

## Conflict Of Interest

### **744.446 Conflicts of interest; prohibited activities; court approval; breach of fiduciary duty.--**

- (1) It is essential to the proper conduct and management of a guardianship that the guardian be independent and impartial. The fiduciary relationship which exists between the guardian and the ward may not be used for the private gain of the guardian other than the remuneration for fees and expenses provided by law. The guardian may not incur any obligation on behalf of the guardianship which conflicts with the proper discharge of the guardian's duties.
- (2) Unless prior approval is obtained by court order, or unless such relationship existed prior to appointment of the guardian and is disclosed to the court in the petition for appointment of guardian, a guardian may not:
  - (a) Have any interest, financial or otherwise, direct or indirect, in any business transaction or activity with the guardianship;
  - (b) Acquire an ownership, possessory, security, or other pecuniary interest adverse to the ward;
  - (c) Be designated as a beneficiary on any life insurance policy, pension, or benefit plan of the ward unless such designation was validly made by the ward prior to adjudication of incapacity of the ward; and
  - (d) Directly or indirectly purchase, rent, lease, or sell any property or services from or to any business entity of which the guardian or the guardian's spouse or any of the guardian's lineal descendants, or collateral kindred, is an officer, partner, director, shareholder, or proprietor, or has any financial interest.
- (3) Any activity prohibited by this section is voidable during the term of the guardianship or by the personal representative of the ward's estate, and the guardian is subject to removal and to imposition of personal liability through a proceeding for surcharge, in addition to any other remedies otherwise available.
- (4) In the event of a breach by the guardian of the guardian's fiduciary duty, the court shall take those necessary actions to protect the ward and the ward's assets.

**History.--**s. 75, ch. 89-96; s. 54, ch. 90-271; s. 1102, ch. 97-102; s. 6, ch. 2002-195.