

## CHAPTER 744

## FLORIDA GUARDIANSHIP LAW, FIRST PART

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**744.01 Short title.**—This chapter, together with chapters 745 and 746 next following, is known and may be cited as the Florida guardianship law.

*History.*—§1, ch. 8478, 1921; CGL 5884; §1, ch. 22750, 1945.

**744.02 Application.**—This Florida guardianship law shall take effect on January 1, 1946, at 12:01 o'clock in the morning, and thereafter shall govern all matters pertaining to guardians and wards and the property of such wards, whether the guardianship exists at the time this law takes effect or arises thereafter; provided, however, that all guardianships and curatorships pending in the circuit courts at the time this law takes effect shall be completed in such courts according to the laws heretofore existing.

*History.*—§50, Nov. 20, 1828; RS 2087; GS 2604; RGS 3965; §1, ch. 8478, 1921; CGL 5885; am. §1, ch. 22750, 1945.

**744.03 Definitions.**—When used in this law, unless the context requires otherwise:

(1) A "guardian" is one to whom the law has entrusted the custody and control of the person or of the property, or of both, of an incompetent. "Guardian" may mean curator, conservator or committee where the context indicates a general, and not a particular, use of the term.

(2) A "guardian ad litem" is one appointed by a court, in which particular litigation is pending, to represent a ward in that particular litigation.

(3) A "foreign guardian" is one appointed in another state or country.

(4) A "testamentary guardian" is one appointed for the person of a minor child by the will of its parent.

(5) An "incompetent" is any person who, because of minority, senility, lunacy, insanity, imbecility, idiocy, drunkenness, excessive use of drugs or other physical or mental incapacity, is incapable of either managing his property or caring for himself, or both.

(6) An "infant" or a "minor" is a person under twenty-one years of age whose disabilities have not been removed by marriage or otherwise according to law.

(7) "Probate court" means county judge's court.

(8) "Property" means realty, personalty, choses in action or any interest in the same, legal or equitable, and also claims or rights of action arising in tort.

(9) A "ward" is an incompetent for whom a guardian has been appointed.

**History.**—§50, Nov. 20, 1828; RS 2088; GS 2605; RGS 3966; §1, ch. 8478, 1921; CGL 5886; am. §1, ch. 22750, 1945.

**744.04 Liberal construction.**—This law shall be liberally construed to the end that controversies and the rights of the parties may be speedily and finally determined; and the rule that statutes in derogation of the common law shall be strictly construed does not apply.

**History.**—§2089, RS 1892; GS 2606; RGS 3967; CGL 5887; am. §1, ch. 22750, 1945.

**744.05 Guardians of incompetent world war veterans.**—The provisions of this law shall extend to incompetent world war veterans, specifically provided for in chapters 293 and 294, Florida Statutes, or any amendment or revision thereof. The provisions of this law shall be cumulative to the provisions of said chapters. However, any conflict arising between provisions in said chapters 293 and 294, or any amendment or revision thereof, and this law shall be resolved by giving effect to the law as stated in said chapters.

**History.**—§1, Nov. 20, 1828; RS 2090; GS 2607; RGS 3968; CGL 5888; am. §1, ch. 22750, 1945.

#### 744.06 Jurisdiction.—

(1) **COUNTY JUDGE.** — (a) The county judge shall have jurisdiction over all matters pertaining to guardians and wards and to the management and the administration of the property of wards, regardless of the origin or cause of the incompetency of the ward.

(b) The county judge may appoint a guardian of the person or of the property, or of both, of an incompetent. The county judge may hear and determine complaints of wards against their guardians, require of guardians security or additional security when necessary, displace them, and make such orders as to the said county judge may seem equitable and right relating to the estates of wards. The county judge may require of guardians, from time to time, inventories of their wards' estates, and accounts of receipts and disbursements, and shall make such orders as to him shall seem just. He may enforce his orders in a summary way by attachment for contempt and by imprisonment.

(c) All orders of the county judge in guardianship matters shall be in writing and shall be filed and recorded in the office of the county judge.

(d) In a conflict as to jurisdiction between county judges' courts, the first to obtain lawful jurisdiction shall retain it.

(2) **CIRCUIT COURT.** — In guardianship proceedings the circuit courts shall have no jurisdiction except the appellate and the supervisory jurisdiction authorized by article V, §11, of the constitution of Florida.

(3) **COURT OF EQUITY.** — No court of equity shall be deprived of its inherent jurisdiction to appoint or to remove guardians or require of them accountings of their trusts or to administer the estates of wards in cases in which equitable intervention is necessary for complete and adequate relief.

**History.**—§1, ch. 3887, 1889; RS 2091; GS 2608; RGS 3969; CGL 5889; am. §1, ch. 22750, 1945.

**744.07 Court always open.**—The court of the county judge, for the exercise of its jurisdiction in all guardianship matters, shall be open at all times for the transaction of business.

**History.**—§2092, RS 1892; GS 2609; RGS 3970; CGL 5890; am. §1, ch. 22750, 1945.

**744.08 Disqualification of county judge.**—The county judge shall be disqualified in all instances in which judges generally are so disqualified in Florida.

**History.**—§2093, RS 1892; GS 2610; RGS 3971; CGL 5891; am. §1, ch. 22750, 1945.

**744.09 Substitution of circuit judge.**—A circuit judge may be substituted for the county judge in guardianship proceedings in the same manner as provided for the substitution of circuit judges in probate proceedings by §732.05, Florida Statutes.

