



HOW IT GOES DOWN IN TEXAS

A White Paper by Americans Against Abusive Probate Guardianship

How many probate attorneys, including those in the REPTL (Real Estate Probate Trust Lawyers) Section of the State Bar of Texas, donate to election campaigns of legislators; How many to judges? While we do not know how many attorneys, or how much money is donated, we do know why.

The Guardians

It is our understanding that Texas Guardianship services providers (certified private professional guardians) automatically get 5% of all income of their wards, and 5% of all income going out of their wards' mandatory "management trust". For every transaction they receive their 5%, and they also invest that money and with a good ROI they get perhaps 5% of that as well, as per the Texas Estates Code. This is said by the Estates Code to be in the spirit of the "best interests of the Ward".

The Judges in Texas Probate

However, what Probate judges rake is not reported anywhere and is a mystery. They do make money from court assessed fees/costs, this is how they "earn" their raises. We hear tell of one judge who took out a private bank loan to buy a yacht. His court appointed attorneys then made untraceable cash payments on the loan. These sources of ready money add up quickly.

Officially, from Jan. 1 2015 to the end of April 2015, \$35 million dollars have been paid out by the courts in Texas in reported court appointee fees, and that is only by 40% of courts reporting. Do the math –that comes out \$350,000,000 annually!

IOLTA

Another source of income from ward's estates is Earned Interest Income paid upon the cash assets of the statutorily-created Management Trusts that accompany every single guardianship in Texas. When a guardianship is created by a probate judge, lawyers liquidate all the ward's assets, as per the rules of the 2014-revamped Texas Estates Code.

Who receives the Earned Interest Income that these captive funds, totaling billions across the state, generate annually in Texas wards' Management Trusts? The ward's Management Trust? Or, the State of Texas in the form of IOLTA (Interest On Lawyers Trust Accounts) payments, made directly from banks to the Texas Access to Justice Foundation, on behalf of the state Supreme Court of Texas.

Our experience in other states leads us to question if the State of Texas is funding it's Texas Access to Justice Foundation off of the Earned Interest Income from the state's wards' captive management trust funds.

We do not know if the statutorily-mandated Management Trusts accounts are considered eligible for the IOLTA program, because there is no documentation, recording, or audit of the mandated management trusts! Probate courts are allowed to spend the management trusts money with no public oversight, no financial audits, and no one is responsible for seeing that this huge pool of money is spent.

Texas Probate Lawyers

In Texas, guardians hire attorneys to represent them, the guardian bills the ward/estate for their guardianship fees, then in turn pay their attorneys out of the wards' trusts or estates – there is no tracking of the monies the guardians pay to their attorneys.

Between trips to the bank, Texas Probate Lawyers ply their trade with great efficiency.

The rush to place otherwise wealthy citizens onto the government dole starts when the courts initiate a guardianship, trapping wards into probate and forcing them out of their homes, which might be sold in a straw man sale, quickly. Then, the guardian/lawyer team gets their Ward “qualified” by secret emergency protection orders. Wards are then forced into Medicaid nursing facilities at the taxpayer’s expense. The court immediately creates a management trust—making the Ward impoverished-- so they qualify for more federal and state benefits like long term care and Medicaid, while the guardians and attorneys pay themselves out of the management trusts. It is all so neat.

And this is in a state where Medicaid costs are out of control and no one can figure out why!

The shameful Texas system is but one of dozens of state sponsored guardianship that screams out for reform.

We will be trying to make that happen with our coalition partners in Texas.

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