

744.309 Who may be appointed guardian of a resident ward.—

(1) RESIDENT.—

(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) No judge shall act as guardian after this law becomes effective, 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 family, and serves without compensation.

(2) NONRESIDENT.—A nonresident of the state may serve as guardian of a resident ward if he or she is:

(a) Related by lineal consanguinity to the ward;

(b) A legally adopted child or adoptive parent of the ward;

(c) A spouse, brother, sister, uncle, aunt, niece, or nephew of the ward, or someone related by lineal consanguinity to any such person; or

(d) The spouse of a person otherwise qualified under this section.

(3) DISQUALIFIED PERSONS.—No person who has been convicted of a felony or who, from any incapacity or illness, is incapable of discharging the duties of a guardian, or who is otherwise unsuitable to perform the duties of a guardian, shall be appointed to act as guardian. Further, no 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, regardless of adjudication, or entered a plea of *nolo contendere* or guilty to, any offense prohibited under s. 435.04 or similar statute of another jurisdiction, shall be appointed to act as a guardian. Except as provided in subsection (5) or subsection (6), a person who provides substantial services to the proposed ward in a professional or business capacity, or a creditor of the proposed ward, may not be appointed guardian and retain that previous professional or business relationship. 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 service 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 the potential conflict of interest is insubstantial and that the appointment would clearly be in the proposed ward's best interest. The court may not appoint a guardian in any other circumstance in which a conflict of interest may occur.

(4) TRUST COMPANY, STATE BANK OR SAVINGS ASSOCIATION, OR NATIONAL BANK OR FEDERAL SAVINGS AND LOAN ASSOCIATION.—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 act as guardian of the property of the ward.

(5) 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. If the nonprofit corporate guardian charges fees against the assets or property of the ward for its services, the corporation must employ at least one professional guardian.

(6) HEALTH CARE PROVIDER.—A provider of health care services to the ward, whether direct or indirect, may not be appointed the guardian of the ward, unless the court specifically finds that there is no conflict of interest with the ward's best interests.

1(7) FOR-PROFIT CORPORATE GUARDIAN.—A for-profit corporate guardian existing under the laws of this state is qualified to act as guardian of a ward if the entity is qualified to do

business in the state, is wholly owned by the person who is the circuit's public guardian in the circuit where the corporate guardian is appointed, has met the registration requirements of s. 744.1083, and posts and maintains a bond or insurance policy under paragraph (a).

(a) The for-profit corporate guardian must meet one of the following requirements:

1. Post and maintain a blanket fiduciary bond of at least \$250,000 with the clerk of the circuit court in the county in which the corporate guardian has its principal place of business. The corporate guardian shall provide proof of the fiduciary bond to the clerks of each additional circuit court in which he or she is serving as a guardian. The bond must cover all wards for whom the corporation has been appointed as a guardian at any given time. The liability of the provider of the bond is limited to the face value of the bond, regardless of the number of wards for whom the corporation is acting as a guardian. The terms of the bond must cover the acts or omissions of each agent or employee of the corporation who has direct contact with the ward or access to the assets of the guardianship. The bond must be payable to the Governor and his or her successors in office and be conditioned on the faithful performance of all duties of a guardian under this chapter. The bond is in lieu of and not in addition to the bond required under s. 744.1085 but is in addition to any bonds required under s. 744.351. The expenses incurred to satisfy the bonding requirements of this section may not be paid with the assets of any ward; or

2. Maintain a liability insurance policy that covers any losses sustained by the guardianship caused by errors, omissions, or any intentional misconduct committed by the corporation's officers or agents. The policy must cover all wards for whom the corporation is acting as a guardian for losses up to \$250,000. The terms of the policy must cover acts or omissions of each agent or employee of the corporation who has direct contact with the ward or access to the assets of the guardianship. The corporate guardian shall provide proof of the policy to the clerk of each circuit court in which he or she is serving as a guardian.

(b) A for-profit corporation appointed as guardian before July 1, 2015, is also qualified to serve as a guardian in the particular guardianships in which the corporation has already been appointed as guardian.

744.312 Considerations in appointment of guardian.—

(1) Subject to the provisions of subsection (4) If the person designated is qualified to serve pursuant to s. 744.309, the court shall appoint any standby guardian or preneed guardian, unless the court determines that appointing such person is contrary to the best interests of the ward.

(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.

(2) 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 financial resources involved; or
- (d) Has the ability to meet the requirements of the law and the unique needs of the individual case.

(3) The court shall also:

- (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 age 14 or over as to who should be appointed guardian;
- (c) Consider any person designated as guardian in any will in which the ward is a beneficiary.
- (4) If the person designated is qualified to serve pursuant to s. 744.309, the court shall appoint any
- (d) Consider the wishes of the ward's next of kin, when the ward cannot express a preference.
- (4) Except when a standby guardian or a preneed guardian, unless the court determines that appointing such person is contrary to the best interests of the ward, is appointed by the court:
- (a) In each case when a court appoints a professional guardian and does not use a rotation system for such appointment, the court must make specific findings of fact stating why the person was selected as guardian in the particular matter involved. The findings must reference each of the factors listed in subsections (2) and (3).
- (b) An emergency temporary guardian who is a professional guardian may not be appointed as the permanent guardian of a ward unless one of the next of kin of the alleged incapacitated person or the ward requests that the professional guardian be appointed as permanent guardian. The court may waive the limitations of this paragraph if the special requirements of the guardianship demand that the court appoint a guardian because he or she has special talent or specific prior experience. The court must make specific findings of fact that justify waiving the limitations of this paragraph.
- (5) The court may not give preference to the appointment of a person under subsection (2) based solely on the fact that such person was appointed by the court to serve as an emergency temporary guardian.