**History.**—§2094, RS 1892; GS 2611; RGS 3972; CGL 5892. Am. §1, ch. 22750, 1945.

**744.10 Change of domicile of ward.**—The domicile of a resident ward is the county in which the guardian of the person was lawfully appointed. The county judge may, upon good cause shown by petition of the guardian of the person and proof of the allegations therein contained, authorize a change of the domicile of the ward.

**History.**—§35, Nov. 20, 1828; §1, ch. 1560, 1866; RS 2095; GS 2612; RGS 3973; CGL 5893. Am. §1, ch. 22750, 1945.

**744.11 Venue.** — The venue in proceedings for the appointment of any guardian shall be as follows:

(1) If the incompetent is a resident of this state, the venue shall be in the county where the incompetent resides.

(2) If the incompetent is not a resident of this state, then the venue shall be in any county in Florida in which property of the incompetent is located.

(3) If the incompetent is not a resident of this state and owns no property located or situated in this state, then the venue shall be in the county where any debtor of the incompetent resides.

**History.**—§1, ch. 14733, 1931; CGL 1936 Supp. 5893(1); am. §1, ch. 22750, 1945.

**744.12 Guardian ad litem.**—Whenever an incompetent is made a party to any litigation pending in any court in this state and has no

guardian, or when his interest is adverse to that of his guardian, such court shall appoint, with or without notice, a guardian ad litem for such incompetent. A guardian ad litem shall be responsible to such incompetent for his conduct in connection with such litigation in the same manner as if he were a regularly qualified guardian. A guardian ad litem shall make and file an oath to discharge his duties faithfully; however, this oath shall not be jurisdictional. The guardian ad litem may appear and plead without service of process upon him, and he shall appear and plead without service of process upon him if directed to do so by the court appointing him.

*History.*—§3, ch. 868, 1859; RS 2097; GS 2613; RGS 3974; CGL 5894; am. §1, ch. 22750, 1945.  
cf.—§744.03(2), Definition.

#### 744.13 Natural guardians.—

(1) The mother and father jointly are natural guardians of their own children and of their adopted children during infancy. If one parent dies, the natural guardianship shall pass to the surviving parent, and such right shall continue even though the surviving parent remarries. In the event of a divorce between the parents, the natural guardianship shall belong to the parent to whom the custody of the children was awarded. If the parents are given joint custody, then both shall continue as natural guardians. In the event a divorce is granted, and neither the father nor the mother is given custody of the children, then neither can act as natural guardian of the children. The mother of an illegitimate child is the natural guardian of such child.

(2) The mother and father jointly, or the survivor, may, without appointment, authority or bond, collect, receive, manage and dispose of any personal property inherited by, or otherwise accruing to the benefit of, the child during infancy, when the amount involved in any instance does not exceed five hundred dollars; provided, however, that in case of a personal injury or other tort claim the power and authority of a natural guardian may be exercised only when the amount of any settlement or compromise of such claim does not exceed the sum of one hundred dollars.

(3) All receipts, bills of sale, releases or other instruments executed by a natural guardian under the powers provided for in subsection (2) of this section shall be binding upon the ward.

*History.*—§5, ch. 868, 1859; RS 2098; GS 2614; RGS 3975; CGL 5895; am. §1, ch. 22750, 1945.

**744.14 Testamentary guardian.**— A surviving father or a surviving mother may by will name a guardian for the person of his or her minor child to serve during such child's minority or any part thereof. Such guardian shall be subject to the provisions of law in the same manner as other guardians.

*History.*—§2099, RS 1892; GS 2615; RGS 3976; CGL 5896; am. §1, ch. 22750, 1945.  
cf.—§744.03(4), Definition.

#### 744.15 Foreign guardians.—

(1) Foreign guardians who produce orders

appointing them guardians, curators, conservators or committees, duly obtained in any state, territory or country and certified or exemplified according to law, shall be authorized to maintain actions in the several courts in this state under the same rules and regulations as other plaintiffs.

(2) Guardians appointed in any state, territory or country may be sued in this state with reference to property, real or personal, in this state, and may defend any suit, action or proceeding in any court of this state.

(3) Debtors who have received no written demand for payment from a guardian appointed in this state within three months after the appointment of a guardian, curator, conservator or committee in any state, territory or country other than this state, and whose property in Florida is subject to a mortgage or other lien securing such debt held by such foreign guardian, curator, conservator or committee, may make payment to the foreign guardian, curator, conservator or committee after the expiration of three months from the date of his appointment. A proper satisfaction of such mortgage or lien executed and acknowledged by the foreign guardian, curator, conservator or committee after said three months has expired, in the manner and form entitling the same to record in this state, with a duly certified or exemplified copy of the letters or other evidence of authority of such foreign guardian, curator, conservator or committee attached thereto, may be recorded in the public records of this state in like manner as other satisfactions; and when so recorded shall constitute an effective discharge of any such mortgage or lien, irrespective of whether the debtor making payment had received such written demand before paying the same.

(4) All persons indebted to a ward or having possession of personal property, either tangible or intangible, belonging to a ward, who have received no written demand for payment of such indebtedness or the delivery of such property from a guardian appointed in this state, are authorized to make payment of such indebtedness or to deliver such personal property to the foreign guardian, curator, conservator or committee after the expiration of three months from the date of his appointment.

*History.*—§ § 1924, 2100, RS 1892; GS 2616; RGS 3977; CGL 5897; am. §1, ch. 22750, 1945.

