, a guardian ad litem shall be appointed to represent the ward in that proceeding. In any litigation between the guardian and the ward, the guardian ad litem may petition the court for removal of the guardian.

Section 134. Section 745.1308, Florida Statutes, is created to read:

745.1308 Guardian forbidden to borrow or purchase; exceptions-.-

(1)-) A professional guardian may not purchase property or borrow money from the ward.

(2)-) A guardian who is not a professional guardian may purchase property from the ward if the property is to be

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purchased at fair market value and the court gives prior authorization for the transaction.

(3~~7~~) A guardian who is not a professional guardian may borrow money from the ward if the loan is to be made at the prevailing interest rate, with adequate security, and the court gives prior authorization for the transaction.

Section 135. Section 745.1309, Florida Statutes, is created to read:

745.1309 Conflicts of interest; prohibited activities; court approval; breach of fiduciary duty~~-. -~~

(1~~7~~) The fiduciary relationship ~~which~~that exists between the guardian and the ward may not be used for the private gain of the guardian other than the remuneration for services rendered for the ward. The guardian may not incur any obligation on behalf of the ward which conflicts with the proper discharge of the ~~guardian's~~guardian's duties.

(2~~7~~) 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~~7~~) Unless prior court approval is obtained, or unless such ~~relationship~~interest existed before appointment of the guardian and is disclosed to the Court, a guardian may not:

(a~~7~~) 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 examiner appointed by the

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court, any court employee involved in the guardianship process,
or the attorney for the ward;

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

~~(c)~~ (c) Be designated as a beneficiary, co-owner, or
recipient of any property or benefit of the ward ~~unless such
designation; or transfer was made by the ward before the ward's
incapacity; or~~

~~(d)~~ (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~~ guardian's spouse or any of the
~~guardian's~~ guardian's lineal heirs, or collateral kindred, is an
officer, partner, director, shareholder, or proprietor, ~~or has~~
any financial interest.

~~(3)~~ (4) Any activity prohibited by this section is voidable
during the term of the guardianship or by the personal
representative of the ~~ward's~~ ward's estate, and the guardian is
subject to removal and to imposition of personal liability
through a proceeding for surcharge, in addition to any other
remedies otherwise available.

~~(4)~~ (5) In the event of a breach by the guardian of the
guardian's fiduciary duty, the court shall take action to
protect the ward and the ~~ward's~~ ward's assets upon petition by an
interested person.

Section 136. Section 745.1310-1311, Florida Statutes, is
created to read:
745.1311 Purchasers and lenders protected-

.- No person or entity purchasing, or leasing from, or
taking receiving a mortgage, pledge, or other lien from, a

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guardian shall be bound to see that the money or other things of value paid to the guardian are actually needed or properly applied. The person or entity is not otherwise bound as to the proprieties or expediencies of the acts of the guardian.

Section 137. Section 745.1311-1312, Florida Statutes, is created to read:

745.1312 Temporary delegation of authority to surrogate.~~.-~~

(1)~~(1)~~ A guardian may designate a surrogate guardian to exercise the powers of the guardian if the guardian is unavailable to act. A person designated as a surrogate guardian under this section must be a professional guardian or a member of The Florida Bar qualified to act under s. 745.501.

(2) (a)~~(a)~~ A guardian must file a petition with the court requesting permission to designate a surrogate guardian.

(b)~~(b)~~ If the court approves the designation, the order must specify the name and business address of the surrogate guardian and the duration of ~~appointment~~the designation, which may not exceed 30 days. The court may extend the ~~appointment~~designation for good cause shown. The surrogate guardian may exercise all powers of the guardian unless limited by court order. The surrogate guardian must file with the court an oath swearing or affirming that the surrogate guardian will faithfully perform the duties delegated. The court may require the surrogate guardian to post a bond.

(3)~~(3)~~ This section does not limit the guardian's authority or responsibility ~~of the guardian~~ to the ward and to the court. The guardian is liable for the acts of the surrogate guardian. The guardian may terminate the authority of the surrogate guardian by filing a written notice of termination with the

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court and serving the notice on the surrogate guardian.

(4) The surrogate guardian is subject to the jurisdiction of the court as if appointed to serve as guardian.

Section 138. Section 745.1312-1313, Florida Statutes, is created to read:

745.1313 Multiple guardians-. -

(1) When separate guardians of person and property have been appointed, the guardians must consult with each other when the decision of one may affect the duties and responsibilities of the other. If there is disagreement as to a proposed action, the decision of the guardian within whose authority the decision lies shall prevail. The other guardian may petition for judicial review pursuant to s. 745.1006.

(2) If there are two guardians of person or two guardians of property and there are disagreements between the co-guardians as to a proposed action, neither may act ~~as~~with respect to ~~such~~the proposed action without court order.

(3) If there are three or more guardians of person or property, a majority of them may act. A guardian who serves on all other guardians a written objection to a proposed action ~~shall~~is not ~~be~~liable for the action taken. Any guardian may petition the court for direction as to such matter.

Section 139. Section 745.1313-1314, Florida Statutes, is created to read:

745.1314 Effect of power of attorney and trust-. -

(1) An interested person may file a verified petition in a guardianship proceeding ~~seeking~~to seek authority for the guardian to file an action to have a ward's trust, trust amendment, or power of attorney determined to be invalid

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pursuant to s. 745.903~~(101)~~ (j). The petition must allege that the petitioner has a good faith belief that the ward's trust, trust amendment, or durable power of attorney is invalid~~,~~ and must state a reasonable factual basis for that belief.

(2)~~(1)~~ The petition shall be served on all interested persons by the petitioner.

(3)~~(2)~~ The court shall consider such petition at a hearing with notice to all interested persons and may, for cause, find that such trust, trust amendment, or durable power of attorney is not an appropriate alternative to guardianship of property.

(4)~~(3)~~ The appointment of a guardian does not limit the ~~court's~~ court's power to determine that certain authority granted under a durable power of attorney is to remain exercisable by the agent.

Section 140. Section 745.1314-1315, Florida Statutes, is created to read:

745.1315 Suspension of power of attorney before incapacity determination~~.-~~

(1)~~(1)~~ At any time during proceedings to determine incapacity but before the entry of an order determining incapacity, the authority granted under an alleged incapacitated person's power of attorney to a parent, spouse, child, or grandchild is suspended when an interested person files a verified petition stating that a specific power of attorney should be suspended for any of the following grounds:

(a)~~(a)~~ The agent's decisions are not in accord with the alleged incapacitated person's known desires;

(b)~~(b)~~ The power of attorney is invalid;

(c)~~(c)~~ The agent has failed to discharge the ~~agent's~~ agent's

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duties, or incapacity or illness ~~renders~~has rendered the agent incapable of discharging the ~~agent's~~agent's duties;

~~(d)~~(d) The agent has abused the ~~agent's~~agent's powers; or

~~(e)~~(e) There is a danger that the property of the alleged incapacitated person may be wasted, misappropriated, or lost unless the authority under the power of attorney is suspended.

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

~~(2)~~(2) The verified petition must:

~~(a)~~(a) Identify one or more of the grounds in subsection (1); and

~~(b)~~(b) Include specific statements of fact showing that grounds exist to justify the relief sought; ~~and~~.

~~(3)~~(3) The court shall schedule the petition for an expedited hearing upon the earlier of ~~(a)~~ the filing of a response to the petition by the agent under the power of attorney, or ~~(b)~~ 10 days after the service of the petition on the agent under the power of attorney, ~~the court shall schedule the petition for an expedited hearing~~. Unless an emergency arises and the agent's response sets forth the nature of the emergency, the property or matter involved, and the power to be exercised by the agent, notice must be given to all interested persons, the alleged incapacitated person, and the alleged incapacitated person's attorney. The court order following the hearing must set forth what powers the agent is permitted to exercise, if any, pending the outcome of the petition to determine

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incapacity.

(4) In addition to any other remedy authorized by law, a court may award reasonable attorney fees and costs to an agent who successfully challenges the suspension of the power of attorney if the petitioner's petition was made in bad faith.

(5) The suspension of authority granted to persons other than a parent, spouse, child, or grandchild shall be as provided in s. 709.2109.

Section 141. Section 745.1315-1316, Florida Statutes, is created to read:

745.1316 Abuse, neglect, or exploitation by a guardian.-

(1) A guardian may not abuse, neglect, or exploit a ward.

(2) A guardian has committed exploitation when the guardian:

(a) Commits fraud in obtaining appointment as a guardian;

(b) Abuses the guardian's powers; or

(c) Wastes, embezzles, or intentionally mismanages the assets of the ward.

(3) A person who believes that a guardian is abusing, neglecting, or exploiting a ward shall report the incident to the central abuse hotline of the Department of Children and Families.

(4) This section shall be interpreted in conformity with s. 825.103.

Section ~~14.~~142. Part XIV of chapter 745, Florida Statutes, ~~consisting~~shall be entitled "Public and Professional Guardians"

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and shall consist of ~~sections~~ ss. 745.1401, ~~745.1422.~~

Section 143. ~~Section 1402,~~ 745.1403, ~~745.1404, 745.1405,~~
~~745.1406, 745.1407, 745.1408, 745.1409, 745.1410, 745.1411,~~
~~745.1412, 745.1413, 745.1414, 745.1415, 745.1416, 745.1417,~~
~~745.1418, 745.1419, and 745.1420~~ 1401, Florida Statutes, is created
to read:

~~PART XIV~~

~~PUBLIC AND PROFESSIONAL GUARDIANS~~

~~745.1401—~~ Office of Public and Professional Guardians.

~~—~~ There is created the Office of Public and Professional
Guardians within the Department of Elderly Affairs.

~~(1)—~~ The Secretary of Elderly Affairs shall appoint the
executive director, who shall be the head of the Office of
Public and Professional Guardians. The executive director must
be a member of The Florida Bar, knowledgeable of guardianship
law and of the social services available to meet the needs of
incapacitated persons, shall serve on a full-time basis, and
shall personally, or through a representative of the office,
carry out the purposes and functions of the Office of Public and
Professional Guardians in accordance with state and federal law.
The executive director shall serve at the pleasure of and report
to the secretary.

~~(2)—~~ The executive director shall, within available
resources, do all of the following:

~~(a)—~~ Have oversight responsibilities for all public and
professional guardians.

~~(b)—~~ Establish by rule the standards of practice for
public and professional guardians ~~by rule,~~ in consultation with
professional guardianship associations and other interested

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stakeholders, no later than October 1, 2016. The executive director shall provide a draft of the standards to the Governor, the Legislature, and the secretary for review by August 1, 2016.

~~(c)~~ Review and approve the standards and criteria for the education, registration, and certification of public and professional guardians in ~~Florida~~this state.

~~(3)~~ The executive director's oversight responsibilities of professional guardians must be finalized by October 1, 2016, and shall include, but are not limited to, all of the following:

~~(a)~~ Developing and implementing a monitoring tool to ensure ~~compliance of that~~ professional guardians comply with the standards of practice established by the Office of Public and Professional Guardians. This monitoring tool may not include a financial audit as required by the clerk of the circuit court under s. 745.1001.

~~(b)~~ Developing procedures, in consultation with professional guardianship associations and other interested stakeholders, for the review of an allegation that a professional guardian has violated the standards of practice established by the Office of Public and Professional Guardians governing the conduct of professional guardians.

~~(c)~~ Establishing disciplinary proceedings, conducting hearings, and taking administrative action pursuant to chapter 120.

~~(4)~~ The executive director's oversight responsibilities of public guardians shall include, but are not limited to, all of the following:

~~(a)~~ Reviewing the current public guardian programs in ~~Florida~~this state and other states.

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4410 (b) — Developing, in consultation with local guardianship
4411 offices and other interested stakeholders, statewide performance
4412 measures.

4413 (c) — Reviewing various methods of funding public
4414 guardianship programs, the kinds of services being provided by
4415 such programs, and the demographics of the wards. In addition,
4416 the executive director shall review and make recommendations
4417 regarding the feasibility of recovering a portion or all of the
4418 costs of providing public guardianship services from the assets
4419 or income of the wards.

4420 (d) — By January 1 of each year, providing a status report
4421 and recommendations to the secretary which address the need for
4422 public guardianship services and related issues.

4423 (e) — Developing a guardianship training program
4424 curriculum that may be offered to all guardians, whether public
4425 or private.

4426 (5) — The executive director may provide assistance to
4427 local governments or entities in pursuing grant opportunities.
4428 The executive director shall review and make recommendations in
4429 the annual report on the availability and efficacy of seeking
4430 Medicaid matching funds. The executive director shall diligently
4431 seek ways to use existing programs and services to meet the
4432 needs of public wards.

4433 (6) — The executive director may conduct or contract for
4434 demonstration projects authorized by the Department of Elderly
4435 Affairs, within funds appropriated or through gifts, grants, or
4436 contributions for such purposes, to determine the feasibility or
4437 desirability of new concepts of organization, administration,
4438 financing, or service delivery designed to preserve the civil

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and constitutional rights of persons of marginal or diminished capacity. Any gifts, grants, or contributions for such purposes shall be deposited in the Department of Elderly Affairs Administrative Trust Fund.

Section 144. Section 745.1402—, Florida Statutes, is created to read:

745.1402 Professional guardian registration—.

(1)— A professional guardian must register with the Office of Public and Professional Guardians established in ~~part XIV of this chapters.~~ 745.1401.

(2)— Annual registration shall be made on forms furnished by the Office of Public and Professional Guardians and accompanied by the applicable registration fee as determined by rule. The fee may not exceed \$100.

(3)— Registration must include all of the following:

(a)— Sufficient information to identify the professional guardian, as follows:

1.— If the professional guardian is a natural person, the name, address, date of birth, and employer identification or social security number of the person.

2.— If the professional guardian is a partnership or association, the name, address, and employer identification number of the entity.

(b)— Documentation that the bonding and educational requirements of s. 745.1403 have been met.

(c)— Sufficient information to distinguish a guardian providing guardianship services as a public guardian, individually, or through partnership, corporation, or any other business organization.

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~~(4) Prior to~~ Before registering a professional guardian, the Office of Public and Professional Guardians must receive and review copies of the credit history and criminal record investigations conducted under s. 745.504. The credit history and criminal record investigations must have been completed within the previous 2 years.

~~(5)~~ The executive director of the Office of Public and Professional Guardians may deny registration to a professional guardian if the executive director determines that the guardian's proposed registration, including the guardian's credit history or criminal record investigations, indicates that registering the professional guardian would violate any provision of this chapter. If a guardian's proposed registration is denied, the guardian has standing to seek judicial review of the denial pursuant to chapter 120.

~~(6)~~ The Department of Elderly Affairs may adopt rules necessary to administer this section.

~~(7)~~ A trust company, a state banking corporation or state savings association authorized and qualified to exercise fiduciary powers in this state, or a national banking association or federal savings and loan association authorized and qualified to exercise fiduciary powers in this state, ~~may,~~ but is not required to, register as a professional guardian under this section. If a trust company, state banking corporation, state savings association, national banking association, or federal savings and loan association described in this subsection elects to register as a professional guardian under this subsection, the requirements of subsections (3) and (4) do not apply and the registration must include only the name,

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address, and employer identification number of the registrant,
the name and address of its registered agent, if any, and the
documentation described in paragraph (3) (b).

~~(8)~~ (9) The Department of Elderly Affairs may contract with
the Florida Guardianship Foundation or other not-for-profit
entity to register professional guardians.

~~(9)~~ (10) The department or its contractor shall ensure that
the clerks of the court and the chief judge of each judicial
circuit receive information about each registered professional
guardian.

~~(10)~~ (11) A state college or university or an independent
college or university that is located and chartered in
~~Florida~~ this state, that is accredited by the Commission on
Colleges of the Southern Association of Colleges and Schools or
the Accrediting Council for Independent Colleges and Schools,
and that confers degrees as defined in s. 1005.02 ~~(7)~~ may, but is
~~not required to,~~ register as a professional guardian under this
section. If a state college or university or independent college
or university elects to register as a professional guardian
under this subsection, the requirements of subsections (3) and
(4) do not apply and the registration must include only the
name, address, and employer identification number of the
registrant.

Section 145. Section 745.1403—, Florida Statutes, is
created to read:

745.1403 Regulation of professional guardians; application;
bond required; educational requirements.—

~~(1)~~ (1) The provisions of this section are in addition to
and supplemental to any other provision of this code, except s.

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745.505.

(2) ~~Each professional guardian who files a petition for appointment after October 1, 1997, shall post a blanket fiduciary bond with the clerk of the circuit court in the county in which the guardian's primary place of business is located. The guardian shall provide proof of the fiduciary bond to the clerks of each additional circuit court in which the guardian is serving as a professional guardian. The bond shall be maintained by the guardian in an amount not less than \$50,000. The bond must cover all wards for whom the guardian has been appointed at any given time. The bond provider's liability of the provider of the bond is limited to the face amount of the bond, regardless of the number of wards for whom the professional guardian has been appointed. The acts or omissions of each employee of a professional guardian who has direct contact with the ward or access to the ward's assets are covered by the terms of such bond. The bond must be payable to the Governor of the State of Florida and the Governor's successors in office and conditioned on the faithful performance of all duties by the guardian. In form, the bond must be joint and several. The bond is in addition to any bonds required under s. 745.607. This subsection does not apply to any attorney who is licensed to practice law in this state and who is in good standing, to any financial institution as defined in s. 745.106, or a public guardian. The expenses incurred to satisfy the bonding requirements prescribed in this section may not be paid with the assets of any ward.~~

(3) ~~Each professional guardian and public guardian, as defined in s. 745.106(30) and public guardian, must receive a minimum of 40 hours of instruction and training. Each~~

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professional guardian must receive a minimum of 16 hours of continuing education every 2 calendar years after the year in which the initial 40-hour educational requirement is met. The instruction and education must be completed through a course approved or offered by the Office of Public and Professional Guardians. The expenses incurred to satisfy the educational requirements prescribed in this section may not be paid with the assets of any ward. This subsection does not apply to any attorney who is licensed to practice law in this state or an institution acting as guardian under s. 745.1402(7).

~~(4)~~ Each professional guardian must allow, at the guardian's expense, an investigation of the guardian's credit history, and the credit history of employees of the guardian, in a manner prescribed by the Department of Elderly Affairs.

~~(5)~~ As required in s. 745.504, each professional guardian shall allow a level 2 background screening of the guardian and employees of the guardian in accordance with ~~the provisions of s.s.~~ 435.04.

~~(6)~~ Each professional guardian is required to demonstrate competency to act as a professional guardian by taking an examination approved by the Department of Elderly Affairs.

~~(a)~~ The Department of Elderly Affairs shall determine the minimum examination score necessary for passage of guardianship examinations.

~~(b)~~ The Department of Elderly Affairs shall determine the procedure for administration of the examination.

~~(c)~~ The Department of Elderly Affairs or its contractor shall charge an examination fee for the actual costs of the

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development and the administration of the examination. The examination fee for a guardian may not exceed \$500.

~~(d)~~ The Department of Elderly Affairs may recognize passage of a national guardianship examination in lieu of all or part of the examination approved by the Department of Elderly Affairs, except that all professional guardians must take and pass an approved examination section related to Florida law and procedure.