***new statute* 744.359 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 his or her 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.

709.2109 Termination or suspension of power of attorney or agent's authority.—

- (1) A power of attorney terminates when:
- (a) The principal dies;
- (b) The principal becomes incapacitated, if the power of attorney is not durable;
- (c) The principal is adjudicated totally or partially incapacitated by a court, unless the court determines that certain authority granted by the power of attorney is to be exercisable by the agent;
- (d) The principal revokes the power of attorney;
- (e) The power of attorney provides that it terminates;
- (f) The purpose of the power of attorney is accomplished; or

(g) The agent's authority terminates and the power of attorney does not provide for another agent to act under the power of attorney.

(2) An agent's authority is exercisable until the authority terminates. An agent's authority terminates when:

(a) The agent dies, becomes incapacitated, resigns, or is removed by a court;

(b) An action is filed for the dissolution or annulment of the agent's marriage to the principal or for their legal separation, unless the power of attorney otherwise provides; or

(c) The power of attorney terminates.

1(3) If any person initiates judicial proceedings to determine the principal's incapacity or for the appointment of a guardian advocate, the authority granted under the power of attorney is suspended until the petition is dismissed or withdrawn or the court enters an order authorizing the agent to exercise one or more powers granted under the power of attorney. However, if the agent named in the power of attorney is the principal's parent, spouse, child, or grandchild, the authority under the power of attorney is not suspended unless a verified motion in accordance with s. 744.3203 is also filed.

(a) If an emergency arises after initiation of proceedings to determine incapacity and before adjudication regarding the principal's capacity, the agent may petition the court in which the proceeding is pending for authorization to exercise a power granted under the power of attorney. The petition must set forth the nature of the emergency, the property or matter involved, and the power to be exercised by the agent.

(b) Notwithstanding the provisions of this section, unless otherwise ordered by the court, a proceeding to determine incapacity does not affect the authority of the agent to make health care decisions for the principal, including, but not limited to, those provided in chapter 765. If the principal has executed a health care advance directive designating a health care surrogate, the terms of the directive control if the directive and the power of attorney are in conflict unless the power of attorney is later executed and expressly states otherwise.

(4) Termination or suspension of an agent's authority or of a power of attorney is not effective as to an agent who, without knowledge of the termination or suspension, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

744.3025 Claims of minors.—

(1)(a) The court may appoint a guardian ad litem to represent the minor's interest before approving a settlement of the 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 gross settlement of the claim exceeds \$15,000 if the court believes a guardian ad litem is necessary to protect the minor's interest.

(b) TExcept as provided in paragraph (e), the court shall appoint a guardian ad litem to represent the minor's interest before approving a settlement of the minor's claim in any case in which the gross settlement involving a minor equals or exceeds \$50,000.

(c) The appointment of the guardian ad litem must be without the necessity of bond or notice.

(d) The duty of the guardian ad litem is to protect the minor's interests as described in the Florida Probate Rules.

(e) A court need not appoint a guardian ad litem for the minor if a guardian of the minor has previously been appointed and that guardian has no potential adverse interest to the minor.A

~~court may appoint a guardian ad litem if the court believes a guardian ad litem is necessary to protect the interests of the minor.~~

(2) Unless waived, the court shall award reasonable fees and costs to the guardian ad litem to be paid out of the gross proceeds of the settlement.

(3) A settlement of a claim pursuant to this section is subject to the confidentiality provisions of this chapter.

744.3701 Inspection of reportConfidentiality.—

(1) Unless otherwise ordered by the court, ~~upon a showing of good cause, any initial, annual, or final guardianship report or amendment thereto, or a court record relating to the settlement of a claim,~~ is subject to inspection only by the court, the clerk or the clerk's representative, the guardian and the guardian's attorney, ~~and the ward, unless he or she is a minor or has the guardian ad litem with regard to the settlement of the claim, the ward if he or she is at least 14 years of age and has not been determined to be totally incapacitated, and the ward's attorney, the minor if he or she is at least 14 years of age, or the attorney representing the minor with regard to the minor's claim, or as otherwise provided by this chapter.~~

(2) The court may direct disclosure and recording of parts of an initial, annual, or final report ~~or amendment thereto, or a court record relating to the settlement of a claim, including a petition for approval of a settlement on behalf of a ward or minor, a report of a guardian ad litem relating to a pending settlement, or an order approving a settlement on behalf of a ward or minor, in connection with any real property transaction or for such other purpose as the court allows, in its discretion.~~

(3) A court record relating to the settlement of a ward's or minor's claim, including a petition for approval of a settlement on behalf of a ward or minor, a report of a guardian ad litem relating to a pending settlement, or an order approving a settlement on behalf of a ward or minor, is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and may not be disclosed except as specifically authorized.