#### 744.16 Foreign guardian may manage the property of nonresident ward.—

(1) A guardian of the property of a nonresident ward, duly appointed by a court of another state, territory or country, who desires to manage any part or all of the real and personal property located in Florida of such nonresident ward, shall file a petition in the office of the county judge of the county wherein such property is located, setting forth his appointment, describing the property involved, stating the estimated value thereof, showing, to the best of his knowledge and belief, the indebtedness, if any, existing against the ward in this

state and setting forth his desires with reference to such property.

(2) Such guardian shall also designate a resident agent as required by §744.46.

(3) Such guardian shall file with such petition, certified or exemplified copies of his letters of guardianship and of his bond or other security. Evidence satisfactory to said county judge shall be produced showing that the foreign bond or other security is sufficient to guarantee the faithful management of the ward's property in this state. The county judge in his discretion may require a new guardian's bond in this state in such amount as he deems necessary, to be executed in accordance with the laws of this state and to be conditioned for the proper management and application of the property of the ward coming into the custody of said guardian in this state. The county judge may make such order or orders with reference to said petition as he deems appropriate.

(4) This section shall apply to and be operative in all cases in which the guardian of a nonresident ward is appointed by a court, or is made such guardian by virtue of the laws of another state, territory or country. In cases in which, by virtue of the laws of such state, territory or country, a person becomes the guardian of an estate of an incompetent domiciled therein, without an appointment by a court, or is not required to give bond or other security as such guardian, then the production of copies of letters of guardianship and bond or other security, and the evidence referred to in this section, shall not be required; provided, that satisfactory proof to the county judge is produced that such guardianship exists under the laws of such state, territory or country; and provided, further, that bond may be required by the county judge in such amount as he may deem necessary.

**History.**—§1, ch. 5144, 1903; GS 2617; RGS 3978; CGL 5898; am. §1, ch. 22750, 1945.

**744.17 Sale, mortgage or lease by foreign guardian of nonresident ward.**—A foreign guardian of a nonresident ward may sell, mortgage or lease real or personal property of his ward in this state in the same manner as provided in this law for the sale, lease or mortgage of real or personal property by a resident guardian; provided, however, that such foreign guardian must designate a resident agent as required by §744.46; and provided, further, that the county judge having jurisdiction may require of such foreign guardian bond for the proper application of the funds arising from such sale, lease or mortgage, as in his discretion he may deem necessary to protect the interests of the ward and to protect the Florida creditors of the ward. Any deed, lease or mortgage executed by a foreign guardian of a nonresident ward under the provisions of this law, when authorized or confirmed by the county judge, shall be effective to convey, lease or mortgage the right, title and interest of the ward in the property involved.

**History.**—§1, ch. 5904, 1909; RGS 3979; CGL 5899; §1, ch. 14837, 1931; CGL 1936 Supp. 5902(1); am. §1, ch. 22750, 1945.

**744.18 Resident guardian of the property of nonresident incompetent.**—The county judge of a county in which property, real or personal, of a nonresident incompetent is located, which requires the care of a guardian, may appoint a resident of Florida as guardian of the incompetent's property upon the petition of a relative, next friend or creditor of such incompetent, regardless of whether he has a foreign guardian or not. The foreign guardian, if there is one, may also petition for the appointment of such resident guardian.

**History.**—§2, ch. 5144, 1903; GS 2618; RGS 3980; CGL 5900; am. §1, ch. 22750, 1945.

**744.19 Petition for appointment of resident guardian for the property of nonresident incompetent.**—

(1) The petition for the appointment of a resident guardian for the property of a nonresident incompetent shall be in writing, and shall be prepared in accordance with the requirements of §744.30.

(2) If it is alleged that the incompetency is due to mental or physical incapacity, the petition shall be accompanied by a duly certified or exemplified copy of the adjudication of unsoundness of mind or of physical incapacity from the qualified authorities in the state, territory or country where such incompetent is domiciled, and shall state whether said incompetent is in the custody of any person or institution, and if so, shall give the name and post-office address of the custodian. Said adjudication shall constitute prima facie proof of such incompetency.

(3) If the question as to the mental or physical incapacity of a nonresident is presented while he is temporarily residing in Florida, and if he is not under an adjudication of incompetency made in some other state, territory or country, the procedure for the appointment of a resident guardian of his property shall be the same as though he were a citizen of Florida.

(4) The county judge may, if he deems it advisable, require the petitioner to execute and file a bond with good and sufficient sureties in a penal sum to be fixed by the judge and conditioned to pay the costs of such proceedings.

**History.**—§1, ch. 12042, 1927; CGL 5901; am. §1, ch. 22750, 1945.

**cf.**—§744.26, Bond, oath and duties.  
§744.30, Petition for appointment of guardian.

**744.20 Guardian ad litem for property of nonresident incompetent.**—After the filing of the application for appointment of a resident guardian of the property of a nonresident incompetent, the county judge shall make an order in writing appointing an attorney at law as guardian ad litem to defend the interest of the person alleged to be incompetent, who shall take oath and traverse the allegations of the application and defend the interests of the person alleged to be incompetent.

**History.**—§2, ch. 12042, 1927; CGL 5902; am. §1, ch. 22750, 1945.

**744.21 Notice of hearing on petition for appointment of resident guardian of the property of nonresident incompetent.**—When the ground for the appointment of such guardian is minority or is incompetency previously adjudicated in another state, territory or country, notice of the hearing shall be served personally or by registered mail on such incompetent and his legal custodian, if any, and also on one or more members of his family or relatives, if any are known to the petitioner, at least ten days before the hearing.