~~(7)~~ The Department of Elderly Affairs shall set the minimum score necessary to demonstrate professional guardianship competency.

~~(8)~~ The Department of Elderly Affairs shall waive the examination requirement in subsection (6) if a professional guardian can provide:

~~(a)~~ Proof that the guardian has actively acted as a professional guardian for 5 years or more; and

~~(b)~~ A letter from a circuit judge before whom the professional guardian practiced at least 1 year which states that the professional guardian had demonstrated to the court competency as a professional guardian.

~~(9)~~ The court may not appoint any professional guardian who is not registered by the Office of Public and Professional Guardians.

~~(10)~~ This section does not apply to a professional guardian or the employees of that professional guardian when that guardian is a trust company, a state banking corporation, a state savings association authorized and qualified to exercise fiduciary powers in this state, or a national banking association or federal savings and loan association authorized

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and qualified to exercise fiduciary powers in this state.

Section 146. Section 745.1404—, Florida Statutes, is created to read:

745.1404 Complaints; disciplinary proceedings; penalties; enforcement—.

(1)— By October 1, 2016, the Office of Public and Professional Guardians shall establish procedures to:

(a)— Review and, if determined legally sufficient, investigate any complaint that a professional guardian has violated the standards of practice established by the Office of Public and Professional Guardians governing the conduct of professional guardians. A complaint is legally sufficient if it contains ultimate facts that show a violation of a standard of practice by a professional guardian has occurred.

(b)— Initiate an investigation no later than 10 business days after the Office of Public and Professional Guardians receives a complaint.

(c)— Complete and provide initial investigative findings and recommendations, if any, to the professional guardian and the person who filed the complaint within 60 days after receipt.

(d)— Obtain supporting information or documentation to determine the legal sufficiency of a complaint.

(e)— Interview a ward, a family member, or an interested party to determine the legal sufficiency of a complaint.

(f)— Dismiss any complaint if, at any time after legal sufficiency is determined, it is found that there is insufficient evidence to support the allegations contained in the complaint.

(g)— Coordinate, to the greatest extent possible, with

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the clerks of court to avoid duplication of duties with regard to the financial audits prepared by the clerks pursuant to s. 745.1001.

~~(2)~~ (3) The Office of Public and Professional Guardians shall establish disciplinary proceedings, conduct hearings, and take administrative action pursuant to chapter 120. Disciplinary actions may include, but are not limited to, requiring a professional guardian to participate in additional educational courses provided or approved by the Office of Public and Professional Guardians, imposing additional monitoring by the office of the guardianships to which the professional guardian is appointed, and suspension or revocation of a professional guardian's registration.

~~(3)~~ (3) In any disciplinary proceeding that may result in the suspension or revocation of a professional guardian's registration, the Department of Elderly Affairs shall provide the professional guardian and the person who filed the complaint all of the following:

~~(a)~~ (a) A written explanation of how an administrative complaint is resolved by the disciplinary process.

~~(b)~~ (b) A written explanation of how and when the person may participate in the disciplinary process.

~~(c)~~ (c) A written notice of any hearing before the Division of Administrative Hearings at which final agency action may be taken.

~~(4)~~ (4) If the office makes a final determination to suspend or revoke the professional guardian's registration, it must provide ~~such~~ that determination to the court of competent jurisdiction for any guardianship case to which the professional

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guardian is currently appointed.

~~(5) —~~ If the office determines or has reasonable cause to suspect that a vulnerable adult has been or is being abused, neglected, or exploited, as a result of a filed complaint or during the course of an investigation of a complaint, that a vulnerable adult has been or is being abused, neglected, or exploited, it shall immediately report such determination or suspicion to the central abuse hotline established and maintained by the Department of Children and Families pursuant to s. 415.103.

~~(6) — By October 1, 2016, —~~ The Department of Elderly Affairs shall adopt rules to implement ~~the provisions of~~ this section.

Section 147. Section 745.1405—, Florida Statutes, is created to read:

745.1405 Grounds for discipline; penalties; enforcement.—

~~(1) —~~ The following acts by a professional guardian shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

~~(a) —~~ Making misleading, deceptive, or fraudulent representations in or related to the practice of guardianship.

~~(b) —~~ Violating any rule governing guardians or guardianships adopted by the Office of Public and Professional Guardians.

~~(c) —~~ Being convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of or the ability to practice as a professional guardian.

~~(d) —~~ Failing to comply with the educational course

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requirements contained in s. 745.1403.

(e) Having a registration, a license, or the authority to practice a regulated profession revoked, suspended, or otherwise acted against, including the denial of registration or licensure, by the registering or licensing authority of any jurisdiction, including its agencies or subdivisions, for a violation under Florida law or similar law under a foreign jurisdiction. The registering or licensing authority's acceptance of a relinquishment of registration or licensure, a stipulation, a consent order, or other settlement offered in response to or in anticipation of the filing of charges against the registration or license shall be construed as an action against the registration or license.

(f) Knowingly filing a false report or complaint with the Office of Public and Professional Guardians against another guardian.

(g) Attempting to obtain, obtaining, or renewing a registration or license to practice a profession by bribery, by fraudulent misrepresentation, or as a result of an error by the Office of Public and Professional Guardians which is known by the professional guardian and not disclosed to the office~~of Public and Professional Guardians.~~

(h) Failing to report to the Office of Public and Professional Guardians any person who the professional guardian knows is in violation of this chapter or the rules of the office~~of Public and Professional Guardians.~~

(i) Failing to perform any statutory or legal obligation placed upon a professional guardian.

(j) Making or filing a report or record that the

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professional guardian knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, or willfully impeding or obstructing another person's attempt to do so. Such reports or records shall include only those that are signed in the guardian's capacity as a professional guardian.

(k) — Using the position of guardian for the purpose of financial gain by a professional guardian or a third party, other than the funds awarded to the professional guardian by the court pursuant to s. 745.113114.

(l) — Violating a lawful order of the Office of Public and Professional Guardians or failing to comply with a lawfully issued subpoena of the office ~~of Public and Professional Guardians~~.

(m) — Improperly interfering with an investigation or inspection authorized by statute or rule or with any disciplinary proceeding.

(n) — Using the guardian relationship to engage or attempt to engage the ward, or an immediate family member or a representative of the ward, in verbal, written, electronic, or physical sexual activity.

(o) — Failing to report to the Office of Public and Professional Guardians in writing within 30 days after being convicted or found guilty of, or ~~entered~~entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction.

(p) — Being unable to perform the functions of a professional guardian with reasonable skill by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other

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type of substance or as a result of any mental or physical condition.

~~(q)~~ Failing to post and maintain a blanket fiduciary bond pursuant to s. 745.1403.

~~(r)~~ Failing to maintain all records pertaining to a guardianship for a reasonable time after the court has closed the guardianship matter.

~~(s)~~ Violating any provision of this chapter or any rule adopted pursuant thereto.

~~(2)~~ When the Office of Public and Professional Guardians finds a professional guardian guilty of violating subsection (1), it may enter an order imposing one or more of the following penalties:

~~(a)~~ Refusal to register an applicant as a professional guardian.

~~(b)~~ Suspension or permanent revocation of a professional guardian's registration.

~~(c)~~ Issuance of a reprimand or letter of concern.

~~(d) Requirement~~ Requiring that the professional guardian undergoes treatment, attends continuing education courses, submits to reexamination, or satisfies any terms that are reasonably tailored to the violations found.

~~(e) Requirement~~ Requiring that the professional guardian pay restitution to a ward or the ward's estate, if applicable, of any funds obtained or disbursed through a violation of any statute, rule, or other legal authority.

~~(f) Requirement~~ Requiring that the professional guardian undergo remedial education.

~~(3)~~ In determining what action is appropriate, the

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Office of Public and Professional Guardians must first consider what sanctions are necessary to safeguard wards and to protect the public. Only after those sanctions have been imposed may the office ~~of Public and Professional Guardians~~ consider and include in the order requirements designed to mitigate the circumstances and rehabilitate the professional guardian.

~~(4)~~ (5) The Office of Public and Professional Guardians shall adopt by rule and periodically review the disciplinary guidelines applicable to each ground for disciplinary action that may be imposed by the office ~~of Public and Professional Guardians~~ pursuant to this chapter.

~~(5)~~ (6) It is the intent of the Legislature that the disciplinary guidelines specify a meaningful range of designated penalties based upon the severity and repetition of specific offenses and that minor violations be distinguished from those ~~which~~ that endanger the health, safety, or welfare of a ward or the public; that ~~such~~ disciplinary guidelines provide reasonable and meaningful notice to the public of likely penalties that may be imposed for proscribed conduct; and that ~~such~~ the penalties be consistently applied by the Office of Public and Professional Guardians.

~~(6)~~ (7) The Office of Public and Professional Guardians shall by rule designate possible mitigating and aggravating circumstances and the variation and range of penalties permitted for ~~such~~ those circumstances.

~~(a)~~ (a) An administrative law judge, in recommending penalties in any recommended order, must follow the disciplinary guidelines established by the Office of Public and Professional Guardians and must state in writing any mitigating or

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aggravating circumstance upon which a recommended penalty is based if such circumstance causes the administrative law judge to recommend a penalty other than that provided in the disciplinary guidelines.

(b) — The Office of Public and Professional Guardians may impose a penalty other than those provided for in the disciplinary guidelines upon a specific finding in the final order of mitigating or aggravating circumstances.

(7) — In addition to, or in lieu of, any other remedy or criminal prosecution, the Office of Public and Professional Guardians may file a proceeding in the name of the state seeking issuance of an injunction or a writ of mandamus against any person who violates any provision of this chapter or any provision of law with respect to professional guardians or the rules adopted pursuant thereto.

(8) — Notwithstanding chapter 120, if the Office of Public and Professional Guardians determines that revocation of a professional guardian's registration is the appropriate penalty, the revocation is permanent.

(9) — If the Office of Public and Professional Guardians makes a final determination to suspend or revoke ~~the~~a professional guardian's registration, the office must provide the determination to the court of competent jurisdiction for any guardianship case to which the professional guardian is currently appointed.

(10) — The purpose of this section is to facilitate uniform discipline for those actions made punishable under this section and, to this end, a reference to this section constitutes a general reference under the doctrine of

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incorporation by reference.

~~(11)~~ The Office of Public and Professional Guardians shall adopt rules to administer this section.

Section 148. Section 745.1406—, Florida Statutes, is created to read:

745.1406 Office of Public and Professional Guardians; appointment; notification.—

~~(1)~~ The executive director of the Office of Public and Professional Guardians, after consultation with the chief judge and other circuit judges within the judicial circuit and with appropriate advocacy groups ~~and~~, individuals, and organizations who are knowledgeable about the needs of incapacitated persons, may establish, within a county in the judicial circuit or within the judicial circuit, one or more offices of public guardian and, if so established, shall create a list of persons best qualified to serve as the public guardian ~~and~~ who have been investigated pursuant to s. 745.504. The public guardian must have knowledge of the legal process and knowledge of social services available to meet the needs of incapacitated persons. The public guardian shall maintain a staff or contract with professionally qualified individuals to carry out the guardianship functions, including an attorney who has experience in probate areas and another person who has a master's degree in social work, or a gerontologist, psychologist, registered nurse, or nurse practitioner. A public guardian that is a nonprofit corporate guardian under s. 745.502 must receive tax-exempt status from the United States Internal Revenue Service.

~~(2)~~ The executive director shall appoint or contract with a public guardian from the list of candidates as described

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in subsection (1). A public guardian must meet the qualifications for a guardian as prescribed in s. 745.501(1)(a). Upon appointment of the public guardian, the executive director shall notify the chief judge of the judicial circuit and the Chief Justice of the Supreme Court ~~of Florida~~, in writing, of the appointment.

~~(3)~~ If the needs of the county or circuit do not require a full-time public guardian, a part-time public guardian may be appointed at reduced compensation.

~~(4)~~ A public guardian, whether full ~~-time~~ or part ~~-time~~, may not hold any position that would create a conflict of interest.

~~(5)~~ The public guardian is to be appointed for a term of 4 years, after which the public guardian's appointment must be reviewed by the executive director, and may be reappointed for a term of up to 4 years. The executive director may suspend a public guardian with or without the request of the chief judge. If a public guardian is suspended, the executive director shall appoint an acting public guardian as soon as possible to serve until such time as a permanent replacement is selected. A public guardian may be removed from office during the term of office only by the executive director, who must consult with the chief judge ~~prior to said~~ before the removal. A recommendation of removal made by the chief judge must be considered by the executive director.

~~(6)~~ Public guardians who have been previously appointed by a chief judge ~~prior to~~ before the effective date of this act pursuant to this section may continue in their positions until the expiration of their term pursuant to their agreement.

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However, oversight of all public guardians shall transfer to the Office of Public and Professional Guardians upon the effective date of this act. The executive director of the Office of Public and Professional Guardians shall be responsible for all future appointments of public guardians pursuant to this act.

Section 149. Section 745.1407—, Florida Statutes, is created to read:

745.1407 Powers and duties—.

(1)—) A public guardian may serve as a guardian of a person adjudicated incapacitated under this chapter if there is no family member or friend, other person, bank, or corporation willing and qualified to serve as guardian.

(2)—) The public guardian shall be vested with all the powers and duties of a guardian under this chapter, except as otherwise provided by law.

(3)—) The public guardian shall primarily serve incapacitated persons who are of limited financial means, as defined by contract or rule of the Department of Elderly Affairs. The public guardian may serve incapacitated persons of greater financial means to the extent the Department of Elderly Affairs determines to be appropriate.

(4)—) The public guardian shall be authorized to employ sufficient staff to carry out the duties of the public guardian's office.

(5)—) The public guardian may delegate to assistants and other members of the public guardian's staff the powers and duties of the office of public guardian, except as otherwise limited by law. The public guardian shall retain ultimate responsibility for the discharge of the public guardian's duties

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and responsibilities.

(6) Upon appointment as guardian of an incapacitated person, a public guardian shall endeavor to locate a family member or friend, other person, bank, or corporation who is qualified and willing to serve as guardian. Upon determining that there is someone qualified and willing to serve as guardian, either the public guardian or the qualified person shall petition the court for appointment of a successor guardian.

(7) A public guardian may not commit a ward to a treatment facility, as defined in s. 394.455, without an involuntary placement proceeding as provided by law.

(8) When a person is appointed successor public guardian, the successor public guardian immediately succeeds to all rights, duties, responsibilities, and powers of the preceding public guardian.

(9) When the position of public guardian is vacant, subordinate personnel employed under subsection (4) shall continue to act as if the position of public guardian were filled.

Section 150. Section 745.1408, Florida Statutes, is created to read:

745.1408 Costs of public guardian.

(1) All costs of administration, including filing fees, shall be paid from the budget of the office of public guardian.
No Costs of administration, including filing fees, shall be recovered from the assets or the income of the ward.

(2) In any proceeding for appointment of a public guardian, or in any proceeding involving the estate of a ward

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for whom a public guardian has been appointed guardian, the court shall waive any court costs or filing fees.

Section 151. Section 745.1409—, Florida Statutes, is created to read:
745.1409 Preparation of budget—

.—Each public guardian, whether funded in whole or in part by money raised through local efforts, grants, or any other source or whether funded in whole or in part by the state, shall prepare a budget for the operation of the office of public guardian to be submitted to the Office of Public and Professional Guardians. As appropriate, the Office of Public and Professional Guardians will include such budgetary information in the Department of Elderly Affairs' legislative budget request. The office of public guardian shall be operated within the limitations of the General Appropriations Act and any other funds appropriated by the Legislature to that particular judicial circuit, subject to ~~the provisions of~~ chapter 216. The Department of Elderly Affairs shall make a separate and distinct request for an appropriation for the Office of Public and Professional Guardians. However, this section may not be construed to preclude the financing of any operations of the office of public guardian by moneys raised through local effort or through the efforts of the Office of Public and Professional Guardians.

Section 152. Section 745.1410—1411, Florida Statutes, is created to read:
745.1411 Procedures and rules—

.—The public guardian, subject to the oversight of the Office of Public and Professional Guardians, is authorized to:

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4990 (1) Formulate and adopt necessary procedures to assure
4991 the efficient conduct of the wards' affairs of the ward and
4992 general administration of the office and staff.

4993 (2) Contract for services necessary to discharge the
4994 duties of the office.

4995 (3) Accept the services of volunteer persons or
4996 organizations and provide reimbursement for proper and necessary
4997 expenses.

4998 Section 153. Section 745.1411-1412, Florida Statutes, is
4999 created to read:
5000 745.1412 Surety bond.

5001 .—Upon taking office, a public guardian shall file a bond
5002 with surety as prescribed in s. 45.011 to be approved by the
5003 clerk. The bond shall be payable to the Governor and the
5004 Governor's successors in office, in the penal sum of not less
5005 than \$5,000 nor more than \$25,000, conditioned on the faithful
5006 performance of all duties by the guardian. The amount of the
5007 bond shall be fixed by the majority of the judges within the
5008 judicial circuit. In form, the bond shall be joint and several.
5009 The bond shall be purchased from the funds of the local office
5010 of public guardian.

5011 Section 154. Section 745.1412-1413, Florida Statutes, is
5012 created to read:

5013 745.1413 Reports and standards.—

5014 (1) The public guardian shall keep and maintain proper
5015 financial, case control, and statistical records on all matters
5016 in which the public guardian serves as guardian.

5017 (2) No A report or disclosure of the ward's personal and
5018 medical records shall may not be made, except as authorized by

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law.

(3) — A public guardian shall file an annual report on the operations of the office of public guardian, in writing, by September 1 for the preceding fiscal year with the Office of Public and Professional Guardians, which shall ~~have~~ responsibility be responsible for ~~supervision of~~ supervising the operations of the office of public guardian.

(4) — Within 6 months ~~of~~ after appointment as guardian of a ward, the public guardian shall submit to the clerk of the court for placement in the ward's guardianship file and to the executive director of the Office of Public and Professional Guardians a report on the public guardian's efforts to locate a family member or friend, other person, bank, or corporation to act as guardian of the ward and a report on the ward's potential to be restored to capacity.

(5) (a) — Each office of public guardian shall undergo an independent audit by a qualified certified public accountant at least once every 2 years. A copy of the audit report shall be submitted to the Office of Public and Professional Guardians.

(b) — In addition to regular monitoring activities, the Office of Public and Professional Guardians shall conduct an investigation into the practices of each office of public guardian related to the managing of each ward's personal affairs and property. If feasible, the investigation shall be conducted in conjunction with the financial audit of each office of public guardian under paragraph (a).

(6) — A public guardian shall ensure that each of the guardian's wards is personally visited by the public guardian or by one of the guardian's professional staff at least once each

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calendar quarter. During this personal visit, the public guardian or the professional staff person shall assess:

~~(a)~~ The ward's physical appearance and condition;

~~(b)~~ The appropriateness of the ward's current living situation; and

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

~~(7)~~ The ratio for professional staff to wards shall be 1 professional to 40 wards. The Office of Public and Professional Guardians may increase or decrease the ratio after consultation with the local public guardian and the chief judge of the circuit court. The basis for the decision to increase or decrease the prescribed ratio must be included in the annual report to the secretary.

