

TRAIN FOR SUCCESS INC.
EXAMINING COMMITTEE MEMBER
INITIAL 4Hr COURSE

Course presenters

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Course lesson plan

EXAMINING COMMITTEE MEMBER INITIAL 4Hr COURSE is offered online (computer-based).

Online course offering: 11/09/2020 – 11/09/2021

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PURPOSE

The purpose of this course is to educate and reinforce the knowledge of Examining Committee Member, Guardians, Nurses; ARNP, RN, other professionals who are working within various settings and the health care environment; as well as other individuals regarding duties of the Examining Committee Member, procedures to determine incapacity, dismissal of Petition, adjudicatory Hearing, order determining Incapacity, fees, rights of persons determined incapacitated, Guardian education requirements and the Guardianship system per Florida Guardianships Laws from the Florida Statutes Chapter 744.

Objectives

At the end of this course the participants will be able to:

1. Describe the duties of the Examining Committee Member
2. Discuss the procedures to determine incapacity
3. Discuss dismissal of Petition
4. Describe adjudicatory Hearing procedures
5. Discuss order determining incapacity
6. Identify the rights of persons determined incapacitated
7. Discuss the Guardian education requirements
8. Describe the Guardianship system.

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INTRODUCTION

EXAMINING COMMITTEE

According to Florida Statutes 744.331 (3)

(3) EXAMINING COMMITTEE

(a) Within 5 days after a petition for determination of incapacity has been filed, the court shall appoint an examining committee consisting of three members.

One member must be a psychiatrist or other physician.

The remaining members must be either a psychologist, a gerontologist, a psychiatrist, a physician, an advanced practice registered nurse, a registered nurse, a licensed social worker, a person with an advanced degree in gerontology from an accredited institution of higher education, or any other person who by knowledge, skill, experience, training, or education may, in the court's discretion, advise the court in the form of an expert opinion.

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According to Florida Statutes 744.331 (3) (a),

One of three members of the committee must have knowledge of the type of incapacity alleged in the petition. Unless good cause is shown, the attending or family physician may not be appointed to the committee. If the attending or family physician is available for consultation, the committee must consult with the physician.

Members of the examining committee 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 member may not be employed by any private or governmental agency that has custody of, or furnishes, services or subsidies, directly or indirectly, to the person or the family of the person alleged to be incapacitated or for whom a guardianship is sought. A petitioner may not serve as a member of the examining committee.

Members of the examining committee must be able to communicate, either directly or through an interpreter, in the language that the alleged incapacitated person speaks or to communicate in a medium understandable to the alleged incapacitated person if she or he is able to communicate. The clerk of the court shall send notice of the appointment to each person appointed no later than 3 days after the court's appointment.

(b) A person who has been appointed to serve as a member of an examining committee to examine an alleged incapacitated person may not thereafter be appointed as a guardian for the person who was the subject of the examination.

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According to Florida Statutes 744.331 (3)

(c) Each person appointed to an examining committee must file an affidavit with the court stating that he or she has completed the required courses or will do so no later than 4 months after his or her initial appointment. Each year, the chief judge of the circuit must prepare a list of persons qualified to be members of an examining committee.



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COMPLETE A MINIMUM OF 4 HOURS OF INITIAL TRAINING

According to Florida Statutes 744.331:

744.331 (3)(d)

(d) A member of an examining committee must complete a minimum of 4 hours of initial training. The person must complete 2 hours of continuing education during each 2-year period after the initial training. The initial training and continuing education program must be 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 training requirement for a person who has served for not less than 5 years on examining committees. If a person wishes to obtain his or her continuing education on the Internet or by watching a video course, the person must first obtain the approval of the chief judge before taking an Internet or video course.

(e) Each member of the examining committee shall examine the person. Each examining committee member must determine the alleged incapacitated person's ability to exercise those rights specified in s. 744.3215. In addition to the examination, each examining committee member must have access to, and may consider, previous examinations of the person, including, but not limited to, habilitation plans, school records, and psychological and psychosocial reports voluntarily offered for use by the alleged incapacitated person. Each member of the examining committee must file his or her report with the clerk of the court within 15 days after appointment.