**History.**—§1, ch. 14836, 1931; CGL 1936 Supp. 5902(2); am. §1, ch. 22750, 1945.

**744.22 Hearing on petition for appointment of resident guardian of the property of nonresident incompetent.**—Upon the day set for the hearing on the petition for appointment of a resident guardian of the property of a nonresident incompetent, or on the date until which the hearing is adjourned for cause, the county judge, after hearing the evidence, shall issue an order granting or denying the relief sought in the petition.

**History.**—§2101, RS 1892; §1, ch. 4134, 1893; GS § § 2619, 2620; RGS 3981, 3982; CGL 5903, 5904; am. §1, ch. 22750, 1945.

**744.23 Costs on appointment of resident guardian of the property of nonresident incompetent.**—

(1) The county judge shall fix the compensation of the guardian ad litem and shall tax such compensation as costs in the case.

(2) If the petition is granted, the judgment for costs shall be against the guardian of the property of the nonresident incompetent, to be satisfied out of said property. If the petition is denied, the costs shall be against the applicant, or against the applicant and the obligors on the bond for costs, when such bond has been required.

**History.**—§2102, RS 1892; GS 2621; RGS 3983; CGL 5905; am. §1, ch. 22750, 1945.

**744.24 Testimony at hearing on appointment of resident guardian of the property of nonresident incompetent.**—Testimony to be used at the hearing on the petition for the appointment of a resident guardian of the property of a nonresident incompetent may be taken and filed, as provided in this law for the taking of testimony in other guardianship proceedings.

**History.**—§1, ch. 4720, 1899; GS 2629; RGS 3991; CGL 5913; am. §1, ch. 22750, 1945.

**744.25 Preference in appointment as resident guardian of the property of nonresident incompetent.**—In the appointment of such guardian the county judge shall be governed by the provisions of §744.35.

**History.**—§2, ch. 4720, 1899; GS 2630; RGS 3992; CGL 5914; am. §1, ch. 22750, 1945.

**744.26 Bond, oath, duties and powers of resident guardian of the property of nonresident ward.**—When a resident guardian of the property of a nonresident ward has been appointed, his duties as to oath and bond, and his other duties, powers and liabilities as to the custody, control, management and disposition of

his ward's property, and as to his removal, accounting and discharge shall be governed by the laws of this state pertaining to resident guardians of property of resident wards.

**History.**—§2, ch. 1554, 1866; RS 2110; GS 2631; RGS 3993; CGL 5915; am. §1, ch. 22750, 1945.

**744.27 Who may be appointed guardian of a resident incompetent.**—

(1) **RESIDENT.**—(a) Any resident of Florida who is sui juris is qualified to act as guardian of the person or of the property, or of both, of an incompetent; provided, however, that no person who has been convicted of a felony, or who, from sickness, intemperance or want of understanding, is incompetent to discharge the duties of guardian, shall be appointed to act as guardian. A married woman may act as guardian in Florida without the consent of her husband. The guardian of the person and the guardian of the property may be the same person, or they may be different persons.

(b) No county judge shall act as guardian after this law becomes effective, except in cases in which he has qualified prior to his election as county judge and in cases in which he is related to his ward by blood, marriage or adoption. When any county judge is a guardian, he shall make his settlement as such guardian with a judge of the circuit court of the county where he resides in the same manner as other guardians are required by this law to make their settlements with the county judge.

(2) **NONRESIDENT.**—Any nonresident who is sui juris may be appointed guardian of the person but not of the property of a resident incompetent; provided, such nonresident complies with the laws of Florida relating to guardianship of incompetents.

(3) **TRUST COMPANY OR NATIONAL BANK.**—A trust company incorporated under the laws of Florida or a national banking association authorized and qualified to exercise fiduciary powers in Florida may act as guardian of the property of any incompetent.

**History.**—§1, ch. 1554, 1866; RS 2111; GS 2632; RGS 3994; CGL 5916; am. §1, ch. 22750, 1945.

**744.28 Pleadings.**—The pleadings before the county judge in guardianship matters shall be in writing and shall be signed by the pleader or his attorney. All technical forms of pleading are abolished in guardianship matters. No defect of form shall impair substantial rights; and no defect in the statement of jurisdictional facts actually existing shall render void any proceedings. The pleadings and procedure with reference thereto shall be as nearly as possible the same as the pleadings and procedure under the probate law, as specified in §732.08, Florida Statutes.

**History.**—§1, ch. 9285, 1923; CGL 5933; am. §1, ch. 22750, 1945.

**744.29 Notice and service.**—

(1) Whenever a notice or citation is required to be published in a newspaper by any of the provisions of this law, unless otherwise specified by law, publication shall be once a week for four weeks in a newspaper authorized

to publish legal notices in the county of the guardianship, four publications being sufficient. If no newspaper is published in the county of the guardianship, then such notice may be published as aforesaid in a newspaper authorized to publish legal notices in any adjoining county. In lieu of publication in a newspaper in an adjoining county, such notice or citation may be by posting at not fewer than three public places in the county of the guardianship, one of which shall be at the courthouse, such other places to be prescribed by the county judge.

(2) Proof of publication or of posting shall be by affidavit, and such proof shall be filed in the office of the county judge.

(3) Whenever notice or citation is required by any of the provisions of this law and the manner and duration of such notice or citation is not specified, such notice or citation may be in such manner and for such length of time before the hearing as the county judge in his discretion may deem proper.