Section 155. Section 745.1413, Florida Statutes, is created to read:
745.1414 Public records exemption-

.-The home addresses, telephone numbers, dates of birth, places of employment, and photographs of current or former public guardians and employees with fiduciary responsibility; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. As used in this section, the term "employee with fiduciary responsibility" means an employee of a public guardian

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who has the ability to direct any transactions of a ward's funds, assets, or property; who under the supervision of the guardian, manages the care of the ward; or who makes any health care decision, as defined in s. 765.101, on behalf of the ward. This exemption applies to information held by an agency before, on, or after July 1, 2018. An agency that is the custodian of the information specified in this section shall maintain the exempt status of that information only if the current or former public guardians and employees with fiduciary responsibility submit to the custodial agency a written request for maintenance of the exemption. This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 156. Section 745.1414—1415, Florida Statutes, is created to read:

745.1415 Access to records by the Office of Public and Professional Guardians; confidentiality.

(1) — Notwithstanding any other ~~provision of~~ law to the contrary, any medical, financial, or mental health records held by an agency, or the court and its agencies, or financial audits prepared by the clerk of the court pursuant to s. 745.1001 and held by the court, which are necessary as part of an investigation of a guardian as a result of a complaint filed with the Office of Public and Professional Guardians to evaluate the public guardianship system, to assess the need for additional public guardianship, or to develop required reports, shall be provided to the Office of Public and Professional Guardians or its designee upon that office's request. Any

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confidential or exempt information provided to the Office of Public and Professional Guardians shall continue to be held confidential or exempt as otherwise provided by law.

~~(2)~~ All records held by the Office of Public and Professional Guardians relating to the medical, financial, or mental health of vulnerable adults as defined in chapter 415, persons with a developmental disability as defined in chapter 393, or persons with a mental illness as defined in chapter 394, shall be confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

Section 157. Section 745.1415—1416, Florida Statutes, is created to read:

745.1416 Direct-support organization; definition; use of property; board of directors; audit; dissolution—.

~~(1)~~ DEFINITION.—As used in this section, the term “direct-support organization” means an organization whose sole purpose is to support the Office of Public and Professional Guardians and is:

~~(a)~~ A not-for-profit corporation incorporated under chapter 617 and approved by the Department of State;

~~(b)~~ Organized and operated to conduct programs and activities; to raise funds; to request and receive grants, gifts, and bequests of moneys; to acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other property, real or personal; and to make expenditures to or for the direct or indirect benefit of the Office of Public and Professional Guardians; and

~~(c)~~ Determined by the Office of Public and Professional Guardians to be consistent with the goals of the office, in the

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best interests of the state, and in accordance with the adopted goals and mission of the Department of Elderly Affairs and the Office of Public and Professional Guardians.

~~(2)~~ CONTRACT.—The direct-support organization shall operate under a written contract with the Office of Public and Professional Guardians. The written contract must provide for:

~~(a)~~ Certification by the Office of Public and Professional Guardians that the direct-support organization is complying with the terms of the contract and is doing so consistent with the goals and purposes of the office and in the best interests of the state. This certification must be made annually and reported in the official minutes of a meeting of the direct-support organization.

~~(b)~~ The reversion of monies and property held in trust by the direct-support organization:

1. ~~.~~ To the Office of Public and Professional Guardians if the direct-support organization is no longer approved to operate for the office;

2. ~~.~~ To the Office of Public and Professional Guardians if the direct-support organization ceases to exist;

3. ~~.~~ To the Department of Elderly Affairs if the Office of Public and Professional Guardians ceases to exist; or

4. ~~.~~ To the state if the Department of Elderly Affairs ceases to exist.

The fiscal year of the direct-support organization shall begin on July 1 of each year and end on June 30 of the following year.

~~(c)~~ The disclosure of the material provisions of the contract, and the distinction between the Office of Public and

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Professional Guardians and the direct-support organization, to donors of gifts, contributions, or bequests, ~~including such~~ and the inclusion of this disclosure ~~on~~ in all promotional and fundraising publications.

~~(3)~~ (3) BOARD OF DIRECTORS.—The Secretary of Elderly Affairs shall appoint a board of directors for the direct-support organization from a list of nominees submitted by the executive director of the Office of Public and Professional Guardians.

~~(4)~~ (4) USE OF PROPERTY.—The Department of Elderly Affairs may permit, without charge, appropriate use of fixed property and facilities of the department or the Office of Public and Professional Guardians by the direct-support organization. The department may prescribe any condition with which the direct-support organization must comply in order to use fixed property or facilities of the department or the Office of Public and Professional Guardians.

~~(5)~~ (5) ~~MONIES~~ MONEYS.—Any ~~monies~~ moneys may be held in a separate depository account in the name of the direct-support organization and subject to the provisions of the organization's written contract with the Office of Public and Professional Guardians. Expenditures of the direct-support organization shall be expressly used to support the Office of Public and Professional Guardians. The expenditures of the direct-support organization may not be used for the purpose of lobbying as defined in s. 11.045.

~~(6)~~ (6) PUBLIC RECORDS.—Personal identifying information of a donor or prospective donor to the direct-support organization who desires to remain anonymous is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

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5193 (7) ~~—~~ AUDIT.—The direct-support organization shall provide
5194 for an annual financial audit in accordance with s. 215.981.

5195 (8) ~~—~~ DISSOLUTION.—A not-for-profit corporation
5196 incorporated under chapter 617 ~~that~~which is determined by a
5197 circuit court to be representing itself as a direct-support
5198 organization created under this section, but that does not have
5199 a written contract with the Office of Public and Professional
5200 Guardians in compliance with this section, is considered to meet
5201 the grounds for a judicial dissolution as described in s.
5202 617.1430(1)(a). The Office of Public and Professional Guardians
5203 shall be the recipient for all assets held by the dissolved
5204 corporation which accrued during the period that the dissolved
5205 corporation represented itself as a direct-support organization
5206 created under this section.

5207 Section 158. Section 745. ~~1416—1417~~, Florida Statutes, is
5208 created to read:
5209 ~~745.1417~~ 745.1417 Joining Forces for Public Guardianship grant program;
5210 ~~purpose—~~

5211 .—The Legislature establishes the Joining Forces for Public
5212 Guardianship matching grant program for the purpose of assisting
5213 counties to establish and fund community-supported public
5214 guardianship programs. The Joining Forces for Public
5215 Guardianship matching grant program shall be established and
5216 administered by the Office of Public and Professional Guardians
5217 within the Department of Elderly Affairs. The purpose of the
5218 program is to provide startup funding to encourage communities
5219 to develop and administer locally funded and supported public
5220 guardianship programs to address the needs of indigent and
5221 incapacitated residents.

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5222 (1) — The Office of Public and Professional Guardians may
5223 distribute the grant funds as follows:

5224 (a) — As initial startup funding to encourage counties
5225 that have no office of public guardian to establish an office,
5226 or as initial startup funding to open an additional office of
5227 public guardian within a county whose public guardianship needs
5228 require more than one office of public guardian.

5229 (b) — As support funding to operational offices of public
5230 guardian ~~that~~which demonstrate ~~a~~the necessity for funds to meet
5231 the public guardianship needs of a particular geographic area in
5232 ~~the~~this state which the office serves.

5233 (c) — To assist counties that have an operating public
5234 guardianship program but that propose to expand the geographic
5235 area or population of persons they serve, or to develop and
5236 administer innovative programs to increase access to public
5237 guardianship in this state.

5238
5239 Notwithstanding this subsection, the executive director of the
5240 office may award emergency grants if ~~the executive director~~he or
5241 she determines that the award is in the best interests of public
5242 guardianship in this state. Before making an emergency grant,
5243 the executive director must obtain the written approval of the
5244 Secretary of Elderly Affairs. Subsections (2), (3), and (4) do
5245 not apply to the distribution of emergency grant funds.

5246 (2) — One or more grants may be awarded within a county.
5247 However, a county may not receive an award that equals, or
5248 multiple awards that cumulatively equal, more than 20 percent of
5249 the total amount of grant funds appropriated during any fiscal
5250 year.

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(3) — If an applicant is eligible and meets the requirements to receive grant funds more than once, the Office of Public and Professional Guardians shall award funds to prior awardees in the following manner:

(a) — In the second year that grant funds are awarded, the cumulative sum of the award provided to one or more applicants within the same county may not exceed 75 percent of the total amount of grant funds awarded within that county in year one.

(b) — In the third year that grant funds are awarded, the cumulative sum of the award provided to one or more applicants within the same county may not exceed 60 percent of the total amount of grant funds awarded within that county in year one.

(c) — In the fourth year that grant funds are awarded, the cumulative sum of the award provided to one or more applicants within the same county may not exceed 45 percent of the total amount of grant funds awarded within that county in year one.

(d) — In the fifth year that grant funds are awarded, the cumulative sum of the award provided to one or more applicants within the same county may not exceed 30 percent of the total amount of grant funds awarded within that county in year one.

(e) — In the sixth year that grant funds are awarded, the cumulative sum of the award provided to one or more applicants within the same county may not exceed 15 percent of the total amount of grant funds awarded within that county in year one.

The Office of Public and Professional Guardians may not award grant funds to any applicant within a county that has received grant funds for more than 6 years.

(4) — Grant funds shall be used only to provide direct

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services to indigent wards, except that up to 10 percent of the grant funds may be retained by the awardee for administrative expenses.

~~(5)~~ Implementation of the program is subject to a specific appropriation by the Legislature in the General Appropriations Act.

Section 159. Section 745.1417-1418, Florida Statutes, is created to read:
745.1418 Program administration; duties of the Office of Public and Professional Guardians-

.-The Office of Public and Professional Guardians shall administer the Joining Forces for Public Guardianship matching grant program. The office shall do all of the following:

~~(1)~~ Publicize the availability of grant funds to entities that may be eligible for the funds.

~~(2)~~ Establish an application process for submitting a grant proposal.

~~(3)~~ Request, receive, and review proposals from applicants seeking grant funds.

~~(4)~~ Determine the amount of grant funds each awardee may receive and award grant funds to applicants.

~~(5)~~ Develop a monitoring process to evaluate grant awardees, which may include an annual monitoring visit to each awardee's local office.

~~(6)~~ Ensure that persons or organizations awarded grant funds meet and adhere to the requirements of this act.

Section 160. Section 745.1418-1419, Florida Statutes, is created to read:

745.1419 Eligibility-.-

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(1~~—~~) Any person or organization that has not been awarded a Joining Forces for Public Guardianship matching grant must meet all of the following conditions to be eligible to receive a grant:

(a~~—~~) The applicant must meet, or directly employ staff that meet, the minimum qualifications for a public guardian under this chapter.

(b~~—~~) The applicant must have ~~already~~ been appointed by, or is pending appointment by, the Office of Public and Professional Guardians ~~to become~~ as an office of public guardian in this state.

(2~~—~~) Any person or organization that has been awarded a grant must meet all of the following conditions to be eligible to receive another grant:

(a~~—~~) The applicant must meet, or directly employ staff that meet, the minimum qualifications for a public guardian under this chapter.

(b~~—~~) The applicant must have been appointed by, or is pending reappointment by, the Office of Public and Professional Guardians as to be an office of public guardian in this state.

(c~~—~~) The applicant must have achieved a satisfactory monitoring score during the applicant's most recent evaluation.

Section 161. Section 745.1419—1421, Florida Statutes, is created to read:
745.1421 Grant application requirements; review criteria; awards process~~—~~

.-Grant applications under the Joining Forces for Public Guardianship matching grant program must be submitted to the Office of Public and Professional Guardians for review and approval.

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(1) A grant application must contain all of the following:

(a) The specific amount of ~~funds~~ funding being requested.

(b) The proposed annual budget for the office of public guardian ~~for which~~ on whose behalf the applicant is applying ~~on behalf of~~, including all sources of funding, and a detailed report of proposed expenditures, including administrative costs.

(c) The total number of wards the applicant intends to serve during the grant period.

(d) Evidence that the applicant has:

1. Attempted to procure funds and has exhausted all other possible ~~other~~ sources of funding; or

2. Procured funds from local sources, but the total amount of the funds collected or pledged is not sufficient to meet the need for public guardianship in the geographic area that the applicant intends to serve.

(e) An agreement or confirmation from a local funding source, such as a county, municipality, or any other public or private organization, that the local funding source will contribute matching funds to the public guardianship program totaling not less than \$1 for every \$1 of grant funds awarded. For purposes of this section, an applicant may provide evidence of agreements or confirmations from multiple local funding sources showing that the local funding sources will pool their contributed matching funds to the public guardianship program for a combined total of not less than \$1 for every \$1 of grant funds awarded. In-kind contributions, such as materials, commodities, office space, or other types of facilities, personnel services, or other items as determined by rule, shall

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be considered by the office and may be counted as part or all of the local matching funds.

(f) ~~—~~ A detailed plan describing how the office of public guardian ~~for which~~ on whose behalf the applicant is applying ~~on behalf of~~ will be funded in future years.

(g) ~~—~~ Any other information determined by rule as necessary to assist in evaluating grant applicants.

(2) ~~—~~ If the Office of Public and Professional Guardians determines that an applicant meets the requirements for an award ~~of grant funds~~ under the Joining Forces for Public Guardianship matching grant program, the office may award the applicant any amount of grant funds the executive director deems appropriate, if the amount awarded meets the requirements of ~~this act~~ the program. The office may adopt a rule allocating the maximum allowable amount of grant funds which may be expended on any ward.

(3) ~~—~~ A grant awardee must submit a new grant application for each year of additional funding.

(4) (a) ~~—~~ In the first year of the Joining Forces for Public Guardianship matching grant program's existence, the Office of Public and Professional Guardians shall give priority in awarding grant funds to those entities that:

1. ~~—~~ Are operating as appointed offices of public guardians in this state;

2. ~~—~~ Meet all of the requirements for being awarded a grant under ~~this act~~ the program; and

3. ~~—~~ Demonstrate a need for grant funds during the current fiscal year due to a loss of local funding formerly raised through court filing fees.

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(b) — In each fiscal year after the first year that grant funds are distributed, the Office of Public and Professional Guardians may give priority to awarding grant funds to those entities that:

1. — Meet all of the requirements of this section and ss. 745.1416, 745.1417, and 745.1418 for being awarded grant funds; and

2. — Submit with their application an agreement or confirmation from a local funding source, such as a county, municipality, or any other public or private organization, that the local funding source will contribute matching funds totaling an amount equal to or exceeding \$2 for every \$1 of grant funds awarded by the office. An entity may submit with its application agreements or confirmations from multiple local funding sources showing that the local funding sources will pool their contributed matching funds to the public guardianship program for a combined total of not less than \$2 for every \$1 of grant funds awarded. In-kind contributions allowable under this section shall be evaluated by the Office of Public and Professional Guardians and may be counted as part or all of the local matching funds.

Section 162. Section 745.1420—1422, Florida Statutes, is created to read:

745.1422 Confidentiality.—

(1) — The following are confidential and exempt from ~~the provisions of s.s.~~ 119.07(1) and s. 24(a), Art. I of the State Constitution, when held by the Department of Elderly Affairs in connection with a complaint filed and any subsequent investigation conducted pursuant to this part, unless the

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disclosure is required by court order:

(a) Personal identifying information of a complainant or ward.

(b) All personal health and financial records of a ward.

(c) All photographs and video recordings.

(2) Except as otherwise provided in this section, information held by the department is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the investigation is completed or ceases to be active, unless the disclosure is required by court order.

(3) This section does not prohibit the department from providing such information to any law enforcement agency, any other regulatory agency in the performance of its official duties and responsibilities, or the clerk of the circuit court pursuant to s. 745.1001.

(4) The exemption under this section applies to all documents received by the department in connection with a complaint before, on, or after July 1, 2017.

(5) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Section ~~15.~~163. Part XV of chapter 745, Florida Statutes, ~~consisting~~shall be entitled "Veterans' Guardianship" and shall consist of sections ~~ss.~~ ss. 745.1501~~, -745.1528.~~

Section 164. Section~~1502,~~ 745.~~1503, 745.1504, 745.1505, 745.1506, 745.1507, 745.1508, 745.1509, 745.1510, 745.1511, 745.1512, 745.1513, 745.1514, 745.1515, 745.1516, 745.1517, 745.1518, 745.1519, 745.1520, 745.1521, 745.1522, 745.1523,~~

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~~745.1524, 745.1525, and 745.1526~~ 1501, Florida Statutes, is created to read:

~~PART XV~~

~~VETERANS' GUARDIANSHIP~~

745.1501 Short title; scope of part.

(1) This part shall be known and may be cited as the "Veterans' Guardianship Law."

(2) The application of this part is limited to veterans and other persons who are entitled to receive benefits from the United States Department of Veterans Affairs. This part is not intended to replace the general law relating to guardianship except insofar as this part is inconsistent with the general law relating to guardianship; in which event, this part and the general law relating to guardianship shall be read together, with any conflict between this part and the general law of guardianship to be resolved by giving effect to this part.

Section 165. Section 745.1502, Florida Statutes, is created to read:

745.1502 Definitions.

.—As used in this part, the term:

(1) "Adjudication by a court of competent jurisdiction" means a judicial decision or finding that a person is or is not incapacitated as provided in ~~chapter 745~~ part III of this chapter.

(2) "Adjudication by the United States Department of Veterans Affairs" means a determination or finding that a person is competent or incompetent on examination in accordance with the laws and regulations governing the United States Department of Veterans Affairs.

~~(3) "Secretary" means the Secretary of Veterans Affairs as head of~~

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~~the United States Department of Veterans Affairs or her or his
successor.~~

(3) "Benefits" means arrears of pay, bonus, pension,
compensation, insurance, and all other moneys paid or payable by
the United States through the United States Department of
Veterans Affairs by reason of a person's service in the Armed
Forces of the United States.

(4) "Estate" means income on hand and assets acquired in
whole or in part with income.

(5) "Guardian" means any person acting as a fiduciary for
a ward's person or the ward's estate, or both.

(6) "Income" means moneys received from the United States
Department of Veterans Affairs as benefits, and revenue or
profit from any property acquired in whole or in part with such
moneys.

(7) "Person" means an individual, a partnership, a
corporation, or an association.

(8) "Secretary" means the Secretary of Veterans Affairs as
head of the United States Department of Veterans Affairs or his
or her successor.

(9) "United States Department of Veterans Affairs" means
the United States Department of Veterans Affairs or its
predecessors or successors.

(10) "Ward" means a beneficiary of the United States
Department of Veterans Affairs.

Section 166. Section 745.1503, Florida Statutes, is created
to read:

745.1503 Secretary of Veterans Affairs as party in interest.

.—The Secretary of Veterans Affairs shall be a party in

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interest in any proceeding for the appointment or removal of a guardian or for the removal of the disability of minority or mental incapacity of a ward, and in any suit or other proceeding affecting in any manner the administration by the guardian of the estate of any present or former ward whose estate includes assets derived in whole or in part from benefits heretofore or hereafter paid by the United States Department of Veterans Affairs. Not less than 15 days ~~prior to~~before a hearing ~~in~~on such matter, notice in writing of the time and place thereof shall be given by mail ~~(, unless waived in writing)~~, to the office of the United States Department of Veterans Affairs having jurisdiction over the area in which any such suit or any such proceeding is pending.