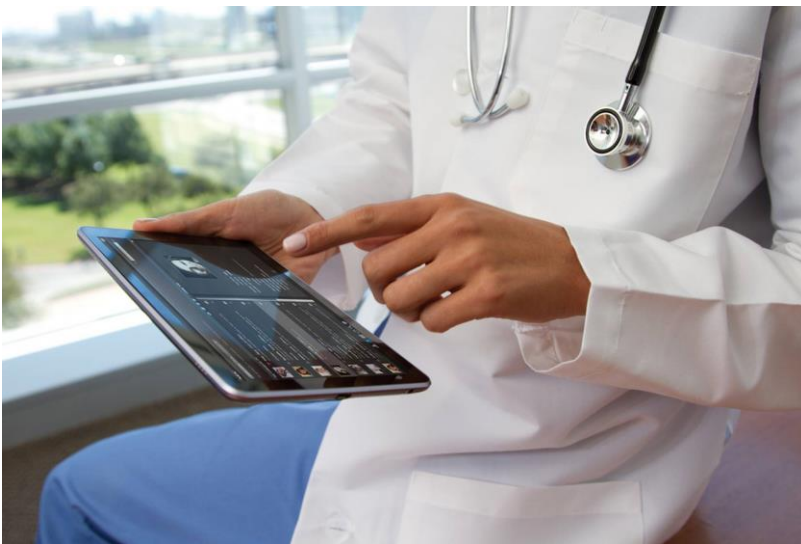
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According to Florida Statutes 744.331:

744.331 (3)

(f) The examination of the alleged incapacitated person must include a comprehensive examination, a report of which shall be filed by each examining committee member as part of his or her written report. The comprehensive examination report should be an essential element, but not necessarily the only element, used in making a capacity and guardianship decision. The comprehensive examination must include, if indicated:

1. A physical examination
2. A mental health examination, and
3. A functional assessment.



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According to Florida Statutes 744.331:

If any of these three aspects of the examination is not indicated or cannot be accomplished for any reason, the written report must explain the reasons for its omission.

(g) Each committee member's written report must include:

1. To the extent possible, a diagnosis, prognosis, and recommended course of treatment.
2. An evaluation of the alleged incapacitated person's ability to retain her or his rights, including, without limitation, the rights to marry; vote; contract; manage or dispose of property; have a driver license; determine her or his residence; consent to medical treatment; and make decisions affecting her or his social environment.
3. The results of the comprehensive examination and the committee member's assessment of information provided by the attending or family physician, if any.
4. A description of any matters with respect to which the person lacks the capacity to exercise rights, the extent of that incapacity, and the factual basis for the determination that the person lacks that capacity.
5. The names of all persons present during the time the committee member conducted his or her examination. If a person other than the person who is the subject of the examination supplies answers posed to the alleged incapacitated person, the report must include the response and the name of the person supplying the answer.
6. The signature of the committee member and the date and time the member conducted his or her examination.

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(h) Within 3 days after receipt of each examining committee member's report, the clerk shall serve the report on the petitioner and the attorney for the alleged incapacitated person by electronic mail delivery or United States mail, and, upon service, shall file a certificate of service in the incapacity proceeding. The petitioner and the attorney for the alleged incapacitated person must be served with all reports at least 10 days before the hearing on the petition, unless the reports are not complete, in which case the petitioner and attorney for the alleged incapacitated person may waive the 10 day requirement and consent to the consideration of the report by the court at the adjudicatory hearing. If such service is not timely effectuated, the petitioner or the alleged incapacitated person may move for a continuance of the hearing.

(i) The petitioner and the alleged incapacitated person may object to the introduction into evidence of all or any portion of the examining committee members' 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 upon which the challenge to admissibility is made. If an objection is timely filed and served, the court shall 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.

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Dismissal of Petition

According to Florida Statutes 744.331 (4) DISMISSAL OF PETITION. If a majority of the examining committee members conclude that the alleged incapacitated person is not incapacitated in any respect, the court shall dismiss the petition.

ADJUDICATORY HEARING

According to Florida Statutes 744.331 (5):

(5) ADJUDICATORY HEARING

(a) Upon appointment of the examining committee, the court shall set the date upon which the petition will be heard. The adjudicatory hearing must be conducted at least 10 days, which time period may be waived, but no more than 30 days, after the filing of the last filed report of the examining committee members, unless good cause is shown. The adjudicatory

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hearing must be conducted at the time and place specified in the notice of hearing and in a manner consistent with due process.