(4) Service may be made within the State of Florida in the manner prescribed by law for the service of any summons by any official of this state, or service may be made by any person by delivery of a true copy of a notice or citation to the person to be served. The return of service when made by a person other than an officer shall be by affidavit. Serving of notice or citation may be made outside the State of Florida by any official authorized to make service in the state, territory or country where the person to be served resides or can be found, or such service may be made by any person; provided, that if service is made by a person other than an officer, the return shall be made by affidavit. Whenever it is necessary to make service upon an incompetent, the notice or citation shall be served upon such incompetent and also on the person in whose care and custody such incompetent may be.

(5) The return of service in every case shall state the date when the notice or citation was received by the person making the return, the date it was served, the place of service, the name of the person served and the manner of service. Returns shall be amendable so as to speak the truth, and when amended, shall be effective as of the date of the original return.

(6) Service of notice or citation may be waived in writing by any interested person who is sui juris.

(7) If any person upon whom notice or citation is served fails to respond within the time prescribed in the notice or citation or within such time as the county judge, under exceptional circumstances, may allow, then the matter shall proceed ex parte as to such person, and judgment may be entered in accordance with the right and justice of the case.

**History.**—§1, ch. 4034, 1891; GS 2633; RGS 3995; CGL 5917; am. §1, ch. 22750, 1945.

**744.30 Petition for appointment of guardian.**—Every petition for the appointment of a guardian shall be sworn to by the petitioner, his agent or his attorney, and shall be filed in

the probate court having jurisdiction. The petition shall contain statements, to the best of petitioner's knowledge and belief, showing the name, age, residence and post-office address of the alleged incompetent, the nature of his incapacity, the approximate value and description of his property, the residence and post-office address of the petitioner, the names and addresses of the persons most closely related to the incompetent, or averments showing that reasonable search has been made and that such information cannot be ascertained without delay which would adversely affect the incompetent named in the petition, or his property.

**History.**—§2, ch. 4034, 1891; GS 2634; RGS 3996; CGL 5918; am. §1, ch. 22750, 1945.

**744.31 Petition for appointment of guardian for a person mentally or physically incompetent.**—No guardian of the person or of the property, or of both, of a person alleged to be mentally or physically incompetent can be appointed until after such person has been adjudicated to be incompetent in separate proceedings instituted for that purpose in accordance with §§394.20 to 394.22, inclusive, of the Florida Statutes, relating to the adjudication of incompetency. After such adjudication, a petition may be filed for the appointment of a guardian of either the person or of the property, or of both, of such person, and the general guardianship laws of this state shall apply to such petition and to all subsequent proceedings thereon. Any guardian appointed as a result of the filing of such petition shall be subject to the general guardianship laws of this state.

**History.**—§3, ch. 4034, 1891; GS 2635; RGS 3997; CGL 5919; am. §1, ch. 22750, 1945.

**744.32 Subpoenas and depositions.**—The county judge, upon application of any party, shall issue subpoenas and subpoenas duces tecum for the appearance of witnesses and the production of documents at any hearing. Depositions of witnesses in guardianship proceedings shall be taken, as nearly as possible, in the same manner as depositions are authorized to be taken under the probate law of Florida.

**History.**—§1, ch. 6943, 1915; RGS 3998; CGL 5920; am. §1, ch. 22750, 1945.

**744.33 Notice of hearing on petition for appointment of guardian for an incompetent.**—

(1) When the petition alleges that the nature of the incapacity is minority, if the petitioner is not the parent and if the parents of the minor are living, reasonable notice of the hearing shall be given to them. When a parent applies for appointment as guardian of his minor child, no notice is necessary unless the other parent is living and refuses to consent to such appointment.

(2) When the petition for the appointment of a guardian alleges that the person named therein as respondent has been adjudicated to be physically or mentally incompetent, or both, the county judge shall hear the petition without notice if it is filed at the conclusion of the hearing in which such person was so adjudi-

cated. If it is filed on a later date, then reasonable notice of the hearing shall be served on the respondent and also on one or more members of his family or relatives, if any can be found within the jurisdiction of the county judge, or if no such person can be found within the jurisdiction, then notice shall be given by such publication or otherwise as the county judge may think proper.

**History.**—§2, ch. 6943, 1915; RGS 3999; CGL 5921; am. §1, ch. 22750, 1945.

#### 744.34 Order of appointment.—

(1) Upon the day fixed for the hearing on the petition for the appointment of a guardian, the county judge shall hear the evidence on the question of the competency of the person who is the subject of the hearing. An order of the county judge previously adjudicating a person to be incompetent shall constitute conclusive proof of such incompetency until reversed or set aside or until the competency of such person has been restored as provided by law. The county judge may hear testimony on the question as to who is entitled to preference in the appointment as guardian. Any person interested may intervene in such proceedings with leave of the county judge. If the county judge, on such hearing, is satisfied that the person who is the subject of the hearing is incompetent, he shall appoint a guardian of the person or of the property, or of both, as he may deem necessary. The order shall state the specific nature of the incapacity found to be existing. The order of appointment shall also specify the amount of the bond to be given by the guardian.

(2) The testimony adduced at the hearing may be transcribed and filed at the request of any of the parties or upon the direction of the county judge.

**History.**—§3, ch. 6943, 1915; RGS 4000; CGL 5922; am. §1, ch. 22750, 1945.

**744.35 Preference in appointment.**—In the appointment of a guardian the county judge shall give due consideration to the appointment of one of the next of kin of said incompetent who is a fit and proper person and qualified to act, and likewise to any person designated as guardian in any will in which the incompetent is a beneficiary. The county judge may in his discretion appoint any person who is qualified to act as guardian, whether related to the ward or not.