Section 167. Section 745.1504, Florida Statutes, is created to read:

745.1504 Procedure for commitment of veteran to United States Department of Veterans Affairs hospital.

.—The procedure for ~~the placement~~ placing a ward into a United States Department of Veterans Affairs hospital ~~of a ward hereunder~~ shall be the procedure prescribed in s. 394.4672.

Section 168. Section 745.1505, Florida Statutes, is created to read:

745.1505 Appointment of guardian for ward authorized.—

(1) Whenever, pursuant to any law of the United States or regulation of the United States Department of Veterans Affairs, the secretary requires, ~~prior to~~before the payment of benefits, that a guardian be appointed for a ward, the appointment may be made in the manner ~~hereinafter~~provided in this section.

(2) When a petition is filed for the appointment of a

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guardian of a minor ward, a certificate of the secretary or the secretary's authorized representative setting forth the age of ~~such~~the minor, as shown by the records of the United States Department of Veterans Affairs, and a statement that the appointment of a guardian is a condition precedent to the payment of any moneys due to the minor by the United States Department of Veterans Affairs are prima facie evidence of the necessity for such appointment.

(3) When a petition is filed for the appointment of a guardian of a mentally incompetent ward, a certificate of the secretary or the secretary's authorized representative, ~~setting~~which sets forth the fact that the person has been found incompetent and has been rated incompetent by the United States Department of Veterans Affairs, on examination in accordance with the laws and regulations governing the United States Department of Veterans Affairs, and that the appointment of a guardian is a condition precedent to the payment of any moneys due to such person by the United States Department of Veterans Affairs, is prima facie evidence of the necessity for such appointment.

Section 169. Section 745.1506, Florida Statutes, is created to read:

745.1506 Petition for appointment of guardian~~.-~~

(1) A petition for the appointment of a guardian may be filed in any court of competent jurisdiction by, or on behalf of, any person who under existing law is entitled to priority of appointment. If no person is so entitled, or if the person so entitled neglects or refuses to file such a petition within 30 days after the mailing of notice by the United States Department

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of Veterans Affairs to the last known address of such person,
indicating the necessity for filing the petition, a petition for
such appointment may be filed in any court of competent
jurisdiction by, or on behalf of, any responsible person
residing in this state.

(2) (a) The petition for appointment shall set forth:

1. The name, age, and place of residence of the ward;

2. The names and places of residence of the nearest
~~relative~~relatives, if known;

3. The fact that the ward is entitled to receive moneys
payable by or through the United States Department of Veterans
Affairs;

4. The amount of moneys then due and the amount of probable
future payments;

5. The name and address of the person or institution, if
any, having actual custody of the ward; and

6. The name, age, relationship, if any, occupation, and
address of the proposed guardian.

(b) In the case of a mentally incompetent ward, the
petition ~~shall~~must show that the ward has been found incompetent
and has been rated incompetent on examination by the United
States Department of Veterans Affairs, in accordance with the
laws and regulations governing the United States Department of
Veterans Affairs.

Section 170. Section 745.1507, Florida Statutes, is created
to read:

745.1507 Notice by court of petition filed for appointment
of guardian~~-. -~~

(1) When a petition for the appointment of a guardian has

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been filed pursuant to s. 745.1506, the court shall ~~cause~~
~~such~~ serve notice ~~to be given~~ of the petition as provided by the
 general guardianship law. In addition, notice of the petition
 shall be given to the office of the United States Department of
 Veterans Affairs having jurisdiction over the area in which the
 court is located.

(2) The clerk of the court shall mail a copy of the
 petition provided for in s. 745.1506 ~~shall be mailed by the clerk~~
~~of the court~~ to the person or persons for whom a guardian is to
 be appointed, ~~the clerk of court mailing the copy of the petition~~
~~to~~ using the last known address of such person or persons, not
 less than 5 days ~~prior to~~ before the date set for the hearing of
 the petition by the court.

Section 171. Section 745.1508, Florida Statutes, is created
to read:

745.1508 Persons who may be appointed guardian~~.-~~

(1) Notwithstanding any law with respect to priority of
 persons entitled to appointment, or nomination in the petition,
 the court may appoint some other individual or a bank or trust
 company as guardian if the court determines that the appointment
 of the other individual or bank or trust company would be in the
 best interest of the ward.

(2) It is unlawful for a circuit judge to appoint either
~~himself or herself~~ himself or herself, or a member of ~~her~~ his or ~~his~~ her
 family, as guardian for any person entitled to the benefits
 provided for in 38 U.S.C., as amended, except in a case when the
 person entitled to such benefits is a member of the family of
 the circuit judge involved.

Section 172. Section 745.1509, Florida Statutes, is created

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to read:

745.1509 Bond of guardian~~-~~

.—When the appointment of a guardian is made, the guardian shall execute and file a bond to be approved by the court in an amount not less than the sum of the amount of moneys then due to the ward and the amount of moneys estimated to become payable during the ensuing year. The bond shall be in the form, and shall be conditioned, as required of guardians appointed under the general guardianship laws of this state. The court has the power to require, from time to time, the guardian to file an additional bond.

~~745.1510~~

Section 173. Section 745.1511, Florida Statutes, is created

to read:

745.1511 Inventory of ward's property; guardian's failure to file inventory; discharge; forfeiture of commissions~~-~~

.—Every guardian shall, within 30 days after his or her qualification and whenever subsequently required by the circuit judge, file in the circuit court a complete inventory of all the ward's personal property ~~in his or her hands~~ under the guardian's control and, ~~also,~~ a schedule of all real estate in ~~the~~ this state belonging to his or her ward, describing it and its quality, whether it is improved ~~or not~~, and, if it is improved, in what manner, and the appraised value of ~~same~~ the real estate. The failure ~~on the part of~~ by the guardian to conform to the requirements of this section is a ground for the discharge of the guardian, in which case the guardian shall forfeit all commissions.

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Section 174. Section 745.1511-1512, Florida Statutes, is created to read:
745.1512 Guardian empowered to receive moneys due ward from the United States Government-

.-A guardian appointed under ~~the provisions of~~ s. 745.1506 may receive income and benefits payable by the United States through the United States Department of Veterans Affairs-and. The guardian also has the right to receive for the account of the ward any moneys due from the United States Government in the way of arrears of pay, bonus, compensation or insurance, or other sums due by reason of his or her service-~~+~~, or the service of the person through whom the ward claims~~+~~, in the Armed Forces of the United States and any other moneys due from the United States Government, payable through its agencies or entities, together with the income derived from investments of these moneys.

Section 175. Section 745.1512-1513, Florida Statutes, is created to read:
745.1513 Guardian's application of estate funds for support and maintenance of person other than ward-

.-A guardian ~~shall~~may not apply any portion of the estate of ~~her~~his or ~~his~~her ward to the support and maintenance of any person other than ~~her~~his or ~~his~~her ward, except upon order of the court after a hearing, notice of which has been given to the proper office of the United States Department of Veterans Affairs as provided in s. 745.1514.

~~1513.~~

~~745.1513~~

Section 176. Section 745.1514, Florida Statutes, is created

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to read:

745.1514 Petition for support, or support and education, of ward's dependents; payments of apportioned benefits prohibit contempt action against veteran~~-. -~~

(1) Any person who is dependent on a ward for support may petition a court of competent jurisdiction for an order directing the guardian of the ward's estate to contribute from the estate of the ward to the support, or support and education, of the dependent person, when the estate of the ward is derived in whole or in part from payments of compensation, adjusted compensation, pension, insurance, or other benefits made directly to the guardian of the ward by the United States Department of Veterans Affairs. AThe petitioner shall give notice of the application for support, or support and education, ~~shall be given by the applicant~~ to the office of the United States Department of Veterans Affairs having jurisdiction over the area in which the court is located at least 15 days before the hearing on the ~~application~~petition.

(2) The ~~grant~~granting or denial of an order for support, or support and education, does not preclude a further petition for an increase, decrease, modification, or termination of the allowance for such support, or support and education, by either the petitioner or the guardian.

(3) The order for the support, or support and education, of the petitioner is valid for any payment made pursuant to the order, but no valid payment can be made after the termination of the guardianship. The receipt of the petitioner shall be a sufficient release of the guardian for payments made pursuant to the order.

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(4) When a claim for apportionment of benefits filed with the United States Department of Veterans Affairs on behalf of a dependent or dependents of a disabled veteran is approved by the United States Department of Veterans Affairs, subsequent payments of such apportioned benefits by the United States Department of Veterans Affairs prohibit an action for contempt from being instituted against the veteran.

Section 177. Section 745.1514-1515, Florida Statutes, is created to read:
745.1515 Exemption of benefits from claims of creditors-

.-Except as provided by federal law, payments of benefits from the United States Department of Veterans Affairs or the Social Security Administration to or for the benefit of a disabled veteran or the veteran's surviving spouse or dependents are exempt from the claims of creditors and ~~shall~~ may not be ~~liable~~ subject to attachment, levy, or seizure by or under any legal or equitable process ~~whatever~~, either before or after the receipt of the payments by the guardian or the beneficiary.

Section 178. Section 745.1515-1516, Florida Statutes, is created to read:
745.1516 Investment of funds of estate by guardian-

.-Every guardian shall invest the funds of the estate in such manner or in such securities, in which the guardian has no interest, as allowed by chapter 518.

Section 179. Section 745.1516-1517, Florida Statutes, is created to read:

745.1517 Guardian's petition for authority to sell ward's real estate; notice by publication; penalties-.-

(1) When a guardian of the estate of a minor or an

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incompetent ward, ~~which~~for whom the guardian has the control or management of any real estate that is the property of ~~such~~the minor or incompetent, deems it necessary or expedient to sell all or part of the real estate, the guardian ~~shall~~must apply, either in term time or in vacation by petition to the judge of the circuit court for the county in which the real estate is situated, for authority to sell all or part of the real estate. If ~~the prayer of~~ the petition appears to the judge to be reasonable and just and financially beneficial to the estate of the ward, the judge may authorize the guardian to sell the real estate described in the petition under such conditions as the interest of the minor or incompetent may, ~~in the opinion of the judge, seem to~~ require.

(2) The authority to sell the real estate described in the petition ~~shall~~may not be granted unless the guardian has previously given ~~previous~~ notice, published once a week for 4 successive weeks in a newspaper published in the county where the application is made, of his or her intention to ~~make application to~~petition the judge for authority to sell such real estate~~7~~. The guardian ~~setting~~must set forth in the notice the time and place of the proceeding and ~~to what~~which judge ~~the application will be made~~hear the petition. If the lands lie in more than one county, the ~~application~~petition for such authority shall be made in each county in which the lands lie.

(3) The failure ~~on the part of~~by the guardian to comply with ~~the provisions of~~ this section makes the guardian and the guardian's bond agents individually responsible for any loss that may accrue to the estate of the ward involved, and is a ground for the immediate removal of ~~such~~the guardian as to his or

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her functions, but does not discharge the guardian as to his or her liability or discharge the liabilities of his or her sureties.

Section 180. Section 745.1517-1518, Florida Statutes, is created to read:

745.1518 Guardian's accounts, filing with court, and certification to United States Department of Veterans Affairs; notice and hearing on accounts; failure to account~~.-~~

(1) Every guardian who receives on ~~account~~behalf of his or her ward any moneys from the United States Department of Veterans Affairs shall annually file with the court on the anniversary date of the appointment, in addition to such other accounts as ~~may be required by the court~~ may require, a full, true, and accurate account under oath, which account is an account of all moneys so received by him or her and of all disbursements from such moneys, ~~and which. This account shows~~must show the balance of the moneys ~~in his or her hands at~~under the guardian's control as of the date of such filing and ~~shows how~~ the moneys are invested. The guardian shall send a certified copy of each ~~of such accounts~~account filed with the court ~~shall be sent by the guardian to~~ the office of the United States Department of Veterans Affairs having jurisdiction over the area in which ~~such~~the court is located. If the requirement of certification is waived in writing by the United States Department of Veterans Affairs, an uncertified copy of each ~~of~~ such ~~accounts~~account shall be sent.

(2) The court, at its discretion or upon the petition of an interested party, shall ~~fix~~set a time and place for the hearing on such account~~;~~ and. The court shall give notice of the hearing

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~~shall be given by the court~~ to the United States Department of Veterans Affairs not less than 15 days ~~prior to~~before the date ~~fixed for~~of the hearing.

(3) The court need not appoint a guardian ad litem to represent the ward at the hearing provided for in subsection (2). If the residence of the next kin of the ward is known, notice by registered mail shall be sent to such relative. Notice also shall be served on the ward~~,~~ or, if the ward is mentally incapable of understanding the matter at issue, the notice may be served on the person in charge of the institution where the ward is detained~~,~~ or on the person having charge or custody of the ward.

(4) When a hearing on an account is required by the court or requested in the petition of an interested party as provided in subsection (2), the judge ~~of the court on the day of the hearing as provided for in subsection (2)~~ shall carefully examine the vouchers and audit on the day of the hearing and state the account between the guardian and ward. Proper evidence shall be required in support of any voucher or item of the account ~~that~~which may appear to the court not to be just and proper, such evidence to be taken by affidavit or by any other legal mode. If any voucher is rejected, the item or items covered by the disapproval of any~~the~~ voucher ~~or vouchers~~ shall be taxed against the guardian personally. After ~~such~~its examination, the court shall render a decree upon the account, which shall be entered ~~on~~in the record, and the account and vouchers shall be filed. Such partial settlement shall be taken and presumed ~~as~~ correct ~~on~~upon final settlement of the guardianship.

(5) If a guardian fails to file any account of the moneys

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~~received by him~~he or ~~her~~she receives from the United States Department of Veterans Affairs on ~~account~~behalf of his or her ward within 30 days after such account is required by either the court or the United States Department of Veterans Affairs, or fails to furnish the United States Department of Veterans Affairs a copy of his or her accounts as required by subsection (1), such failure shall be a ground for the removal of the guardian.

Section 181. Section 745.1518-1519, Florida Statutes, is created to read:
745.1519 Certified copies of public records made available-

.—When a copy of any public record is required by the United States Department of Veterans Affairs to be used in determining the eligibility of any person to participate in benefits made available by the United States Department of Veterans Affairs, the official charged with the custody of such public record shall, without charge, provide to the applicant for such benefits or any person acting on ~~her~~his or ~~his~~her behalf, or to the authorized representative of the United States Department of Veterans Affairs, a certified copy of such record. For each ~~and every~~ certified copy ~~so furnished by~~ the official furnishes, the official shall be paid by the board of county commissioners the fee provided by law for copies.

Section 182. Section 745.1519-1521, Florida Statutes, is created to read:
745.1521 Clerk of the circuit court; fees; duties-

.—Upon the filing of the petition for guardianship, granting of same, and entering decree thereon, the clerk of the circuit court is entitled to the service charge as provided by

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law, which shall include the cost of recording the petition, bond, and decree and the issuing of letters of guardianship. The certificate of the secretary or the secretary's authorized representative provided for in s. 745.1505 need not be recorded but must be kept in the file. Upon issuing letters of guardianship or letters appointing a guardian for the estate of a minor or incompetent, the clerk of the circuit court shall send to the regional office of the United States Department of Veterans Affairs having jurisdiction in this state two certified copies of the letters and two certified copies of the bond approved by the court, without charge or expense to the estate involved. The clerk of the circuit court shall also send a certified copy of such letters to the property appraiser and to the tax collector in each county in which the ward owns real property.

~~745.1520 Attorney's fee.~~

Section 183. Section 745.1522, Florida Statutes, is created to read:

745.1522 Attorney fees.—The fee for the attorney filing the petition and conducting the proceedings shall be fixed by the court in an amount as small as reasonably possible, not to exceed \$250. However, this section is not to be interpreted to exclude a petition for extraordinary ~~attorney's~~ attorney fees, properly filed, and if approved by the United States Department of Veterans Affairs, does not necessitate a hearing before the court for approval, but the court shall enter its order for withdrawal of ~~said attorney's~~ the attorney fees from the ward's guardianship account accordingly.

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Section 184. Section 745.1521-1523, Florida Statutes, is created to read:
745.1523 Guardian's compensation; bond premiums-

.-The amount of compensation payable to a guardian shall~~may~~
 not exceed 5 percent of the income of the ward during any year
 and may be taken, by the guardian, on a monthly basis. In the
 event of extraordinary services rendered by ~~such~~the guardian, the
 court may, upon petition and after hearing on the petition,
 authorize additional compensation for the extraordinary
 services, payable from the estate of the ward. ~~Provided that~~
 Extraordinary services approved by the United States Department
 of ~~Veteran's~~Veterans Affairs do not require a court hearing for
 approval of the fees, but shall require an order authorizing the
 guardian to withdraw the amount from the guardianship account. ~~No~~
~~compensation shall~~Compensation may not be allowed on the corpus
 of an estate received from a ~~preceding~~previous guardian. The
 guardian may be allowed ~~from the estate of her or his ward~~
 reasonable premiums paid from the estate of his or her ward by
 the guardian to any corporate surety upon the guardian's bond.

Section 185. Section 745.1522-1524, Florida Statutes, is created to read:
745.1524 Discharge of guardian of minor or incompetent ward-

.-When a minor ward, for whom a guardian has been appointed
under ~~the provisions of~~ this part or other laws of this state,
 attains his or her majority and, if ~~such~~the minor ward has been
 incompetent, is declared competent by the United States
 Department of Veterans Affairs and the court, or when an
 incompetent ward who is not a minor is declared competent by the
 United States Department of Veterans Affairs and the court, the

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guardian shall, upon making a satisfactory accounting, be
discharged upon a petition filed for that purpose.

~~745.1523~~

Section 186. Section 745.1525, Florida Statutes, is created
to read:
745.1525 Final settlement of guardianship; notice required;
guardian ad litem fee; papers required by United States
Department of Veterans Affairs.

~~On.~~ Upon the final settlement of the guardianship, the
notice provided herein for partial settlement must be given and
the other proceedings conducted as in the case of partial
settlement, except that a guardian ad litem may be appointed to
represent the ward, and the fee ~~of which~~ for the guardian ad litem
~~shall in no case~~ may not exceed \$150. However, if the ward has
been pronounced competent, is shown to be mentally sound,
appears in court, and is at least 18 years of age, the
settlement may be had between the guardian and the ward under
the direction of the court without notice to the next of kin, ~~or~~
the appointment of a guardian ad litem. A certified copy of the
final settlement so made in every case must be filed with the
United States Department of Veterans Affairs by the clerk of the
court.