(b) The alleged incapacitated person must be present at the adjudicatory hearing, unless waived by the alleged incapacitated person or the person's attorney or unless good cause can be shown for her or his absence.

Determination of good cause rests in the sound discretion of the court.

(c) In the adjudicatory hearing on a petition alleging incapacity, the partial or total incapacity of the person must be established by clear and convincing evidence.



(6) ORDER DETERMINING INCAPACITY

If, after making findings of fact on the basis of clear and convincing evidence, the court finds that a person is incapacitated with respect to the exercise of a particular right, or all rights, the court shall enter a written

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order determining such incapacity. In determining incapacity, the court shall consider the person's unique needs and abilities and may only remove those rights that the court finds the person does not have the capacity to exercise. A person is determined to be incapacitated only with respect to those rights specified in the order.

(a) The court shall make the following findings:

1. The exact nature and scope of the person's incapacities
2. The exact areas in which the person lacks capacity to make informed decisions about care and treatment services or to meet the essential requirements for her or his physical or mental health or safety
3. The specific legal disabilities to which the person is subject; and
4. The specific rights that the person is incapable of exercising.

(b) When an order determines that a person is incapable of exercising delegable rights, the court must consider and find whether there is an alternative to guardianship that will sufficiently address the problems of the incapacitated person. A guardian may not be appointed if the court finds there is an alternative to guardianship which will sufficiently address the problems of the incapacitated person. If the court finds there is not an alternative to guardianship that sufficiently addresses the problems of the incapacitated person, a guardian must be appointed to exercise the incapacitated person's delegable rights.

(c) In determining that a person is totally incapacitated, the order must contain findings of fact demonstrating that the individual is totally without capacity to care for herself or himself or her or his property.

(d) An order adjudicating a person to be incapacitated constitutes proof of such incapacity until further order of the court.

(e) After the order determining that the person is incapacitated has been filed with the clerk, it must be served on the incapacitated person. The person is deemed incapacitated only to the extent of the findings of the

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court. The filing of the order is notice of the incapacity. An incapacitated person retains all rights not specifically removed by the court.

(f) Upon the filing of a verified statement by an interested person stating:

1. That he or she has a good faith belief that the alleged incapacitated person's trust, trust amendment, or durable power of attorney is invalid; and

2. A reasonable factual basis for that belief, the trust, trust amendment, or durable power of attorney shall not be deemed to be an alternative to the appointment of a guardian. The appointment of a guardian does not limit the court's power to determine that certain authority granted by a durable power of attorney is to remain exercisable by the agent.

(7) FEES

(a) The examining committee and any attorney appointed under subsection (2) are entitled to reasonable fees to be determined by the court.

(b) The fees awarded under paragraph (a) shall be paid by the guardian from the property of the ward or, if the ward is indigent, by the state. The state shall have a creditor's claim against the guardianship 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 ad litem fees. If the state does not file its claim within the 90-day period, the state is thereafter barred from asserting the claim. Upon petition by the state for payment of the claim, the court shall enter an order authorizing immediate payment out of the property of the ward. The state shall keep a record of the payments.

(c) If the petition is dismissed or denied:

1. The fees of the examining committee shall be paid upon court order as expert witness fees under s. 29.004(6).

2. Costs and 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 1. upon such a finding.

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Procedures to determine incapacity

According to the Florida Statutes 744.331 regarding procedures to determine incapacity

(1) NOTICE OF PETITION TO DETERMINE INCAPACITY

Notice of the filing of a petition to determine incapacity and a petition for the appointment of a guardian if any and copies of the petitions must be served on and read to the alleged incapacitated person. The notice and copies of the petitions must also be given to the attorney for the alleged incapacitated person and served upon all next of kin identified in the petition.

The notice must state the time and place of the hearing to inquire into the capacity of the alleged incapacitated person and that an attorney has been appointed to represent the person and that, if she or he is determined to be incapable of exercising certain rights, a guardian will be appointed to exercise those rights on her or his behalf.

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According to the Florida Statutes 744.331 regarding procedures to determine incapacity

(2) ATTORNEY FOR THE ALLEGED INCAPACITATED PERSON

(a) When a court appoints an attorney for an 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 chapter.

