



ROBERT W. GERMAINE
CLERK OF THE COURTS • HIGHLANDS COUNTY, FLORIDA
OFFICE LOCATION: 430 SOUTH COMMERCE AVENUE
THE COURTHOUSE

CLERK OF CIRCUIT COURT
CLERK OF COUNTY COURT
COUNTY AUDITOR
COUNTY RECORDER
CLERK TO THE BOARD OF COUNTY COMMISSIONERS

PLEASE REPLY TO:

590 SOUTH COMMERCE AVENUE
SEBRING, FLORIDA 33870-3867
PHONE (863) 402-6565
SUNCOM 718-6565
FAX (863) 402-6768

MEMORANDUM

Date: June 27, 2014
To: Guardians and Representatives
From: Robert W. Germaine, Clerk of Courts
Subject: Guardianship Cases

This correspondence provides information concerning recent changes to statutes covering guardianship cases. Florida's Clerk of Courts have been directed by statute to audit guardianship reports and advise the court of their audit findings since 1989. These audits have been limited in scope. As of July 1, 2014 HB 635 amends several sections of Chapter 744 (Guardianship) and provides authority to the Clerk of Courts to audit guardianship reports in greater detail. As a result, beginning July 1, the Clerk of Courts will be performing routine and more detailed audits of guardianship cases. Any noted concerns will be communicated to the Courts and other appropriate parties.

In addition, this communication encourages guardians to retain copies of all back-up documentation that supports "Accounting of Guardian Property" in the event a detailed back-up is requested for audit purposes. Specifically, documents related to items noted below.

- Schedule A - Receipts
- Schedule B - Disbursements
- Schedule C - Capital Transactions and Adjustments
- Schedule D - Assets on Hand at Close of Accounting Period

Examples of supporting back-up documentation may include, but are not limited to, the following:

- Detailed receipts for purchases from wards funds
- Check copies written from wards funds
- Bank and investment statements showing detailed account activity
- Documents to support selling of property or inventory

Details of these amendments are provided per the attached document. Please feel free to contact our office with any questions or concerns.

Thank you.

cc: Court Judges
Darlene Stoelton, Director of Court Administration
Kathryn Whitlock, Director of Probate
Clerk of Courts Compliance and Internal Audit Division

Attachment

F.S. Chapter 744 – Guardianship Amendments¹

Summary:

Since 1989, Florida's Clerks of Court have been directed by statute to audit guardianship reports and advise the court of their audit findings. However, these audits are limited in scope: checking only for mathematical accuracy, timely filing, and a reconciliation of disbursements to court orders. The audits do not provide a mechanism for auditors to identify or investigate potential fraud or exploitation of the state's billions of dollars in guardianship assets. As keepers of the state's court records and auditors for each of the state's 67 counties, the Clerks are the logical local governmental entity for uncovering waste, fraud, and abuse in court-appointed guardianship cases.

This bill allows Clerks the ability to create enhanced guardianship audits in their offices. Courts would continue to maintain oversight of guardianship cases, and this bill further codifies in statute the relationship between the Clerks and the court.

Clerk Point:

- Section one of this bill amends section 744.102, F.S., to provide that an "audit" can include various practices accepted by professional standards, such as verifications, reviews of substantiating papers and accounts, interviews, inspections, and investigations.
 - Section two amends section 744.3135, F.S., to require all guardians, other than a corporate guardian, to submit to credit history investigations and background checks.
 - On petition by any interested person or on the court's own motion, the court may waive the requirement of a credit history investigation or a level 2 background screening, or both.
 - If appointed, a nonprofessional guardian may petition the court to reimburse the reasonable expenses of the credit history and background screening.
 - Section three amends section 744.368, F.S., to:
 - allow the Clerk, at the direction of the court, to obtain and review records and documents that "reasonably impact guardianship assets;"
 - provide that the Clerk can apply to the court to issue and serve subpoenas by affidavit to parties and non-parties, compelling the production of books, papers, documents, and other evidence upon notice to the guardian and the ward;
 - provide that if the guardian or ward serves an objection to production within 10 days after service of notice, the documents will not be produced pending resolution of the objection. If no objection is made within 10 days of service, the Clerk may issue the subpoena to the nonparty.
 - The court can shorten the timeframe within which a guardian or ward is required to file an objection upon showing by the Clerk that the ward's property is endangered.
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- Section four amends section 744.3685, F.S., to:
 - require the court to issue an order to show cause to a guardian that fails to timely file a guardianship report;
 - require the guardian to comply with submission of records and documents requested by the Clerk during the audit, upon a showing of good cause by affidavit of the Clerk as to why the records should be produced.
 - Section five amends section 744.474, F.S., to add failure to comply with submission of guardianship records during an audit to the list of reasons for guardian removal.
 - Section six amends section 943.0585, F.S., to provide an exception relating to the acknowledgements of arrests covered by an expunged criminal history record for persons seeking appointment as a guardian.
 - Section seven amends section 943.059, F.S., to provide for an exception relating to the acknowledgements of arrests covered by a sealed criminal history record for persons seeking appointment as a guardian.
 - Section eight provides an effective date.