~~745.1524~~

Section 187. Section 745.1526, Florida Statutes, is created
to read:
745.1526 Notice of appointment of general guardian; closing of
veteran's guardianship; transfer of responsibilities and

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penalties to general guardian~~;~~

.—When the appointment of a general guardian has been made in the proper court and such guardian has qualified and taken charge of the other property of the ward, the general guardian shall file notice of ~~such~~the appointment in the court in which the veteran's guardianship is pending and have the veteran's guardianship settled up and closed so that the general guardian may take charge of the moneys referred to and described in ss. 745.1505(2) and (3) and 745.1511. When the appointment of a general guardian, whether for an incompetent or minor ~~child~~or another beneficiary entitled to the benefits provided in 38 U.S.C., as amended, has been confirmed by the court having jurisdiction, ~~such~~the general guardian is responsible and is subject to the provisions and penalties contained in 38 U.S.C., as amended, as well as the requirements pertaining to guardians as set forth in this part.

Section 188. Section 745.~~1525~~1527, Florida Statutes, is created to read:
745.1527 Construction and application of part~~;~~

.—This part shall be construed liberally to secure the beneficial intents and purposes of this part and applies only to beneficiaries of the United States Department of Veterans Affairs. It shall be so interpreted and construed as to effectuate its general purpose of making the welfare of such beneficiaries the primary concern of their guardians and of the court.

~~745.1526~~

Section 189. Section 745.1528, Florida Statutes, is created

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to read:

745.1528 Annual guardianship report.

.—Guardians appointed under the Veterans' Guardianship Law
shall~~are~~ not ~~be~~ required to comply with ~~the provisions of~~ s.
745.805 or s. 745.813.

~~Section 16. Chapter 744 is repealed.~~

~~Section 17. This act~~

Section 190. Paragraph (a) of subsection (1) of section
20.415, Florida Statutes, is amended to read:

20.415 Department of Elderly Affairs; trust funds.—The
following trust funds shall be administered by the Department of
Elderly Affairs:

(1) Administrative Trust Fund.

(a) Funds to be credited to and uses of the trust fund
shall be administered in accordance with ss. 215.32, 745.1106,
and 745.1401 ~~ss. 215.32, 744.534, and 744.2001.~~

Section 191. Paragraph (c) of subsection (6) of section
27.511, Florida Statutes, is amended to read:

27.511 Offices of criminal conflict and civil regional
counsel; legislative intent; qualifications; appointment;
duties.—

(6)

(c) Notwithstanding paragraph (b) or any provision of
chapter 745 ~~chapter 744~~ to the contrary, when chapter 745
chapter 744 provides for appointment of counsel, the court, in
consultation with the clerk of court and prior to appointing
counsel, shall determine, if possible, whether the person

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entitled to representation is indigent, using the best available evidence.

1. If the person is indigent, the court shall appoint the regional counsel. If at any time after appointment the regional counsel determines that the person is not indigent and that there are sufficient assets available for the payment of legal representation under s. 745.114 ~~s. 744.108~~, the regional counsel shall move the court to reassign the case to a private attorney.

2. If the person is not indigent or if the court and the clerk are not able to determine whether the person is indigent at the time of appointment, the court shall appoint a private attorney. If at any time after appointment the private attorney determines that the person is indigent and that there are not sufficient assets available for the payment of legal representation under s. 745.114 ~~s. 744.108~~, the private attorney shall move the court to reassign the case to the regional counsel. When a case is reassigned, the private attorney may seek compensation from the Justice Administrative Commission for representation not recoverable from any assets of the person in an amount approved by the court as a pro rata portion of the compensation limits prescribed in the General Appropriations Act.

Section 192. Subsection (7) of section 27.5304, Florida Statutes, as amended by section 59 of chapter ~~take effect on July 1,~~ 2020-114, Laws of Florida, is amended to read:

27.5304 Private court-appointed counsel; compensation; notice.-

(7) Counsel entitled to receive compensation from the state for representation pursuant to court appointment in a proceeding

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under chapter 384, chapter 390, chapter 392, chapter 393,
chapter 394, chapter 397, chapter 415, chapter 743, chapter 745
~~chapter 744~~, or chapter 984 shall receive compensation not to
exceed the limits prescribed in the General Appropriations Act.

Section 193. Paragraph (i) of subsection (1) of section
28.2401, Florida Statutes, is amended to read:

28.2401 Service charges and filing fees in probate
matters.—

(1) Except when otherwise provided, the clerk may impose
service charges or filing fees for the following services or
filings, not to exceed the following amounts:

(i) Fee for veterans' guardianship pursuant to chapter 745
~~chapter 744~~.....\$230

The clerk shall remit \$115 of each filing fee collected under
paragraphs (a), (c)-(i), and (k) to the Department of Revenue
for deposit into the State Courts Revenue Trust Fund and shall
remit \$15 of each filing fee collected under paragraphs (a),
(c), (d), (f), (h), (i), and (k), \$1 of each filing fee
collected under paragraph (j), \$5 of each filing fee collected
under paragraph (b), \$25 of each filing fee collected under
paragraph (e), and \$30 of each filing fee collected under
paragraph (g) to the Department of Revenue for deposit into the
General Revenue Fund.

Section 194. Subsection (3) of section 39.013, Florida
Statutes, is amended to read:

39.013 Procedures and jurisdiction; right to counsel.—

(3) When a child is under the jurisdiction of the circuit
court pursuant to this chapter, the circuit court assigned to

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handle dependency matters may exercise the general and equitable jurisdiction over guardianship ~~and shall apply to all~~ proceedings under chapter 745 ~~chapter 744~~ and proceedings for temporary custody of minor children by extended family under chapter 751.

Section 195. Paragraph (d) of subsection (1) of section 39.5085, Florida Statutes, is amended to read:

39.5085 Relative Caregiver Program.—

(1) It is the intent of the Legislature in enacting this section to:

(d) Recognize that permanency in the best interests of the child can be achieved through a variety of permanency options, including permanent guardianship under s. 39.6221 if the guardian is a relative, by permanent placement with a fit and willing relative under s. 39.6231, by a relative, guardianship under chapter 745 ~~chapter 744~~, or adoption, by providing additional placement options and incentives that will achieve permanency and stability for many children who are otherwise at risk of foster care placement because of abuse, abandonment, or neglect, but who may successfully be able to be placed by the dependency court in the care of such relatives.

Section 196. Subsection (4) of section 39.6221, Florida Statutes, is amended to read:

39.6221 Permanent guardianship of a dependent child.—

(4) A permanent guardianship of a dependent child established under this chapter is not a plenary guardianship and is not subject to the requirements of chapter 745 ~~chapter 744~~.

Section 197. Subsection (8) of section 39.6251, Florida Statutes, is amended to read:

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39.6251 Continuing care for young adults.-

(8) During the time that a young adult is in care, the court shall maintain jurisdiction to ensure that the department and the lead agencies are providing services and coordinate with, and maintain oversight of, other agencies involved in implementing the young adult's case plan, individual education plan, and transition plan. The court shall review the status of the young adult at least every 6 months and hold a permanency review hearing at least annually. If the young adult is appointed a guardian under chapter 745 ~~chapter 744~~ or a guardian advocate under s. 393.12, at the permanency review hearing the court shall review the necessity of continuing the guardianship and whether restoration of guardianship proceedings are needed when the young adult reaches 22 years of age. The court may appoint a guardian ad litem or continue the appointment of a guardian ad litem with the young adult's consent. The young adult or any other party to the dependency case may request an additional hearing or review.

Section 198. Paragraph (b) of subsection (3) of section 39.701, Florida Statutes, is amended to read:

39.701 Judicial review.-

(3) REVIEW HEARINGS FOR CHILDREN 17 YEARS OF AGE.-

(b) At the first judicial review hearing held subsequent to the child's 17th birthday, the department shall provide the court with an updated case plan that includes specific information related to the independent living skills that the child has acquired since the child's 13th birthday, or since the date the child came into foster care, whichever came later.

1. For any child who may meet the requirements for

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6122 appointment of a guardian pursuant to chapter 745 ~~chapter 744~~,
6123 or a guardian advocate pursuant to s. 393.12, the updated case
6124 plan must be developed in a face-to-face conference with the
6125 child, if appropriate; the child's attorney; any court-appointed
6126 guardian ad litem; the temporary custodian of the child; and the
6127 parent, if the parent's rights have not been terminated.

6128 2. At the judicial review hearing, if the court determines
6129 pursuant to chapter 745 ~~chapter 744~~ that there is a good faith
6130 basis to believe that the child qualifies for appointment of a
6131 guardian advocate, limited guardian, or plenary guardian for the
6132 child and that no less restrictive decisionmaking assistance
6133 will meet the child's needs:

6134 a. The department shall complete a multidisciplinary report
6135 which must include, but is not limited to, a psychosocial
6136 evaluation and educational report if such a report has not been
6137 completed within the previous 2 years.

6138 b. The department shall identify one or more individuals
6139 who are willing to serve as the guardian advocate pursuant to s.
6140 393.12 or as the plenary or limited guardian pursuant to chapter
6141 745 ~~chapter 744~~. Any other interested parties or participants
6142 may make efforts to identify such a guardian advocate, limited
6143 guardian, or plenary guardian. The child's biological or
6144 adoptive family members, including the child's parents if the
6145 parents' rights have not been terminated, may not be considered
6146 for service as the plenary or limited guardian unless the court
6147 enters a written order finding that such an appointment is in
6148 the child's best interests.

6149 c. Proceedings may be initiated within 180 days after the
6150 child's 17th birthday for the appointment of a guardian

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advocate, plenary guardian, or limited guardian for the child in a separate proceeding in the court division with jurisdiction over guardianship matters and pursuant to chapter 745 ~~chapter 744~~. The Legislature encourages the use of pro bono representation to initiate proceedings under this section.

3. In the event another interested party or participant initiates proceedings for the appointment of a guardian advocate, plenary guardian, or limited guardian for the child, the department shall provide all necessary documentation and information to the petitioner to complete a petition under s. 393.12 or chapter 745 ~~chapter 744~~ within 45 days after the first judicial review hearing after the child's 17th birthday.

4. Any proceedings seeking appointment of a guardian advocate or a determination of incapacity and the appointment of a guardian must be conducted in a separate proceeding in the court division with jurisdiction over guardianship matters and pursuant to chapter 745 ~~chapter 744~~.

Section 199. Subsection (4) of section 39.811, Florida Statutes, is amended to read:

39.811 Powers of disposition; order of disposition.—

(4) If the child is neither in the custody of the department nor in the custody of a parent and the court finds that the grounds for termination of parental rights have been established for either or both parents, the court shall enter an order terminating parental rights for the parent or parents for whom the grounds for termination have been established and placing the child with the department or an appropriate legal custodian. If the parental rights of both parents have been terminated, or if the parental rights of only one parent have

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been terminated and the court makes specific findings based on evidence presented that placement with the remaining parent is likely to be harmful to the child, the court may order that the child be placed with a legal custodian other than the department after hearing evidence of the suitability of the intended placement. Suitability of the intended placement includes the fitness and capabilities of the proposed legal custodian to function as the primary caregiver for a particular child; and the compatibility of the child with the home in which the child is intended to be placed. If the court orders that a child be placed with a legal custodian under this subsection, the court shall appoint a legal custodian as the guardian for the child as provided in s. 39.621 or s. 745.713 ~~s. 744.3021~~ or ~~s. 39.621~~. The court may modify the order placing the child in the custody of the legal custodian and revoke the guardianship established under s. 745.713 ~~s. 744.3021~~ or another relationship if the court subsequently finds the placement to be no longer in the best interest of the child.

Section 200. Paragraph (b) of subsection (1) of section 61.052, Florida Statutes, is amended to read:

61.052 Dissolution of marriage.—

(1) No judgment of dissolution of marriage shall be granted unless one of the following facts appears, which shall be pleaded generally:

(b) Mental incapacity of one of the parties. However, no dissolution shall be allowed unless the party alleged to be incapacitated shall have been adjudged incapacitated according to the provisions of part III of chapter 745 ~~s. 744.331~~ for a preceding period of at least 3 years. Notice of the proceeding

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for dissolution shall be served upon one of the nearest blood relatives or guardian of the incapacitated person, and the relative or guardian shall be entitled to appear and to be heard upon the issues. If the incapacitated party has a general guardian other than the party bringing the proceeding, the petition and summons shall be served upon the incapacitated party and the guardian; and the guardian shall defend and protect the interests of the incapacitated party. If the incapacitated party has no guardian other than the party bringing the proceeding, the court shall appoint a guardian ad litem to defend and protect the interests of the incapacitated party. However, in all dissolutions of marriage granted on the basis of incapacity, the court may require the petitioner to pay alimony pursuant to the provisions of s. 61.08.

Section 201. Subsection (1) of section 90.5021, Florida Statutes, is amended to read:

90.5021 Fiduciary lawyer-client privilege.—

(1) For the purpose of this section, a client acts as a fiduciary when serving as a personal representative or a trustee as defined in ss. 731.201 and 736.0103, an administrator ad litem as described in s. 733.308, a curator as described in s. 733.501, a guardian or guardian ad litem as defined in s. 745.106 ~~s. 744.102~~, a conservator as defined in s. 710.102, or an attorney in fact as described in chapter 709.

Section 202. Subsection (4) of section 117.107, Florida Statutes, is amended to read:

117.107 Prohibited acts.—

(4) A notary public may not take the acknowledgment of or administer an oath to a person whom the notary public actually

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6238 knows to have been adjudicated mentally incapacitated by a court
6239 of competent jurisdiction, where the acknowledgment or oath
6240 necessitates the exercise of a right that has been removed
6241 pursuant to s. 745.303(2) or (3) ~~s. 744.3215(2) or (3)~~, and
6242 where the person has not been restored to capacity as a matter
6243 of record.

6244 Section 203. Paragraph (c) of subsection (8) of section
6245 121.091, Florida Statutes, is amended to read:

6246 121.091 Benefits payable under the system.—Benefits may not
6247 be paid under this section unless the member has terminated
6248 employment as provided in s. 121.021(39) (a) or begun
6249 participation in the Deferred Retirement Option Program as
6250 provided in subsection (13), and a proper application has been
6251 filed in the manner prescribed by the department. The department
6252 may cancel an application for retirement benefits when the
6253 member or beneficiary fails to timely provide the information
6254 and documents required by this chapter and the department's
6255 rules. The department shall adopt rules establishing procedures
6256 for application for retirement benefits and for the cancellation
6257 of such application when the required information or documents
6258 are not received.

6259 (8) DESIGNATION OF BENEFICIARIES.—

6260 (c) Notwithstanding the member's designation of benefits to
6261 be paid through a trust to a beneficiary that is a natural
6262 person as provided in s. 121.021(46), and notwithstanding the
6263 provisions of the trust, benefits shall be paid directly to the
6264 beneficiary if the person is no longer a minor or an
6265 incapacitated person as defined in s. 745.106 ~~s. 744.102.~~

6266 Section 204. Paragraph (c) of subsection (20) of section

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121.4501, Florida Statutes, is amended to read:

121.4501 Florida Retirement System Investment Plan.—

(20) DESIGNATION OF BENEFICIARIES.—

(c) Notwithstanding the member's designation of benefits to be paid through a trust to a beneficiary that is a natural person and the provisions of the trust, benefits must be paid directly to the beneficiary if the person is no longer a minor or an incapacitated person as defined in s. 745.106 ~~s. 744.102~~.

Section 205. Section 192.123, Florida Statutes, is amended to read:

192.123 Notification of veteran's guardian.—Upon the receipt of a copy of letters of guardianship issued pursuant to s. 745.1519 ~~s. 744.638~~, the property appraiser and tax collector shall provide the guardian with every notice required under chapters 192-197 which would otherwise be provided the ward.

Section 206. Paragraph (a) of subsection (13) of section 316.193, Florida Statutes, is amended to read:

316.193 Driving under the influence; penalties.—

(13) If personnel of the circuit court or the sheriff do not immobilize vehicles, only immobilization agencies that meet the conditions of this subsection shall immobilize vehicles in that judicial circuit.

(a) The immobilization agency responsible for immobilizing vehicles in that judicial circuit shall be subject to strict compliance with all of the following conditions and restrictions:

1. Any immobilization agency engaged in the business of immobilizing vehicles shall provide to the clerk of the court a signed affidavit attesting that the agency:

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- a. Has verifiable experience in immobilizing vehicles;
- b. Maintains accurate and complete records of all payments for the immobilization, copies of all documents pertaining to the court's order of impoundment or immobilization, and any other documents relevant to each immobilization. Such records must be maintained by the immobilization agency for at least 3 years; and
- c. Employs and assigns persons to immobilize vehicles that meet the requirements established in subparagraph 2.
2. The person who immobilizes a vehicle must:
- a. Not have been adjudicated incapacitated under part III of chapter 745 s. ~~744.331~~, or a similar statute in another state, unless his or her capacity has been judicially restored; involuntarily placed in a treatment facility for the mentally ill under chapter 394, or a similar law in any other state, unless his or her competency has been judicially restored; or diagnosed as having an incapacitating mental illness unless a psychologist or psychiatrist licensed in this state certifies that he or she does not currently suffer from the mental illness.
- b. Not be a chronic and habitual user of alcoholic beverages to the extent that his or her normal faculties are impaired; not have been committed under chapter 397, former chapter 396, or a similar law in any other state; not have been found to be a habitual offender under s. 856.011(3), or a similar law in any other state; or not have had any convictions under this section, or a similar law in any other state, within 2 years~~pending~~ before the affidavit is submitted.
- c. Not have been committed for controlled substance abuse

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or have been found guilty of a crime under chapter 893, or a similar law in any other state, relating to controlled substances in any other state.

d. Not have been found guilty of or entered a plea of guilty or nolo contendere to, regardless of adjudication, or been convicted of a felony, unless his or her civil rights have been restored.

e. Be a citizen or legal resident alien of the United States or have been granted authorization to seek employment in this country by the United States Bureau of Citizenship and Immigration Services.

Section 207. Section 322.2505, Florida Statutes, is amended to read:

322.2505 Court to forward license of person adjudicated incapacitated to department.—Whenever a person is adjudicated to be mentally or physically incapacitated pursuant to part III of chapter 745 ~~s. 744.331~~, the court shall require such person to surrender to it all driver licenses held by such person, and the court shall forward the same, together with a record of the adjudication, to the department.

Section 208. Subsection (20) of section 393.063, Florida Statutes, is amended to read:

393.063 Definitions.—For the purposes of this chapter, the term:

(20) "Guardian" has the same meaning as in s. 745.106 ~~s. 744.102~~.

Section 209. Paragraph (b) of subsection (10) of section 393.11, Florida Statutes, is amended to read:

393.11 Involuntary admission to residential services.—

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(10) COMPETENCY.—

(b) The issue of the competency of a person who has an intellectual disability or autism for purposes of assigning guardianship shall be determined in a separate proceeding according to the procedures and requirements of chapter 745
chapter 744. The issue of the competency of a person who has an intellectual disability or autism for purposes of determining whether the person is competent to proceed in a criminal trial shall be determined in accordance with chapter 916.

Section 210. Paragraph (b) of subsection (1), paragraph (a) of subsection (4), subsection (8), subsection (10), and paragraphs (c) and (g) of subsection (12) of section 393.12, Florida Statutes, are amended to read:

393.12 Capacity; appointment of guardian advocate.—

(1) CAPACITY.—

(b) The determination of incapacity of a person with a developmental disability and the appointment of a guardian must be conducted in a separate proceeding according to the procedures and requirements of chapter 745
chapter 744 and the Florida Probate Rules.