(b) The court shall appoint an attorney for each person alleged to be incapacitated in all cases involving a petition for adjudication of incapacity. The alleged incapacitated person may substitute her or his own attorney for the attorney appointed by the court.

(c) Any attorney representing an 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.

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According to the Florida Statutes 744.331

Minimum of 8 hours of education in guardianship

(d) An attorney seeking to be appointed by a court for incapacity and guardianship proceedings must have completed a minimum of 8 hours of education in guardianship. A court may waive the initial training requirement for an attorney who has served as a court-appointed attorney in incapacity proceedings or as an attorney of record for guardians for not less than 3 years.



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Order Determining Incapacity



According to Florida Statutes 744.331 (6),

If, after making findings of fact on the basis of clear and convincing evidence, the court finds that a person is incapacitated with respect to the exercise of a particular right, or all rights, the court shall enter a written order determining such incapacity.

In determining incapacity, the court shall consider the person's unique needs and abilities and may only remove those rights that the court finds the person does not have the capacity to exercise. A person is determined to be incapacitated only with respect to those rights specified in the order.

(a) The court shall make the following findings:

1. The exact nature and scope of the person's incapacities
2. The exact areas in which the person lacks capacity to make informed decisions about care and treatment services or to meet the essential requirements for her or his physical or mental health or safety
3. The specific legal disabilities to which the person is subject; and
4. The specific rights that the person is incapable of exercising.

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(b) When an order determines that a person is incapable of exercising delegable rights, the court must consider and find whether there is an alternative to guardianship that will sufficiently address the problems of the incapacitated person. A guardian may not be appointed if the court finds there is an alternative to guardianship which will sufficiently address the problems of the incapacitated person. If the court finds there is not an alternative to guardianship that sufficiently addresses the problems of the incapacitated person, a guardian must be appointed to exercise the incapacitated person's delegable rights.

(c) In determining that a person is totally incapacitated, the order must contain findings of fact demonstrating that the individual is totally without capacity to care for herself or himself or her or his property.

(d) An order adjudicating a person to be incapacitated constitutes proof of such incapacity until further order of the court.

(e) After the order determining that the person is incapacitated has been filed with the clerk, it must be served on the incapacitated person. The person is deemed incapacitated only to the extent of the findings of the court. The filing of the order is notice of the incapacity. An incapacitated person retains all rights not specifically removed by the court.

(f) Upon the filing of a verified statement by an interested person stating:

1. That he or she has a good faith belief that the alleged incapacitated person's trust, trust amendment, or durable power of attorney is invalid; and
2. A reasonable factual basis for that belief,

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the trust, trust amendment, or durable power of attorney shall

not be deemed to be an alternative to the appointment of a guardian. The appointment of a guardian does not limit the court's power to determine that certain authority granted by a durable power of attorney is to remain exercisable by the agent.

FEES

According to Florida Statutes 744.331 (7) regarding fee,

- (a) The examining committee and any attorney appointed under subsection (2) are entitled to reasonable fees to be determined by the court.
- (b) The fees awarded under paragraph (a) shall be paid by the guardian from the property of the ward or, if the ward is indigent, by the state. The state shall have a creditor's claim against the guardianship 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 ad litem fees. If the state does not file its claim within the 90-day period, the state is thereafter barred from asserting the claim. Upon petition by the state for payment of the claim, the court shall enter an order authorizing immediate payment out of the property of the ward. The state shall keep a record of the payments.

(c) If the petition is dismissed or denied:

1. The fees of the examining committee shall be paid upon court order as expert witness fees under s. 29.004(6).
2. Costs and attorney fees of the proceeding may be assessed against the petitioner if the court finds the petition to have been filed in bad faith.

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The petitioner shall also reimburse the state courts system for any amounts paid under subparagraph 1. upon such a finding.

Guardian and attorney fees and expenses

According to Florida Statutes 744.108,

(1) A guardian, or an attorney who has rendered services to the ward or to the guardian on the ward's behalf, is entitled to a reasonable fee for services rendered and reimbursement for costs incurred on behalf of the ward.

(2) When fees for a guardian or an attorney are submitted to the court for determination, the court shall 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 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 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.

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(3) In awarding fees to attorney guardians, the court must clearly distinguish between fees and expenses for legal services and fees and expenses for guardian services and must have determined that no conflict of interest exists.

