

HB 775

2015

1 A bill to be entitled
2 An act relating to the appointment of a guardian ad
3 litem; amending s. 49.021, F.S.; providing for the
4 appointment of a guardian ad litem to represent known
5 or unknown persons claiming by, through, under, or
6 against a person who is deceased or unknown;
7 specifying that common law authority to appoint a
8 guardian ad litem is not abrogated; providing that a
9 guardian ad litem may not be appointed in certain
10 circumstances; providing duties of a guardian ad litem
11 appointed in certain circumstances; confirming the
12 validity of a guardian ad litem appointed before a
13 specified date; amending s. 49.011, F.S.; conforming a
14 cross-reference; providing an effective date.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Section 49.021, Florida Statutes, is amended to
19 read:

20 49.021 Service of process by publication, upon whom;
21 appointment of guardian ad litem.—

22 (1) (a) Where personal service of process or, if
23 appropriate, service of process under s. 48.194 cannot be had,
24 service of process by publication may be had upon any party,
25 natural or corporate, known or unknown, including:

26 1.~~(1)~~ Any known or unknown natural person, and, when

HB 775

2015

27 described as such, the unknown spouse, heirs, devisees,
28 grantees, creditors, or other parties claiming by, through,
29 under, or against any known or unknown person who is known to be
30 dead or is not known to be either dead or alive;

31 2.~~(2)~~ Any corporation or other legal entity, whether its
32 domicile be foreign, domestic, or unknown, and whether dissolved
33 or existing, including corporations or other legal entities not
34 known to be dissolved or existing, and, when described as such,
35 the unknown assigns, successors in interest, trustees, or any
36 other party claiming by, through, under, or against any named
37 corporation or legal entity;

38 3.~~(3)~~ Any group, firm, entity, or persons who operate or
39 do business, or have operated or done business, in this state,
40 under a name or title that ~~which~~ includes the word
41 "corporation," "company," "incorporated," "inc.," or any
42 combination thereof, or under a name or title that ~~which~~
43 indicates, tends to indicate, or leads one to believe ~~think~~ that
44 the same may be a corporation or other legal entity; and

45 4.~~(4)~~ All claimants under any of such parties.

46 (b) Unknown parties may be proceeded against exclusively
47 or together with other parties.

48 (2) The court may appoint an attorney, administrator, or
49 guardian ad litem for any party, whether known or unknown, upon
50 whom constructive service of process under this chapter is
51 properly made and who fails to file or serve any paper in the
52 action within the time required by law. The guardian ad litem is

53 not required to post a bond or designate a resident agent in
54 order to serve in the capacity of a guardian ad litem.

55 (a) The guardian ad litem is deemed discharged when the
56 final judgment is entered or as otherwise ordered by the court.

57 (b) The guardian ad litem is entitled to an award of a
58 reasonable fee for services rendered and costs, which shall be
59 assessed against the party requesting the appointment of the
60 guardian ad litem or as otherwise ordered by the court.

61 (3) This section does not abrogate the common law
62 authority of a court to appoint a guardian ad litem.

63 (4) (a) A guardian ad litem may not be appointed to
64 represent an interest for which a personal representative,
65 guardian of the property, or trustee is serving. If a guardian
66 ad litem is appointed and he or she discovers that a personal
67 representative, guardian of the property, or trustee is serving
68 and represents the interest for which the guardian ad litem was
69 appointed, the guardian ad litem shall promptly report that
70 finding to the court and shall file a petition for discharge as
71 to any interest for which a personal representative, guardian of
72 the property, or trustee is serving.

73 (b) If a guardian ad litem is appointed to represent an
74 interest and discovers that the person whose interest is
75 represented is deceased and there is no personal representative,
76 guardian of the property, or trustee to represent the decedent's
77 interest, the guardian ad litem shall use reasonable efforts to
78 locate any spouse, heir, devisee, or beneficiary of the

79 decendent, shall report to the court the name and address of any
 80 such person the guardian ad litem locates, and shall petition
 81 for discharge as to any interest of the person located.

82 Section 2. A proceeding adjudicated before the effective
 83 date of this act in which the court appointed a guardian ad
 84 litem may not be declared ineffective solely due to lack of
 85 statutory authority to have appointed a guardian ad litem.

86 Section 3. Section 49.011, Florida Statutes, is amended to
 87 read:

88 49.011 Service of process by publication; cases in which
 89 allowed.—Service of process by publication may be made in any
 90 court on any party identified in s. 49.021(1) ~~49.021~~ in any
 91 action or proceeding:

92 (1) To enforce any legal or equitable lien or claim to any
 93 title or interest in real or personal property within the
 94 jurisdiction of the court or any fund held or debt owing by any
 95 party on whom process can be served within this state.

96 (2) To quiet title or remove any encumbrance, lien, or
 97 cloud on the title to any real or personal property within the
 98 jurisdiction of the court or any fund held or debt owing by any
 99 party on whom process can be served within this state.

100 (3) To partition real or personal property within the
 101 jurisdiction of the court.

102 (4) For dissolution or annulment of marriage.

103 (5) For the construction of any will, deed, contract, or
 104 other written instrument and for a judicial declaration or

105 enforcement of any legal or equitable right, title, claim, lien,
 106 or interest thereunder.

107 (6) To reestablish a lost instrument or record which has
 108 or should have its situs within the jurisdiction of the court.

109 (7) In which a writ of replevin, garnishment, or
 110 attachment has been issued and executed.

111 (8) In which any other writ or process has been issued and
 112 executed which places any property, fund, or debt in the custody
 113 of a court.

114 (9) To revive a judgment by motion or scire facias.

115 (10) For adoption.

116 (11) In which personal service of process or notice is not
 117 required by the statutes or constitution of this state or by the
 118 Constitution of the United States.

119 (12) In probate or guardianship proceedings in which
 120 personal service of process or notice is not required by the
 121 statutes or constitution of this state or by the Constitution of
 122 the United States.

123 (13) For termination of parental rights pursuant to part
 124 VIII of chapter 39 or chapter 63.

125 (14) For temporary custody of a minor child, under chapter
 126 751.

127 (15) To determine paternity, but only as to the legal
 128 father in a paternity action in which another man is alleged to
 129 be the biological father, in which case it is necessary to serve
 130 process on the legal father in order to establish paternity with

HB 775

2015

131 | regard to the alleged biological father.

132 | Section 4. This act shall take effect upon becoming a law.