(4) NOTICE.—

(a) Notice of the filing of the petition must be given to the person with a developmental disability, verbally and in writing in the language of the person and in English. Notice must also be given to the next of kin of the person with a developmental disability as defined in chapter 745
chapter 744, a health care surrogate designated pursuant to an advance directive under chapter 765, an agent under a durable power of attorney, and such other persons as the court may direct. A copy

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of the petition to appoint a guardian advocate must be served with the notice.

(8) COURT ORDER.—If the court finds the person with a developmental disability requires the appointment of a guardian advocate, the court shall enter a written order appointing the guardian advocate and containing the findings of facts and conclusions of law on which the court made its decision, including:

(a) The nature and scope of the person's lack of decisionmaking ability;

(b) The exact areas in which the individual lacks decisionmaking ability to make informed decisions about care and treatment services or to meet the essential requirements for his or her physical health and safety;

(c) The specific legal disabilities to which the person with a developmental disability is subject;

(d) The name of the person selected as guardian advocate and the reasons for the court's selection; and

(e) The powers, duties, and responsibilities of the guardian advocate, including bonding of the guardian advocate, as provided in s. 745.607 ~~s. 744.351~~.

(10) POWERS AND DUTIES OF GUARDIAN ADVOCATE.—A guardian advocate for a person with a developmental disability shall be a person or corporation qualified to act as guardian, with the same powers, duties, and responsibilities required of a guardian under chapter 745 ~~chapter 744~~ or those defined by court order under this section. However, a guardian advocate may not be required to file an annual accounting under s. 745.805 ~~s. 744.3678~~ if the court determines that the person with a

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developmental disability receives income only from Social Security benefits and the guardian advocate is the person's representative payee for the benefits.

(12) SUGGESTION OF RESTORATION OF RIGHTS.—Any interested person, including the person with a developmental disability, may file a suggestion of restoration of rights with the court in which the guardian advocacy is pending. The suggestion must state that the person with a developmental disability is currently capable of exercising some or all of the rights that were delegated to the guardian advocate and provide evidentiary support for the filing of the suggestion. Evidentiary support includes, but is not limited to, a signed statement from a medical, psychological, or psychiatric practitioner by whom the person with a developmental disability was evaluated and which supports the suggestion for the restoration. If the petitioner is unable to provide evidentiary support due to the lack of access to such information or reports, the petitioner may state a good faith basis for the suggestion for the restoration of rights without attaching evidentiary support. The court shall immediately set a hearing if no evidentiary support is attached to inquire of the petitioner and guardian advocate as to the reason and enter such orders as are appropriate to secure the required documents. The person with a disability and the person's attorney shall be provided notice of the hearing.

(c) Any objections to the suggestion must be filed within 20 days after service of the notice. If an objection is timely filed, or if the evidentiary support suggests that restoration of rights is not appropriate, the court shall set the matter for hearing. The hearing shall be conducted as set forth in s.

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6441 745.304 s. ~~744.1095~~. The court, at the hearing, shall consider
6442 all reports and testimony relevant to the person's
6443 decisionmaking abilities at the hearing, including, but not
6444 limited to, the person's current individual family plan or
6445 individual support plan, the individual education plan, and
6446 other professional reports that document the condition and needs
6447 of the person.

6448 (g) If only some rights are restored to the person with a
6449 developmental disability, the order must state which rights are
6450 restored and amended letters of guardian advocacy shall be
6451 issued by the court. The guardian advocate shall amend the
6452 current plan as required under chapter 745 ~~chapter 744~~ if
6453 personal rights are restored to the person with a developmental
6454 disability. The guardian advocate shall file a final accounting
6455 as required under chapter 745 ~~chapter 744~~ if all property rights
6456 are restored to the person with a developmental disability. The
6457 guardian advocate must file the amended plan or final accounting
6458 within 60 days after the order restoring rights and amended
6459 letters of guardian advocacy are issued. A copy of the reports
6460 shall be served upon the person with a developmental disability
6461 and the attorney for the person with a developmental disability.

6462 Section 211. Paragraph (h) of subsection (3) of section
6463 393.13, Florida Statutes, is amended to read:

6464 393.13 Treatment of persons with developmental
6465 disabilities.—

6466 (3) RIGHTS OF ALL PERSONS WITH DEVELOPMENTAL DISABILITIES.—
6467 The rights described in this subsection shall apply to all
6468 persons with developmental disabilities, whether or not such
6469 persons are clients of the agency.

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(h) Persons with developmental disabilities shall have a right to consent to or refuse treatment, subject to the powers of a guardian advocate appointed pursuant to s. 393.12 or a guardian appointed pursuant to chapter 745 ~~chapter 744~~.

Section 212. Subsection (21) of section 394.455, Florida Statutes, is amended to read:

394.455 Definitions.—As used in this part, the term:

(21) "Incapacitated" means that a person has been adjudicated incapacitated pursuant to part III chapter 745 ~~part V of chapter 744~~ and a guardian of the person has been appointed.

Section 213. Subsections (1) and (4) of section 394.4598, Florida Statutes, are amended to read:

394.4598 Guardian advocate.—

(1) The administrator may petition the court for the appointment of a guardian advocate based upon the opinion of a psychiatrist that the patient is incompetent to consent to treatment. If the court finds that a patient is incompetent to consent to treatment and has not been adjudicated incapacitated and a guardian with the authority to consent to mental health treatment appointed, it shall appoint a guardian advocate. The patient has the right to have an attorney represent him or her at the hearing. If the person is indigent, the court shall appoint the office of the public defender to represent him or her at the hearing. The patient has the right to testify, cross-examine witnesses, and present witnesses. The proceeding shall be recorded either electronically or stenographically, and testimony shall be provided under oath. One of the professionals authorized to give an opinion in support of a petition for

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involuntary placement, as described in s. 394.4655 or s. 394.467, must testify. A guardian advocate must meet the qualifications of a guardian contained in part V of chapter 745 ~~part IV of chapter 744~~, except that a professional referred to in this part, an employee of the facility providing direct services to the patient under this part, a departmental employee, a facility administrator, or member of the Florida local advocacy council shall not be appointed. A person who is appointed as a guardian advocate must agree to the appointment.

(4) In lieu of the training required of guardians appointed pursuant to chapter 745 ~~chapter 744~~, a guardian advocate must, at a minimum, participate in a 4-hour training course approved by the court before exercising his or her authority. At a minimum, this training course must include information about patient rights, psychotropic medications, the diagnosis of mental illness, the ethics of medical decisionmaking, and duties of guardian advocates.

Section 214. Subsections (1) and (4) of section 397.6978, Florida Statutes, are amended to read:

397.6978 Guardian advocate; patient incompetent to consent; substance abuse disorder.—

(1) The administrator of a receiving facility or an addictions receiving facility may petition the court for the appointment of a guardian advocate based upon the opinion of a qualified professional that the patient is incompetent to consent to treatment. If the court finds that a patient is incompetent to consent to treatment and has not been adjudicated incapacitated and that a guardian with the authority to consent to substance abuse treatment has not been appointed, it may

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appoint a guardian advocate. The patient has the right to have an attorney represent him or her at the hearing. If the person is indigent, the court shall appoint the office of criminal conflict and civil regional counsel to represent him or her at the hearing. The patient has the right to testify, cross-examine witnesses, and present witnesses. The proceeding shall be recorded electronically or stenographically, and testimony must be provided under oath. One of the qualified professionals authorized to give an opinion in support of a petition for involuntary services, as described in s. 397.693, must testify. A guardian advocate must meet the qualifications of a guardian contained in part V of chapter 745 ~~part IV of chapter 744~~. The person who is appointed as a guardian advocate must agree to the appointment.

(4) In lieu of the training required for guardians appointed pursuant to chapter 745 ~~chapter 744~~, a guardian advocate shall attend at least a 4-hour training course approved by the court before exercising his or her authority. At a minimum, the training course must include information about patient rights, the diagnosis of substance abuse disorders, the ethics of medical decisionmaking, and the duties of guardian advocates.

Section 215. Paragraph (a) of subsection (3) of section 401.45, Florida Statutes, is amended to read:

401.45 Denial of emergency treatment; civil liability.—

(3) (a) Resuscitation may be withheld or withdrawn from a patient by an emergency medical technician or paramedic if evidence of an order not to resuscitate by the patient's physician is presented to the emergency medical technician or

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paramedic. An order not to resuscitate, to be valid, must be on the form adopted by rule of the department. The form must be signed by the patient's physician and by the patient or, if the patient is incapacitated, the patient's health care surrogate or proxy as provided in chapter 765, court-appointed guardian as provided in chapter 745 ~~chapter 744~~, or attorney in fact under a durable power of attorney as provided in chapter 709. The court-appointed guardian or attorney in fact must have been delegated authority to make health care decisions on behalf of the patient.

Section 216. Subsection (12) of section 415.102, Florida Statutes, is amended to read:

415.102 Definitions of terms used in ss. 415.101-415.113.—As used in ss. 415.101-415.113, the term:

(12) "Guardian" means a person who has been appointed by a court to act on behalf of a person; a preneed guardian, as provided in chapter 745 ~~chapter 744~~; or a health care surrogate expressly designated as provided in chapter 765.

Section 217. Paragraph (e) of subsection (1), paragraph (g) of subsection (2), and subsection (6) of section 415.1051, Florida Statutes, are amended to read:

415.1051 Protective services interventions when capacity to consent is lacking; nonemergencies; emergencies; orders; limitations.—

(1) NONEMERGENCY PROTECTIVE SERVICES INTERVENTIONS.—If the department has reasonable cause to believe that a vulnerable adult or a vulnerable adult in need of services is being abused, neglected, or exploited and is in need of protective services but lacks the capacity to consent to protective services, the

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department shall petition the court for an order authorizing the provision of protective services.

(e) Continued protective services.—

1. No more than 60 days after the date of the order authorizing the provision of protective services, the department shall petition the court to determine whether:

a. Protective services will be continued with the consent of the vulnerable adult pursuant to this subsection;

b. Protective services will be continued for the vulnerable adult who lacks capacity;

c. Protective services will be discontinued; or

d. A petition for guardianship should be filed pursuant to chapter 745 ~~chapter 744~~.

2. If the court determines that a petition for guardianship should be filed pursuant to chapter 745 ~~chapter 744~~, the court, for good cause shown, may order continued protective services until it makes a determination regarding capacity.

3. If the department has a good faith belief that the vulnerable adult lacks the capacity to consent to protective services, the petition to determine incapacity under s. 745.301 ~~s. 744.3201~~ may be filed by the department. Once the petition is filed, the department may not be appointed guardian and may not provide legal counsel for the guardian.

(2) EMERGENCY PROTECTIVE SERVICES INTERVENTION.—If the department has reasonable cause to believe that a vulnerable adult is suffering from abuse or neglect that presents a risk of death or serious physical injury to the vulnerable adult and that the vulnerable adult lacks the capacity to consent to emergency protective services, the department may take action

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under this subsection. If the vulnerable adult has the capacity to consent and refuses consent to emergency protective services, emergency protective services may not be provided.

(g) Continued emergency protective services.—

1. Not more than 60 days after the date of the order authorizing the provision of emergency protective services, the department shall petition the court to determine whether:

a. Emergency protective services will be continued with the consent of the vulnerable adult;

b. Emergency protective services will be continued for the vulnerable adult who lacks capacity;

c. Emergency protective services will be discontinued; or

d. A petition should be filed under chapter 745 ~~chapter~~ 744.

2. If it is decided to file a petition under chapter 745 ~~chapter 744~~, for good cause shown, the court may order continued emergency protective services until a determination is made by the court.

3. If the department has a good faith belief that the vulnerable adult lacks the capacity to consent to protective services, the petition to determine incapacity under s. 745.301 ~~s. 744.3201~~ may be filed by the department. Once the petition is filed, the department may not be appointed guardian and may not provide legal counsel for the guardian.

(6) LIMITATIONS.—This section does not limit in any way the authority of the court or a criminal justice officer, or any other duly appointed official, to intervene in emergency circumstances under existing statutes. This section does not limit the authority of any person to file a petition for

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guardianship under chapter 745 ~~chapter 744~~.

Section 218. Subsection (2) of section 415.1102, Florida Statutes, is amended to read:

415.1102 Adult protection teams.—

(2) Such teams may be composed of, but need not be limited to:

(a) Psychiatrists, psychologists, or other trained counseling personnel;

(b) Police officers or other law enforcement officers;

(c) Medical personnel who have sufficient training to provide health services;

(d) Social workers who have experience or training in preventing the abuse of elderly or dependent persons; and

(e) Public and professional guardians as described in part XIV of chapter 745 ~~part II of chapter 744~~.

Section 219. Paragraph (h) of subsection (3) of section 493.6105, Florida Statutes, is amended to read:

493.6105 Initial application for license.—

(3) The application must contain the following information concerning the individual signing the application:

(h) A statement whether he or she has ever been adjudicated incompetent under chapter 745 ~~chapter 744~~.

Section 220. Paragraph (c) of subsection (1) of section 493.6106, Florida Statutes, is amended to read:

493.6106 License requirements; posting.—

(1) Each individual licensed by the department must:

(c) Not have been adjudicated incapacitated under part III of chapter 745 ~~s. 744.331~~ or a similar statute in another state, unless her or his capacity has been judicially restored; not

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have been involuntarily placed in a treatment facility for the mentally ill under chapter 394 or a similar statute in any other state, unless her or his competency has been judicially restored; and not have been diagnosed as having an incapacitating mental illness, unless a psychologist or psychiatrist licensed in this state certifies that she or he does not currently suffer from the mental illness.

Section 221. Paragraph (b) of subsection (1) of section 493.6108, Florida Statutes, is amended to read:

493.6108 Investigation of applicants by Department of Agriculture and Consumer Services.—

(1) Except as otherwise provided, the department must investigate an applicant for a license under this chapter before it may issue the license. The investigation must include:

(b) An inquiry to determine if the applicant has been adjudicated incompetent under chapter 745 ~~chapter 744~~ or has been committed to a mental institution under chapter 394.

Section 222. Paragraph (c) of subsection (1) and paragraph (a) of subsection (14) of section 501.0051, Florida Statutes, are amended to read:

501.0051 Protected consumer report security freeze.—

(1) As used in this section, the term:

(c) "Protected consumer" means a person younger than 16 years of age at the time a security freeze request is made or a person represented by a guardian or other advocate pursuant to chapter 39, chapter 393, chapter 745 ~~chapter 744~~, or chapter 914.

(14) A written disclosure by a consumer reporting agency, pursuant to 15 U.S.C. s. 1681g, to a representative and

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protected consumer residing in this state must include a written summary of all rights that the representative and protected consumer have under this section and, in the case of a consumer reporting agency that compiles and maintains records on a nationwide basis, a toll-free telephone number that the representative can use to communicate with the consumer reporting agency. The information provided in paragraph (b) must be in at least 12-point boldfaced type. The written summary of rights required under this section is sufficient if it is substantially in the following form:

(a) If you are the parent or legal guardian of a minor younger than 16 years of age or a guardian or advocate of an incapacitated, disabled, or protected person under chapter 39, chapter 393, chapter 745 ~~chapter 744~~, or chapter 914, Florida Statutes, you have the right to place a security freeze on the consumer report of the person you are legally authorized to care for. If no consumer report exists, you have the right to request that a record be created and a security freeze be placed on the record. A record with a security freeze is intended to prevent the opening of credit accounts until the security freeze is removed.

Section 223. Paragraph (b) of subsection (3) of section 549.09, Florida Statutes, is amended to read:

549.09 Motorsport nonspectator liability release.—

(3)

(b)1. If a minor is participating in a motorsports event as defined in s. 549.10, the motorsport liability release must comply with the requirements of this section and is valid to the same extent provided for other nonspectators under this section.

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2. If a minor is participating in an activity at a closed-course motorsport facility, other than a motorsports event as defined in s. 549.10, a waiver or release must comply with the requirements in s. 745.712(7) ~~s. 744.301(3)~~ and is valid only to the extent, and subject to the presumptions, provided in that subsection.

Section 224. Subsection (7) of section 660.25, Florida Statutes, is amended to read:

660.25 Definitions.—Subject to other definitions contained in other sections of this code, and unless the context otherwise requires, in this chapter:

(7) Terms used but not defined in this chapter, but which are expressly defined in chapter 518, the financial institutions codes, chapter 732, chapter 733, chapter 734, chapter 735, chapter 736, chapter 738, chapter 745 ~~chapter 744~~, or chapter 747, shall in this chapter, unless the context otherwise requires, have the meanings ascribed to them in said chapters; and references in any of said chapters to a "trust company" or to "trust companies" shall include every trust department as defined in s. 658.12.

Section 225. Section 694.14, Florida Statutes, is amended to read:

694.14 Validation of deeds executed by guardians appointed under Veterans' Guardianship Law.—Any deed of conveyance, executed bona fide and for a valuable consideration authorized and approved by order of the probate court, by any limited guardian who was appointed as guardian under the Veterans' Guardianship Law of Florida and who acted under that law and the order of the probate court in the execution of the deed of

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6760 conveyance is hereby cured and shall be deemed and taken as if
6761 properly executed, notwithstanding the fact that the deed was
6762 executed to property that the mentally incompetent veteran did
6763 not directly or otherwise acquire with money received by the
6764 veteran from the United States Department of Veteran's Affairs,
6765 and notwithstanding the fact that the conveyance is to property
6766 acquired by the mentally incompetent veteran before she or he
6767 became a veteran or was declared insane, and notwithstanding the
6768 fact that some of the information required by the Veterans'
6769 Guardianship Law was not set out in the petition for appointment
6770 of the guardian, and notwithstanding the fact that the guardian
6771 did not publish the notice of application for an order of sale
6772 as required by s. 745.1517 ~~s. 744.631~~, and notwithstanding any
6773 other defect in any part of the guardianship proceeding that
6774 resulted in the court-authorized and court-approved proceeding
6775 which resulted in the execution of such guardian's deed.

6776 Section 226. Subsection (3) of section 709.2109, Florida
6777 Statutes, is amended to read:

6778 709.2109 Termination or suspension of power of attorney or
6779 agent's authority.—

6780 (3) If any person initiates judicial proceedings to
6781 determine the principal's incapacity or for the appointment of a
6782 guardian advocate, the authority granted under the power of
6783 attorney is suspended until the petition is dismissed or
6784 withdrawn or the court enters an order authorizing the agent to
6785 exercise one or more powers granted under the power of attorney.
6786 However, if the agent named in the power of attorney is the
6787 principal's parent, spouse, child, or grandchild, the authority
6788 under the power of attorney is not suspended unless a verified

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6789 motion in accordance with s. 745.1314 ~~s. 744.3203~~ is also filed.

