IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT OF FLORIDA IN AND FOR BREVARD COUNTY, FLORIDA

ADMINISTRATIVE ORDER NO.:
21-35-B
SUPERSEDES 18-18-B

IN RE: PROBATE & GUARDIANSHIP – PETITIONS TO SELL REAL PROPERTY

Whereas, section 744.361, Florida Statutes, requires that a guardian shall act in good faith, shall act in the Ward's best interests, and protect and preserve the property of a Ward.

Whereas, section 744.441(12), Florida Statutes, authorizes a guardian to sell, mortgage, or lease any real or personal property, including homestead property, upon approval of the Court.

Whereas, section 744.441(21), Florida Statutes, authorizes a guardian to enter into contracts that are appropriate for, and in the best interest of, the Ward, upon approval of the Court.

Whereas, section 744.447, Florida Statutes, requires the filing of a petition requesting authorization to act under section 744.441, which shall include:

1. The facts showing expediency or necessity for the action;
2. A description of any property involved;
3. The price and terms of a sale, mortgage, or other contract;
4. Whether the application conforms to the general terms of the guardianship report; and
5. Whether the Ward has been adjudicated incapacitated to act with respect to the rights to be exercised.

Whereas, section 744.381, Florida Statutes, authorizes the Court to appoint appraisers to appraise the property of the Ward that is subject to the guardianship when it deems necessary.

Whereas, section 733.610, Florida Statutes, specifies that any sale or encumbrance to the Personal Representative or Personal Representative's spouse, agent, or attorney, or any corporation or trust in which the Personal Representative has a substantial beneficial interest, or any transaction that is affected by a conflict of interest on the part of the Personal Representative, is voidable by any interested person except one who has consented after fair disclosure, unless:

1. The will or contract entered into by the decedent expressly authorized the transaction; or
2. The transaction is approved by the Court after notice to interested persons.

Whereas, section 733.612(19), Florida Statutes, authorizes a Personal Representative to employ appraisers.

Whereas, section 733.613, Florida Statutes, authorizes a Personal Representative of an intestate estate, or whose testator has not conferred a power of sale or whose testator has granted a power of sale but the power is so limited by the will or by operation of law that it cannot be conveniently exercised, shall consider that it is for the best interest of the estate and of those interested in it that real property be sold, the Personal Representative may sell it at public or private sale. No title shall pass until the Court authorizes or confirms the sale.

In order to further protect the real property of the Ward or Decedent against exploitation, to avoid conflicts of interest and to avoid the appearance of impropriety in the sale of real property subject to a guardianship.

It is hereby **ORDERED and ADJUDGED** that all petitions to sell real property shall be completed and shall include the following:

1. Acknowledgment that an appraisal of the real property was performed within 60 days of the filing of the petition to sell real property. The appraisal shall be attached to the petition.
2. When a listing agreement is entered into, the real property shall be publicly listed for sale on the Multiple Listing Service ("MLS"); and
3. The petitioner shall disclose any relationship or conflicts of interests, both familial and business related, between any of the following individuals or entities involved in the transaction to sell the Decedent's real property: seller, seller's agent, buyer, buyer's agent Guardian or Personal Representative. The Guardian shall similarly attest to no known conflicts.
4. The Petitioner or Guardian may seek leave of Court to depart from the requirements of paragraph 1 and/or 2 for good cause shown prior to or at the time of filing any petition to sell real property.

DONE and ORDERED this 15th day of November 2021.

JESSICA J. RECKSIEDLER
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CHIEF JUDGE

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