**History.**—§4, ch. 6943, 1915; RGS 4001; CGL 5923; am. §1, ch. 22750, 1945.

**744.36 Oath of guardian.**—Every guardian, before exercising his authority as guardian, shall take oath that he will faithfully perform his duties as guardian and that he will render true accounts whenever required according to law, which oath may be administered by any officer authorized to administer oaths under the laws of this state and shall be filed in the office of the county judge. This oath is not jurisdictional.

**History.**—§6, ch. 6943, 1915; RGS 4003; CGL 5925; am. §1, ch. 22750, 1945.

**744.37 Oaths and affidavits.**—Oaths, affirmations, verifications and affidavits required by law in guardianship proceedings may be made, either within or without the state, before any officer authorized by the laws of this state to administer oaths.

**History.**—§5, ch. 6943, 1915; RGS 4002; CGL 5924; am. §1, ch. 22750, 1945.

#### 744.38 Bond of guardian.—

(1) Every person appointed a guardian of the property of a ward in Florida, before entering on his duties as guardian, shall be required by the county judge to execute and file in his office a bond with two or more sufficient sureties to be approved by the county judge, or an authorized surety company as surety. Such bond shall be payable to the governor of the state and his successors in office, conditioned to perform faithfully all duties as such guardian according to law. In form the bond must be joint and several.

(2) All bonds required in guardianship proceedings, whether original bonds or additional bonds, shall be filed in the office of the county judge having jurisdiction and shall be recorded by him.

(3) The requirements of this section shall not be applicable to banks and trust companies authorized by law to act as guardians.

(4) Signatures of principals and sureties other than surety companies on a guardian's bond shall be witnessed by two competent witnesses, but the failure to have such a signature witnessed shall not affect the validity of the bond.

(5) When the sureties on a bond are persons (and not a surety company), the guardian shall be required to file with his annual returns proof satisfactory to the county judge that the sureties are alive and solvent.

(6) The penal sum of a guardian's bond shall be fixed by the county judge in his discretion, and it must be in an amount not less than the full amount of the cash on hand and on deposit belonging to the ward, plus the value of the notes and bonds owned by the ward which are payable to bearer.

**History.**—§8, ch. 6943, 1915; RGS 4005; CGL 5927; am. §1, ch. 22750, 1945.

**744.39 Bond of surety company.**—Any surety company authorized to do business in this state may become surety upon the bond of a guardian; and in such case, there need be only one surety on such bond.

**History.**—§7, ch. 6943, 1915; RGS 4004; CGL 5926; am. §7, ch. 22000, 1943; am. §1, ch. 22750, 1945.

**744.40 Letters of guardianship.**—While letters of guardianship are not necessary to the validity of an order appointing the guardian, the county judge may issue such letters to the guardian of the person or of the property or of both, and he must issue the same whenever a request is made by the guardian for such letters, and the cost of the issuance of such letters of guardianship shall be paid by the estate of the ward.

**History.**—§9, ch. 6943, 1915; RGS 4006; CGL 5928; am. §1, ch. 22750, 1945.

**744.41 Insufficiency of bond.**—If any person files with the county judge having jurisdiction a petition alleging that the sureties on any bond given by a guardian are insolvent or insufficient or that the bond is insufficient in amount and substantiates the same with evidence satisfactory to the county judge, after notice to the guardian and his sureties and hearing on the petition, said judge may enter an order requiring additional sureties or an additional bond, as the circumstances require. If the county judge has such knowledge, though no petition has been filed, he may, after notice, enter such order sua sponte as the circumstances require.

**History.**—§10, ch. 6943, 1915; RGS 4007; CGL 5929; am. §1, ch. 22750, 1945.

**744.42 Validity of bond.**—No bond executed by any guardian shall be invalid because of informality in it or because of informality or illegality in the appointment of such guardian. Such 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.

**History.**—§11, ch. 6943, 1915; RGS 4008; CGL 5930; am. §1, ch. 22750, 1945.

**744.43 Liability of surety.**—No surety for any guardian shall be charged beyond the assets of the ward's property because of any omission or mistake in pleading or because of the false pleading of such guardian.

**History.**—§12, ch. 6943, 1915; RGS 4009; CGL 5931; am. §1, ch. 22750, 1945.

**744.44 Suit upon bond.**—A bond given by any guardian, upon the breach thereof, may be from time to time put in suit and prosecuted by or on behalf of the person damaged by such breach, until the whole penalty of such bond has been recovered. The county judge shall deliver to any person, on request and payment of his legal fees for the same, a true copy of any bond given by any guardian, and such copy duly certified, with the seal of the court affixed, shall be prima facie proof of the bond.

**History.**—§13, ch. 6943, 1915; RGS 4010; CGL 5932; am. §1, ch. 22750, 1945.  
cf.—§746.10, Suit on removed guardian's bond.

**744.45 Release of surety.**—The surety or sureties, or the personal representative of any surety or sureties, on the bond of any guardian shall be released by the same procedure and on the same conditions as provided in §732.68 of Florida Statutes, for the release of a surety in probate matters.

**History.**—§1, ch. 22750, 1945.

**744.46 Resident agent.**—

(1) Every foreign guardian who seeks to sell, lease, manage, control or mortgage any of his ward's property, real or personal, in the State of Florida, shall have his residence and post-office address recorded in the office of the county judge and designate in writing, which shall likewise be filed, some resident of the county where the guardianship property is located as his agent or attorney for the service

of process, whose name, residence and post-office address shall likewise be recorded.