6790 (a) If an emergency arises after initiation of proceedings
6791 to determine incapacity and before adjudication regarding the
6792 principal's capacity, the agent may petition the court in which
6793 the proceeding is pending for authorization to exercise a power
6794 granted under the power of attorney. The petition must set forth
6795 the nature of the emergency, the property or matter involved,
6796 and the power to be exercised by the agent.

6797 (b) Notwithstanding the provisions of this section, unless
6798 otherwise ordered by the court, a proceeding to determine
6799 incapacity does not affect the authority of the agent to make
6800 health care decisions for the principal, including, but not
6801 limited to, those provided in chapter 765. If the principal has
6802 executed a health care advance directive designating a health
6803 care surrogate, the terms of the directive control if the
6804 directive and the power of attorney are in conflict unless the
6805 power of attorney is later executed and expressly states
6806 otherwise.

6807 Section 227. Subsection (11) of section 717.124, Florida
6808 Statutes, is amended to read:

6809 717.124 Unclaimed property claims.—

6810 (11) This section applies to all unclaimed property
6811 reported and remitted to the Chief Financial Officer, including,
6812 but not limited to, property reported pursuant to ss. 45.032,
6813 732.107, 733.816, and 745.1106 ~~ss. 45.032, 732.107, 733.816, and~~
6814 ~~744.534.~~

6815 Section 228. Section 717.138, Florida Statutes, is amended
6816 to read:

6817 717.138 Rulemaking authority.—The department shall

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administer and provide for the enforcement of this chapter. The department has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter. The department may adopt rules to allow for electronic filing of fees, forms, and reports required by this chapter. The authority to adopt rules pursuant to this chapter applies to all unclaimed property reported and remitted to the Chief Financial Officer, including, but not limited to, property reported and remitted pursuant to ss. 45.032, 732.107, 733.816, and 745.1106 ~~ss. 45.032, 732.107, 733.816, and 744.534.~~

Section 229. Subsection (6) of section 736.0602, Florida Statutes, is amended to read:

736.0602 Revocation or amendment of revocable trust.—

(6) A guardian of the property of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only as provided in s. 745.903 ~~s. 744.441.~~

Section 230. Subsection (2) of section 739.104, Florida Statutes, is amended to read:

739.104 Power to disclaim; general requirements; when irrevocable.—

(2) With court approval, a fiduciary may disclaim, in whole or part, any interest in or power over property, including a power of appointment, except that a disclaimer of a power arising under s. 739.201(4) does not require court approval. Without court approval, a fiduciary may disclaim, in whole or in part, any interest in or power over property, including a power of appointment, if and to the extent that the instrument creating the fiduciary relationship explicitly grants the

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fiduciary the right to disclaim. In the absence of a court-
appointed guardian, notwithstanding anything in chapter 745
~~chapter 744~~ to the contrary, without court approval, a natural
guardian under s. 745.712 ~~s. 744.301~~ may disclaim on behalf of a
minor child of the natural guardian, in whole or in part, any
interest in or power over property, including a power of
appointment, which the minor is to receive solely as a result of
another disclaimer, but only if the disclaimed interest or power
does not pass to or for the benefit of the natural guardian as a
result of the disclaimer.

Section 231. Subsection (1) of section 740.04, Florida
Statutes, is amended to read:

740.04 Disclosure of digital assets to guardian of ward.—

(1) After an opportunity for a hearing under chapter 745
~~chapter 744~~, the court may grant a guardian access to the
digital assets of a ward.

Section 232. Subsection (1) of section 741.403, Florida
Statutes, is amended to read:

741.403 Address confidentiality program; application;
certification.—

(1) An adult person, a parent or guardian acting on behalf
of a minor, or a guardian acting on behalf of a person
adjudicated incapacitated under chapter 745 ~~chapter 744~~ may
apply to the Attorney General to have an address designated by
the Attorney General serve as the person's address or the
address of the minor or incapacitated person. To the extent
possible within funds appropriated for this purpose, the
Attorney General shall approve an application if it is filed in
the manner and on the form prescribed by the Attorney General

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and if it contains all of the following:

(a) A sworn statement by the applicant that the applicant has good reason to believe that the applicant, or the minor or incapacitated person on whose behalf the application is made, is a victim of domestic violence, and that the applicant fears for his or her safety or his or her children's safety or the safety of the minor or incapacitated person on whose behalf the application is made.

(b) A designation of the Attorney General as agent for purposes of service of process and for the purpose of receipt of mail.

(c) The mailing address where the applicant can be contacted by the Attorney General, and the phone number or numbers where the applicant can be called by the Attorney General.

(d) A statement that the new address or addresses that the applicant requests must not be disclosed for the reason that disclosure will increase the risk of domestic violence.

(e) The signature of the applicant and of any individual or representative of any office designated in writing under s. 741.408 who assisted in the preparation of the application, and the date on which the applicant signed the application.

Section 233. Subsection (3) of section 743.08, Florida Statutes, is amended to read:

743.08 Removal of disabilities of minors; artistic or creative services; professional sports contracts; judicial approval.—

(3)(a) If a contract described by subsection (1) is so approved by the circuit court pursuant to the requirements of

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this section and the requirements of ss. 743.09, 743.095, and chapter 745 ~~chapter 744~~, the minor may not, either during his or her minority or upon reaching his or her majority, disaffirm the contract on the ground of minority or assert that the parent or guardian lacked authority to make the contract. A contract modified, amended, or assigned after its approval under this section shall be deemed a new contract.

(b) If a contract described by subsection (1) is so approved, all earnings, royalties, or other compensation earned or received by the minor pursuant to said approved contract shall become the property of the minor, subject to the provisions of ss. 743.09, 743.095, and chapter 745 ~~chapter 744~~.

Section 234. Subsection (3) of section 743.09, Florida Statutes, is amended to read:

743.09 Removal of disabilities of minors; artistic or creative services; professional sports contracts; procedure for court approval; appointment of a guardian ad litem.-

(3) At any time after the filing of the petition, the court, if it deems it advisable, may appoint a guardian ad litem, pursuant to s. 745.714 ~~s. 744.3025~~, to represent the interests of the minor. The court shall appoint a guardian ad litem as to any contract where the parent or guardian will receive remuneration or financial gain from the performance of the contract or has any other conflict of interest with the minor as defined by s. 744.446. The court, in determining whether a guardian ad litem should be appointed, may consider the following criteria:

(a) The length of time the exclusive services of the minor are required.

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(b) Whether the gross earnings of the minor under the contract are either contingent or unknown.

(c) Whether the gross earnings of the minor under the contract are in excess of \$15,000.

Section 235. Paragraph (a) of subsection (2) of section 743.095, Florida Statutes, is amended to read:

743.095 Removal of disabilities of minors; artistic or creative services; professional sports contracts; guardianship of the property.—

(2)(a) If a guardian of the property of the minor has been appointed or qualified in this state, he or she shall receive and hold any net earnings directed by the court to be set aside for the minor as provided in subsection (1) and by chapter 745 ~~chapter 744~~ governing guardians of the property. In any other case a guardian of the property shall be appointed for the purpose of holding the net earnings of the minor pursuant to the contract as directed by the court pursuant to subsection (1) and thereafter shall hold said earnings as a guardian of the property pursuant to chapter 745 ~~chapter 744~~.

Section 236. Section 747.034, Florida Statutes, is amended to read:

747.034 Bond.—The court may require the conservator to post a bond as required for a guardian under ss. 745.607 and 745.608 ~~ss. 744.38 and 744.39~~. All provisions of chapter 745 ~~chapter 744~~ which are applicable to bonds are applicable to the bond of the conservator required under this chapter.

Section 237. Subsection (1) of section 747.035, Florida Statutes, is amended to read:

747.035 Rights, powers, and duties of conservator.—

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(1) The conservator shall have all the rights, powers, and duties of a guardian of the property as established in chapter 745 ~~chapter 744~~ and an absentee and an absentee's dependents shall be entitled to all benefits accruing to a ward or a ward's dependents under said chapter.

Section 238. Subsection (14) of section 765.101, Florida Statutes, is amended to read:

765.101 Definitions.—As used in this chapter:

(14) "Minor's principal" means a principal who is a natural guardian as defined in s. 745.712(1) ~~s. 744.301(1)~~; legal custodian; or, subject to chapter 745 ~~chapter 744~~, legal guardian of the person of a minor.

Section 239. Subsection (1) of section 765.1103, Florida Statutes, is amended to read:

765.1103 Pain management and palliative care.—

(1) A patient shall be given information concerning pain management and palliative care when he or she discusses with the primary physician, or such physician's designee, the diagnosis, planned course of treatment, alternatives, risks, or prognosis for his or her illness. If the patient is incapacitated, the information shall be given to the patient's health care surrogate or proxy, court-appointed guardian as provided in chapter 745 ~~chapter 744~~, or attorney in fact under a durable power of attorney as provided in chapter 709. The court-appointed guardian or attorney in fact must have been delegated authority to make health care decisions on behalf of the patient.

Section 240. Subsections (1) and (5) of section 765.2035, Florida Statutes, are amended to read:

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765.2035 Designation of a health care surrogate for a minor.—

(1) A natural guardian as defined in s. 745.712(1) ~~s. 744.301(1)~~, legal custodian, or legal guardian of the person of a minor may designate a competent adult to serve as a surrogate to make health care decisions for the minor. Such designation shall be made by a written document signed by the minor's principal in the presence of two subscribing adult witnesses. If a minor's principal is unable to sign the instrument, the principal may, in the presence of witnesses, direct that another person sign the minor's principal's name as required by this subsection. An exact copy of the instrument shall be provided to the surrogate.

(5) A natural guardian as defined in s. 745.712(1) ~~s. 744.301(1)~~, legal custodian, or legal guardian of the person of a minor may designate a separate surrogate to consent to mental health treatment for the minor. However, unless the document designating the health care surrogate expressly states otherwise, the court shall assume that the health care surrogate authorized to make health care decisions for a minor under this chapter is also the minor's principal's choice to make decisions regarding mental health treatment for the minor.

Section 241. Section 765.2038, Florida Statutes, is amended to read:

765.2038 Designation of health care surrogate for a minor; suggested form.—A written designation of a health care surrogate for a minor executed pursuant to this chapter may, but need not, be in the following form:

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DESIGNATION OF HEALTH CARE SURROGATE
FOR MINOR

I/We, ...(name/names)..., the [...] natural guardian(s) as
defined in s. s. 745.712(1) ~~s. 744.301(1)~~, Florida Statutes;
[...] legal custodian(s); [...] legal guardian(s) [check one]
of the following minor(s):

.....;
.....;
.....,

pursuant to s. 765.2035, Florida Statutes, designate the
following person to act as my/our surrogate for health care
decisions for such minor(s) in the event that I/we am/are not
able or reasonably available to provide consent for medical
treatment and surgical and diagnostic procedures:

Name: ...(name)...
Address: ...(address)...
Zip Code: ...(zip code)...
Phone: ...(telephone)...

If my/our designated health care surrogate for a minor is
not willing, able, or reasonably available to perform his or her
duties, I/we designate the following person as my/our alternate
health care surrogate for a minor:

Name: ...(name)...

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Address: ...(address)...

Zip Code: ...(zip code)...

Phone: ...(telephone)...

I/We authorize and request all physicians, hospitals, or other providers of medical services to follow the instructions of my/our surrogate or alternate surrogate, as the case may be, at any time and under any circumstances whatsoever, with regard to medical treatment and surgical and diagnostic procedures for a minor, provided the medical care and treatment of any minor is on the advice of a licensed physician.

I/We fully understand that this designation will permit my/our designee to make health care decisions for a minor and to provide, withhold, or withdraw consent on my/our behalf, to apply for public benefits to defray the cost of health care, and to authorize the admission or transfer of a minor to or from a health care facility.

I/We will notify and send a copy of this document to the following person(s) other than my/our surrogate, so that they may know the identity of my/our surrogate:

Name: ...(name)...

Name: ...(name)...

Signed: ...(signature)...

Date: ...(date)...

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WITNESSES:

1. ... (witness) ...

2. ... (witness) ...

Section 242. Subsection (3) of section 765.205, Florida Statutes, is amended to read:

765.205 Responsibility of the surrogate.—

(3) If, after the appointment of a surrogate, a court appoints a guardian, the surrogate shall continue to make health care decisions for the principal, unless the court has modified or revoked the authority of the surrogate pursuant to s. 745.61 s. 744.3115. The surrogate may be directed by the court to report the principal's health care status to the guardian.

Section 243. Subsection (12) of section 765.511, Florida Statutes, is amended to read:

765.511 Definitions.—As used in this part, the term:

(12) "Guardian" means a person appointed pursuant to chapter 745 ~~chapter 744~~. The term does not include a guardian ad litem.

Section 244. Subsection (3) of section 766.104, Florida Statutes, is amended to read:

766.104 Medical negligence cases; reasonable investigation required before filing.—

(3) For purposes of conducting the investigation required by this section, and notwithstanding any other provision of law to the contrary, subsequent to the death of a person and prior to the administration of such person's estate, copies of all medical reports and records, including bills, films, and other records relating to the care and treatment of such person that are in the possession of a health care practitioner as defined

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in s. 456.001 shall be made available, upon request, to the spouse, parent, child who has reached majority, guardian pursuant to chapter 745 ~~chapter 744~~, surrogate or proxy pursuant to chapter 765, or attorney in fact of the deceased pursuant to chapter 709. A health care practitioner complying in good faith with the provisions of this subsection shall not be held liable for civil damages attributable to the disclosure of such records or be subject to any disciplinary action based on such disclosure.

Section 245. Subsections (2) and (10) of section 790.06, Florida Statutes, are amended to read:

790.06 License to carry concealed weapon or firearm.—

(2) The Department of Agriculture and Consumer Services shall issue a license if the applicant:

(a) Is a resident of the United States and a citizen of the United States or a permanent resident alien of the United States, as determined by the United States Bureau of Citizenship and Immigration Services, or is a consular security official of a foreign government that maintains diplomatic relations and treaties of commerce, friendship, and navigation with the United States and is certified as such by the foreign government and by the appropriate embassy in this country;

(b) Is 21 years of age or older;

(c) Does not suffer from a physical infirmity which prevents the safe handling of a weapon or firearm;

(d) Is not ineligible to possess a firearm pursuant to s. 790.23 by virtue of having been convicted of a felony;

(e) Has not been:

1. Found guilty of a crime under the provisions of chapter

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893 or similar laws of any other state relating to controlled substances within a 3-year period immediately preceding the date on which the application is submitted; or

2. Committed for the abuse of a controlled substance under chapter 397 or under the provisions of former chapter 396 or similar laws of any other state. An applicant who has been granted relief from firearms disabilities pursuant to s. 790.065(2)(a)4.d. or pursuant to the law of the state in which the commitment occurred is deemed not to be committed for the abuse of a controlled substance under this subparagraph;

(f) Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired. It shall be presumed that an applicant chronically and habitually uses alcoholic beverages or other substances to the extent that his or her normal faculties are impaired if the applicant has been convicted under s. 790.151 or has been deemed a habitual offender under s. 856.011(3), or has had two or more convictions under s. 316.193 or similar laws of any other state, within the 3-year period immediately preceding the date on which the application is submitted;

(g) Desires a legal means to carry a concealed weapon or firearm for lawful self-defense;

(h) Demonstrates competence with a firearm by any one of the following:

1. Completion of any hunter education or hunter safety course approved by the Fish and Wildlife Conservation Commission or a similar agency of another state;

2. Completion of any National Rifle Association firearms

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safety or training course;

3. Completion of any firearms safety or training course or class available to the general public offered by a law enforcement agency, junior college, college, or private or public institution or organization or firearms training school, using instructors certified by the National Rifle Association, Criminal Justice Standards and Training Commission, or the Department of Agriculture and Consumer Services;

4. Completion of any law enforcement firearms safety or training course or class offered for security guards, investigators, special deputies, or any division or subdivision of a law enforcement agency or security enforcement;

5. Presents evidence of equivalent experience with a firearm through participation in organized shooting competition or military service;

6. Is licensed or has been licensed to carry a firearm in this state or a county or municipality of this state, unless such license has been revoked for cause; or

7. Completion of any firearms training or safety course or class conducted by a state-certified or National Rifle Association certified firearms instructor;

A photocopy of a certificate of completion of any of the courses or classes; an affidavit from the instructor, school, club, organization, or group that conducted or taught such course or class attesting to the completion of the course or class by the applicant; or a copy of any document that shows completion of the course or class or evidences participation in firearms competition shall constitute evidence of qualification under

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this paragraph. A person who conducts a course pursuant to subparagraph 2., subparagraph 3., or subparagraph 7., or who, as an instructor, attests to the completion of such courses, must maintain records certifying that he or she observed the student safely handle and discharge the firearm in his or her physical presence and that the discharge of the firearm included live fire using a firearm and ammunition as defined in s. 790.001;

(i) Has not been adjudicated an incapacitated person under part III of chapter 745 ~~s. 744.331~~, or similar laws of any other state. An applicant who has been granted relief from firearms disabilities pursuant to s. 790.065(2)(a)4.d. or pursuant to the law of the state in which the adjudication occurred is deemed not to have been adjudicated an incapacitated person under this paragraph;

(j) Has not been committed to a mental institution under chapter 394, or similar laws of any other state. An applicant who has been granted relief from firearms disabilities pursuant to s. 790.065(2)(a)4.d. or pursuant to the law of the state in which the commitment occurred is deemed not to have been committed in a mental institution under this paragraph;

(k) Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or expunction has occurred;

(l) Has not had adjudication of guilt withheld or imposition of sentence suspended on any misdemeanor crime of domestic violence unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or the record has been expunged;

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(m) Has not been issued an injunction that is currently in force and effect and that restrains the applicant from committing acts of domestic violence or acts of repeat violence; and

(n) Is not prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.

(10) A license issued under this section shall be suspended or revoked pursuant to chapter 120 if the licensee:

(a) Is found to be ineligible under the criteria set forth in subsection (2);

(b) Develops or sustains a physical infirmity which prevents the safe handling of a weapon or firearm;

(c) Is convicted of a felony which would make the licensee ineligible to possess a firearm pursuant to s. 790.23;

(d) Is found guilty of a crime under the provisions of chapter 893, or similar laws of any other state, relating to controlled substances;

(e) Is committed as a substance abuser under chapter 397, or is deemed a habitual offender under s. 856.011(3), or similar laws of any other state;

(f) Is convicted of a second violation of s. 316.193, or a similar law of another state, within 3 years after a first conviction of such section or similar law of another state, even though the first violation may have occurred before the date on which the application was submitted;

(g) Is adjudicated an incapacitated person under part III of chapter 745 ~~s. 744.331~~, or similar laws of any other state; or

(h) Is committed to a mental institution under chapter 394,

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or similar laws of any other state.