(4) Fees for legal services may include customary and reasonable charges for work performed by legal assistants employed by and working under the direction of the attorney.

(5) All petitions for guardian and attorney fees and expenses must be accompanied by an itemized description of the services performed for the fees and expenses sought to be recovered.

(6) A petition for fees or expenses may not be approved without prior notice to the guardian and to the ward, unless the ward is a minor or is totally incapacitated.

(7) A petition for fees shall include the period covered and the total amount of all prior fees paid or costs awarded to the petitioner in the guardianship proceeding currently before the court.

(8) When court proceedings are instituted to review or determine a guardian's or an attorney's fees under subsection (2), such proceedings are part of the guardianship administration process and the costs, including costs and attorney fees for the guardian's attorney, an attorney appointed under s. 744.331(2), or an attorney who has rendered services to the ward, shall be determined by the court and paid from the assets of the guardianship estate unless the court finds the requested compensation under subsection (2) to be substantially unreasonable.

(9) The court may determine that a request for compensation by the guardian, the guardian's attorney, a person employed by the guardian, an

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attorney appointed under s. 744.331(2), or an attorney who has rendered services to the ward, is reasonable without receiving expert testimony. A person or party may offer expert testimony for or against a request for compensation after giving notice to interested persons. Reasonable expert witness fees shall be awarded by the court and paid from the assets of the guardianship estate using the standards in subsection (8).

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Rights of persons determined incapacitated

Annual review of the guardianship report and plan

According to Florida Statutes 744.3215, rights of persons determined incapacitated

- (1) A person who has been determined to be incapacitated retains the right:
 - (a) To have an annual review of the guardianship report and plan.

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CONTINUING REVIEW OF THE NEED FOR RESTRICTION OF HIS OR HER RIGHTS.

According to Florida Statutes 744.3215,

- (1) A person who has been determined to be incapacitated retains the right:
- (b) To have continuing review of the need for restriction of his or her rights.

RESTORED TO CAPACITY

According to Florida Statutes 744.3215,

- (1) A person who has been determined to be incapacitated retains the right:
- (c) To be restored to capacity at the earliest possible time.

TREATED HUMANELY

According to Florida Statutes 744.3215,

- (1) A person who has been determined to be incapacitated retains the right:
- (d) To be treated humanely, with dignity and respect, and to be protected against abuse, neglect, and exploitation.

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QUALIFIED GUARDIAN

According to Florida Statutes 744.3215,

- (1) A person who has been determined to be incapacitated retains the right:
(e) To have a qualified guardian.

INDEPENDENT AS POSSIBLE

Florida Statutes 744.3215 states:

- (1) A person who has been determined to be incapacitated retains the right:
(f) To remain as independent as possible, including having his or her preference as to place and standard of living honored, either as he or she expressed or demonstrated his or her preference prior to the determination of his or her incapacity or as he or she currently expresses his or her preference, insofar as such request is reasonable.

PROPERLY EDUCATED

According to Florida Statutes 744.3215,

- (1) A person who has been determined to be incapacitated retains the right:
(g) To be properly educated.

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MANAGEMENT FOR PROPERTY

Florida Statutes 744.3215 states:

- (1) A person who has been determined to be incapacitated retains the right:
- (h) To receive prudent financial management for his or her property and to be informed how his or her property is being managed if he or she has lost the right to manage property.

SERVICES AND REHABILITATION

According to Florida Statutes 744.3215:

- (1) A person who has been determined to be incapacitated retains the right:
- (i) To receive services and rehabilitation necessary to maximize the quality of life.

DISCRIMINATION

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According to Florida Statutes 744.3215,

- (1) A person who has been determined to be incapacitated retains the right:
(j) To be free from discrimination because of his or her incapacity.

ACCESS TO COURT, COUNSEL, VISITORS

According to Florida Statutes 744.3215:

- (1) A person who has been determined to be incapacitated retains the right:
(k) To have access to the courts.
(l) To counsel.
(m) To receive visitors and communicate with others.

NOTICE OF ALL PROCEEDINGS

According to Florida Statutes 744.3215,

- (1) A person who has been determined to be incapacitated retains the right:
(n) To notice of all proceedings related to determination of capacity and guardianship, unless the court finds the incapacitated person lacks the ability to comprehend the notice.