(2) A resident guardian removing his residence from the State of Florida shall also comply with the foregoing requirements.

(3) The aforesaid designation, in whatever form it may be, shall be taken to constitute the consent of the person so designating that service of any process upon the designated agent or attorney shall be sufficient to bind the person so designating in any suit or action against such person either in his representative capacity or personally; provided, only, that such personal action must have accrued in the administration of the guardianship estate.

**History.**—§1, ch. 22750, 1945.

**744.47 Costs.**—In all guardianship proceedings cost may be awarded in the sound judicial discretion of the county judge, and shall ordinarily abide the result of each particular proceeding unless, under the special circumstances of a particular case, it would be unjust that the losing party pay the costs. When the costs are to be paid out of the estate of the ward, the county judge may, in his discretion, direct from what portion of the estate such costs shall be paid.

**History.**—§1, ch. 22750, 1945.

**744.48 Duties of guardian of the person.**—It is the duty of the guardian of the person to take care of the person of the ward, to treat him humanely, and if he is a minor, to see that he is properly educated and that he has the opportunity to learn a trade, occupation or profession.

**History.**—§1, ch. 22750, 1945.

**744.49 Powers of guardian of the person.**—The guardian of the person shall be entitled to the custody of the ward. Such guardian shall not have power to bind the ward or his property or to represent him in any legal proceedings pertaining to his property.

**History.**—§1, ch. 22750, 1945.

**744.50 Payments to guardian of the person.**—If the guardian of the person of the ward is other than the guardian of the property, either guardian may apply by petition to the county judge, upon reasonable notice to the other, for an order directing the guardian of the property to pay to the guardian of the person an amount weekly, monthly, quarterly, semiannually, annually, or as the county judge may direct, to be expended in the support, care, maintenance and education of the ward, which amount may be increased or decreased from time to time in the discretion of the county judge. The decision upon such petition shall be in the discretion of the county judge. If such order is made, the receipt of the guardian of the person for payments made in pursuance thereof shall be a sufficient acquittance to the guardian of the property, and he shall not be bound to see to the application thereof.

**History.**—§1, ch. 22750, 1945.



**744.51 Duties of guardian of the property.**—It is the duty of the guardian of the property of the ward to protect and preserve it, to invest it prudently, to apply it as provided in §744.64, to account for it faithfully, to perform all other duties required of him by law, and at the termination of the guardianship, to deliver the assets of the ward to the person or persons lawfully entitled thereto.

History.—§1, ch. 22750, 1945.

**744.52 Guardian to take possession of all property.**—The guardian of the property shall take possession of all of the ward's property, real and personal, and of the rents, income, issues and profits therefrom, whether accruing before or after his appointment, and of the proceeds arising from the sale, lease or mortgage of the same or any part thereof. All such property and the rents, income, issues and profits therefrom shall be assets in the hands of the guardian for the payment of debts, taxes, claims, charges and expenses of the guardianship, and for the care, support, maintenance and education of the ward or his dependents, as may be authorized or approved by the county judge.

History.—§1, ch. 22750, 1945.

**744.53 Duty to file inventory.**—Within sixty days after his appointment the guardian of the property shall file with the county judge a complete verified inventory of the real and personal estate which has come to his knowledge and of any cause of action on which his ward has a right to sue or on which he has the right to sue in behalf of his ward. Said inventory shall be recorded in the office of the county judge having jurisdiction.

History.—§1, ch. 22750, 1945.

**744.54 Appointment and qualification of appraisers.**—Whenever the county judge deems it necessary, he may appoint two persons of discretion not related to the ward or to the guardian and not interested in the property, authorizing them to appraise the property of the ward that may come to their knowledge. The form of the warrant of appraisal shall be substantially that prescribed for the appointment of appraisers of the estates of decedents. On the death or on the neglect or refusal to act of an appraiser, another may be appointed by the county judge to act in his place. Before making the appraisal, the appraisers shall make and subscribe an oath or affirmation before any person authorized to administer oaths, substantially in the following form:

"We solemnly swear or affirm that without partiality we will truly appraise the estate of the ward (giving his name) so far as it may come to our knowledge, and that in all respects we will perform our duties as appraisers to the best of our ability."

History.—§1, ch. 22750, 1945.

**744.55 Form and return of appraisal.**—The appraisers shall list every article or parcel of property owned by the ward with its value in dollars and cents. When the appraisal is com-

pleted, but in any event within sixty days from the date of the warrant, unless the time is extended by the county judge, the appraisers shall certify it under their hands and seals and shall deliver it to the county judge.

History.—§1, ch. 22750, 1945.

**744.56 Compensation of appraisers.**—Each appraiser shall be entitled to receive for his services reasonable compensation to be fixed by the county judge after reasonable notice to the guardian of the property. Such compensation shall be paid by the guardian of the property from the estate of the ward.

History.—§1, ch. 22750, 1945.

**744.57 When appraisal unnecessary.**—If the whole estate of the ward consists of money, no appraisal thereof shall be necessary. The county judge may dispense with the appraisal of any estate whenever he deems an appraisement unnecessary.

History.—§1, ch. 22750, 1945.

**744.58 Inventory or appraisal as evidence.**—An inventory or appraisal may be used as evidence in any suit, by or against the guardian of the property, but it shall not be conclusive, for or against him, as to the real value of the estate, or that it was sold bona fide for more or less than the appraised amount.