Notwithstanding s. 120.60(5), service of a notice of the suspension or revocation of a concealed weapon or firearm license must be given by either certified mail, return receipt requested, to the licensee at his or her last known mailing address furnished to the Department of Agriculture and Consumer Services, or by personal service. If a notice given by certified mail is returned as undeliverable, a second attempt must be made to provide notice to the licensee at that address, by either first-class mail in an envelope, postage prepaid, addressed to the licensee at his or her last known mailing address furnished to the department, or, if the licensee has provided an e-mail address to the department, by e-mail. Such mailing by the department constitutes notice, and any failure by the licensee to receive such notice does not stay the effective date or term of the suspension or revocation. A request for hearing must be filed with the department within 21 days after notice is received by personal delivery, or within 26 days after the date the department deposits the notice in the United States mail (21 days plus 5 days for mailing). The department shall document its attempts to provide notice, and such documentation is admissible in the courts of this state and constitutes sufficient proof that notice was given.

Section 246. Paragraph (a) of subsection (2) of section 790.065, Florida Statutes, is amended to read:

790.065 Sale and delivery of firearms.—

(2) Upon receipt of a request for a criminal history record check, the Department of Law Enforcement shall, during the

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licensee's call or by return call, forthwith:

(a) Review any records available to determine if the potential buyer or transferee:

1. Has been convicted of a felony and is prohibited from receipt or possession of a firearm pursuant to s. 790.23;

2. Has been convicted of a misdemeanor crime of domestic violence, and therefore is prohibited from purchasing a firearm;

3. Has had adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled or expunction has occurred; or

4. Has been adjudicated mentally defective or has been committed to a mental institution by a court or as provided in sub-sub-subparagraph b.(II), and as a result is prohibited by state or federal law from purchasing a firearm.

a. As used in this subparagraph, "adjudicated mentally defective" means a determination by a court that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease, is a danger to himself or herself or to others or lacks the mental capacity to contract or manage his or her own affairs. The phrase includes a judicial finding of incapacity under s. 745.312 ~~s. 744.331(6)(a)~~, an acquittal by reason of insanity of a person charged with a criminal offense, and a judicial finding that a criminal defendant is not competent to stand trial.

b. As used in this subparagraph, "committed to a mental institution" means:

(I) Involuntary commitment, commitment for mental

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defectiveness or mental illness, and commitment for substance abuse. The phrase includes involuntary inpatient placement as defined in s. 394.467, involuntary outpatient placement as defined in s. 394.4655, involuntary assessment and stabilization under s. 397.6818, and involuntary substance abuse treatment under s. 397.6957, but does not include a person in a mental institution for observation or discharged from a mental institution based upon the initial review by the physician or a voluntary admission to a mental institution; or

(II) Notwithstanding sub-sub-subparagraph (I), voluntary admission to a mental institution for outpatient or inpatient treatment of a person who had an involuntary examination under s. 394.463, where each of the following conditions have been met:

(A) An examining physician found that the person is an imminent danger to himself or herself or others.

(B) The examining physician certified that if the person did not agree to voluntary treatment, a petition for involuntary outpatient or inpatient treatment would have been filed under s. 394.463(2)(g)4., or the examining physician certified that a petition was filed and the person subsequently agreed to voluntary treatment prior to a court hearing on the petition.

(C) Before agreeing to voluntary treatment, the person received written notice of that finding and certification, and written notice that as a result of such finding, he or she may be prohibited from purchasing a firearm, and may not be eligible to apply for or retain a concealed weapon or firearms license under s. 790.06 and the person acknowledged such notice in writing, in substantially the following form:

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"I understand that the doctor who examined me believes I am a danger to myself or to others. I understand that if I do not agree to voluntary treatment, a petition will be filed in court to require me to receive involuntary treatment. I understand that if that petition is filed, I have the right to contest it. In the event a petition has been filed, I understand that I can subsequently agree to voluntary treatment prior to a court hearing. I understand that by agreeing to voluntary treatment in either of these situations, I may be prohibited from buying firearms and from applying for or retaining a concealed weapons or firearms license until I apply for and receive relief from that restriction under Florida law."

(D) A judge or a magistrate has, pursuant to sub-sub-subparagraph c.(II), reviewed the record of the finding, certification, notice, and written acknowledgment classifying the person as an imminent danger to himself or herself or others, and ordered that such record be submitted to the department.

c. In order to check for these conditions, the department shall compile and maintain an automated database of persons who are prohibited from purchasing a firearm based on court records of adjudications of mental defectiveness or commitments to mental institutions.

(I) Except as provided in sub-sub-subparagraph (II), clerks of court shall submit these records to the department within 1 month after the rendition of the adjudication or commitment. Reports shall be submitted in an automated format. The reports

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7369 must, at a minimum, include the name, along with any known alias
7370 or former name, the sex, and the date of birth of the subject.

7371 (II) For persons committed to a mental institution pursuant
7372 to sub-sub-subparagraph b.(II), within 24 hours after the
7373 person's agreement to voluntary admission, a record of the
7374 finding, certification, notice, and written acknowledgment must
7375 be filed by the administrator of the receiving or treatment
7376 facility, as defined in s. 394.455, with the clerk of the court
7377 for the county in which the involuntary examination under s.
7378 394.463 occurred. No fee shall be charged for the filing under
7379 this sub-sub-subparagraph. The clerk must present the records to
7380 a judge or magistrate within 24 hours after receipt of the
7381 records. A judge or magistrate is required and has the lawful
7382 authority to review the records ex parte and, if the judge or
7383 magistrate determines that the record supports the classifying
7384 of the person as an imminent danger to himself or herself or
7385 others, to order that the record be submitted to the department.
7386 If a judge or magistrate orders the submittal of the record to
7387 the department, the record must be submitted to the department
7388 within 24 hours.

7389 d. A person who has been adjudicated mentally defective or
7390 committed to a mental institution, as those terms are defined in
7391 this paragraph, may petition the court that made the
7392 adjudication or commitment, or the court that ordered that the
7393 record be submitted to the department pursuant to sub-sub-
7394 subparagraph c.(II), for relief from the firearm disabilities
7395 imposed by such adjudication or commitment. A copy of the
7396 petition shall be served on the state attorney for the county in
7397 which the person was adjudicated or committed. The state

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attorney may object to and present evidence relevant to the relief sought by the petition. The hearing on the petition may be open or closed as the petitioner may choose. The petitioner may present evidence and subpoena witnesses to appear at the hearing on the petition. The petitioner may confront and cross-examine witnesses called by the state attorney. A record of the hearing shall be made by a certified court reporter or by court-approved electronic means. The court shall make written findings of fact and conclusions of law on the issues before it and issue a final order. The court shall grant the relief requested in the petition if the court finds, based on the evidence presented with respect to the petitioner's reputation, the petitioner's mental health record and, if applicable, criminal history record, the circumstances surrounding the firearm disability, and any other evidence in the record, that the petitioner will not be likely to act in a manner that is dangerous to public safety and that granting the relief would not be contrary to the public interest. If the final order denies relief, the petitioner may not petition again for relief from firearm disabilities until 1 year after the date of the final order. The petitioner may seek judicial review of a final order denying relief in the district court of appeal having jurisdiction over the court that issued the order. The review shall be conducted de novo. Relief from a firearm disability granted under this sub-subparagraph has no effect on the loss of civil rights, including firearm rights, for any reason other than the particular adjudication of mental defectiveness or commitment to a mental institution from which relief is granted.

e. Upon receipt of proper notice of relief from firearm

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disabilities granted under sub-subparagraph d., the department shall delete any mental health record of the person granted relief from the automated database of persons who are prohibited from purchasing a firearm based on court records of adjudications of mental defectiveness or commitments to mental institutions.

f. The department is authorized to disclose data collected pursuant to this subparagraph to agencies of the Federal Government and other states for use exclusively in determining the lawfulness of a firearm sale or transfer. The department is also authorized to disclose this data to the Department of Agriculture and Consumer Services for purposes of determining eligibility for issuance of a concealed weapons or concealed firearms license and for determining whether a basis exists for revoking or suspending a previously issued license pursuant to s. 790.06(10). When a potential buyer or transferee appeals a nonapproval based on these records, the clerks of court and mental institutions shall, upon request by the department, provide information to help determine whether the potential buyer or transferee is the same person as the subject of the record. Photographs and any other data that could confirm or negate identity must be made available to the department for such purposes, notwithstanding any other provision of state law to the contrary. Any such information that is made confidential or exempt from disclosure by law shall retain such confidential or exempt status when transferred to the department.

Section 247. Paragraph (b) of subsection (4) of section 817.5685, Florida Statutes, is amended to read:

817.5685 Unlawful possession of the personal identification

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information of another person.-

(4) Subsection (2) does not apply to:

(b) A person who is the guardian of another person under chapter 745 ~~chapter 744~~ and who is authorized to possess the personal identification information of that other person and make decisions regarding access to that personal identification information.

Section 248. Subsection (1) of section 825.103, Florida Statutes, is amended to read:

825.103 Exploitation of an elderly person or disabled adult; penalties.-

(1) "Exploitation of an elderly person or disabled adult" means:

(a) Knowingly obtaining or using, or endeavoring to obtain or use, an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who:

1. Stands in a position of trust and confidence with the elderly person or disabled adult; or

2. Has a business relationship with the elderly person or disabled adult;

(b) Obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds,

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assets, or property, or to benefit someone other than the
elderly person or disabled adult, by a person who knows or
reasonably should know that the elderly person or disabled adult
lacks the capacity to consent;

(c) Breach of a fiduciary duty to an elderly person or
disabled adult by the person's guardian, trustee who is an
individual, or agent under a power of attorney which results in
an unauthorized appropriation, sale, or transfer of property. An
unauthorized appropriation under this paragraph occurs when the
elderly person or disabled adult does not receive the reasonably
equivalent financial value in goods or services, or when the
fiduciary violates any of these duties:

1. For agents appointed under chapter 709:

a. Committing fraud in obtaining their appointments;

b. Abusing their powers;

c. Wasting, embezzling, or intentionally mismanaging the
assets of the principal or beneficiary; or

d. Acting contrary to the principal's sole benefit or best
interest; or

2. For guardians and trustees who are individuals and who
are appointed under chapter 736 or chapter 745 ~~chapter 744~~:

a. Committing fraud in obtaining their appointments;

b. Abusing their powers; or

c. Wasting, embezzling, or intentionally mismanaging the
assets of the ward or beneficiary of the trust;

(d) Misappropriating, misusing, or transferring without
authorization money belonging to an elderly person or disabled
adult from an account in which the elderly person or disabled
adult placed the funds, owned the funds, and was the sole

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contributor or payee of the funds before the misappropriation, misuse, or unauthorized transfer. This paragraph only applies to the following types of accounts:

1. Personal accounts;

2. Joint accounts created with the intent that only the elderly person or disabled adult enjoys all rights, interests, and claims to moneys deposited into such account; or

3. Convenience accounts created in accordance with s. 655.80; or

(e) Intentionally or negligently failing to effectively use an elderly person's or disabled adult's income and assets for the necessities required for that person's support and maintenance, by a caregiver or a person who stands in a position of trust and confidence with the elderly person or disabled adult.

Section 249. Paragraph (f) of subsection (2) and paragraph (a) of subsection (3) of section 825.1035, Florida Statutes, is amended to read:

825.1035 Injunction for protection against exploitation of a vulnerable adult.—

(2) WHO MAY FILE; VENUE; RECORDING.—

(f) If a proceeding concerning the vulnerable adult under chapter 745 ~~chapter 744~~ is pending at the time of the filing, the petition must be filed in that proceeding. Otherwise, a petition for an injunction for protection against exploitation of a vulnerable adult may only be filed in the circuit where the vulnerable adult resides.

(3) FORM OF PETITION.—

(a) A sworn petition filed under this section must allege

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the existence of exploitation, or the imminent exploitation, of
the vulnerable adult and must include the specific facts and
circumstances for which relief is sought. The sworn petition
must be in substantially the following form:

PETITION FOR INJUNCTION FOR PROTECTION
AGAINST EXPLOITATION OF A VULNERABLE ADULT

Before me, the undersigned authority, personally appeared
Petitioner ...(Name)..., who has been sworn and says that the
following statements are true:

1. The vulnerable adult resides at: ...(address)....
2. The respondent resides at: ...(last known address)....
3. The respondent's last known place of employment is:
...(name of business and address)....

4. Physical description of the respondent:

Race....

Sex....

Date of birth....

Height....

Weight....

Eye color....

Hair color....

Distinguishing marks or scars....

5. Aliases of the respondent:

6. The respondent is associated with the vulnerable adult
as follows:

7. The following describes any other cause of action
currently pending between the petitioner and the respondent, any

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proceeding under chapter 745 ~~chapter 744~~ concerning the
vulnerable adult, and any previous or pending attempts by the
petitioner to obtain an injunction for protection against
exploitation of the vulnerable adult in this or any other
circuit; related case numbers, if available; and the results of
any such attempts:

.....
8. The following describes the petitioner's knowledge of
any reports made to a government agency, including, but not
limited to, the Department of Elderly Affairs, the Department of
Children and Families, and the adult protective services program
relating to the abuse, neglect, or exploitation of the
vulnerable adult; any investigations performed by a government
agency relating to abuse, neglect, or exploitation of the
vulnerable adult; and the results of any such reports or
investigations:

9. The petitioner knows the vulnerable adult is either a
victim of exploitation or the petitioner has reasonable cause to
believe the vulnerable adult is, or is in imminent danger of
becoming, a victim of exploitation because the respondent has:
...(describe in the spaces below the incidents or threats of
exploitation)....

10. The following describes the petitioner's knowledge of
the vulnerable adult's dependence on the respondent for care;
alternative provisions for the vulnerable adult's care in the
absence of the respondent, if necessary; available resources the
vulnerable adult has to access such alternative provisions; and
the vulnerable adult's willingness to use such alternative
provisions:

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7601 11. The petitioner knows the vulnerable adult maintains
7602 assets, accounts, or lines of credit at the following financial
7603 institution(s): ...(list name, address, and account number of
7604 each)....

7605 12. The petitioner believes that the vulnerable adult's
7606 assets to be frozen are: ...(mark one)....

7607 Worth less than \$1500;

7608 Worth between \$1500 and \$5000; or

7609 Worth more than \$5000.

7610 13. The petitioner genuinely fears imminent exploitation of
7611 the vulnerable adult by the respondent.

7612 14. The petitioner seeks an injunction for the protection
7613 of the vulnerable adult, including: ...(mark appropriate section
7614 or sections)....

7615 Prohibiting the respondent from having any direct or
7616 indirect contact with the vulnerable adult.

7617 Immediately restraining the respondent from committing
7618 any acts of exploitation against the vulnerable adult.

7619 Freezing the assets of the vulnerable adult held at
7620 ...(name and address of depository or financial institution)...
7621 even if titled jointly with the respondent, or in the
7622 respondent's name only, in the court's discretion.

7623 Freezing the credit lines of the vulnerable adult at
7624 ...(name and address of financial institution)... even if
7625 jointly with the respondent, in the court's discretion.

7626 Providing any terms the court deems necessary for the
7627 protection of the vulnerable adult or his or her assets,
7628 including any injunctions or directives to law enforcement
7629 agencies.

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15. Should the court enter an injunction freezing assets and credit lines, the petitioner believes that the critical expenses of the vulnerable adult will be paid for or provided by the following persons or entities, or the petitioner requests that the following expenses be paid notwithstanding the freeze: ... (for each expense, list the name of the payee, address, account number if known, amount, and a brief explanation of why payment is critical)....

Section 250. Paragraph (b) of subsection (6) of section 943.0585, Florida Statutes, is amended to read:

943.0585 Court-ordered expunction of criminal history records.—

(6) EFFECT OF EXPUNCTION ORDER.—

(b) The person who is the subject of a criminal history record that is expunged under this section or under other provisions of law, including former ss. 893.14, 901.33, and 943.058, may lawfully deny or fail to acknowledge the arrests covered by the expunged record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;

2. Is a defendant in a criminal prosecution;

3. Concurrently or subsequently petitions for relief under this section, s. 943.0583, or s. 943.059;

4. Is a candidate for admission to The Florida Bar;

5. Is seeking to be employed or licensed by or to contract with the Department of Children and Families, the Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for

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Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the disabled, or the elderly;

6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities;

7. Is seeking to be licensed by the Division of Insurance Agent and Agency Services within the Department of Financial Services; or

8. Is seeking to be appointed as a guardian pursuant to s. 745.601 ~~s. 744.3125.~~

Section 251. Paragraph (b) of subsection (6) of section 943.059, Florida Statutes, is amended to read:

943.059 Court-ordered sealing of criminal history records.-

(6) EFFECT OF ORDER.-

(b) The subject of the criminal history record sealed under this section or under other provisions of law, including former ss. 893.14, 901.33, and 943.058, may lawfully deny or fail to acknowledge the arrests covered by the sealed record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;

2. Is a defendant in a criminal prosecution;

3. Concurrently or subsequently petitions for relief under this section, s. 943.0583, or s. 943.0585;

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4. Is a candidate for admission to The Florida Bar;

5. Is seeking to be employed or licensed by or to contract with the Department of Children and Families, the Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the disabled, or the elderly;

6. Is seeking to be employed or licensed by the Department of Education, a district school board, a university laboratory school, a charter school, a private or parochial school, or a local governmental entity that licenses child care facilities;

7. Is attempting to purchase a firearm from a licensed importer, licensed manufacturer, or licensed dealer and is subject to a criminal history check under state or federal law;

8. Is seeking to be licensed by the Division of Insurance Agent and Agency Services within the Department of Financial Services;

9. Is seeking to be appointed as a guardian pursuant to s. 745.601 ~~s. 744.3125~~; or

10. Is seeking to be licensed by the Bureau of License Issuance of the Division of Licensing within the Department of Agriculture and Consumer Services to carry a concealed weapon or concealed firearm. This subparagraph applies only in the determination of an applicant's eligibility under s. 790.06.

Section 252. Paragraph (e) of subsection (2) of section 947.16, Florida Statutes, is amended to read:

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947.16 Eligibility for parole; initial parole interviews; powers and duties of commission.-

(2) The following special types of cases shall have their initial parole interview as follows:

(e) Any inmate who has been determined to be an incapacitated person pursuant to part III of chapter 745 s. 744.331 shall have an initial interview conducted within 90 days after the date the commission is provided with written notice that the inmate has been restored to capacity by the court.

Section 253. The purpose of the Legislature in revising this guardianship code is to rearrange, renumber, reword, reorder, streamline, consolidate, and update the code.

Section 254. Chapter 744, Florida Statutes, is repealed, except that any exemption from public records or public meetings laws contained in this chapter which has been continued in effect by this act shall be considered to have been transferred effective July 1, 2021, rather than repealed.

Section 255. In editing the manuscript for the 2021 Florida Statutes, the Division of Statutory Revision is directed to incorporate any amendments to provisions repealed by this act, including amendments by laws passed during the 2021 Regular Session of the Legislature or any 2021 Special Sessions of the Legislature, into the parallel successor provisions created by this act. The division is further directed to transfer any provisions enacted within chapter 744, Florida Statutes, by 2021 legislation to parallel locations in accordance with this act.

Section 256. This act shall take effect July 1, 2021, and shall apply retroactively to all proceedings pending before ~~that~~^{such} date and all proceedings commenced on or after the

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7746 | effective date.

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 at least 3 years and for fewer than 12 years.

Scholarships will be considered for applicants who best meet the following criteria:

- Demonstrated involvement 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.