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# BEST PRACTICE CHECKLIST-GUARDIANSHIP AUDIT

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## Mandatory Elements

1. ☐ Track open and pre-discharge (open for clerk purposes even if closed for SRS) guardianship cases. Know which guardianship cases require clerk monitoring and which cases are fully closed, such as discharged or dismissed, not requiring any further clerk or court action.
2. ☐ Track when guardianship reports are statutorily due pursuant to Section 744.362, FS, and Section 744.367, FS, flag cases with late reports and report non-compliance to the Court pursuant to Section 744.368(4), FS.
3. ☐ Utilize statewide fee schedules including Section 744.3135(1), FS, Section 744.365(6), FS, Section 744.3678(4), FS, and Section 744.638, FS.
4. ☐ Ensure all financial reports are mathematically accurate, complete, and can be re-calculated.
5. ☐ Ensure all financial information is reported in a clear and concise manner (stated in a manner that is understandable to interested persons, sufficient to put interested persons on notice); the format should be acceptable to the Court and the Clerk; the reports should comply with generally accepted accounting procedures: using consistent standards and procedures, be impartial, and with all activities fully reported.
6. ☐ Ensure all financial reports are consistent with Florida Supreme Court Rules of Probate; see Fla. Prob. R. Appendix B.
7. Ensure all audits are performed timely pursuant to Section 744.368(2) and (3), FS.
8. ☐ Obtain adequate proofs of purchase for disbursements based on a methodology suitable for your county (i.e. an established dollar threshold, reviewing outliers, and/or use of professional judgment), regardless of whether the purchase falls under Section 744.441, FS, or Section 744.444, FS; flag disbursements for the Court to review reasonableness; review for actual or perceived and undisclosed conflicts of interest for the Court to review; and, when appropriate, analyze disbursements and fees universally.
9. ☐ Ensure that the Clerk maintains a file on each guardian appointed by the court and retain in the file documentation of the result of any credit history investigation and level 2 background screening pursuant to Section 744.3135(1), FS.

## Optional Elements

1. ☐ Engage with a Florida State Guardianship Association (FSGA) local chapter. The Clerk and guardianship auditor(s) can become an organizational member of the FSGA, the FSGA local chapter, and the National Guardianship Association (NGA).
2. ☐ Raise awareness about the Clerk's role in guardianship with community engagement (HOAs, civic organizations).
3. ☐ Consider establishing a multi-leveled auditing program with the majority of reports undergoing a base level of auditing and a smaller fraction of reports undergoing additional scrutiny and varying degrees of scope.
4. ☐ Perform third-party verifications utilizing the Clerk's permissive ability to issue subpoenas by affidavit pursuant to Section 744.368(7), FS.
5. ☐ Collect data and statistics about guardianship proceedings. The following data and statistics about all guardianship case proceedings should be collected:
  - a. Case type (Limited, plenary, voluntary, guardian advocacy, VA, minor, etc.)
  - b. Case closure reason (restoration of rights, death, reach age of majority, transfer, dismissal, etc.)
  - c. Ward information (DOB, DOD, residency status, incapacity)
  - d. Guardian information (relationship to Ward type – professional, public, family, attorney, etc., fees)

- e. Attorney information (relationship to Ward, interested party, other, fees)
  - f. Petitioner information (relationship to Ward, family, DCF, attorney, other)
  - g. Financial information (asset balance by type)
6. ☐ Participate as a member of the Clerks' SIA assisting audits in other clerk offices and/or investigations for OPPG.
  7. ☐ Communicate with the Court about auditing standards and with the Clerks' Statewide Investigation Alliance (SIA) about specific concerns with state-registered professional guardians; explain to the Court that the Clerk's role with guardianship is:
    - a. administrative in nature and not substantive;
    - b. not impermissible ex parte communication; and,
    - c. a vital check and balance to the judiciary and the guardianship system.
  8. ☐ Ensure professional guardians post a blanket fiduciary bond with the Clerk in counties of the guardian's primary place of business pursuant to Section 744.2003(2), FS.
  9. ☐ Ensure for-profit corporate guardians comply with one of the requirements pursuant to Section 744.309(7)(a).
  10. ☐ Ensure not for profit corporate guardians file a quarterly disclosure statement that contains information pursuant to Section 744.3125(1) and (2), FS, rather than filing the guardianship application with each petition to be appointed guardian pursuant to Section 744.3125(4), FS.
  11. ☐ Ensure public guardians file surety bond pursuant to Section 744.2102, FS and a report of efforts to locate family members or friends, other persons, banks, or corporations to act as guardian of a ward and the ward's potential to be restored to capacity pursuant to Section 744.2103, FS.
  12. ☐ Consider making the Clerk's audit findings part of the non-confidential portion of the case file, but keep information protected by Section 744.3701, Florida Statutes (FS), confidential, restricting electronic access to probate images pursuant to Florida Supreme Court Order AOSC14-19.
  13. ☐ Consider engaging with the Clerks' SIA about specific concerns with a non-professional guardian; the Clerks' SIA can assist your office with performing an enhanced audit pursuant to Section 744.368(5), FS.
  14. Ensure professional guardians, pursuant to Section 744.102(17), FS, are registered with the Office of Public and Professional Guardians, pursuant to Section 744.2002, FS, including those professional guardians who are attorneys.
  15. Consider deputizing and/or work in conjunction with a Clerks' SIA member to conduct a joint investigation of the conduct of a professional guardian and with an enhanced audit.
    - a. Establish an FTP connection with the SIA Administrative Coordinator to securely transmit information.
  16. ☐ Flag possible issues that may not conform with Florida Guardianship Law for the Court to consider involving all guardians and consider filing the Clerk's written audit report into the case proceeding to ensure the guardian's due process rights are protected. There is no statutory duty to report findings directly to guardians or attorneys.

### Best Practice Point of Contact

<u>County</u>	
<u>Best Practice Contact</u>	
<u>Email</u>	
<u>Date submitted</u>	