History.—§1, ch. 22750, 1945.

**744.59 Subsequently discovered or acquired property.**—If the guardian learns of any property which is not included in the previous inventories or appraisals, such property shall be inventoried in like manner within sixty days after the discovery or acquisition thereof. Upon any subsequent appraisals the same or different persons may be appointed as appraisers.

History.—§1, ch. 22750, 1945.

**744.60 Compromise and settlement.**—Whenever it is proposed to compromise or settle any claim by or against the guardian or the ward, whether arising as a result of personal injury or otherwise, and whether arising before or after appointment of a guardian, the county judge, on sworn petition by the guardian setting forth the facts and circumstances of such claim, question or dispute and the proposed compromise or settlement, and on such evidence, if any, as may be introduced, if satisfied that such compromise or settlement will be for the best interest of the ward, may enter an order authorizing the settlement or compromise to be made, which order shall operate to relieve the guardian from any further responsibility or liability in connection with such claim or dispute when such compromise or settlement has been made in accordance with said order. The order authorizing the compromise may also determine whether an additional bond is required, and if it is required, shall fix the amount thereof, but no such bond shall be required when the guardian is a bank or trust company. In making any compromise or settlement under court order, as provided in this section, the guardian is authorized and empowered to execute any release or waiver which

may be necessary to effect the compromise or settlement. The execution of such instrument shall operate as a full and complete release to the person, firm or corporation making the settlement; provided, however, that compromise and settlement of a tort claim, not exceeding one hundred dollars, and other claims not exceeding five hundred dollars, may be had under this section or under §744.13.

*History.*—§1, ch. 22750, 1945.

**744.61 Suits by and against guardian or ward.**—All suits, actions or proceedings to establish the validity and amount of claims against the estate of the ward shall be brought jointly against the guardian and the ward, and in any such suit no guardian ad litem need be appointed. Suits to enforce or to declare rights of the ward shall be brought jointly in the name of the guardian and the ward. If suit is brought by the guardian against the ward or vice versa or if the interest of the guardian is adverse to that of his ward, then a guardian ad litem shall be appointed by the court to represent the ward in that particular litigation. Judgments in favor of the ward shall, upon termination of guardianship, become the property of the ward without the necessity for any assignment by the guardian or receipt by the ward. The guardian may receive payment and satisfy any judgment in behalf of the ward without any joinder of the ward.

*History.*—§1, ch. 22750, 1945.

**744.62 Suspension of statutes of limitations in favor of guardian.**—If a person entitled to bring an action is declared incompetent before the expiration of the time limited for the commencement thereof and the cause of the action survives, the action may be commenced by the guardian after such expiration and within twelve months from the date of the order appointing him.

*History.*—§1, ch. 22750, 1945.

**744.63 Suspension of statutes of limitations in favor of claimants.**—If a person against whom a cause of action exists is declared incompetent before the expiration of the time limited for commencement thereof and the cause of action survives, the action may be commenced against the guardian after such expiration and within twelve months from the date of the order appointing him.

*History.*—§1, ch. 22750, 1945.

**744.64 Application of income or property of ward.**—

(1) The county judge may authorize the guardian of the property to apply the income of the ward's property, first to his care, support, education and maintenance, and then any surplus, as far as the county judge deems necessary, for the care, support, education and maintenance of the dependents, if any, of such ward. If the income is not sufficient for such purposes, the county judge may authorize the expenditure of such portion of the principal as

he deems necessary from time to time for such purposes.

(2) If the ward is a minor and his parents are able to care for him and to support, maintain and educate him, the guardian of the property of such minor shall not be required so to use his ward's property unless directed or authorized to do so by the county judge.

*History.*—§1, ch. 22750, 1945.

**744.65 Petition for support of ward's dependents.**—Any person lawfully entitled to support from the ward may apply by petition, personally, or if he is incompetent, by his guardian, to the county judge appointing the guardian for an order directing the guardian of the ward's property to contribute to the support of the applicant from the property of the ward in his possession or from the income therefrom. The county judge may enter an order for the suitable support and education of the applicant out of the ward's property or the income thereof. Such order may be appealed by the guardian or the applicant, or by the ward if the guardianship is terminated before the expiration of the time for taking an appeal. The granting or denial of such order for support, or the expiration of time for appeal therefrom, shall not preclude a further application for increase, decrease, modification or termination of such allowance for support by either the applicant or the guardian. Such order for support shall be valid as to payments made in pursuance thereto, but no valid payments can be made thereunder after the termination of the guardianship. The receipt of the applicant shall be a sufficient acquittance to the guardian for any payments made in pursuance of such order for support. If the 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 veterans' administration, notice of the application for support shall be given by the applicant to the chief attorney for the administrator of veterans' affairs in this state at least ten days before the hearing on the application.

*History.*—§1, ch. 22750, 1945.

**744.66 Continuance of business.**—In all cases where it is necessary, in the opinion of the county judge, to continue the business of a ward, such business may be continued by the guardian of the property under the supervision of the county judge, and according to the rules and regulations specified in §733.08 of the Florida Statutes, under which a personal representative is allowed to continue the business of a decedent.

*History.*—§1, ch. 22750, 1945.

**744.67 Cultivation of lands.**—A guardian of the property may cultivate his ward's lands, hire labor, and make contracts for the purpose of such cultivation; provided, that the county judge first authorizes the cultivation of such land.

*History.*—§1, ch. 22750, 1945.