PRIVACY

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According to Florida Statutes 744.3215:

- (1) A person who has been determined to be incapacitated retains the right:
(o) To privacy.

Florida Statutes 744.3215 states:

(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 been removed, the right to marry is subject to court approval.
- (b) To vote.
- (c) To personally apply for government benefits.
- (d) To have a driver license.
- (e) To travel.
- (f) To seek or retain employment.

(3) Rights that may be removed from a person by an order determining incapacity and which may be delegated to the guardian include the right:

- (a) To contract.
- (b) To sue and defend lawsuits.
- (c) To apply for government benefits.
- (d) To manage property or to make any gift or disposition of property.
- (e) To determine his or her residence.
- (f) To consent to medical and mental health treatment.
- (g) To make decisions about his or her social environment or other social aspects of his or her life.

(4) Without first obtaining specific authority from the court, as described in s. 744.3725, a guardian may not:

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- (a) Commit the ward to a facility, institution, or licensed service provider without formal placement proceeding, pursuant to chapter 393, chapter 394, or chapter 397.
- (b) Consent on behalf of the ward to the performance on the ward of any experimental biomedical or behavioral procedure or to the participation by the ward 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 preserve the life of or prevent serious impairment to the mental or physical health of the ward; or
 - 2. It is intended to assist the ward to develop or regain his or her abilities.
- (c) Initiate a petition for dissolution of marriage for the ward.
- (d) Consent on behalf of the ward to termination of the ward's parental rights.
- (e) Consent on behalf of the ward to the performance of a sterilization or abortion procedure on the ward.

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GUARDIAN EDUCATION REQUIREMENTS



According to F.S. 744.3145:

744.3145 Guardian education requirements

- (1) Each ward is entitled to a guardian competent to perform the duties of a guardian 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 guardian of the property of a minor child, must receive a minimum of 8 hours of instruction and training which covers:
 - (a) The legal duties and responsibilities of the guardian
 - (b) The rights of the ward
 - (c) The availability of local resources to aid the ward; and

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(d) The preparation of habilitation plans and annual guardianship reports, including financial accounting for the ward's property.

(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 the guardian of the property

(b) The preparation of the initial inventory and annual guardianship accountings for the ward's property; 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 his or her appointment as guardian. 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 organization. Court-approved organizations may include, but are not limited to, community or junior colleges, guardianship organizations, and the local bar association or The Florida Bar.

(5) Expenses incurred by the guardian to satisfy the education requirement may be paid from the ward's estate, unless the court directs that such expenses be paid by the guardian individually.

(6) The court may, in its discretion, waive some or all of the requirements of this section or impose additional requirements. The court 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 not apply to professional guardians.

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THE GUARDIANSHIP SYSTEM

The following section provides a review of definitions as detailed by Florida Guardianship Law F.S. 744.102:

Florida Statutes 744.102:

Definitions As used in this chapter, the term:

- (1) “Attorney for the alleged incapacitated person” means an attorney who represents the alleged incapacitated person. The attorney shall represent the expressed wishes of the alleged incapacitated person to the extent it is consistent with the rules regulating The Florida Bar.
- (2) “Audit” means a systematic review of financial and all other documents to ensure compliance with s. 744.368, rules of court, and local procedures using generally accepted accounting principles. The term includes various practices that meet professional standards, such as verifications, reviews of substantiating papers and accounts, interviews, inspections, and investigations.
- (3) “Clerk” means the clerk or deputy clerk of the court.
- (4) “Corporate guardian” means a corporation authorized to exercise fiduciary or guardianship powers in this state and includes a nonprofit corporate guardian.
- (5) “Court” means the circuit court.
- (6) “Court monitor” means a person appointed by the court under s. 744.107 to provide the court with information concerning a ward.
- (7) “Estate” means the property of a ward subject to administration.
- (8) “Foreign guardian” means a guardian appointed in another state or country.

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- (9) “Guardian” means a person who has been appointed by the court to act on behalf of a ward’s person or property, or both.
- (a) “Limited guardian” means a guardian who has been appointed by the court to exercise the legal rights and powers specifically designated by court order entered after the court has found that the ward lacks the capacity to do some, but not all, of the tasks necessary to care for his or her person or property, or after the person has voluntarily petitioned for appointment of a limited guardian.
- (b) “Plenary guardian” means a person who has been appointed by the court to exercise all delegable legal rights and powers of the ward after the court has found that the ward lacks the capacity to perform all of the tasks necessary to care for his or her person or property.
- (10) “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 that proceeding.
- (11) “Guardian advocate” means a person appointed by a written order of 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.
- (12) “Incapacitated person” means a person who has been judicially determined to lack the capacity to manage at least some of the property or to meet at least some of the essential health and safety requirements of the person.
- (a) To “manage property” means to take those actions necessary to obtain, administer, and dispose of real and personal property, intangible property, business property, benefits, and income.
- (b) To “meet essential requirements for health or safety” means to take those actions necessary to provide the health care, food, shelter, clothing, personal hygiene, or other care without which serious and imminent physical injury or illness is more likely than not to occur.
- (13) “Minor” means a person under 18 years of age whose disabilities have not been removed by marriage or otherwise.

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(14) “Next of kin” means those persons who would be heirs at law of the ward or alleged incapacitated person if the person were deceased and includes the lineal descendants of the ward or alleged incapacitated person.

(15) “Nonprofit corporate guardian” means a nonprofit corporation organized for religious or charitable purposes and existing under the laws of this state.

(16) “Preneed guardian” means a person named in a written declaration to serve as guardian in the event of the incapacity of the declarant as provided in s. 744.3045.

(17) “Professional guardian” means any guardian who has at any time rendered services to three or more wards as their guardian. A person serving as a guardian for two or more relatives as defined in s. 744.309(2) is not considered a professional guardian. A public guardian shall be considered a professional guardian for purposes of regulation, education, and registration.

(18) “Property” means both real and personal property or any interest in it and anything that may be the subject of ownership.

(19) “Standby guardian” means a person empowered to assume the duties of guardianship upon the death or adjudication of incapacity of the last surviving natural or appointed guardian.

(20) “Surrogate guardian” means a guardian designated according to s. 744.442.

(21) “Totally incapacitated” means incapable of exercising any of the rights enumerated in s. 744.3215(2) and (3).

(22) “Ward” means a person for whom a guardian has been appointed.

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Office of Public and Professional Guardians

According Florida Statutes 744.2001 regarding the 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:

(a) Have oversight responsibilities for all public and professional guardians.

(b) Establish standards of practice for public and professional guardians by rule, in consultation with professional guardianship associations and other interested stakeholders, no later than October 1, 2016. The executive

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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.

(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:

(a) Developing and implementing a monitoring tool to ensure compliance of professional guardians 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. 744.368.

(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:

(a) Reviewing the current public guardian programs in Florida and other states.

(b) Developing, in consultation with local guardianship offices and other interested stakeholders, statewide performance measures.

(c) Reviewing various methods of funding public guardianship programs, the kinds of services being provided by such programs, and the

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demographics of the wards. In addition, the executive director shall review and make recommendations regarding the feasibility of recovering a portion or all of the costs of providing public guardianship services from the assets or income of the wards.

(d) By January 1 of each year, providing a status report and recommendations to the secretary which address the need for public guardianship services and related issues.

(e) Developing a guardianship training program curriculum that may be offered to all guardians, whether public or private.

(5) The executive director may provide assistance to local governments or entities in pursuing grant opportunities. The executive director shall review and make recommendations in the annual report on the availability and efficacy of seeking Medicaid matching funds. The executive director shall diligently seek ways to use existing programs and services to meet the needs of public wards.

(6) The executive director may conduct or contract for demonstration projects authorized by the Department of Elderly Affairs, within funds appropriated or through gifts, grants, or contributions for such purposes, to determine the feasibility or desirability of new concepts of organization, administration, financing, or service delivery designed to preserve the civil 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.

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RESOURCES:

[FOR MORE INFORMATION](#)

[REVIEW THE](#)

[FLORIDA STATUTES 744](#)

[CONTACT:](#)

Florida Department of Elder Affairs

4040 Esplanade Way
Tallahassee, FL 32399-7000
Phone: 850-414-2000
Fax: 850-414-2004
TDD: 850-414-2001
Email: information@elderaffairs.org

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Questions about Programs and How to Apply for Services

Call the Elder Helpline at **1-800-96-ELDER (1-800-963-5337)** to find out information regarding eligibility to receive benefits and services from one or more programs.

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